

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
COUNTY OF MCHENRY, STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
)
vs.)
)
MICHAEL PENKAVA) 20 CM 1338
Defendant)

STATE'S MOTION TO ADMIT STATEMENTS OF [REDACTED] & THE
CONFESSION OF [REDACTED]

Now come the People of the State of Illinois, by and through Patrick D. Kenneally, State's Attorney for McHenry County, and for his Motion to Admit Statements of [REDACTED]

I. Facts:

On or about July of 2006, [REDACTED], a six-year old minor at the time, reported to her mother, [REDACTED], that [REDACTED] father and [REDACTED] husband, [REDACTED], had been touching her vaginal area. Ex. 1 at 7-8. At the time, both [REDACTED] and [REDACTED] were members of the Kingdom Hall Congregation of Jehovah's Witnesses in Crystal Lake. *Id.* at 10. [REDACTED] confronted [REDACTED] with [REDACTED] statements, and [REDACTED] acknowledged his conduct. *Id.* at 9. [REDACTED] told [REDACTED] that he was a sinner and needed to disclose his sexual abuse to the "Elders" of the congregation, which included the Defendants. *Id.* at 10. [REDACTED] told [REDACTED] further that if he refused, she would inform the Elders of [REDACTED] disclosure herself. *Id.* Soon thereafter, the Defendant confessed that he had sexually molested his daughter to the Defendants. *Id.* at 10. A few days later at a subsequent meeting (discussed more below), [REDACTED] informed the Defendants of [REDACTED] outcry statements herself.

Despite learning of the abuse from both [REDACTED] and [REDACTED], neither Defendant reported the abuse to the Illinois Department of Children or Family Services (DCFS) pursuant to 325 ILCS 5/4(a)(9). The statute provides in pertinent part:

The following persons are required to immediately report to [DCFS] when they have reasonable cause to believe that a child known to them in their professional or official capacities may be an abused child or a neglected child...[a]ny member of the clergy.¹

Sometime before September 26, 2006, after learning of the abuse to [REDACTED] the Defendants sent a letter to the Christian Congregation of Jehovah's Witnesses (CCJW or Service Department). *See* Ex. 2. The CCJW is a 501(c)(3) Jehovah's Witness Organization that facilitates communications with local chapters and the legal service department housed within Watchtower Bible and Tract Society of New York, Inc." *Caekaert v. Watchtower Bible & Tract Soc'y of N.Y.*, 2021 U.S. Dist. Lexis 122566 (2021). In the letter, the Defendants indicated that "a judicial committee was formed for [REDACTED] [REDACTED]." set forth the details of [REDACTED] confession, and identified [REDACTED] by name. *See* Ex. 2. The Defendants indicated further that [REDACTED] exhibiting "sincere repentance," was "publicly reprovved with restrictions that include participation in the Theocratic Ministry School and commenting at meetings." *Id.* The Defendants indicated further that they had "notified" the Legal Department, which "deemed that it was not necessary to report to the authorities." *Id.* The Defendants indicated further that [REDACTED] received and will continue receiving encouragement in order to achieve family unity." *Id.* Lastly, the Defendants indicated:

[REDACTED] needs help. [REDACTED] [another Elder] will have study sessions to direct his thoughts to a good relationship with Jehovah. His status will be examined as he progresses spiritually."

Id. Nowhere in the letter do the Defendants indicate that [REDACTED] was charged with any responsibilities, duties, or specific vocations related to providing [REDACTED] with "spiritual guidance." *See id.*

On September 26, 2006, the CCJW responded, acknowledging receipt of the "recent report from the judicial committee that handled the case of Brother [REDACTED]"

¹ "Member of the clergy" means "a clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs. *Id.* at 5/3.

[REDACTED], baptized publisher of his congregation, who confessed to having sexually abused his six-year-old daughter, [identified by name]." Ex. 3. The letter advised that "for the good of the congregation and its members, neither the local congregation nor any legal corporation used by the Jehovah's Witnesses should be seen as an entity that has delegated authority or status to a person known to have indecently abused a minor." *Id.* The letter instructed that: 1) [REDACTED] "not be offered any particular responsibility in the congregation that might be interpreted as an assignment, regardless of how small"; 2) children not be allowed "to spend the night in [REDACTED] home," go out on "field service with [REDACTED]," or "cultivate friendly relationships" with [REDACTED]; and 3) [REDACTED] not be allowed to "go out alone for field ministry." *Id.*

Due to the failure of the Defendants to report the sexual abuse of [REDACTED], it escalated from touching to sexual penetration. This continued unimpeded through 2018. In October of 2018, [REDACTED] finally reported the ongoing abuse to the police. As part of the investigation, Defendant [REDACTED] provided law enforcement with the following written statement:

In approximately 13 years ago, [REDACTED] confessed to touching the genitals of his 6 year old daughter. A committee was formed to handle the matter. He was publicly reprovved.

Ex. 4.

On November 15, 2008, [REDACTED] was indicted on over 13 felonies related to the twelve-year molestation and rape of his daughter in 18 CF 1057. At trial, Defendant Penkava was called to testify. *See* Ex. 5. He testified to two meetings that he had "somewhere around July of 2006." *Id.* at 10. The first was with Defendant [REDACTED] and [REDACTED] to "censure and to reprove and spiritually help [REDACTED]." *Id.* at 45. The second meeting was with Defendant [REDACTED] and [REDACTED] *Id.* at 18, 46. According to Defendant Penkava, the purpose of the second meeting with [REDACTED] was to "offer her spiritually - spiritual support" and to inform her of her "right to contact the authorities on this matter." *Id.* at 16, 18. Defendant Penkava testified further that

██████████ was assigned to help ██████████ spiritually recover, give him ongoing spiritual help..." *Id.* at 18.

On December 19, 2019, ██████████ was found guilty of multiples counts and sentenced to 45 years in the Illinois Department of Corrections.

On November 18, 2020, the Defendants were charged with Failure to Report Child Abuse in violation of 325 ILCS 5/4(a)(9). On April 1, 2021, the State issued a subpoena seeking, among other things: 1) [a]ny and all instruction material sent to Kingdom Hall or Defendants from either [CCJW] or any other governing body...regarding...steps or procedures in handling child abuse or sex abuse...; and 2) "[a]ll documents, reports, minutes generated by the Judicial Committee formed for ██████████" The Defendants filed a motion to quash the subpoena and the matter went to evidentiary hearing on December 16, 2021.

At the hearing, the Defendant's called John Miller, Esq., an Elder and associate general counsel for the Watchtower, to describe the Jehovah's Witnesses "confessional process." Dec. 16, 2021 Tr. 29. Mr. Miller testified that an Elder "is a person who to a reasonable degree, is meeting the - scriptural qualifications for elders are found in the Books of Timothy and Titus." *Id.* at 32. Regarding the Jehovah's confessional process, he testified that it includes multiple stages. First:

The elder who hears [the confession] will get another elder, and the two of them will then approach the individual who has made that report, be it the confessor or the other individual who is reporting the sin.

There is a caveat in child abuse, because if it involves child abuse, they stop what they're doing. They call the legal department at Watchtower headquarters, and they get legal guidance on whether in the law of the state in which they are serving there is a duty to report. If there is, they're given direction on how to make that report.

...once the determination is made whether on the law of that state a report is made, the elders then turn their attention back to the spiritual element of the sin.

Id. at 35-36. Mr. Miller testified further:

Q. And all of the instructions that they're given as to who to communicate and when to communicate, all of those come from either the legal department or the service department, correct?

A. Everything legal comes from any lawyer they consult. Anything spiritual comes from their review of the Bible or from their assistance they receive from the service department.

Second:

...If a sinner confesses, the quest now is to determine whether the sinner's repentant.

And so, now, they're going to get a third elder to join them. This may be the first time that the two elders will approach the coordinator of the Body of Elders and tell the coordinator we have a matter that involves gross sin. We have a confession that requires a judicial committee. To determine a repentance, we need a third elder.

A third elder is then appointed by the Body of Elders, and the three of them will now meet with the individual who made the report, be it the sinner or be it the other reporter; and they will then confront the sinner if the information came from someone else. And they get a full confession from that sinner. In the case of child abuse and in the case of adultery, those two, because of what it says back, in 1909, those two are going to require another step. Now they're going to have to alert the spouse of the fact that they have received information that may give rise to a spouse's right to divorce. And in the case of child abuse, the spouse's right to report to the police.

Id. at 36-7. During the meeting with the spouse, Mr. Miller testified further:

The elders do not reveal what was told to them in detail by the sinner. But they do ask the spouse, what did he tell you, because they need to weigh the two and match them. That's part of determining repentance.

Id. at 38. Mr. Miller testified further:

Q: And when they go to meet with the spouse, the spouse isn't confessing anything to them, correct?

A: No.

Id. at 111.

Third:

If the decision by the elders is that the sinner was not repentant, has not displayed repentance, then they're going to make the decision that this individual must be disfellowshipped. It's excommunication, kicked out.

If the sinner is found to have demonstrated repentance, and in the case of child abuse, it is evidencing a desire to completely turn that around and change his life course, in that case, that will be state; and instead, public reprove is what is going to be stated on the document.

Id. at 39.

According to Mr. Miller, the discussion with the Legal Department, the Service Department, and the discussion with the spouse of a child abuser are "all part of the confessional process." *See id generally.*

At the hearing, [REDACTED] also testified. She testified that in July of 2006, she met with the Defendants and [REDACTED] at their request in the basement of Kingdom Hall. *Id.* at 133, 143. [REDACTED] testified further that during the meeting, she stated that [REDACTED] had told her that [REDACTED] was touching [REDACTED] "private parts." *Id.* at 158-9, 166. [REDACTED] testified further that during the meeting, she did not "confess" anything that she had "committed." *Id.* at 146. She testified further:

Q. Yes. I'm asking if you were asked to [spiritually] help him treat your husband.

A. No. No. He was going to receive help from - I don't know how they decided on it, but it was [REDACTED] who was going to help him, not me.

Id. at 161.

On December 23, 2021, the Court, after an *in camera*, inspection, returned some documents to the State pursuant to its subpoena request. One of those documents is a copy of chapter 14 from a book entitled *Organized to Do Jehovah's Will*. *See Ex. 6*. It provides in pertinent part:

Some serious offenses, such as sexual immorality, adultery, homosexuality, blasphemy, apostasy, idolatry, and similar gross sins,

require more than forgiveness from an offended individual. Because the spiritual and moral cleanness of the congregation are threatened, such serious sins must be reported to the elders and handled by them. Some individuals may approach the elders either to confess their own sin or report what they know regarding the wrongdoing of others. Regardless of the manner in which the leaders first hear reports of serious wrongdoing on the part of a baptized Witness, an initial investigation will be made by two elders. If it is established that there is substance to the report and that evidence is available showing that a serious sin has been committed, the body of elders will assign a judicial committee of at least three elders to handle the matter...

In every situation where guilt is established, the primary endeavor of the overseers is to restore the wrongdoer to spiritual health. If he is genuinely repentant and they are able to help him, their administering of reproof, either in private or before any possible witnesses who testified during the judicial hearing, will serve to discipline him and instill wholesome fear in the onlookers. In all cases of judicial reproof, restrictions are imposed...In due course, the restrictions are removed as the individual's spiritual recovery becomes manifest.

Id. at 148-9. Reproof, therefore, appears to be a formal censure and symbolic restoration process where the sinner is restored to the congregation, but in a new role (i.e. restrictions) owing to his sin. The chapter goes on to discuss the recourse for the unrepentant, such as disfellowship (expulsion from the congregation) or dissociation (expulsion from Jehovah's Witnesses). *Id.* at 150-3.

Also, as part of the subpoena return, the State received a copy of chapters 12 and 14 of a book entitled *Shepard the Flock of God*. Ex. 7. Chapter 12 sets forth the Jehovah's Witnesses "confessional process" in a way that is not nearly as all-encompassing as Mr. Miller's description. It provides:

Confession: Admission of wrongdoing, either written or oral, may be accepted as conclusive proof without other corroborating evidence.

There must be two witnesses to a confession, and the confession must be clear and unambiguous...

Chapter 14 details the way Elders should respond to Child Abuse. It provides, “the victim, her parents, or anyone else who reports such an allegation to the elders should be clearly informed that they have the right to report the matter to the secular authorities.” *Id.* at § 4. It provides further that two elders should investigate the allegations” and “[g]enerally, elders should be able to obtain necessary information from the parents.” *Id.* at § 18. It provides further that the Elders, upon establishing an instance of child abuse, must contact the Service Department (i.e. CCJW) for “direction” regarding: 1) “restrictions imposed on the individuals activities within the congregation” and access to minors; and 2) “direct family heads of minors within the congregation of the need to monitor their children’s interaction with the individual.” *Id.* at § 23. Specifically, and in a way that suggests Jehovah’s Witnesses are well aware of the ongoing danger a child abuser poses, even after the “spiritual counseling” and reproof, chapter 14 states:

The elders will be directed to caution the individual never to be alone with a minor, not to cultivate friendships with minors, not to display affection for minors and so forth. The Service Department will direct the elders to inform family heads of minors within the congregation of the need to monitor their children’s interaction with the individual.

Id. Nowhere in these documents is it contemplated, recommended, or required that the perpetrator’s wife or other family members participate in his “spiritual guidance.”

II. Relevant Law:

Pursuant to 735 ILCS 5/8-803

A clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs, shall not be compelled to disclose in any court, or to any administrative board or agency, or to any public officer, a confession or admission made to him or her in his or her professional character or as a spiritual advisor in the course of the discipline enjoined by the rules or practices of such religious body or of the religion which he or she professes, nor be compelled to divulge any information which has been obtained by him or her in such professional character or as such spiritual advisor.

The clergy penitent privilege only protects clergy/penitent communications; it does not protect information “acquired by a church as a result of independent investigations not involving confidential communications between clergy and penitent.” *People v. Campobello*, 348 Ill. App. 3d 619, 625 (2nd Dist. 2004). In *Campobello*, the Roman Catholic Diocese of Rockford, pursuant to canon law, convened an “intervention committee” to investigate allegations of sexual misconduct of a minor by the defendant, a priest. *Id.* at 623. The ultimate purpose of the committee was “to recommend to the bishop whether [the defendant] should remain employed by the Church or should at least be removed from active ministry.” *Id.* Pursuant to canon law and the sworn averments of the Bishop, all committee deliberations involved “religious thoughts and ideas,” all documents generated were done so by a priest “in his official capacity” and were to be kept confidential, and all members of the committee were “practitioners accredited by the Roman Catholic Church.” *Id.* at 623-4. Despite the Church’s objection, the trial court issued a discovery order requiring production of the intervention committee’s documents. *Id.* at 622. The Church refused, was held in contempt, and ultimately appealed, citing the clergy/penitent privilege. *Id.*

After a lengthy textual analysis of section 8-803, the Second District determined that the clergy-penitent privilege applies only to: 1) an “admission or confession”; 2) “made in confidence”; 3) “made for the purpose of receiving spiritual counsel or consolation;” and 4) “to a clergy member whose religion requires him to receive admissions or confessions for the purpose of providing spiritual counsel or consolation.” *Id.* at 668. The Second District construed further that the clergy/penitent privilege “does not protect any information that a religious institution acquires independently of a communication that is privileged by section 8-803, *even if that information is the same as that conveyed in the confidential communication* (emphasis added).”² *Id.* at 636. The Second District, thereafter, ordered the Church to produce the

² This sentiment was forcefully echoed in *People v. Burnidge*, 279 Ill. App. 127 (2nd Dist. 1996), stating, “[w]e see no reason why the clergy privilege should be extended to exclude testimony offered by others who are not subject to the privilege.”

documents to the trial court for an *in camera* inspection and disclosure in accordance with its opinion. *Id.*

A clergyman or penitent waives the privilege by communicating the admission or confession to a non-privileged third-party unless that third-party was "indispensable" to the "counseling or consoling" or "regularly engaged" in aiding the clergyman or practitioner in giving spiritual advice." *Id.*; *People v. Thodos*, 2015 Ill. App Lexis 720, p 18 (2nd Dist. 2015); *People v. Dierks*, 88 Ill. App. 3d 1073 (2nd Dist. 1980).

"In order to properly invoke an evidentiary privilege, the party asserting the privilege must establish all of the privilege's necessary elements." *Doe v. Catholic Diocese of Rockford*, 2015 IL App (2d)140618, p53 (2nd Dist. 2015).

III. Argument:

- a. ██████████ statements to the Defendants were not privileged because she was not a penitent/confessant and her statements were not a "confession" or "admission."

The Defendants' contention that it is merely the prerogative of the Jehovah's Witnesses to self-delineate the clergy-penitent privilege is a distortion. The Defendants' further contention that the Jehovah's Witnesses' "confessional process" is synonymous or coextensive with the term "confession" as used in section 8-803 is an equivocation.

While the Jehovah's Witnesses are free to define their own "confessional process" for purposes of their religious practices and obligations, the breadth of the clergy-penitent privilege is defined by the law. As such, it cannot be encumbered or broadened by the Defendants' attempts to graft on their own religious dogmas and practices. Under the law, the clergy-penitent privilege explicitly and only protects the "confession" or "admission" of the penitent/confessant.

Turning back to *Campobello*, the Church therein made an analogous claim to the Defendants' here, arguing that section 8-803 not only protects "'admissions' or 'confessions'...but also 'any information' obtained by a clergy member in his 'professional character.'" *Campobello*, 348 Ill. App. 3d at 634. In dispensing with this argument, the Second District focused in on the clause in section 8-803 providing, "in

his or her professional character or as a spiritual advisor in the course of the discipline enjoined by the rules or practices of [the] religious body or of the religion which [the clergy member] member professes." *Id.* Specifically, the Second District noted that "course of discipline" was the "crucial phrase." After a review of case law from other states, the court resolved that the "discipline" referred to in section 8-803 "is limited to the set of dictates binding a clergy [or practitioner] member to receive from an individual an 'admission' or 'confession' for the purpose of spiritually counseling or consoling the individual." *Id.* at 635. In other words, section 8-803 protects only the confession or admission made in a formalized context. It does not protect any and all statements made during the course of subsequent spiritual counseling or consoling arising from the confession.

In this case ██████ not ██████ was the confessant/penitent who had committed the transgression. ██████ and her daughter, though perhaps bearing the scars of the Defendant's sin, had nothing to confess. Therefore, only ██████ statements, not ██████ were privileged under section 8-803. Merely imbuing ██████ disclosure with a spiritual aspect or insisting that her statements to the Defendants were in some mysterious way uttered for the "spiritual guidance" of ██████ does not miraculously transfigure her into a penitent and her statements into a confession. Merely uttering the words "confession" or "confessional process" when describing ██████ meeting with the Defendants is semantics and does not shroud this entire encounter in the privilege. Pursuant to *Campobello*, the reach of the clergy-penitent privilege ends with the formal confession or admission, not that which comes after.

The Defendants' interpretation is without precedent in that no Illinois case has held that a statement not made by the confessant himself is privileged. Accepting the Defendant's position would constitute a categorical change in the nature of the privilege and expand it beyond anything that has been contemplated or sanctioned by an appellate court.

Moreover, accepting the Defendant's interpretation would make the clergy-penitent privilege readily subject to abuse. For example, what if Mr. Miller or any

figure of authority in a religious sect testified that their confessional process extends also to outcry statements of child victims that may subsequently give rise to the confession of an abuser? Surely the court can see how permitting religious denominations, some having less than reputable histories defending the interests of children, to broadly define the clergy-penitent privilege in self-serving and unforthcoming ways could substantially diminish the clergy reporting requirement and undermine the State's profoundly compelling interests in preventing, exposing, and redressing child sexual abuse. It would certainly be strange for the Illinois legislature to have intended that certain children receive less protection against child abuse depending on the religion into which they were born.

It is worth noting that Mr. Miller's presentation of the Jehovah's Witnesses' "confessional process" at the December 16, 2021 hearing appears out of step with its own religious literature. As discussed, according to chapter 12 of *Shepherd the Flock*, a confession consists of an "unambiguous" "admission of wrongdoing" to at least two witnesses. A "judicial committee," on the other hand, is formed in response to any "serious wrongdoing" that has been established after an initial investigation. It is established to reprove and "discipline" the wrongdoer. Though related, in that a confession may precede and precipitate a "judicial committee," they are clearly distinct events - distinct temporally, distinct in terms of participants, and distinct in terms of purpose.

Lastly, the Defendants' contention that [REDACTED] statements were received for the purpose of "spiritually guiding" [REDACTED] is weak and refuted by their own words. At [REDACTED] trial, Defendant Penkava testified that the purpose of the meeting with [REDACTED] was to provide her with "spiritual support" and inform her of her rights to notify the authorities. Moreover, as testified to by both Defendant Penkava and [REDACTED] and as stated by the Defendants in their letter to the CCJW, it was [REDACTED] not [REDACTED] that was commissioned with providing "spiritual help" to [REDACTED]

[REDACTED] testified that she was never requested to advise, discipline, console, or otherwise "spiritually guide" [REDACTED]. Unlike *Thodos*, [REDACTED] neither offered nor was

invited to offer advice on how the Elders should counsel [REDACTED] Rather and according to [REDACTED], the Defendants confirmed [REDACTED] confession, read a few Bible verses, counseled her regarding her options to a divorce and contact with law enforcement, and sent her away. Not exactly adequate preparation or discipleship for her front-line and all-important role of "spiritually guiding" a dangerous man with known pedophilic and incestuous urges living in the same house as her young daughter.

- b. [REDACTED] confession is not privileged because it was never intended to be "confidential," and the subsequent disclosures of the confession were not for the purpose of spiritual counseling or consoling.

"As with the attorney-client privilege, the priest-penitent privilege only attaches when the communication is made in confidence." *People v. Diercks*, 88 Ill. App. 3d 1073, 1078 (5th Dist. 1980). In *Diercks*, the appellate court affirmed the trial court's holding that a pastor could testify to the defendant's admissions, reasoning in part that the pastor's "actions [in telling the State's Attorney of the confession]...would indicate that no privilege existed." *Id.* at 1077.

Similarly, the State would urge this court to resolve this controversy not based on the Defendants' and Mr. Miller's words in furtherance of a legal strategy now, but on the actions and words of those involved in 2006. Immediately after the Defendants learned of [REDACTED] "confession," and in accordance with the Jehovah's Witnesses' express guidance, they shared it with strangers in New York at both the Legal and Service Departments. Hardly a locked-box confessional, revealing that there was never an intention or expectation that [REDACTED] statements would be kept strictly confidential.

The Defendants' detailed communications to the Legal and Service Departments were not made for the purpose of [REDACTED] spiritual counsel or console, and Mr. Miller's testimony to the contrary is dubious. At the outset, Mr. Miller has never had a formal relationship with the Kingdom Hall congregation in Crystal Lake, was not involved in any of the events at issue, and was not privy to the private intentions or purposes of anyone involved in 2006.

With respect to the disclosure of [REDACTED] confession to the Legal Department, it was manifestly and expressly (as provided by Defendant Penkava, Mr. Miller, and the Jehovah's Witnesses' own guidebooks) for the purpose of ascertaining the Defendants' reporting obligations to secular authorities. Mr. Miller's "trust me, not your eyes" assertion, artfully shoring up a glaring vulnerability in his fellow adherents' privilege defense, that somehow the call with the lawyers accrued to the benefit of [REDACTED] spiritual condition betrays the tendentious nature of and deliberate bent to his testimony. Moreover, there is no legal basis to hold that, even though the disclosure was not for the purpose of "spiritual guidance," it was not waived so long as the third-party was under some independent obligation to keep the disclosure confidential, such as the attorney-client privilege.

While the State certainly does not begrudge the Defendants having obtained legal advice, if it was their intention, they were perfectly capable of doing so without betraying the confidence of [REDACTED]. The Defendants could have obtained identical legal advice under the following two scenarios:

Scenario 1: Hello, lawyers, we are Elders at the Kingdom Hall Congregation in Crystal Lake, Illinois. Today, a parishioner, [REDACTED], D.O.B. [REDACTED] came to us and confessed that he had been inappropriately touching his six-year old daughter, [full name]. We confirmed the report with [REDACTED] wife, [REDACTED] [D.O.B.] What are our reporting requirements?

Scenario 2: Hello, lawyers, if a parishioner were to confess to clergy at an Illinois congregation that he/she sexually abused a minor, what would the clergy's reporting requirements be?

With respect to the Service Department, its responsive letter on September 26, 2006 reveals that its participation had nothing to do with spiritually advising or consoling [REDACTED]. Nowhere in the letter is his spiritual condition or improvement mentioned. The Service Department instructed the Defendants to rescind [REDACTED] privileges and assignments to avoid scandal and because, due to his "natural fleshy

weakness," he is unqualified. Moreover, the Service Department instructs the Defendants to protect others in the congregation by limiting [REDACTED] access to children as "experience has shown that such an adult may well molest other children."

Unfortunately, no such consideration was shown [REDACTED] for members of the community not affiliated with Kingdom Hall whose children may have been accessible to [REDACTED]

These instructions in the September 26, 2006 letter correspond almost perfectly with the role foreseen for the Service Department in *Shepard the Flock*. As provided, such contact is not for the purpose of spiritual counseling the abuser, but to: 1) ascertain "restrictions imposed on the individuals activities within the congregation" and access to minors; and 2) "direct family heads of minors within the congregation of the need to monitor their children's interaction with the individual." *Id.*

As their actions and words in 2006 demonstrate, contacting the Legal Department and Service Departments, neither of which contributed to [REDACTED] "counseling or consoling," let alone were "indispensable" to it, was not for the benefit of [REDACTED]. The purpose of the contact and these disclosures, which were intended and required from the beginning, was to protect the Jehovah's from [REDACTED]. Accordingly, the confession, which was never intended to remain strictly confidential, as is explicitly required by the clergy-penitent privilege, is not protected.

WHEREFORE, the People of the State of Illinois respectfully request that this Honorable Court grant the State's Motion to Admit the Statements of [REDACTED] & The Confession of [REDACTED]

Respectfully submitted,


Patrick D. Kenneally
State's Attorney

STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)

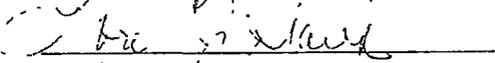
The undersigned, on oath, states that to the best of his knowledge the facts set forth in the foregoing motion are true in substance and matter of fact.



Patrick D. Kenneally
Assistant State's Attorney

Signed and sworn to before me this

6 Day of January, 2022



Notary Public



Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: [REDACTED]
10/08/2020
McHenry County Illinois
22nd Judicial Circuit

1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS.

3 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
4 McHENRY COUNTY, ILLINOIS

6 THE PEOPLE OF THE)
7 STATE OF ILLINOIS,)
8 vs.) No. [REDACTED]
9 [REDACTED])
10 Defendant.)

11 EXCERPTS OF:

12 REPORT OF PROCEEDINGS had at the hearing of the
13 cause before the HONORABLE MICHAEL COPPEDGE, on the
14 22nd of October, 2019, at the McHenry County Government
15 Center, Woodstock, Illinois.
16

17 APPEARANCES:

18 MR. PATRICK KENNEALLY
19 State's Attorney of McHenry County
20 BY: MS. SHARYL EISENSTEIN
21 MS. SUSANNE GROEBNER
22 Assistant State's Attorneys
23 Appeared on behalf of the State

22 MR. MARK COOK
23 Public Defender of McHenry County
24 BY: MR. RICHARD BEHOF
MR. ANGELO MOURELATOS
Assistant Public Defenders
Appeared on behalf of [REDACTED]

---BEGINNING OF EXCERPT---

[REDACTED]

Having been first duly sworn, was examined and testified (through interpreter) as follows:

EXAMINATION

BY MS. SUSANNE GROEBNER:

Q. Ma'am, in a nice loud and clear voice, can you state your name for the record and spell your first and last name for the court reporter.

A. [REDACTED]

Q. [REDACTED] how old are you?

A. [REDACTED]

Q. Where do you currently live at?

A. In [REDACTED]

[REDACTED]

Q. How long have you lived there?

A. Four years.

Q. Are you currently employed?

A. Yes.

Q. What do you do for a living?

INTERPRETER FOR THE WITNESS: Interpreter is going to ask for clarification.

A. I weld like metals.

Q. How long have you had that job?

1 A. Five.

2 Q. Five years?

3 A. Yes.

4 Q. Are you currently married?

5 A. Yes.

6 Q. Who are you married to?

7 A. With [REDACTED]

8 Q. Do you see [REDACTED] in court today?

9 A. Yes.

10 Q. Could you please identify him for the record by
11 identifying something that he is wearing today?

12 A. A blue shirt.

13 Q. Can you describe any other article of clothing
14 he's wearing?

15 A. A brown suit.

16 MS. GROEBNER: May the record reflect the /EUPB
17 in-court identification of the Defendant?

18 THE COURT: It will.

19 MS. GROEBNER:

20 Q. [REDACTED] how long have you been married to the
21 Defendant?

22 A. Married? Married legally, or --

23 Q. How long have you -- How long have you been
24 together with the Defendant?

1 A. Okay. Like 25 years.

2 Q. How old is' the Defendant?

3 A. 42.

4 Q. Do you and, the Defendant have any children
5 together?

6 A. Yes.

7 Q. How many children?

8 A. Two.

9 Q. What are their names?

10 A. [REDACTED] and [REDACTED]

11 Q. How old is [REDACTED]

12 A. 20.

13 Q. What is her date of birth?

14 A. It's [REDACTED]

15 Q. And how old is [REDACTED]

16 A. He's [REDACTED]

17 Q. What is his date of birth?

18 A. [REDACTED]

19 Q. Now, [REDACTED], directing your attention back to the
20 year 2006. Where were you living at?

21 A. In [REDACTED] on [REDACTED]

22 Q. Was that a house or an apartment?

23 A. [REDACTED]

24 Q. And where were you staying within that [REDACTED]

1 A. In the basement.

2 Q. Who lived with you in the basement of that
3 residence?

4 A. Just us four.

5 Q. And how many bedrooms were contained within that
6 basement?

7 A. One.

8 Q. Who would sleep in that bedroom?

9 A. The children.

10 Q. Where would you and your husband sleep?

11 A. In a part of the living room.

12 Q. How old would [REDACTED] have been back in [REDACTED]

13 A. [REDACTED]

14 Q. Do you recall what grade she was in back when she
15 was [REDACTED]

16 A. Like in [REDACTED]

17 Q. And [REDACTED] shared the bedroom with [REDACTED] back
18 in 2006; correct?

19 A. Yes.

20 Q. Did they each have their own beds within that
21 bedroom?

22 A. Yes.

23 Q. Now, back in 2006 when [REDACTED] was in first
24 grade, did you notice any unusual behavior?

1 A. No.

2 Q. Did anything cause you concern with [REDACTED] back
3 in [REDACTED]

4 A. No. What do you mean, worries?

5 Q. Did -- Was there any actions of [REDACTED] that
6 caused you concern that she -- that -- new behaviors of
7 [REDACTED] that caused you concern back in [REDACTED]

8 A. Oh, yes. The problem with her peeing.

9 Q. And where would she be peeing at that would cause
10 you concern?

11 A. In her clothing. She would wake up and she had
12 peed.

13 Q. And had [REDACTED] ever had any bed wetting problems
14 prior to that time in [REDACTED] after she had been
15 potty-trained?

16 A. I didn't understand that.

17 Q. [REDACTED] did she have any bed wetting problems
18 prior to you noticing the problem in [REDACTED]

19 A. No. No, she didn't have that problem. And it had
20 been a few days and that worried me.

21 Q. So that she wet the bed for more than one time?

22 A. Yes. Like four or five times.

23 Q. When you took -- When you noticed this bed wetting
24 problem with [REDACTED] did you address it with her at all

1 or talk to her about it?

2 A. Yes.

3 Q. And where did this conversation take place with
4 [REDACTED] in regard to her wetting the bed?

5 A. In part of the living room.

6 Q. Was anyone else present when you talked to
7 [REDACTED] about wetting the bed?

8 A. No.

9 Q. Do you recall what time of day it was when you
10 talked to [REDACTED] about this?

11 A. Yes, it was when she was getting ready for school
12 so it would be ten to eight or around eight. That's
13 usually when we would get ready.

14 Q. Now, when you had a conversation with [REDACTED]
15 about wetting the bed, what did you say to her and what
16 did she say to you?

17 A. Well, I was worried because it had been a few days
18 that she had consistently been peeing. I told her that
19 that was -- for me it was not normal, so what was
20 happening. I asked her if somebody was -- I asked her if
21 somebody was touching her.

22 Q. And what did [REDACTED] respond to you?

23 A. Well, she told me that her father was touching
24 her.

1 Q. Did she tell you how her father was touching her?

2 A. Well she -- Well, she kind of pointed (indicating)
3 and pointed kind of towards like her private area, like
4 her vagina. Well, she pointed, and I imagined -- I mean,
5 she's peeing in the bed, so I imagined it was her vagina.

6 Q. Did she tell you what her father would touch her
7 with?

8 A. Just said that -- that it hurt.

9 Q. That it hurt when her father touched her?

10 A. Yes. Yes.

11 Q. And when she told you that he touched her and it
12 hurt, she was indicating towards her vaginal area?

13 A. Yes, she was.

14 Q. After you learned of this from [REDACTED], did you
15 ever talk to the Defendant about what [REDACTED] had told
16 you?

17 A. Yes.

18 Q. How soon after you talked to [REDACTED] did you talk
19 to the Defendant?

20 A. I couldn't do it right then because he was
21 working; but as soon as he got home, I talked to him then
22 and I was very upset.

23 Q. Was anyone else present when you talked to the
24 Defendant?

1 A. No.

2 Q. What did you say to him, and what did he say to
3 you?

4 A. I told him what our daughter had told me. I mean,
5 I told him of course that that was not okay what he was
6 doing. It was not correct; and then he just kind of bent
7 down and looked like he was embarrassed.

8 Q. Did he ever say anything to you?

9 A. He just put his head down. I don't remember much.
10 I was very upset about the situation.

11 Q. Did he ever tell you at that time that he didn't
12 touch [REDACTED]

13 MR. BEHOF: Objection, asked and answered.

14 THE COURT: Pardon me? The objection, Mr. Behof, is
15 what?

16 MR. BEHOF: Asked and answered.

17 THE COURT: Sustained.

18 MS. GROEBNER:

19 Q. [REDACTED] at this time in [REDACTED] did you and your
20 family begin -- belong to any religious organizations?

21 A. Yes.

22 Q. What did you belong to?

23 A. Jehovah's Witnesses.

24 Q. And during this conversation that you had with the

1 Defendant in regards to touching [REDACTED] did you ever
2 discuss with him anything to do with the church?

3 A. Yes. I was very upset. I told him that that was
4 a very big sin and that that could not continue like
5 that. And I said that this is something that our elders
6 have to know about about what -- what you've done. And I
7 said, Either you say something or I'm going to say
8 something. And he said, I'll say something.

9 Q. Did -- Did the Defendant go and speak to the
10 elders at the church?

11 A. Yes.

12 Q. Now, in regard to after the Defendant had spoken
13 to the elders, did anything happen at the church in
14 regards to your husband?

15 INTERPRETER FOR THE WITNESS: The interpreter
16 needs repetition of the question. I'm sorry.

17 MS. GROEBNER:

18 Q. After your husband spoke with the church, did
19 anything happen with him in regards to the church?

20 A. To him, yes.

21 Q. What -- What happened?

22 A. Well, they censured him publicly, and he wasn't
23 allowed to have privileges.

24 Q. What does it mean to be censured by the church?

1 A. Well, to be censured, it shows that he
2 acknowledged it and that he was censured.

3 INTERPRETER TO THE WITNESS: The interpreter is
4 going to clarify something. The interpreter needs another
5 pen. I'm sorry.

6 THE COURT: I'm not going to promise that it will
7 write, though. Go ahead.

8 INTERPRETER TO WITNESS: What was the question?

9 MS. GROEBNER:

10 Q. What does it mean to be censured by the church?

11 A. To be censured means that he repents in public,
12 and then they give him a censure in -- publicly. (No
13 audible response.) Yes.

14 MS. GROEBNER:

15 Q. Now, [REDACTED] after the Defendant spoke with the
16 elders, did you have another conversation with him about
17 him touching [REDACTED]

18 A. No. We didn't talk about it -- We didn't talk
19 about it after he came out and he said that he was
20 censured, and we didn't have any more conversations about
21 it. Only during that -- Only during -- Only during that
22 that he did ask that I forgive him for what was
23 happening.

24 Q. When did that happen that he asked you to forgive

1 him for what's happening?

2 A. When we were on our way home.

3 Q. From the church?

4 A. (Nodding head.)

5 Q. Is that a, Yes?

6 A. Yes.

7 Q. [REDACTED] after you spoke with [REDACTED] and the
8 Defendant, did you ever tell any other family members
9 what [REDACTED] had told you?

10 A. No.

11 Q. Did you tell anyone else about the Defendant and
12 the elders?

13 A. The case just stayed with them.

14 Q. Now, [REDACTED], I'd like to fast forward to [REDACTED]
15 [REDACTED]

16 A. Yes.

17 Q. On that day, was your family going to go to a
18 get-together with another family that you knew?

19 A. Yes.

20 Q. What family was that?

21 A. With the [REDACTED]

22 Q. And was that going to be at their house?

23 A. Yes.

24 Q. Did you go to the [REDACTED] family's house on that

1 day?

2 A. Yes.

3 Q. Who did you go with?

4 A. With my husband and my son.

5 Q. Was [REDACTED] going to attend that get-together as
6 well that day?

7 A. Yes.

8 Q. Why did she not go with you, your son, and your
9 husband?

10 MR. BEHOF: Objection, asking the witness to
11 speculate.

12 THE COURT: Sustained.

13 MS. GROEBNER:

14 Q. How was [REDACTED] going to get to the party that
15 day?

16 A. She was working, so she was going to go over
17 there, well, in her own car.

18 Q. And at some point while you were at the [REDACTED]
19 house, did your husband leave?

20 A. Yes.

21 Q. Did he tell you he was going to leave?

22 A. No.

23 Q. Do you know where he had gone?

24 A. No. I asked the men, the men that I was talking

1 with that were there, and they said -- I asked them if
2 they had seen him, and they said, No, just that he had
3 went out.

4 Q. Do you know approximately how long he was gone
5 for?

6 A. I didn't really realize exactly when he left, but
7 I think it was maybe 30 minutes. Twenty. Around that.

8 Q. When he came back to the party, was anyone with
9 him?

10 A. Yes, [REDACTED]

11 Q. Now, [REDACTED] you had stated earlier that you have
12 been working for approximately five years; is that
13 correct?

14 A. Yes.

15 Q. And has this been since you've been living on the
16 -- at the [REDACTED] address?

17 A. Yes. Well, for one year before when we lived on
18 [REDACTED] I was working; and then I moved.

19 Q. What are your hours when you work?

20 A. From 7:30 til 4:00, but usually quite often til
21 5:00.

22 Q. And has your husband been working the last few
23 years?

24 A. Yes.

1 Q. What kind of work does he do?

2 A. Construction.

3 Q. Now, working construction, did he have regularly
4 scheduled hours?

5 A. No.

6 Q. Were there days that he didn't work at all?

7 A. Yes.

8 Q. And your children, during the day they would go to
9 school?

10 A. Yes.

11 Q. When they would arrive home from school, on the
12 days that your husband wasn't working, would he be home?

13 MR. BEHOF: Objection. The witness can't know that
14 if she wasn't home.

15 THE COURT: Sustained.

16 MS. GROEBNER:

17 Q. [REDACTED] when you would arrive home from work
18 around 4:00 or 5:00 o'clock, who would typically be home
19 at your house on [REDACTED]

20 A. Well, if my husband was home, then he was there,
21 and then my children, [REDACTED] and [REDACTED]

22 Q. And this [REDACTED] on [REDACTED] how many
23 bedrooms did it have?

24 A. Two.

1 Q. What other rooms were contained within that

2 [REDACTED]

3 A. Well, just the living room, the kitchen, and two
4 bedrooms.

5 Q. And were there times, [REDACTED] when you would come
6 home that [REDACTED] would be in your bed?

7 A. Yes.

8 Q. Did she -- Did you ever question her why he was
9 sleeping in your bed or laying in your bed?

10 A. Well, yes. Sometimes she would be in the living
11 room or in the bed or in the room; but I was annoyed that
12 she was laying in my bed because I would get home from
13 work and I wanted to rest when I got home.

14 Q. Now, [REDACTED] --

15 INTERPRETER FOR WITNESS: I'm sorry. The
16 interpreter forgot one thing. I'm going to clarify.

17 A. And she said that it was -- my bed was more
18 comfortable.

19 MS. GROEBNER:

20 Q. [REDACTED] how would you describe your relationship
21 with the Defendant?

22 MR. BEHOF: Objection, relevance.

23 THE COURT: Sustained. Although I'm not sure, Ms.
24 Groebner, with apologies, I'm not sure you finished your

1 question. Was that, the whole of your question?

2 MS. GROEBNER: If I could re-ask it.

3 Q. [REDACTED] how would you describe your relationship
4 with the Defendant in the last few years?

5 MR. BEHOF: Same objection.

6 THE COURT: Overruled. I'll give a little bit of
7 latitude here.

8 A. Can I answer?

9 THE COURT: Yes.

10 A. It wasn't -- It wasn't any -- very good anymore.

11 MS. GROEBNER:

12 Q. Did you have a sexual relationship with your
13 husband?

14 MR. BEHOF: Objection, relevance.

15 THE COURT: Sustained.

16 MS. GROEBNER:

17 Q. [REDACTED] after your Defendant was -- after the
18 Defendant was charged in this case, did you ever have a
19 conversation with him about being charged?

20 A. No. I don't know much about that.

21 Q. Did you ever have a conversation with the
22 Defendant after he was charged?

23 MR. BEHOF: Objection, asked and answered.

24 THE COURT: Sustained.

1 A. Am I supposed to answer that?

2 THE COURT: No. Thank you.

3 MS. GROEBNER: , Can I have one moment, Your Honor?

4 THE COURT: Yes, you may.

5 MS. GROEBNER:

6 Q. [REDACTED] have you had any conversations with the
7 Defendant in regards to touching [REDACTED] in the last
8 year?

9 MR. BEHOF: Objection, foundation, asked and
10 answered.

11 THE COURT: On both grounds it's overruled. That's
12 a different question.

13 You can answer.

14 A. Can you ask the question again?

15 MS. GROEBNER:

16 Q. Have you had any other conversations with the
17 Defendant about touching [REDACTED] within the past year?

18 A. No.

19 MS. GROEBNER: One moment, Your Honor.

20 THE COURT: Sure.

21 MS. GROEBNER:

22 Q. [REDACTED] directing your attention back to [REDACTED]
23 [REDACTED] when you were at the party at the [REDACTED] family's.

24 A. Yes.

1 Q. When you realized that the Defendant was no longer
2 at the house, did you ever try to contact him?

3 A. Yes.

4 Q. How did you do that?

5 A. I called him to tell him that the food was ready,
6 that it was ready, and that we were waiting for him.

7 Q. And did you speak with him?

8 A. Yes.

9 Q. Did he indicate to you at that time where he was?

10 A. Yes, that he had went for [REDACTED]

11 MS. GROEBNER: No further questions, Your Honor.

12 THE COURT: Cross.

13

14 CROSS-EXAMINATION

15 BY MR. RICHARD BEHOF:

16

17 THE COURT: I'm sorry. Mr. Behof is conducting
18 cross.

19 Go ahead, sir.

20 MR. BEHOF: Thank you.

21 Q. Ma'am, can you talk about your living arrangements
22 first. The first [REDACTED] that we talked about, was that
23 [REDACTED] correct?

24 A. Yes.

1 Q. And in [REDACTED] your two children shared a
2 bedroom; correct?

3 A. Yes.

4 Q. And is it accurate that your living area or where
5 your bed is was in the living room?

6 A. Yes.

7 Q. And the four of you lived in the basement;
8 correct?

9 A. Yes.

10 Q. How many people lived upstairs?

11 A. Six.

12 Q. Were you responsible for the laundry when you
13 lived at [REDACTED]

14 A. Yes.

15 Q. Is this how you noticed your daughter was wetting
16 her clothes?

17 A. It wasn't like that.

18 Q. How was it like?

19 A. It was when she woke up.

20 Q. Would you notice pee in her clothes or on her
21 sheets?

22 A. No. In her clothes. On her undergarments.

23 Q. Okay. Did you notice any kind of blood on her
24 undergarments?

1 A. No.

2 Q. Did you notice any kind of blood on her sheets at
3 all?

4 A. No.

5 Q. Is it when you confronted your daughter about
6 peeing in her clothes that she then told you about being
7 abused by her dad?

8 A. Yes.

9 Q. I want to talk about the other [REDACTED] that you
10 lived at or the [REDACTED] on [REDACTED]

11 A. Yes.

12 Q. Did your daughter and son share a bedroom there?

13 A. Yes.

14 Q. And how far is their bedroom from your bedroom?

15 A. A bathroom divides it.

16 Q. Okay. You stated earlier that you would notice
17 your daughter peed in her clothes, that you would be home
18 getting her ready for school; is that correct?

19 A. Yes.

20 Q. You also indicated that your husband went and
21 talked to the elders; correct?

22 A. Yes.

23 Q. You were not part of that conversation that he had
24 with the elders; correct?

1 A. Correct.

2 Q. The State asked you about a party, about [REDACTED]
3 ago, [REDACTED] with the [REDACTED]

4 A. Yes.

5 Q. Was -- Was it a party or just a dinner?

6 A. It was a dinner with friends.

7 Q. Okay. Did [REDACTED] seem okay when she got to the
8 party?

9 A. Yes. Normal.

10 Q. And she came with her dad?

11 A. Yes.

12 Q. Did your husband seem okay when he got to the
13 party?

14 A. Yes. Normal.

15 Q. Isn't it correct that the entire childhood of your
16 daughter and your husband seemed normal to you?

17 A. Yes. It seemed normal. They got along well.

18 Q. Did your daughter ever come to you and say that
19 she didn't want to be by her father or was afraid of her
20 father?

21 MS. GROEBNER: Objection, Your Honor.

22 THE COURT: What's your objection?

23 MS. GROEBNER: Hearsay.

24 THE COURT: Overruled.

1 A. Am I supposed to answer?

2 THE COURT: Yes, you can. It's a, yes, or, no,
3 question.

4 A. Can you repeat the question?

5 MR. BEHOF:

6 Q. Did your daughter ever tell you that she was
7 afraid of her father or did not want to be by her father?

8 A. No, never.

9 MR. BEHOF: Your Honor, may I have a moment?

10 THE COURT: Yes, you may.

11 MR. BEHOF: Nothing further, Judge.

12 THE COURT: Redirect?

13 MS. GROEBNER: Yes, Your Honor.

14

15 REEXAMINATION

16 BY MS. SUSANNE GROEBNER:

17

18 Q. [REDACTED] did [REDACTED] talk to you within the last
19 year about any abuse that your husband did to her?

20 MR. BEHOF: Objection, Your Honor, it's hearsay and
21 it's beyond my cross.

22 THE COURT: Sustained as to the latter objection.

23 MS. GROEBNER:

24 Q. [REDACTED] on cross-examination you were asked if

1 [REDACTED] ever came to you talking about any -- any abuse
2 with your husband since that first time; is that correct?

3 A. I didn't understand the interpreter. I didn't
4 understand what the interpreter said. Could you repeat
5 it?

6 Q. On cross-examination, you were asked if [REDACTED]
7 ever came to you again and talked to you about anything
8 that had happened with the Defendant?

9 MR. BEHOF: Objection, that's not what I asked.

10 THE COURT: I believe it's within the realm of what
11 you asked. The objection is overruled.

12 You can answer the question.

13 INTERPRETER FOR WITNESS: The interpreter is going
14 to need repetition of the question, please.

15 THE COURT: One more time.

16 MS. GROEBNER:

17 Q. On cross you were asked if [REDACTED] ever came to
18 you and talked to you again about what the Defendant had
19 done to her?

20 A. I'm not understanding the interpreter at this
21 question, and I'm going to ask interpreter to speak up.

22 MS. GROEBNER:

23 Q. [REDACTED] when Mr. Behof was asking you questions,
24 he asked you if [REDACTED] had ever come and talked to you

1 again about what happened with the Defendant; is that
2 correct?

3 A. Yes.

4 Q. Has [REDACTED] talked to you again about what
5 happened with the Defendant besides that first time back
6 in [REDACTED]

7 A. Not a lot. She does not want to talk.

8 Q. Not a lot, but has she talked to you about it?

9 MR. BEHOF: Objection, asked and answered.

10 THE COURT: Overruled.

11 Answer the question, ma'am.

12 A. She just says that she's not going to tell me a
13 lot of things.

14 MS. GROEBNER:

15 Q. Tell you a lot of things about what?

16 A. About what happened.

17 Q. And when did you have this conversation with
18 [REDACTED]

19 A. I don't remember. We were just talking, but I
20 don't remember exactly when. I think it was towards the
21 beginning of everything that came out.

22 MS. GROEBNER: One moment, Your Honor.

23 Q. [REDACTED] when [REDACTED] would tell you that she
24 didn't want to tell you a lot of things about what

1 happened, did you have -- were you having a conversation
2 with her about what the Defendant had done to her?

3 MR. BEHOF: Objection, leading.

4 THE COURT: Sustained.

5 MS. GROEBNER:

6 Q. [REDACTED] when [REDACTED] told you she didn't want to
7 tell you a lot of things, what were you guys talking
8 about?

9 A. About what happened, what her father had done to
10 her.

11 Q. What did she tell you?

12 MR. BEHOF: Objection, hearsay.

13 THE COURT: Sustained.

14 A. Everything that he did --

15 THE COURT: The objection was sustained, ma'am.
16 That means you don't answer. So the Court will not
17 receive that answer by way of interpretation.

18 MS. GROEBNER:

19 Q. But she did have another conversation with you
20 about what the Defendant did to her?

21 MR. BEHOF: Objection, asked and answered.

22 THE COURT: Overruled.

23 That means you can answer.

24 A. What was the question?

1 MS. GROEBNER:

2 Q. But she did have another conversation with you
3 about what had happened with her and the Defendant?

4 A. I don't understand what -- how -- what you're
5 asking.

6 MS. GROEBNER: Did she answer?

7 THE COURT: She indicated that she did not
8 understand what you were asking.

9 MS. GROEBNER: Thank you.

10 Q. [REDACTED] about [REDACTED] ago, did you learn that
11 [REDACTED] had gone to the police?

12 A. Yes.

13 Q. About [REDACTED] prior to [REDACTED] going to the
14 police, did you have a conversation with her in which --
15 in regards to what the Defendant had done to her?

16 INTERPRETER FOR WITNESS: Interpreter needs
17 clarification of the question.

18 MS. GROEBNER:

19 Q. About [REDACTED] prior to [REDACTED] going to the
20 police, did you have a conversation with her about what
21 the Defendant had done to her?

22 MR. BEHOF: I'm going to object again. Asked and
23 answered.

24 THE COURT: It is asked and answered. Sustained.

1 MS. GROEBNER: I have no further questions.

2 THE COURT: Thank you, ma'am. You may step down.

3 ---END OF EXCERPT---

4 ---BEGINNING OF EXCERPT---

5 THE COURT: You're welcome.

6 State, another witness?

7 You want to come forward, sir. Raise your
8 right hand for me.

9 (Whereupon, witness sworn.)

10 THE COURT: Thank you so much. You may lower your
11 hand. Be seated, please. I apologize for pointing.

12 Once you are comfortable as best you can be,
13 kindly tell Ms. Groebner.

14 THE WITNESS: I'm sorry?

15 THE COURT: Once you are comfortable, let
16 Ms. Groebner know, and she'll proceed.

17 Go ahead, Ms. Groebner.

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MICHAEL PENKAVA,

Having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. SUSANNE GROEBNER:

Q. Sir, in a nice loud and clear voice, can you introduce yourself to the ladies and gentlemen of the jury by stating your first and last name and spell your last name for the court reporter.

A. My name is Michael Penkava, spelled P-E-N-K-A-V-A.

Q. Mr. Penkava, are you currently a member of a religious organization?

THE WITNESS: Your Honor, may I ask your help? Must I answer questions as an ordained minister about the situation?

THE COURT: This wasn't a situational question, sir. It simply was whether you are a member of the ordained religion. So --

THE WITNESS: Okay.

THE COURT: -- that question I would respectfully ask you to answer.

A. Repeat the question, please.

MS. GROEBNER:

Q. Are you currently a member of the religious

1 organization?

2 A. Yes, I am.

3 Q. What organization is that?

4 A. Jehovah's Witnesses.

5 Q. Where is that located at?

6 A. That's in Crystal Lake.

7 Q. Is that Kingdom Hall?

8 A. It's at Kingdom Hall in Crystal Lake.

9 Q. How many members are in the Kingdom Hall of
10 Jehovah's Witnesses?

11 A. We have approximately 130 what we call publishers,
12 ones who are active, practicing witnesses.

13 Q. How do you become an active, practicing witness?

14 A. You study the Bible with Jehovah's Witnesses. You
15 conform to the Bible's standards of conduct. You make a
16 dedication to God to do His will. And in that way, you
17 would -- and you may proceed to a baptism, emersion, full
18 emersion; and you become a baptized dedicated witness of
19 Jehovah.

20 Q. What is your position with the Kingdom Hall of
21 Jehovah's Witnesses?

22 A. I have the position of a -- of being what is
23 called an elder.

24 Q. What is an elder?

1 A. An elder is an individual, a man who has fulfilled
2 the scriptural requirements to be an elder or older man
3 or overseer according to the Bible.

4 Q. How long have you held that position as an elder?

5 A. I don't know exactly how many years, but over 30
6 years.

7 Q. How many elders are there at the Kingdom Hall of
8 Jehovah's Witnesses?

9 A. I believe we have eight.

10 Q. And what -- What are your duties or what do you do
11 as an elder?

12 A. We do the teaching in the congregation during the
13 congregational meetings, public talks, direct Bible
14 studies of the congregation. We do shepherding where we
15 would visit either at the Kingdom Hall or at the homes of
16 our members to help them with problems. Give them
17 scriptural advice, and help them to solve -- solve
18 problems in their lives using Bible principles.

19 Q. Have you heard of the term of being publicly
20 reproved?

21 A. Yes, I have.

22 Q. What does it mean to be publicly reproved?

23 A. That would mean that an individual --

24 Your Honor, must I answer that question?

1 THE COURT: Yes, sir. That is within the realm of
2 general information regarding your religious practice;
3 and yes, sir, kindly answer.

4 A. Okay. Thank you.

5 THE COURT: You're welcome.

6 A. Public reproof is when an individual has committed
7 a particular sin, has repented of that sin, and the --
8 the sin is known in the congregation. So an announcement
9 of public reproof would let all who know of that sin
10 understand that that individual has been scripturally
11 helped to overcome the sin, reject that course, and
12 determine to avoid that sin in the future.

13 Q. And public reproof, is that something that takes
14 place in the Kingdom Hall of Jehovah Witnesses?

15 A. There's an announcement that is made.

16 Q. And --

17 A. That is made at the Kingdom Hall.

18 Q. And the announcement is made to all of the active
19 members of the Jehovah's Witnesses?

20 A. All who are in attendance at that particular
21 meeting.

22 Q. Have you heard of the term, censure, before?

23 A. In terms of?

24 Q. In your practice as a Jehovah Witness?

1 A. Well, censure and public reproof are -- are about
2 -- are the same thing.

3 Q. Now, Mr. Penkava, if one is not censured or one
4 doesn't repent for their sin, is there another process
5 that takes place within the Kingdom Hall of Jehovah's
6 Witnesses to that person?

7 A. Well, scripturally, yes, there is. The Bible
8 exhorts that if a member would not repent and would be
9 determined to continue a sin, they would be what we call
10 disfellowshipped or it means excommunicated from the
11 congregation.

12 Q. And what does it mean to be excommunicated?

13 A. Well, that person would no longer be an active
14 member of the congregation in good standing; and
15 scripturally, ones would not associate with that person.

16 Q. Is censure a common practice in the Kingdom Hall
17 of Jehovah Witness?

18 A. It is not common. It does happen at times when
19 ones are involved in a serious sin that violates
20 scriptural principles and that -- that are needed to be
21 addressed by the elders. So sometimes that happens. And
22 sometimes ones need to be readjusted and helped to
23 repentance.

24 Q. Do you know an individual by the name of [REDACTED]

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[REDACTED]

A. Yes, I do.

Q. And how do you know him?

A. [REDACTED] is a member of the -- of the congregation of Jehovah's Witnesses.

Q. Is he an active witness?

A. At this time, no. No action has been taken with regard to recent activity.

Q. But was he an active witness in the Kingdom Hall at -- as a -- Had he been baptized and gone through the process to become an active disciple and witness?

A. Yes. Yes, he did.

Q. Do you see [REDACTED] in court today?

A. Yes, I do.

Q. Could you please identify him for the record by an article of clothing he's wearing today?

A. He has the blue shirt and the tie (indicating) sitting over there.

Q. Can you just --

MR. MOURELATOS: Judge, I would stipulate to the in-court identification of my client.

MS. GROEBNER: Thank you.

THE COURT: The record will show by stipulation the Defendant has been identified.

1 MS. GROEBNER:

2 Q. How long has the Defendant been a member of the
3 Jehovah's Witnesses?

4 A. I don't know exactly. It's a number of years.

5 Q. Does he have a family?

6 A. Yes, he does.

7 Q. And are you aware of the immediate members of his
8 family, are they members of the Kingdom Hall as well?

9 A. Yes, they are.

10 Q. Do you know who his family members are?

11 A. We have [REDACTED] his daughter. We have [REDACTED]
12 his son; and [REDACTED] his wife.

13 Q. Was the Defendant ever censured by your church?

14 THE WITNESS: Your Honor, may -- Do I need -- Must I
15 answer that question?

16 THE COURT: Without establishing some basis for not,
17 sir, which would have to come from you, the answer to
18 your question is yes.

19 THE WITNESS: Your Honor, may I appeal to the
20 clergy-penitent privilege that is allowed by state law
21 that I as a spiritual advisor and counselor, that I would
22 not have to reveal confidential information with regard
23 to an individual member that I've counseled and advised?

24 THE COURT: Mr. Caridei, if you would be so kind as

1 to escort the jury out for a moment.

2 Ladies and gentlemen, if you can step out for
3 a minute, please.

4 THE BAILIFF: All rise.

5 (Whereupon, the jury left the room.)

6 THE COURT: Thank you. Please be seated.

7 Mr. Penkava, were you to answer that
8 question, what would the answer be?

9 A. Could you repeat the question, please?

10 MS. GROEBNER:

11 Q. Was the Defendant ever censured by your church?

12 A. Yes.

13 THE COURT: What would the next question be?

14 MS. GROEBNER:

15 Q. When was this?

16 A. I believe it was back in [REDACTED] Somewhere around
17 [REDACTED]

18 THE COURT: Mr. Penkava, you bring focus to the
19 areas of concern to the Court.

20 During the first parts of your testimony,
21 sir, you identified that -- as I heard you -- that the
22 censure process and the public -- Did you say it was
23 reproof or reproachment?

24 A. Reproof.

1 THE COURT: Reproval -- the public reproval process
2 are one in the same; is that right?

3 A. Yeah. I don't see a difference because they're
4 just two words for the same process.

5 THE COURT: As part of the censure process -- and if
6 it's the same, please correct me -- is there a
7 preliminary step where an individual, a clergy member --
8 pardon me -- a member of the assembly meets with elders
9 to discuss the situation?

10 A. Yes.

11 THE COURT: Does that precede the public reproval?

12 A. Yes.

13 THE COURT: Is that a conversation that takes place
14 in private?

15 A. Absolutely.

16 THE COURT: Who is present during the initial
17 conversation?

18 A. It would be the individual who committed the sin
19 or alleged sin and three ministers or three elders.

20 THE COURT: Three elders?

21 A. Yes.

22 THE COURT: In this case, you were one of the
23 elders?

24 A. Yes.

1 THE COURT: And aside from the two other elders, was
2 anyone else present?

3 A. Just the -- Just the Defendant.

4 THE COURT: [REDACTED]. And then when
5 there's a transition from that meeting to a public
6 reproof, what's the order of events? Is an individual
7 apprised of the fact that depending upon the decision of
8 the elders, there may be a public reproof?

9 A. Yes. The three elders would in the meeting with
10 the individual, try to spiritually help that person to
11 see the gravity of what they have done and give them
12 counsel as to how to prevent that to occur again.

13 Based upon the reaction of the individual, if
14 that individual reacts and is repentant and wants to
15 change his course of action, then there's no need to
16 remove him from the congregation. He has been reproved
17 with the use of the scriptures.

18 However, in the case -- in the case of
19 [REDACTED] there were ones who knew about that. So to allow
20 the congregation to understand that it has been dealt
21 with and -- and he was repentant, he is reproved
22 publicly. So ones who know about that situation,
23 understand that it has been handled scripturally by the
24 body of elders.

1 THE COURT: And when there's a transition from the
2 meeting with the elders to a public reproof, first of
3 all, what's the time interval?

4 A. It would be the next mid week meeting. So if we
5 met on a Saturday or Sunday, whatever the next mid week
6 meeting. And the Defendant or the individual who is
7 being counseled and reproofed would be clearly receive
8 that counsel and clearly explain to him the procedure of
9 public reproof and that that would be announced.

10 Q. And when there's a public reproof, what's the
11 substance that is announced?

12 A. It's just -- It would say the name of the
13 individual has been reproofed. That's all.

14 THE COURT: So perhaps I misunderstood your
15 testimony a bit ago.

16 When the public reproof takes place, I
17 thought I heard you say that -- I think you said, sin --
18 the sin is identified.

19 A. It is not in the public reproof. The sin, no.

20 THE COURT: There was a public reproof regarding
21 Mr. Hernandez?

22 A. Exactly. [REDACTED] has been -- has been
23 reproofed.

24 THE COURT: Maybe you just answered my next

1 question. Is that what the public reproof would have
2 been to the congregation? Relative to [REDACTED]
3 what was the substance of the public reproof?

4 A. The substance was simply a statement that he was
5 reproofed.

6 THE COURT: Tell me, as best you recall, what it was
7 when it happened.

8 A. The words that were announced?

9 THE COURT: As best you recall.

10 A. [REDACTED] as been reproofed.

11 THE COURT: And that's the extent of the discussion
12 at a public reproof?

13 A. Exactly.

14 THE COURT: Ms. Groebner, before I ask Mr. Penkava
15 to step out, do you have any followup in the context of
16 this session?

17 MS. GROEBNER: Yes.

18 THE COURT: Go ahead.

19 MS. GROEBNER:

20 Q. Mr. Penkava, when there is a public reproof,
21 though, the entire congregation is present for that?

22 A. Well, whoever is at that meeting is present.

23 Q. And, Mr. Penkava, in regards to this meeting that
24 you had with the Defendant and the other elders, [REDACTED]

1 was present for that meeting; isn't that correct?

2 A. We do not -- I talked with -- There was one other
3 elder who was with me. The other elder is deceased.
4 There were three. So the other elder, [REDACTED] and
5 I were -- are the only surviving elders from that
6 particular incident.

7 We do not recall [REDACTED] being present.

8 MR. MOURELATOS: Judge, I would object to that question.

9 THE COURT: It's not an objectionable session. This
10 is offer of proof for the Court to try to rule on the
11 objection that's pending relative to whether there's the
12 existence of privilege.

13 MR. MOURELATOS: I understand. Thank you.

14 THE COURT: So you don't recall -- As you were
15 indicating to Ms. Groebner, you don't recall [REDACTED] being
16 present?

17 A. Being present while the three elders met with
18 [REDACTED] and I, -- [REDACTED] and I do not recall her
19 being present.

20 THE COURT: Ms. Groebner.

21 MS. GROEBNER:

22 Q. Mr. Penkava, do you recall speaking with a
23 detective from the Crystal Lake Police Department on
24 October 20 of [REDACTED]

1 A. Yes, I do.

2 Q. And in that -- When you spoke with that detective,
3 isn't it true that you told him that you were told -- you
4 were told by Elder -- [REDACTED] (phonetic)?

5 A. [REDACTED] (phonetic).

6 Q. [REDACTED] (phonetic), that he informed the body of
7 elders of the congregation and that he was joined by
8 [REDACTED] and I to meet with [REDACTED] and his wife about
9 the matter?

10 A. I wrote that -- Could you repeat that, please?

11 Q. That when you spoke with Detective Eitel, you told
12 him that [REDACTED] (phonetic) informed the body of elders of
13 the congregation that he was joined by [REDACTED] and I
14 to meet with [REDACTED] and his wife about the matter?

15 A. Yes. The reference to that meet with [REDACTED] and
16 his wife, where we would meet with [REDACTED] as the three
17 elders, and his wife to offer her spiritually --
18 spiritual support. But not -- She was not involved in
19 the meeting with the three elders.

20 Q. Mr. Penkava, isn't it also true that you told
21 Detective Eitel that in the meeting, [REDACTED] admitted to
22 inappropriately touching [REDACTED]

23 THE COURT: Ms. Groebner, that takes us outside the
24 bounds of trying to ascertain if the gentleman has a

1 basis for asserting the privilege.

2 I don't necessarily at this juncture want to
3 hear about the substance of the meeting.

4 MS. GROEBNER: Your Honor, in the statement, it
5 states that the -- the wife was told by the elders
6 present that she could notify the authorities about this
7 incident.

8 THE COURT: How does that distinguish Mr. Penkava's
9 prior answer that there were two sessions, that there was
10 a discussion with [REDACTED] and then they provided
11 spiritual guidance to [REDACTED] in what Mr. Penkava
12 had said was a separate discussion?

13 MS. GROEBNER: Your Honor, it's in the same sentence
14 of the statement.

15 THE COURT: You can go ahead and explore in terms of
16 trying to establish or refresh, if you will, that Mr.
17 Penkava's recall in terms of whether [REDACTED] was
18 present. But again, I don't want this to delve into a
19 discussion of substance. That's not the salient legal
20 issue that's before the Court.

21 MS. GROEBNER:

22 Q. Mr. Penkava, you told Detective Eitel that the
23 wife was present during the meeting with the Defendant;
24 isn't that true?

1 A. I didn't tell him that. In my written statement,
2 which I do not recall all the details -- In my written
3 statement, I wanted to make sure that -- that it was
4 known that we met with [REDACTED] and also a very important
5 point was that we informed the wife that she had the
6 right to contact the authorities on this matter.

7 MS. GROEBNER:

8 Q. So did you inform the wife of what the Defendant
9 had told you?

10 A. I personally did not. [REDACTED] (phonetic),
11 after the decision was made, after we met with the three
12 elders, [REDACTED] was assigned to help [REDACTED] spiritually
13 recover, give him ongoing spiritual help, and also to
14 make sure that [REDACTED] knew of her rights to contact the
15 authorities.

16 Q. But in your statement you stated, that the elders
17 present told her she could contact the authorities
18 herself; is that correct?

19 A. At -- At the time that I wrote that, that's what I
20 wrote. At the time that I'm sitting here, that's what
21 I'm explaining.

22 Q. Weren't you one of the elders present?

23 A. Yes. But we do not recall [REDACTED] being present at
24 the meeting with the three elders.

1 It was two separate meetings. One, to
2 censure and to reprove and spiritually help the
3 individual. Another to support the wife and the family
4 and to give them guidance.

5 Q. So your support to the wife was to inform her that
6 she could contact the authorities herself?

7 A. Yes. And -- And to give her spiritual support to
8 deal with the crises in the family with regard to their
9 marriage and the future of their family.

10 Q. So you never told that to Detective Eitel; is that
11 correct?

12 A. I had no conversation with him. It was simply --
13 Here's what happened. It was the early hours of the
14 morning. [REDACTED] had come to -- We had talked to
15 [REDACTED] accompanied her to the police station. They
16 took her in to talk to her. I and another elder remained
17 to provide spiritual support to her if necessary.

18 Later, several hours later, the detective
19 came and he informed me that he wanted me to fill out a
20 police report. I told him I'm a minister. Is that a
21 factor in me filling out a report? And he -- He told me,
22 to quote him, he said, I don't know. And he immediately
23 told me to go -- led me into a room. Gave me a -- the pen
24 and the report to fill out and left me. So I

1 sat there thinking I was obligated by law to fill this
2 out. He knew of no special provision for me as a
3 minister. That's -- That is my -- That was my thought
4 process at the time.

5 If I had known about a provision that I could
6 maintain confidentiality, I wouldn't have filled that
7 out.

8 But feeling that I was obligated by law; and
9 as Christians in the Bible it tells us, Romans 13:1, that
10 we must be in subjection to the superior authorities, and
11 he was the superior authority. So I felt like I had to
12 be in subjection and do what he told me to do. That is
13 why I filled out the report.

14 I'm not -- I'm not a lawyer. I'm a minister.
15 And I did what I thought I was obligated to do. That's
16 why I'm in here in court today because this superior
17 authority has requested for me to be here (indicating).

18 Q. So just to be straight, you told the wife what the
19 Defendant told you, and you told the authorities what the
20 Defendant told you; is that correct?

21 A. Personally I did not. Brother -- [REDACTED] was
22 going to be the liaison elder to work with the family and
23 to help them deal.

24 Q. But you were present when she was told what

1 happened during the meeting?

2 A. Could you repeat that?

3 Q. You were present when you told her -- when she was
4 told what happened during the meeting?

5 A. You know, I do not recall if I was involved in
6 informing [REDACTED] I cannot recall that. I've tried to
7 remember that detail, and I cannot recall her being
8 present.

9 MS. GROEBNER: Your Honor, I have further questions
10 in regards to what happened to the Defendant after the
11 public reproof. I don't know if the --

12 THE COURT: That's not the area that we're
13 discussing at this juncture.

14 MS. GROEBNER: Okay.

15 THE COURT: The area of discussion is to allow the
16 Court to rule on the unresolved issue pertaining to the
17 assertion on the privilege.

18 Mr. Penkava, first of all, sir, I would ask
19 you kindly to step outside and don't go far. If you can
20 step down and kindly step outside.

21 Secondly, Mr. Caridei, if you can retrieve
22 the jury so I can excuse them for lunch.

23 THE BAILLIFF: Yes.

24 All rise.

1 (Whereupon, the jury entered.)

2 THE COURT: Thank you. Please be seated.

3 Ladies and gentlemen, my apologies for having
4 you walk up and down the hall.

5 This is a legal issue -- or one of the
6 situations rather where the attorneys and I are
7 addressing a legal issue in an effort to make the
8 evidentiary presentation more efficient for you.

9 Recognizing that we are approaching the noon
10 hour, rather than hold you in the jury deliberation room
11 and step into your lunch hour, I'm going to excuse you
12 now to go out and find lunch and refresh yourselves as it
13 were.

14 I'd like you to be back by 1:15 kindly. And
15 it's my intent to reconvene with the evidence as promptly
16 at 1:30 as possible.

17 So you are excused for lunch. Enjoy your
18 lunch. I'll see you in a while.

19 THE BAILIFF: All rise.

20 (Whereupon, the jury left the room.)

21 THE COURT: Ms. Groebner, Mr. Penkava has asserted
22 the clergy-penitent privilege.

23 What the Court has heard at this juncture is
24 that there are probably layers to the issue.

1 It is clear to the Court from what
2 Mr. Penkava asserts that there was a discussion between
3 he, the other two elders, and [REDACTED]

4 Now, I appreciate that the State has a
5 statement suggesting that [REDACTED] may have been
6 present, but Mr. Penkava has asserted to the contrary.

7 When [REDACTED] testified, she did not
8 testify when asked about the censure process that she was
9 present at a session with the elders and [REDACTED]

10 [REDACTED]

11 So against what Mr. Penkava has told us, how
12 would he not be correct in his assertion of the
13 privilege?

14 MS. GROEBNER: Your Honor, in regards to the
15 conversation that was had with the Defendant, I would
16 seek to admit to the Court the written statement of Mr.
17 Penkava.

18 I believe if the Court reviews that, I
19 believe that Mr. Penkava is testifying differently today
20 than what he told the police back in [REDACTED] of [REDACTED]

21 Your Honor, if -- if the Court does find that
22 the wife wasn't present and that this was a counseling
23 session between the Defendant and Mr.
24 Penkava, then I still believe that the -- the

1 clergy-client -- or clergy-penitent privilege does not
2 apply based on the fact that Mr. Penkava had the
3 discussion with the -- or was present for the discussion
4 with the wife in regards to what the Defendant said to
5 them.

6 And Mr. Penkava informed authorities, the
7 police department, of what Mr. Hernandez told them.

8 So I still believe that based on that, that
9 the -- the privilege does not apply.

10 And further, in regards to the question of
11 whether the Defendant was publicly reprovved in front of
12 the congregation, I believe there is no privilege
13 whatsoever as to --

14 THE COURT: Well, let me interrupt, Ms. Groebner,
15 and tell you straight away, the Court concurs with that.

16 MS. GROEBNER: Thank you.

17 THE COURT: This is not a discourse about the public
18 reprovall process. There's no question in the Court's
19 mind, despite an eloquence of argument from Mr.
20 Mourelatos or Mr. Behof, that the public reprovall was
21 exactly that, a public reprovall.

22 Whatever was said in that process -- and
23 currently we have indication that was of limited
24 substance -- that in the Court's mind is still admissible

1 evidence.

2 MS. GROEBNER: So, Your Honor, I would just seek to
3 admit to the Court the written statement of
4 Mr. Penkava to say that he has been impeached today from
5 what he told the police department back in [REDACTED]
6 and I believe that the privilege does not apply to Mr.
7 Penkava in testifying about what was said during that
8 meeting.

9 THE COURT: Mr. Behof, I've -- Sorry.
10 Mr. Mourelatos, I believe this was an issue on which you
11 took the lead.

12 MR. MOURELATOS: That's correct, Your Honor.

13 I disagree with the State's recitation of the
14 testimony. Specifically, Mr. Penkava was clear and
15 articulate as to his position.

16 I think it is undisputed that he being an
17 elder meets the statutory requirement basically based on
18 his denomination and religious affiliation being a
19 Jehovah's Witness, he is by statute a clergyman or
20 accredited practitioner.

21 As far as his ability to recall what was
22 ongoing back in [REDACTED] he clearly indicated that it was
23 himself and two other elders. He indicated that there
24 are approximately eight elders in the entire

1 congregation, which are -- which is a confidence with
2 only my client, Mr. Pedraza.

3 In addition, he testified that his
4 recollection as to what had transpired on that date was
5 only between the clergymen --

6 THE COURT: Mr. Mourelatos, the Court has heard
7 the evidence. While the Court is with age becoming
8 increasingly forgetful I recall. My request to the
9 Defense is a legal argument that the Defense believes
10 invokes the privilege.

11 MR. MOURELATOS: Oh, Your Honor, clearly citing the
12 statute 735 ILCS 5|8-803, the clergy-penitent privilege
13 applies in this. Specifically, and I would --

14 THE COURT: But the State says it was waived, so
15 talk to me about that issue.

16 The Court understands what the statutory
17 provisions say. And while counsel have eminent more
18 understanding of the statutory language, it says what it
19 says.

20 Talk to me about why waiver doesn't apply.

21 MR. MOURELATOS: There's no evidence to support that
22 was ever waived, Your Honor. There's clearly no evidence
23 that supports that.

24 THE COURT: What about the contention by

1 Ms. Groebner that [REDACTED] was present during the
2 session with Mr. Penkava?

3 MR. MOURELATOS: Mr. -- I apologize, Your Honor.
4 [REDACTED] testified that she was not
5 present for that, number one.

6 Number two, when asked directly by the State
7 to Mr. Penkava whether or not she was present, Mr.
8 Penkava was clear and did not waiver that his
9 recollection was that [REDACTED]

10 THE COURT: Well, he -- respectfully, he interjected
11 context. What you call a lack of waiver was more I think
12 more properly described the interjection of context. Him
13 saying that what he spoke to Detective Eitel, he
14 referenced a meeting but was really a segmental meeting
15 where the elders met with your client and then met to
16 provide spiritual guidance to [REDACTED]

17 Isn't that what he said?

18 MR. MOURELATOS: Yes, Your Honor. That is clear.
19 I'm focusing on the initial communication that happened
20 between solely the elders and my client.

21 As far as what was said after the fact,
22 Mr. Penkava stated I believe -- and I hope I'm
23 paraphrasing this correctly -- that he did not directly
24 state anything that was spoken in confidence and what

1 we're asking to be protected under the privilege directly
2 to the detective.

3 THE COURT: Ms. Groebner, two questions before the
4 Court rules on the issue.

5 Is it not correct in terms of Mr. Mourelatos'
6 argument that [REDACTED] said exactly that, that she
7 wasn't present?

8 MS. GROEBNER: Yes.

9 THE COURT: So if she said she wasn't present and
10 Mr. Penkava said she wasn't present, the linchpin of the
11 State's argument is the extraction from the statement,
12 the material Mr. Penkava now tries to contextually
13 identify?

14 MS. GROEBNER: Yes. I believe that the statement
15 that he wrote back in [REDACTED] states that the
16 wife was present, that he was -- he was joined by the
17 elders to meet with [REDACTED] and his wife. In the meeting,
18 [REDACTED] admitted, and the wife was told by the elders
19 present that she could contact the authorities.

20 I believe that in the context of this statement that
21 was written by this witness, that he clearly is stating
22 that she was present during the meeting.

23 THE COURT: The second question is, if all of that
24 argument tilts in favor of the State, doesn't the

1 Appellate Court in Thomas, which is a recitation from a
2 Second District case, tell us that that's only part of
3 the issue? Don't we have to have some indication that
4 the Defendant is also waiving privilege?

5 MS. GROEBNER: Your Honor, the Defendant hasn't
6 raised privilege.

7 THE COURT: Well, I think he has. I think
8 Mr. Behof and or Mourelatos have asserted in arguing this
9 point that that exact proposition is in play, and [REDACTED]
10 [REDACTED] will not waive privilege.

11 MS. GROEBNER: Your Honor, our contention is that
12 the wife -- if the wife was present, then privilege is
13 waived by the Defendant as well.

14 THE COURT: So I appreciate that argument. The
15 State would say that if there's a waiver predicated on
16 the presence of [REDACTED], it's a total waiver? It
17 waives not only the privilege that Mr. Penkava could
18 assert but also the privilege that [REDACTED], the
19 Defendant, could assert?

20 MS. GROEBNER: Correct.

21 THE COURT: I understand.

22 When the Court addressed this issue
23 yesterday, again for purposes of record clarity, it was
24 presented not really by way of a motion from either side

1 but rather it was brought forward as an evidentiary issue
2 that the parties -- on which the parties wish to obtain
3 clarification.

4 The Court yesterday had lengthy discourse
5 with the parties and appreciates that and adopts that
6 argument into this ruling. Has now received testimony
7 from Mr. Penkava up to a point, wherein Mr. Penkava
8 asserted the privilege. And the Court wished to rule on
9 this issue outside the purview of the jury.

10 In addressing this issue yesterday, the Court
11 identified four potential scenarios that would affect the
12 outcome of this issue. It seems to the Court that based
13 upon the testimony of Mr. Penkava, what takes place
14 within the confines of the preliminary meeting for the
15 public reproof or a censure, which he says are the same,
16 is within the purview of Section 8-803; that is to say,
17 it's the elders providing spiritual guidance to a member
18 of the congregation.

19 Mr. Penkava has indicated that in that
20 session there is some inherent expectation of
21 confidentiality, which is really borne out by what has
22 transpired here because if there was not an expectation
23 of confidentiality, when an individual who was found to
24 have committed some transgression is brought to the

1 congregation for public reproof, there would arguably a
2 disclosure of the salient events that lead to the public
3 reproof.

4 The Court cited yesterday the Dirks
5 (phonetic) decision, and in Dirks (phonetic) the
6 Appellate Court addressed the proposition where a
7 minister met with the defendant in custody and took the
8 information -- the reverend met with the defendant in
9 custody and took the information to the sheriff's office
10 or state's attorney's office and conveyed that
11 information, and the court found that that was not
12 inappropriate.

13 In this situation based currently upon what
14 the Court has, the Court does believe that the discussion
15 in the preliminary public reproof meeting falls under
16 the auspices of Section 8-803.

17 The Court currently does not believe that
18 [REDACTED] was present. The Court reaches that
19 conclusion based upon her own explicit testimony as well
20 as the information provided by Mr. Penkava outside the
21 presence of the jury that she was not present.

22 The Court appreciates the State's argument
23 that Mr. Penkava may have made a statement to the
24 investigating detective suggesting that Mrs. Hernandez

1 was present.

2 Mr. Penkava has brought some context to that
3 this afternoon saying that in his assessment, it was
4 really two different spiritual assessments.

5 Relative to the discussions that pertain to the
6 Defendant in the preliminary public reproof meeting, the
7 Court does find that the is a proper invocation of the
8 testimonial privilege afforded to Mr. Penkava, and will
9 not compel Mr. Penkava to testify about that.

10 The public reproof process is proper for
11 evidence. There's no evidence there would not be
12 application of privilege there. And the Court has yet to
13 see what the intent of the State is regarding eliciting
14 testimony about a meeting with [REDACTED]
15 [REDACTED] either separately, or if the State wishes to
16 pursue that line of inquiry with Mr. Penkava to see if he
17 will ultimately relent and acknowledge contrary to what
18 he has asserted at this point that [REDACTED] was
19 present, which would obviously re invite the ruling
20 because it's the Court's mind that if [REDACTED] is
21 present, it may or may not eviscerate the ability of Mr.
22 Penkava to assert the privilege.

23 And accordingly, that's the Court's ruling at
24 this juncture. Simply stated, the Court will --the State

1 will be allowed to continue its interrogation of Mr.
2 Penkava at least in regards to what took place in the
3 public reproof. If it wishes to pursue who attended
4 meetings, the Court will allow interrogation into that to
5 see where it takes us.

6 Mark, if you can get Mr. Penkava, please.

7 THE BAILIFF: Yes.

8 THE COURT: Mr. Penkava, you want to step forward,
9 sir. I appreciate your patience. I know your time is
10 valuable, sir.

11 The Court has ruled on the issue of your
12 assertion of the privilege. Currently it's finding that
13 you can properly assert the clergy-penitent privilege
14 relative to the pre public reproof meeting and any
15 issues regarding the actual public reproof. The Court
16 has found that those are public that would eliminate the
17 ability to assert the privilege.

18 The State may have additional questions
19 beyond the issues that relate to the meeting that you
20 have identified was attended by you, the two other
21 elders, and [REDACTED] And we'll address those
22 appropriately.

23 I apologize that you'll have to come back,
24 but I would like you to return at 1:30 so you can get out

1 and get some lunch, sandwich. Take care of some business
2 as you wish. If you can be back promptly at 1:30 so we
3 can continue your examination.

4 I will counsel you, sir, that you are
5 effectively on the witness stand even though we are
6 breaking. I'm telling you that because you cannot and
7 should not contact any members of the church to discuss
8 this situation. You cannot or should not review any
9 materials. Your testimony should continue at 1:30 as if
10 we did not take a break to address this legal issue.

11 With that, enjoy your lunch and I'll see you at
12 1:30.

13 THE WITNESS: Thank you

14 THE COURT: You're welcome, sir.

15 Counsel, I'll see you at 1:15 in case there's
16 any issues that the State wishes to re present or the
17 Defense regarding the issue vis-a-vis the Court's ruling.

18 Any other matters before we break for lunch?

19 MS. EISENSTEIN: No, Your Honor.

20 THE COURT: Defense?

21 MR. BEHOF: No.

22 THE COURT: See you all at 1:15.

23 THE BAILIFF: All rise.

24 (Whereupon, a break was taken.)

1 THE BAILIFF: All rise. Court's reconvened.

2 THE COURT: Thank you so much. Please be seated.

3 We are resuming in [REDACTED]

4 Ms. Eisenstein and Ms. Groebner for the State.

5 Mr. Behof and Mr. Mourelatos are for the Defense.

6 We are in the State's case.

7 [REDACTED] is now present.

8 You may be seated. I apologize.

9 We broke for the lunch hour. The Court
10 having ruled on an evidentiary issue that arose yesterday
11 and was addressed by the Court's ruling today.

12 Does the State have any preliminary matters
13 this afternoon?

14 MS. GROEBNER: Your Honor, I just have a question
15 for clarification.

16 THE COURT: Sure. No problem.

17 MS. GROEBNER: Based on the Court's ruling, can I
18 ask Mr. Penkava about having a meeting, who was present
19 at the meeting, and then depending on his answers,
20 proceed from there?

21 THE COURT: Yes. I believe that that is
22 permissible --

23 MS. GROEBNER: Okay.

24 THE COURT: -- in that it's within the realm of the

1 Court's ruling. The Court having expressed a belief that
2 if it is elicited by way of a recantation or by way of
3 other evidence that someone other than Mr. Penkava and
4 [REDACTED] were attending at the meeting, it might
5 change the Court's ruling.

6 MS. GROEBNER: Thank you, Your Honor.

7 THE COURT: You're very welcome. Any other
8 preliminary matters? Ms. Eisenstein?

9 MS. EISENSTEIN: If it's answers remain consistent
10 to what he testified to prior to lunch, is it still
11 permissible to ask the question where then he will assert
12 the privilege and Your Honor will acknowledge that there
13 is a privilege, or will we be barred from asking the
14 question?

15 THE COURT: That's a fair question,
16 Ms. Eisenstein; and the Court's response is there has
17 been a ruling on the motion indicating that it's the
18 Court's finding that the privilege is properly invoked.
19 So I don't think it's appropriate to revisit that issue.
20 But I will ask the State its position in terms of
21 advising the jury of that. How would the State, in view
22 of the fact that this is the State's witness, suggest the
23 Court's explanation, if any, to the jury?

24 MS. EISENSTEIN: I guess the confusion I think that

1 there may be is I believe he attempted to assert the
2 privilege on a question that was not privileged as to
3 whether or not the Defendant was censured.

4 I believe when the jury was brought out, that
5 was the question that was pending. So I think we
6 furthered the discussion after the jury was brought out
7 into the actual discussion where Your Honor had a ruling.
8 But I believe he attempted to bring up the privilege
9 regarding the censure issue, which I think Your Honor
10 said that that's not --

11 THE COURT: Well, I don't know that I agree with
12 that, Ms. Eisenstein. I certainly can stand corrected.
13 I think he already addressed the issue that his treatment
14 of the censure was the same thing as the public reproof.
15 I think we segwayed from that, and I think Ms. Groebner
16 started to ask about the substance or depth of what had
17 taken place.

18 MS. EISENSTEIN: I believe it was more as to whether
19 or not the Defendant was -- After the question about what
20 it was, was the Defendant censured; and that's when he
21 asserted the privilege again. I think we furthered it in
22 the discussion when the jury was outside of the
23 courtroom.

24 THE COURT: So recognizing if that is the correct

1 context of that -- of the gentleman's testimony, what
2 would the State like to do? Would you like to ask the
3 question, and have him assert the privilege? Is that the
4 suggestion?

5 MS. EISENSTEIN: I mean, I think we have to resume
6 with the question that we left off on; and I think that
7 Ms. Groebner should go into the area of the conversation.

8 THE COURT: We're missing each other a little bit.
9 It's my fault.

10 The expectation that Mr. Penkava at some
11 juncture is going to assert the privilege. So when he
12 does that, does the State have a position on ruling --
13 other than to sustain the assertion of the privilege? Do
14 you see what I'm saying?

15 MS. EISENSTEIN: I think that is sufficient.

16 THE COURT: Okay. Any preliminary matters from the
17 Defense, gentlemen?

18 MR. MOURELATOS: Judge, Mr. Penkava did approach us
19 prior to entering wanting to ask the Court a question for
20 clarification. I advised him that he is under oath and I
21 cannot ask -- or answer any of his questions or speak to
22 him at this time. I believe he wanted to address the
23 Court regarding whatever.

24 THE COURT: It's certainly not your fault,

1 gentlemen, that he approached you. He was clearly
2 admonished not to have communication with anyone
3 regarding his testimony.

4 Mr. Caridei, if you or if someone can see if
5 Mr. Penkava is available? Thank you. I appreciate that.

6 Sir, if you can come forward. Mr.
7 Michael Penkava is present. Mr. Penkava, I'm advised by
8 the Public Defender, Mr. Mourelatos, that when I excused
9 you for lunch, that you approached Mr.
10 Mourelatos and or Mr. Behof with a question. And
11 depending upon what that question is, I will allow you to
12 ask it. I will not commit to answering it. Did you
13 have a question?

14 MR. PENKAVA: Yes, I didn't even mention the
15 question. I said I had a question, how do I go about
16 presenting my question, and they said they into let you
17 know.

18 THE COURT: They did. And the question is what?

19 MR. PENKAVA: So could you please review the -- what
20 you told me in terms of what I should testify about and
21 what I was must not testify about?

22 THE COURT: No, I will not do that because I think
23 that would be exceeding my authority in terms of giving
24 you guidance.

1 I have ruled on whether the privilege is
2 applicable, and you have the right to assert the
3 privilege. If you are going to assert the
4 clergymen-penitent privilege, it is your right to do so.
5 Depending upon to what questions you assert that
6 privilege, I will rule accordingly if that helps.

7 MR. PENKAVA: Thank you, thank you.

8 THE COURT: If you can step out for one quick
9 second.

10 Mr. Mourelatos, Mr. Behof, any additional
11 matters?

12 MR. MOURELATOS: No, Your Honor. Thank you.

13 THE COURT: I want to address this issue head-on
14 because I don't want this to turn into a perpetual
15 invocation of the privilege to every question which
16 creates potentially an unfair inference for
17 [REDACTED] and may be intrusive into his
18 rights as they are.

19 Ms. Groebner, if the question is asked and
20 Mr. Penkava asserts the privilege, the Court's intent is
21 to identify that he is asserting a privilege and is not
22 required to testify regarding any conversations that were
23 between he and the Defendant in private under the
24 auspices of providing spiritual guidance. If he chooses

1 to take it beyond that, then it's a so be it proposition.

2 But does that appease the State?

3 MS. GROEBNER: Yes.

4 THE COURT: Defense?

5 MR. MOURELATOS: Yes, Your Honor.

6 THE COURT: You seem a little bit reticent,
7 Mr. Mourelatos.

8 MR. MOURELATOS: I don't want to speculate what the
9 State is going to ask. However, I also have concerns
10 that questions will be asked regarding statements that
11 were had between my client and his wife before the
12 parties at another time. And I don't know if the State
13 is going to delve into that, but obviously Mr. Penkava is
14 going to assert a privilege at that point as well; but I
15 guess that's the unknown.

16 THE COURT: I don't know that that would fall into
17 the auspices of the privilege. That's the whole argument
18 we had this morning about the possibility of waiving the
19 privilege.

20 MR. MOURELATOS: I understand. I understand, Judge.

21 THE COURT: State, I'm going to address this
22 preemptively. When the jury comes back and Mr. Penkava
23 is re seated, I'm going to apprise the jury that he
24 asserted the privilege that contains to a clergyman and a

1 penitent and that he is not required to respond to --
2 I'll stop that. I don't know that that -- I'm going to
3 retract. We're going to treat it as previously addressed
4 by the Court.

5 Mr. Caridei, if you can get jury, please.

6 THE BAILLIFF: Yes.

7 All rise.

8 (Whereupon, the jury entered.)

9 THE COURT: Thank you so much. Please be seated. We
10 are continuing in the State's case; and in that regard,
11 if Mr. Penkava can be brought forward, please.

12 Mr. Penkava, if you can kindly come forward, sir, and
13 re take the witness stand. You are still under oath.
14 Signal Ms. Groebner, when you are comfortable.

15 And for continuity of record, this is
16 Mr. Michael Penkava being examined.

17 Are you comfortable?

18 THE WITNESS: Yes, I am.

19 (Whereupon, the examination of Mr. Michael Penkava by Ms.
20 Groebner continued.)

21 MS. GROEBNER:

22 Q. Mr. Penkava, has the Defendant ever been publicly
23 reproved or censured by your congregation?

24 A. Yes, he has.

1 Q. When was it that the Defendant was censured or
2 publicly reprovved?

3 A. July, 2006.

4 Q. Mr. Penkava, was that public reprovral -- What was
5 that public reprovral based on -- What was that public
6 reprovral based on?

7 A. That would be privileged information.

8 THE COURT: Ladies and gentlemen, Illinois
9 recognizes what's called the clergy -- penitent
10 privilege. When a member who is providing spiritual or
11 clerical guidance to a penitent receives information, it
12 may be privileged; and Mr. Penkava has invoked that
13 privilege.

14 At this point the Court is going to sustain
15 that objection.

16 Next question, Ms. Groebner.

17 MS. GROEBNER:

18 Q. Was there a meeting with the Defendant prior to
19 the Defendant being publicly reprovved?

20 A. Yes.

21 Q. How long before the public reprovral was this
22 meeting?

23 A. A week -- About a week.

24 Q. And, Mr. Penkava, who ordered this meeting to be

1 had?

2 A. That would be privileged information.

3 THE COURT: I'm going to ask that you answer that
4 question, sir. The who ordered the meeting, I don't find
5 under the auspices of the privilege. Please answer that
6 question.

7 A. Yes, Your Honor.

8 A -- Another elder, [REDACTED], called a
9 meeting of the body of elders to discuss the situation
10 with regard to a member of the congregation.

11 Q. And who was present at this meeting set up by
12 Elder Maicha?

13 A. [REDACTED] notified the body, and so the
14 entire body of elders. At that time, I'm not sure how
15 many elders we had. That was back in 2006, but it was
16 maybe five or six elders on the body at that time. And
17 he informed the body of the situation that we needed to
18 deal with.

19 Q. Who was present for the meeting?

20 A. The body of elders. That would be [REDACTED] myself,
21 [REDACTED] and -- but I can't -- I can't recall the
22 names of the other ones back then with authority.

23 Q. Who did you meet with?

24 A. We met with the body to discuss how we could

1 handle the situation scripturally and what help we could
2 give to the alleged sinner.

3 Q. Did you ever have a meeting with the alleged
4 sinner?

5 MR. MOURELATOS: Objection, asked and answered, Your
6 Honor.

7 THE COURT: Overruled.

8 A. So I must answer that?

9 THE COURT: Yes, please.

10 A. Could you repeat the question?

11 THE COURT: Did you have a meeting --

12 MS. GROEBNER:

13 Q. Did you have a meeting with the alleged sinner?

14 A. Yes.

15 Q. And who was present for that meeting?

16 A. Myself, [REDACTED] and [REDACTED] and the
17 -- the alleged sinner.

18 Q. And who was the alleged sinner that you met with?

19 A. Is that privileged? May I --

20 THE COURT: If you're asking to invoke the
21 privilege, sir, I'm going to overrule that request and
22 ask to you identify who that individual was.

23 A. That would be [REDACTED]

24 MS. GROEBNER:

1 Q. Was the Defendant's wife, [REDACTED] present for that
2 meeting?

3 A. Not to the best of my -- of our knowledge -- of my
4 knowledge.

5 Q. Mr. Penkava, on October 20 of 2018, did you meet
6 with Detective Eitel, E-I-T-E-L, of the Crystal Lake
7 Police Department?.

8 A. Yes, I did.

9 Q. And during the course of meeting with the
10 Detective Eitel, did you prepare a written statement in
11 regards to your knowledge on this case?

12 A. Yes, I did.

13 Q. Mr. Penkava, I'm showing you what has been
14 previously been marked as State's Exhibit Number 7 for
15 identification. Do you recognize what that is?

16 A. Yes, I do.

17 Q. What is that?

18 A. Well, it's a statement that I wrote out to -- to
19 the detective at his request.

20 Q. Is that a true and accurate copy of the statement
21 that you wrote out on October 20, of 2018?

22 A. It appears to be a copy of it.

23 Q. Is it a true and accurate copy?

24 A. All I can say is at the time that I wrote that, it

1 was true and accurate when I wrote that.

2 Q. And, Mr. Penkava, in that statement, didn't you
3 state, that [REDACTED] (phonetic) informed the body
4 of elders of the congregation and he was joined by [REDACTED]
5 [REDACTED] and I to meet, with [REDACTED] and his wife about the
6 matter?

7 A. Yes. And those were two separate meetings. We met
8 with [REDACTED] as the three elders helping to -- helping
9 him to spiritually recover. And then there was another
10 meeting with [REDACTED] the wife, to inform her of her right
11 to contact the authorities and to offer spiritual counsel
12 and guidance.

13 Q. But nowhere within that statement did you state
14 that there was two separate meetings; isn't that correct?

15 A. I believe -- No. I said that as two different
16 things in one sentence. It's like saying if I said in
17 one sentence I was in Florida and Illinois, that's two
18 different states in that situation.

19 So I meant that she was -- she was helped
20 spiritually. We met with her, and we met with him in
21 terms of the -- the sin, the alleged sin.

22 Q. Who did you meet with first?

23 A. [REDACTED] I believe, talked with [REDACTED]
24 That's how he found out the information. And then he

1 informed us; and then I believe [REDACTED] who was assigned
2 to help the family, he met with [REDACTED] and talked to her
3 about her rights in contacting the authorities. So that
4 was separate.

5 Q. After the meeting with the Defendant, did you and
6 the elders meet with [REDACTED]

7 A. I do not recall that we did to the best of my
8 knowledge right now. That was some several -- many years
9 ago. I can't -- I cannot answer that. I don't know. I
10 can't recall.

11 MS. GROEBNER: Can I have a moment, Your Honor?

12 THE COURT: Sure.

13 (Whereupon, whispered discussion between Ms. Groebner and
14 Ms. Eisenstein took place.)

15 MS. GROEBNER:

16 Q. Mr. Penkava, what occurred during the meeting with
17 the Defendant?

18 A. That would be privileged information.

19 THE COURT: The Court is going to sustain the
20 assertion of the invocation of the privilege.

21 MS. GROEBNER:

22 Q. Now, Mr. Penkava, you stated that you don't recall
23 if you met with the wife, [REDACTED] after the
24 meeting with the Defendant; is that correct?

1 A. That is correct. I cannot recall. It is possible,
2 but I do not recall.

3 Q. When you spoke with Detective Eitel back on
4 October 20th of 2018, isn't it true that you told him
5 that you met with -- in the written statement that you
6 met with [REDACTED]

7 MR. MOURELATOS: Objection, Your Honor, asked and
8 answered.

9 THE COURT: Sustained.

10 MS. GROEBNER:

11 Q. Is your memory exhausted as to whether you met
12 with [REDACTED] after the meeting with the Defendant?

13 A. I have thought deeply, prayed to recall all the
14 details and to testify to the truth. I'm bound by my
15 swearing in and by my dedication to God to be a man of
16 truth. That's -- I cannot recall that truthfully.

17 Q. Mr. Penkava, would the written statement, People's
18 Exhibit Number 7 before you refresh your recollection on
19 whether you met with [REDACTED] after the meeting the
20 Defendant?

21 MR. MOURELATOS: Objection, Your Honor.

22 THE COURT: What's your objection?

23 MR. MOURELATOS: Asked and answered.

24 THE COURT: It's an effort --

1 (Whereupon, indiscernible whispering being heard.)

2 THE COURT: Counsel.

3 MS. GROEBNER: Oh.

4 THE COURT: It's an effort at present recollection
5 or recording. To the extent that the gentleman has
6 candidly testified that he doesn't recall is an
7 appropriate manner by which to elicit the testimony as
8 an effort at present recollection to recall. The
9 objection is sustained.

10 If you want to pursue it from another angle,
11 Ms. Groebner, you certainly may.

12 MS. GROEBNER:;

13 Q. Mr. Penkava, isn't it true that you -- that you
14 told --

15 Your Honor, may I have one moment?

16 THE COURT: Sure.

17 (Whereupon, whispered discussion between Ms. Groebner and
18 Ms. Eisenstein.)

19 MS. GROEBNER:

20 Q. Mr. Penkava, after the Defendant was publicly
21 reprovved, did his responsibilities change or privileges
22 change with the congregation?

23 A. Yes, they did.

24 Q. And how did his responsibilities or privileges

1 A. That would be privileged.

2 MR. MOURELATOS: Objection to leading.

3 THE COURT: Sustained.

4 MS. GROEBNER:

5 Q. Was there any change in his contact with
6 congregates of the church?

7 MR. MOURELATOS: Same objection, Your Honor,
8 leading.

9 THE COURT: I don't think that is suggesting an
10 answer. Overruled.

11 You can answer the question, sir.

12 A. In terms of his relationships with ones in the
13 church?

14 MS. GROEBNER:

15 Q. Contact with those in the church.

16 A. There was -- He could be in contact with -- with
17 anyone in the church. He was not restricted from
18 contact.

19 Q. Was there any members of the congregation that he
20 could not be alone with?

21 MR. MOURELATOS: Objection, Your Honor, leading.

22 THE COURT: It is leading. Sustained.

23 MS. GROEBNER:

24 Q. Was he allowed contact with children of the

1 church?

2 MR. MOURELATOS: Objection, Your Honor.

3 THE COURT: Objection what, sir?

4 MR. MOURELATOS: Same objection as to leading, and
5 argumentative.

6 THE COURT: It's not argumentative yet. That
7 objection is overruled, but it's sustained as leading.

8 MS. GROEBNER:

9 Q. Was there any member of the church whom the
10 Defendant was not allowed to be in contact with alone?

11 MR. MOURELATOS: Objection, Your Honor, asked and
12 answered.

13 THE COURT: Sustained.

14 MS. GROEBNER: May I have one moment, Your Honor?

15 THE COURT: You may certainly.

16 (Whereupon, indiscernible whispering being heard.)

17 MS. GROEBNER:

18 Q. So, Mr. Penkava, your testimony is that there was
19 no restriction of any -- no restrictions placed on the
20 Defendant with contact with persons of the congregation;
21 is that correct?

22 MR. MOURELATOS: Objection, Your Honor, asked and
23 answered again.

24 THE COURT: Sustained.

1 MS. GROEBNER:

2 Q. Mr. Penkava, when you spoke with Detective Eitel
3 back on October 20th of 2018, isn't it true that you told
4 him that he was not to be alone with any children in the
5 congregation?

6 MR. MOURELATOS: Objection, improper impeachment,
7 Your Honor.

8 THE COURT: I don't think so. Overruled.

9 A. Repeat the question, please.

10 MS. GROEBNER:

11 Q. Mr. Penkava, isn't it true that when you spoke
12 with Detective Eitel and wrote your written statement
13 October 20th of 2018, you wrote in that statement that,
14 he was not to be alone with any children in the
15 congregation?

16 A. That is not a privilege? I must answer that
17 question?

18 THE COURT: If you are invoking the privilege, the
19 objection is overruled. It purports to be in the
20 statement that is identified as People's Exhibit 7 --

21 A. Yes, that's what I wrote.

22 MS. GROEBNER: May I have one moment, Your Honor?
23 (Whereupon, indiscernible whispering being heard.)

24 Q. And, Mr. Penkava, how was it monitored that the

1 Defendant would not have contact with any children?

2 MR. MOURELATOS: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. MOURELATOS: Judge, if I may have a moment?

5 THE COURT: ~~Sure.~~

6 MR. MOURELATOS: Judge, I would object as to
7 improper impeachment of that question based on
8 Mr. Penkava's testimony, as well as the question being
9 argumentative.

10 THE COURT: Both of those grounds the objection is
11 overruled if those are the grounds advanced. Overruled.

12

13 You can answer, sir.

14 A. Repeat the question please.

15 MS. GROEBNER:

16 Q. How was it monitored that the Defendant not be
17 alone with any children of the congregation?

18 A. The -- The elders had the opportunity to talk with
19 family heads of children -- who had children to give them
20 advice to -- to not let their children be alone in his
21 presence.

22 MS. GROEBNER: Your Honor, may I retrieve my
23 exhibit?

24 THE COURT: Certainly.

1 MS. GROEBNER: Your Honor, I have no further
2 questions.

3 THE COURT: Cross?

4 MR. MOURELATOS: Your Honor, may I have a moment?

5 THE COURT: Sure. Absolutely.

6 MR. MOURELATOS: No questions for Mr. Penkava.

7 THE COURT: Mr. Penkava, sir, it has been a
8 pleasure. You may step down. You are excused. Enjoy the
9 rest of the day, sir.

10 THE WITNESS: Thank you, sir.

11 THE COURT: You're welcome.

12

13 ---END OF EXCERPT---

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1 STATE OF ILLINOIS)
2 COUNTY OF MCHENRY)

3
4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
5 McHENRY COUNTY, ILLINOIS

6
7
8 I, Heather Voska Hartwig, one of the Official Court
9 Reporters of the 22nd Judicial Circuit of Illinois, do
10 hereby certify that I reported in shorthand the
11 proceedings had at the hearing of the above-entitled
12 cause, and that the foregoing EXCERPTS of proceedings is
13 a true and correct transcription of the proceedings
14 heard.

15
16 *Heather Voska Hartwig*
17 Heather Voska Hartwig CSR
18 #084-003574

19
20 Dated this 8th day of October, 2020.

Crystal Lake Spanish Congregation
Crystal Lake, IL 60014

RE: Judicial committee for [REDACTED] composed of [REDACTED] chairman; Mike Penkava,
secretary, and; [REDACTED]

On July 27, 2006, a judicial committee was formed for [REDACTED], baptized publisher of the congregation, who is 27 years old. [REDACTED] approached the elders to confess that he had sexually molested his six-year-old daughter [REDACTED] for a period of six months, on approximately six or seven occasions. [REDACTED] stated that he had requested assistance from an elder the first time he had intentions to abuse his daughter. The details of the conversation with the elder could not be determined as the brother is out of the city. With prayer and entreaty, the committee met twice with [REDACTED] who recognized the seriousness of the mistake made. He acknowledged that as they sleep together with the girl his desires awoke and he touched her intimate parts and the last time he was on top of her but without penetrating her. The legal department for the branch was notified about this matter and deemed that it was not necessary to report to the authorities. Nevertheless, they offered guidelines to follow depending on the committee's decision.

We considered biblical texts and Watchtower articles that show the seriousness of the matter and how Jehovah sees them. [REDACTED] accepted the counsel and was willing to accept any discipline imposed on him.

We could truly see sincere repentance in his responses and attitude during the two meetings held.

The committee decided that [REDACTED] should be publicly reproved with some restrictions that include participation in the Theocratic Ministry School and commenting at meetings. His activity in the field ministry is not affected. [REDACTED] and his family attend the book study in the Kingdom Hall.

The recommendations to follow are: protection of the minor. In this regard, [REDACTED] daughter no longer sleeps in the same bed. The girl's mother received and will continue receiving encouragement in order to achieve family unity. Although she initially wanted a divorce, she later left this idea behind. [REDACTED] needs spiritual help. [REDACTED] will have study sessions to direct his thoughts to a good relationship with Jehovah. His status will be examined as he progresses spiritually.

P.S. Confidential matter. No member of the congregation knows about the matter.

[signature]

[signature]

Michael Penkava

[signature]

[crossed-out handwritten initials]

Christian Congregation
of Jehovah's Witnesses
2821 Route 22, Patterson, NY 12563-2237 Phone: (845) 306-1100
SFE:SFF September 26, 2006

BODY OF ELDERS
SPANISH CONGREGATION
OF JEHOVAH'S WITNESSES, CRYSTAL LAKE, IL
C/O COLIN SCOTT
331 KRENZ AVE
CARY IL 60013-2005

Dear Brothers:

We hereby acknowledge receipt of a recent report from the judicial committee that handled the case of Brother [REDACTED] baptized publisher of his congregation, who confessed to having sexually abused his six-year-old daughter, [REDACTED]. The judicial committee decided to give Brother [REDACTED] judicial reproof given that he appeared sincerely repentant, and the congregation was notified of the reproof.

With good reason, *The Watchtower* of January 1, 1997, says on page 29: "A dedicated adult Christian who falls into the sin of child sexual abuse reveals an unnatural fleshly weakness. Experience has shown that such an adult may well molest other children. True, not every child molester repeats the sin, but many do. And the congregation cannot read hearts to tell who is and who is not liable to molest children again. (Jeremiah 17:9) Hence, Paul's counsel to Timothy applies with special force in the case of baptized adults who have molested children: 'Never lay your hands hastily upon any man; neither be a sharer in the sins of others.' (1 Timothy 5:22) For the protection of our children, a man known to have been a child molester does not qualify for a responsible position in the congregation." Therefore, for the good of the congregation and its members, neither the local congregation nor any legal corporation used by the Jehovah's Witnesses should be seen as an entity that has delegated authority or status to a person known to have indecently abused a minor.

After having analyzed carefully and with prayer all of the factors in the case of Brother [REDACTED], we believe that the above applies to him. Therefore, he should not be offered any particular responsibility in the congregation that might be interpreted as an assignment, regardless of how small the assignment might appear. He should not be used to handle accounts, literature, magazines, or territories. Nor would he be used as an usher or sound operator, or to pass the microphones, represent the congregation in prayer, or make the announcements at the Service Meeting. He cannot be a reader for Congregation Book Study or the study of *The Watchtower*, nor should he lead any field service meeting. It would be advisable not to hold Congregation Book Study in his house. Nor does he qualify as an auxiliary or regular pioneer. Although he could offer to help with the general maintenance of the Kingdom Hall that he attends, he would not be approved to work in other Kingdom Halls or Meeting Halls.

SPANISH CONGREGATION, CRYSTAL LAKE, IL

September 26, 2006

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It would be many years before he would again have service privileges, that is, if he should recover them some day. If in the distant future you do consider the possibility of granting him privileges like those mentioned in this paragraph, you should first contact the branch office.

Please bear in mind the following instructions, which were included in the confidential letter addressed to all bodies of elders, dated March 14, 1997, regarding those people known to have abused a minor: "Anyone who has shown weakness in this area should be very conscious of the need to abstain from being alone with a child. They should abstain from hugging or carrying children, and from other displays of affection with them. It will be appropriate for elders to kindly warn anyone they see doing something that could result in a temptation or in cause for concern for other members of the congregation. (1 Cor. 10:12, 32)." This would include not allowing children (that are not their children) to spend the night in their home, not going out for field service in the company of a boy or girl, not cultivating friendly relationships with children, and so on.

In addition, those who have abused a minor in the past should not go out alone for field ministry. They should always be accompanied by another adult publisher of good reputation in the congregation. This also applies to participating with their own minor children in the field ministry. If they decide to preach with their children, there should still always be another adult present, as this is protection for minors that might open the door, for the child molester, and for the congregation's reputation.

Finally, in accordance with the instructions in the August 1, 1995, and March 14, 1997, letters addressed to all of the bodies of elders, if Brother [REDACTED] moves to another congregation, you must report "the problem clearly and discretely to the elders of the new congregation" and explain the person's history, the restrictions in effect, and any precautions that need to be taken. You should also send us a copy of the letter you write so we know the person's whereabouts.

We hope that the above is useful to you in the coming days, so that you may be "like a hiding place from the wind, a place of concealment from the rainstorm, like streams of water in a waterless land" for the flock under your care (Isaias 32:2; 1 Peter 5:2). Our best wishes and Christian love.

Your brothers,
*Christian Congregation
of Jehovah's Witnesses*



COPY

City of Crystal Lake
POLICE DEPARTMENT
Illinois

Case Number# 18-21245

Voluntary Statement
Not Under Arrest

Date: 10-27-18 Time: 9:20 A.M. Location: 331 KRENZ AVE. CARY

Statement:
I, [REDACTED] born on 9-1-33 and now residing at

SAME AS ABOVE (print full name) (date of birth) hereby freely and voluntarily make the following statement to

DAVE EITEL (Street, City, State, Zip) who has identified her/himself to me to be a

C. P. D. (Officer/Detective Taking Statement) this date: 10-27-18, 20 18
(Jurisdiction/Rank) (month/date) (year)

In approximately 13 years ago
Arturo Hernandez confessed to touching the
genitals of his 6 year old daughter & a committee
was formed to handle the matter. He was
publicly reprimanded.

C. EITEL
331

10/29/2018
TCLP2877

18-21245:8DE
Location: Locker H11
Crystal Lake, Ill.

I have made the above statement without any threats or promises, or coercion of any kind being used, for or against me. It is my desire to state the true facts as to this incident. I have read (or had read to me) the above statement and find it is true and correct to the best of my knowledge and belief.

[Signature]
4471
(Witness)

[REDACTED]
(Signature of person giving the voluntary statement)

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF McHENRY)

3 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

4 McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: [REDACTED]
11/08/2019
McHenry County, Illinois
22nd Judicial Circuit

5
6 THE PEOPLE OF THE)
7 STATE OF ILLINOIS,)

8 vs.) No. [REDACTED]

9 [REDACTED]

10 Defendant.)

11 EXCERPT OF:

12 REPORT OF PROCEEDINGS had at the hearing of the
13 cause before the HONORABLE MICHAEL COPPEDGE, on the
14 22nd of October, 2019, at the McHenry County Government
15 Center, Woodstock, Illinois.
16

17 APPEARANCES:

18 MR. PATRICK KENNEALLY
State's Attorney of McHenry County
19 BY: MS. SHARYL EISENSTEIN
MS. SUSANNE GROEBNER
20 Assistant State's Attorneys
Appeared on behalf of the State
21

22 MR. MARK COOK
Public Defender of McHenry County
23 BY: MR. RICHARD BEHOF
MR. ANGELO MOURELATOS
Assistant Public Defenders
24 Appeared on behalf of [REDACTED]

1 ---BEGINNING OF EXCERPT---

2 THE COURT: You're welcome.

3 State, another witness?

4 You want to come forward, sir. Raise your
5 right hand for me.

6 (Whereupon, witness sworn.)

7 THE COURT: Thank you so much. You may lower your
8 hand. Be seated, please. I apologize for pointing.

9 Once you are comfortable as best you can be,
10 kindly tell Ms. Groebner.

11 THE WITNESS: I'm sorry?

12 THE COURT: Once you are comfortable, let Ms.
13 Groebner know, and she'll proceed.

14 Go ahead, Ms. Groebner.

15

16

MICHAEL PENKAVA,

17 Having been first duly sworn, was examined and testified
18 as follows:

19

EXAMINATION

20

BY MS. SUSANNE GROEBNER:

21

Q. Sir, in a nice loud and clear voice, can you

22

introduce yourself to the ladies and gentlemen of the

23

jury by stating your first and last name and spell your

24

last name for the court reporter.

1 A. My name is Michael Penkava, spelled P-E-N-K-A-V-A.

2 Q. Mr. Penkava, are you currently a member of a
3 religious organization?

4 THE WITNESS: Your Honor, may I ask your help? Must
5 I answer questions as an ordained minister about the
6 situation?

7 THE COURT: This wasn't a situational question, sir.
8 It simply was whether you are a member of the ordained
9 religion. So --

10 THE WITNESS: Okay.

11 THE COURT: -- that question I would respectfully
12 ask you to answer.

13 A. Repeat the question, please.

14 MS. GROEBNER:

15 Q. Are you currently a member of the religious
16 organization?

17 A. Yes, I am.

18 Q. What organization is that?

19 A. Jehovah's Witnesses.

20 Q. Where is that located at?

21 A. That's in Crystal Lake.

22 Q. Is that Kingdom Hall?

23 A. It's at Kingdom Hall in Crystal Lake.

24 Q. How many members are in the Kingdom Hall of

1 Jehovah's Witnesses?

2 A. We have approximately 130 what we call publishers,
3 ones who are active, practicing witnesses.

4 Q. How do you become an active, practicing witness?

5 A. You study the Bible with Jehovah's Witnesses. You
6 conform to the Bible's standards of conduct. You make a
7 dedication to God to do His will. And in that way, you
8 would -- and you may proceed to a baptism, emersion, full
9 emersion; and you become a baptized dedicated witness of
10 Jehovah.

11 Q. What is your position with the Kingdom Hall of
12 Jehovah's Witnesses?

13 A. I have the position of a -- of being what is
14 called an elder.

15 Q. What is an elder?

16 A. An elder is an individual, a man who has fulfilled
17 the scriptural requirements to be an elder or older man
18 or overseer according to the Bible.

19 Q. How long have you held that position as an elder?

20 A. I don't know exactly how many years, but over 30
21 years.

22 Q. How many elders are there at the Kingdom Hall of
23 Jehovah's Witnesses?

24 A. I believe we have eight.

1 Q. And what -- What are your duties or what do you do
2 as an elder?

3 A. We do the teaching in the congregation during the
4 congregational meetings, public talks, direct Bible
5 studies of the congregation. We do shepherding where we
6 would visit either at the Kingdom Hall or at the homes of
7 our members to help them with problems. Give them
8 scriptural advice, and help them to solve -- solve
9 problems in their lives using Bible principles.

10 Q. Have you heard of the term of being publicly
11 reprovved?

12 A. Yes, I have.'

13 Q. What does it mean to be publicly reprovved?

14 A. That would mean that an individual --

15 Your Honor, must I answer that question?

16 THE COURT: Yes, sir. That is within the realm of
17 general information regarding your religious practice;
18 and yes, sir, kindly answer.

19 A. Okay. Thank you.'

20 THE COURT: You're welcome.

21 A. Public reproof is when an individual has committed
22 a particular sin, has repented of that sin, and the --
23 the sin is known in the congregation. So an announcement
24 of public reproof would let all who know of that sin

1 understand that that individual has been scripturally
2 helped to overcome the sin, reject that course, and
3 determine to avoid that sin in the future.

4 Q. And public reproof, is that something that takes
5 place in the Kingdom Hall of Jehovah Witnesses?

6 A. There's an announcement that is made.

7 Q. And --

8 A. That is made at the Kingdom Hall.

9 Q. And the announcement is made to all of the active
10 members of the Jehovah's Witnesses?

11 A. All who are in attendance at that particular
12 meeting.

13 Q. Have you heard of the term, censure, before?

14 A. In terms of?

15 Q. In your practice as a Jehovah Witness?

16 A. Well, censure and public reproof are -- are about
17 -- are the same thing.

18 Q. Now, Mr. Penkava, if one is not censured or one
19 doesn't repent for their sin, is there another process
20 that takes place within the Kingdom Hall of Jehovah's
21 Witnesses to that person?

22 A. Well, scripturally, yes, there is. The Bible
23 exerts that if a member would not repent and would be
24 determined to continue a sin, they would be what we call

1 disfellowshipped or it means excommunicated from the
2 congregation.

3 Q. And what does it mean to be excommunicated?

4 A. Well, that person would no longer be an active
5 member of the congregation in good standing; and
6 scripturally, ones would not associate with that person.

7 Q. Is censure a common practice in the Kingdom Hall
8 of Jehovah Witness?

9 A. It is not common. It does happen at times when
10 ones are involved in a serious sin that violates
11 scriptural principles and that -- that are needed to be
12 addressed by the elders. So sometimes that happens. And
13 sometimes ones need to be readjusted and helped to
14 repentance.

15 Q. Do you know an individual by the name of [REDACTED]

16 [REDACTED]

17 A. Yes, I do.

18 Q. And how do you know him?

19 A. [REDACTED] is a member of the -- of the congregation
20 of Jehovah's Witnesses.

21 Q. Is he an active witness?

22 A. At this time, no. No action has been taken with
23 regard to recent activity.

24 Q. But was he an active witness in the Kingdom Hall

1 at -- as a -- Had he been baptized and gone through the
2 process to become an active disciple and witness?

3 A. Yes. Yes, he did.

4 Q. Do you see [REDACTED] in court today?

5 A. Yes, I do.

6 Q. Could you please identify him for the record by an
7 article of clothing he's wearing today?

8 A. He has the blue shirt and the tie (indicating)
9 sitting over there.

10 Q. Can you just --

11 MR. MOURELATOS: Judge, I would stipulate to the
12 in-court identification of my client.

13 MS. GROEBNER: Thank you.

14 THE COURT: The record will show by stipulation the
15 Defendant has been identified.

16 MS. GROEBNER:

17 Q. How long has the Defendant been a member of the
18 Jehovah's Witnesses?

19 A. I don't know exactly. It's a number of years.

20 Q. Does he have a family?

21 A. Yes, he does.

22 Q. And are you aware of the immediate members of his
23 family, are they members of the Kingdom Hall as well?

24 A. Yes, they are.

1 Q. Do you know who his family members are?

2 A. We have [REDACTED] his daughter. We have [REDACTED]
3 his son; and [REDACTED] his wife.

4 Q. Was the Defendant ever censured by your church?

5 THE WITNESS: Your Honor, may -- Do I need -- Must I
6 answer that question?

7 THE COURT: Without establishing some basis for not,
8 sir, which would have to come from you, the answer to
9 your question is yes.

10 THE WITNESS: Your Honor, may I appeal to the
11 clergy-penitent privilege that is allowed by state law
12 that I as a spiritual advisor and counselor, that I would
13 not have to reveal confidential information with regard
14 to an individual member that I've counseled and advised?

15 THE COURT: Mr. Caridei, if you would be so kind as
16 to escort the jury out for a moment.

17 Ladies and gentlemen, if you can step out for
18 a minute, please.

19 THE BAILIFF: All rise.

20 (Whereupon, the jury left the room.)

21 THE COURT: Thank you. Please be seated.

22 Mr. Penkava, were you to answer that
23 question, what would the answer be?

24 A. Could you repeat the question, please?

1 MS. GROEBNER:

2 Q. Was the Defendant ever censured by your church?

3 A. Yes.

4 THE COURT: What would the next question be?

5 MS. GROEBNER:

6 Q. When was this?

7 A. I believe it was back in 2006. Somewhere around
8 July of 2006.

9 THE COURT: Mr. Penkava, you bring focus to the
10 areas of concern to the Court.

11 During the first parts of your testimony,
12 sir, you identified that -- as I heard you -- that the
13 censure process and the public -- Did you say it was
14 reproof or reproachment?

15 A. Reproof.

16 THE COURT: Reproof -- the public reproof process
17 are one in the same; is that right?

18 A. Yeah. I don't see a difference because they're
19 just two words for the same process.

20 THE COURT: As part of the censure process -- and if
21 it's the same, please correct me -- is there a
22 preliminary step where an individual, a clergy member --
23 pardon me -- a member of the assembly meets with elders
24 to discuss the situation?

1 A. Yes.

2 THE COURT: Does that precede the public reproof?

3 A. Yes.

4 THE COURT: Is that a conversation that takes place
5 in private?

6 A. Absolutely.

7 THE COURT: Who is present during the initial
8 conversation?

9 A. It would be the individual who committed the sin
10 or alleged sin and three ministers or three elders.

11 THE COURT: Three elders?

12 A. Yes.

13 THE COURT: In this case, you were one of the
14 elders?

15 A. Yes.

16 THE COURT: And aside from the two other elders, was
17 anyone else present?

18 A. Just the -- Just the Defendant.

19 THE COURT: [REDACTED]. And then when
20 there's a transition from that meeting to a public
21 reproof, what's the order of events? Is an individual
22 apprised of the fact that depending upon the decision of
23 the elders, there may be a public reproof?

24 A. Yes. The three elders would in the meeting with

1 the individual, try to spiritually help that person to
2 see the gravity of what they have done and give them
3 counsel as to how' to prevent that to occur again.

4 Based upon the reaction of the individual, if
5 that individual reacts and is repentant and wants to
6 change his course of action, then there's no need to
7 remove him from the congregation. He has been reprovved
8 with the use of the scriptures.

9 However, in the case -- in the case of
10 Arturo, there were ones who knew about that. So to allow
11 the congregation to understand that it has been dealt
12 with and -- and he was repentant, he is reprovved
13 publicly. So ones who know about that situation,
14 understand that it has been handled scripturally by the
15 body of elders.

16 THE COURT: And when there's a transition from the
17 meeting with the elders to a public reprovval, first of
18 all, what's the time interval?

19 A. It would be the next mid week meeting. So if we
20 met on a Saturday or Sunday, whatever the next mid week
21 meeting. And the Defendant or the individual who is
22 being counseled and reprovved would be clearly receive
23 that counsel and clearly explain to him the procedure of
24 public reproof and that that would be announced.

1 Q. And when there's a public reproof, what's the
2 substance that is announced?

3 A. It's just -- It would say the name of the
4 individual has been reproofed. That's all.

5 THE COURT: So perhaps I misunderstood your
6 testimony a bit ago.

7 When the public reproof takes place, I
8 thought I heard you say that -- I think you said, sin --
9 the sin is identified.

10 A. It is not in the public reproof. The sin, no.

11 THE COURT: There was a public reproof regarding
12 [REDACTED]

13 A. Exactly. [REDACTED] has been -- has been
14 reproofed.

15 THE COURT: Maybe you just answered my next
16 question. Is that what the public reproof would have
17 been to the congregation? Relative to [REDACTED],
18 what was the substance of the public reproof?

19 A. The substance was simply a statement that he was
20 reproofed.

21 THE COURT: Tell me, as best you recall, what it was
22 when it happened.

23 A. The words that were announced?

24 THE COURT: As best you recall.

1 A. [REDACTED] as been reprovod.

2 THE COURT: And that's the extent of the discussion
3 at a public reprovod?

4 A. Exactly.

5 THE COURT: Ms. Groebner, before I ask Mr. Penkava
6 to step out, do you have any followup in the context of
7 this session?

8 MS. GROEBNER: Yes.

9 THE COURT: Go ahead.

10 MS. GROEBNER:

11 Q. Mr. Penkava, when there is a public reprovod,
12 though, the entire congregation is present for that?

13 A. Well, whoever is at that meeting is present.

14 Q. And, Mr. Penkava, in regards to this meeting that
15 you had with the Defendant and the other elders, [REDACTED]
16 was present for that meeting; isn't that correct?

17 A. We do not -- I talked with -- There was one other
18 elder who was with me. The other elder is deceased.
19 There were three. So the other elder, [REDACTED] and
20 I were -- are the only surviving elders from that
21 particular incident.

22 We do not recall [REDACTED] being present.

23 MR. MOURELATOS: Judge, I would object to that question.

24 THE COURT: It's not an objectionable session. This

1 is offer of proof for the Court to try to rule on the
 2 objection that's pending relative to whether there's the
 3 existence of privilege.

4 MR. MOURELATOS: I understand. Thank you.

5 THE COURT: So you don't recall -- As you were
 6 indicating to Ms. Groebner, you don't recall [REDACTED] being
 7 present?

8 A. Being present while the three elders met with
 9 Arturo. [REDACTED] and I -- [REDACTED] and I do not recall her
 10 being present.

11 THE COURT: Ms. Groebner.

12 MS. GROEBNER:

13 Q. Mr. Penkava, do you recall speaking with a
 14 detective from the Crystal Lake Police Department on
 15 October 20 of 2018?

16 A. Yes, I do.

17 Q. And in that -- When you spoke with that detective,
 18 isn't it true that you told him that you were told -- you
 19 were told by Elder -- [REDACTED]

20 A. [REDACTED] (phonetic).

21 Q. [REDACTED] (phonetic), that he informed the body of
 22 elders of the congregation and that he was joined by
 23 [REDACTED] and I to meet with [REDACTED] and his wife about
 24 the matter?

1 A. I wrote that -- Could you repeat that, please?

2 Q. That when you spoke with Detective Eitel, you told
3 him that [REDACTED] (phonetic) informed the body of elders of
4 the congregation that he was joined by [REDACTED] and I
5 to meet with [REDACTED] and his wife about the matter?

6 A. Yes. The reference to that meet with [REDACTED] and
7 his wife, where we would meet with [REDACTED] as the three
8 elders, and his wife to offer her spiritually --
9 spiritual support. But not -- She was not involved in
10 the meeting with the three elders.

11 Q. Mr. Penkava, isn't it also true that you told
12 Detective Eitel that in the meeting, [REDACTED] admitted to
13 inappropriately touching [REDACTED]

14 THE COURT: Ms. Groebner, that takes us outside the
15 bounds of trying to ascertain if the gentleman has a
16 basis for asserting the privilege.

17 I don't necessarily at this juncture want to
18 hear about the substance of the meeting.

19 MS. GROEBNER: Your Honor, in the statement, it
20 states that the -- the wife was told by the elders
21 present that she could notify the authorities about this
22 incident.

23 THE COURT: How does that distinguish Mr.
24 Penkava's prior answer that there were two sessions, that

1 there was a discussion with [REDACTED], and
2 then they provided spiritual guidance to [REDACTED]
3 in what Mr. Penkava had said was a separate discussion?

4 MS. GROEBNER: Your Honor, it's in the same sentence
5 of the statement.

6 THE COURT: You can go ahead and explore in terms of
7 trying to establish or refresh, if you will, that Mr.
8 Penkava's recall in terms of whether [REDACTED] was
9 present. But again, I don't want this to delve into a
10 discussion of substance. That's not the salient legal
11 issue that's before the Court.

12 MS. GROEBNER:

13 Q. Mr. Penkava, you told Detective Eitel that the
14 wife was present during the meeting with the Defendant;
15 isn't that true?

16 A. I didn't tell him that. In my written statement,
17 which I do not recall all the details -- In my written
18 statement, I wanted to make sure that -- that it was
19 known that we met with [REDACTED] and also a very important
20 point was that we informed the wife that she had the
21 right to contact the authorities on this matter.

22 MS. GROEBNER:

23 Q. So did you inform the wife of what the Defendant
24 had told you?

1 A. I personally did not. [REDACTED] (phonetic),
2 after the decision was made, after we met with the three
3 elders, [REDACTED] was assigned to help [REDACTED] spiritually
4 recover, give him ongoing spiritual help, and also to
5 make sure that [REDACTED] knew of her rights to contact the
6 authorities.

7 Q. But in your statement you stated, that the elders
8 present told her she could contact the authorities
9 herself; is that correct?

10 A. At -- At the time that I wrote that, that's what I
11 wrote. At the time that I'm sitting here, that's what
12 I'm explaining.

13 Q. Weren't you one of the elders present?

14 A. Yes. But we do not recall [REDACTED] being present at
15 the meeting with the three elders.

16 It was two separate meetings. One, to
17 censure and to reprove and spiritually help the
18 individual. Another to support the wife and the family
19 and to give them guidance.

20 Q. So your support to the wife was to inform her that
21 she could contact the authorities herself?

22 A. Yes. And -- And to give her spiritual support to
23 deal with the crises in the family with regard to their
24 marriage and the future of their family.

1 Q. So you never told that to Detective Eitel; is that
2 correct?

3 A. I had no conversation with him. It was simply --
4 Here's what happened. It was the early hours of the
5 morning. [REDACTED] had come to -- We had talked to
6 [REDACTED] accompanied her to the police station. They
7 took her in to talk to her. I and another elder remained
8 to provide spiritual support to her if necessary.

9 Later, several hours later, the detective
10 came and he informed me that he wanted me to fill out a
11 police report. I told him I'm a minister. Is that a
12 factor in me filling out a report? And he -- He told me,
13 to quote him, he said, I don't know. And he immediately
14 told me to go -- led me into a room. Gave me a -- the pen
15 and the report to fill out and left me. So I
16 sat there thinking I was obligated by law to fill this
17 out. He knew of no special provision for me as a
18 minister. That's -- That is my -- That was my thought
19 process at the time.

20 If I had known about a provision that I could
21 maintain confidentiality, I wouldn't have filled that
22 out.

23 But feeling that I was obligated by law; and
24 as Christians in the Bible it tells us, Romans 13:1, that

1 we must be in subjection to the superior authorities, and
2 he was the superior authority. So I felt like I had to
3 be in subjection and do what he told me to do. That is
4 why I filled out the report.

5 I'm not -- I'm not a lawyer. I'm a minister.
6 And I did what I thought I was obligated to do. That's
7 why I'm in here in court today because this superior
8 authority has requested for me to be here (indicating).

9 Q. So just to be straight, you told the wife what the
10 Defendant told you, and you told the authorities what the
11 Defendant told you; is that correct?

12 A. Personally I did not. Brother -- [REDACTED] was
13 going to be the liaison elder to work with the family and
14 to help them deal.

15 Q. But you were present when she was told what
16 happened during the meeting?

17 A. Could you repeat that?

18 Q. You were present when you told her -- when she was
19 told what happened during the meeting?

20 A. You know, I do not recall if I was involved in
21 informing [REDACTED] I cannot recall that. I've tried to
22 remember that detail, and I cannot recall her being
23 present.

24 MS. GROEBNER: Your Honor, I have further questions

1 in regards to what happened to the Defendant after the
2 public reproof. I don't know if the --

3 THE COURT: That's not the area that we're
4 discussing at this juncture.

5 MS. GROEBNER: Okay.

6 THE COURT: The area of discussion is to allow the
7 Court to rule on the unresolved issue pertaining to the
8 assertion on the privilege.

9 Mr. Penkava, first of all, sir, I would ask
10 you kindly to step outside and don't go far. If you can
11 step down and kindly step outside.

12 Secondly, Mr. Caridei, if you can retrieve
13 the jury so I can excuse them for lunch.

14 THE BAILLIFF: Yes.

15 All rise.

16 (Whereupon, the jury entered.)

17 THE COURT: Thank you. Please be seated.

18 Ladies and gentlemen, my apologies for having
19 you walk up and down the hall.

20 This is a legal issue -- or one of the
21 situations rather where the attorneys and I are
22 addressing a legal issue in an effort to make the
23 evidentiary presentation more efficient for you.

24 Recognizing that we are approaching the noon

1 hour, rather than hold you in the jury deliberation room
2 and step into your lunch hour, I'm going to excuse you
3 now to go out and find lunch and refresh yourselves as it
4 were.

5 I'd like you to be back by 1:15 kindly. And
6 it's my intent to reconvene with the evidence as promptly
7 at 1:30 as possible.

8 So you are excused for lunch. Enjoy your
9 lunch. I'll see you in a while.

10 THE BAILIFF: All rise.

11 (Whereupon, the jury left the room.)

12 THE COURT: Ms. Groebner, Mr. Penkava has asserted
13 the clergy-penitent privilege.

14 What the Court has heard at this juncture is
15 that there are probably layers to the issue.

16 It is clear to the Court from what
17 Mr. Penkava asserts that there was a discussion between
18 he, the other two elders, and [REDACTED]

19 Now, I appreciate that the State has a
20 statement suggesting that [REDACTED] may have been
21 present, but Mr. Penkava has asserted to the contrary.

22 When [REDACTED] testified, she did not
23 testify when asked about the censure process that she was
24 present at a session with the elders and [REDACTED]

1 [REDACTED]
2 So against what Mr. Penkava has told us, how
3 would he not be correct in his assertion of the
4 privilege?

5 MS. GROEBNER: Your Honor, in regards to the
6 conversation that was had with the Defendant, I would
7 seek to admit to the Court the written statement of Mr.
8 Penkava.

9 I believe if the Court reviews that, I
10 believe that Mr. Penkava is testifying differently today
11 than what he told the police back in October of 2018.

12 Your Honor, if -- if the Court does find that
13 the wife wasn't present and that this was a counseling
14 session between the Defendant and Mr.
15 Penkava, then I still believe that the -- the
16 clergy-client -- or clergy-penitent privilege does not
17 apply based on the fact that Mr. Penkava had the
18 discussion with the -- or was present for the discussion
19 with the wife in regards to what the Defendant said to
20 them.

21 And Mr. Penkava informed authorities, the
22 police department, of what [REDACTED] told them.

23 So I still believe that based on that, that
24 the -- the privilege does not apply.

1 And further, in regards to the question of
2 whether the Defendant was publicly reprovved in front of
3 the congregation, I believe there is no privilege
4 whatsoever as to --

5 THE COURT: Well, let me interrupt, Ms. Groebner,
6 and tell you straight away, the Court concurs with that.

7 MS. GROEBNER: Thank you.

8 THE COURT: This is not a discourse about the public
9 reprovval process. There's no question in the Court's
10 mind, despite an eloquence of argument from Mr.
11 Mourelatos or Mr. Behof, that the public reprovval was
12 exactly that, a public reprovval.

13 Whatever was said in that process -- and
14 currently we have indication that was of limited
15 substance -- that in the Court's mind is still admissible
16 evidence.

17 MS. GROEBNER: So, Your Honor, I would just seek to
18 admit to the Court the written statement of
19 Mr. Penkava to say that he has been impeached today from
20 what he told the police department back in October, '18;
21 and I believe that the privilege does not apply to Mr.
22 Penkava in testifying about what was said during that
23 meeting.

24 THE COURT: Mr. Behof, I've -- Sorry.

1 Mr. Mourelatos, I believe this was an issue on which you
2 took the lead.

3 MR. MOURELATOS: That's correct, Your Honor.

4 I disagree with the State's recitation of the
5 testimony. Specifically, Mr. Penkava was clear and
6 articulate as to his position.

7 I think it is undisputed that he being an
8 elder meets the statutory requirement basically based on
9 his denomination and religious affiliation being a
10 Jehovah's Witness, he is by statute a clergyman or
11 accredited practitioner.

12 As far as his ability to recall what was
13 ongoing back in 2006, he clearly indicated that it was
14 himself and two other elders. He indicated that there
15 are approximately eight elders in the entire
16 congregation, which are -- which is a confidence with
17 only my client, Mr. Pedraza.

18 In addition, he testified that his
19 recollection as to what had transpired on that date was
20 only between the clergymen --

21 THE COURT: Mr. Mourelatos, the Court has heard
22 the evidence. While the Court is with age becoming
23 increasingly forgetful I recall. My request to the
24 Defense is a legal argument that the Defense believes

1 invokes the privilege.

2 MR. MOURELATOS: Oh, Your Honor, clearly citing the
3 statute 735 ILCS 5|8-803, the clergy-penitent privilege
4 applies in this. Specifically, and I would --

5 THE COURT: But the State says it was waived, so
6 talk to me about that issue.

7 The Court understands what the statutory
8 provisions say. And while counsel have eminent more
9 understanding of the statutory language, it says what it
10 says.

11 Talk to me about why waiver doesn't apply.

12 MR. MOURELATOS: There's no evidence to support that
13 was ever waived, Your Honor. There's clearly no evidence
14 that supports that.

15 THE COURT: What about the contention by
16 Ms. Groebner that [REDACTED] was present during the
17 session with Mr. Penkava?

18 MR. MOURELATOS: Mr. -- I apologize, Your Honor.
19 [REDACTED] testified that she was not
20 present for that, number one.

21 Number two, when asked directly by the State
22 to Mr. Penkava whether or not she was present, Mr.
23 Penkava was clear and did not waiver that his
24 recollection was that [REDACTED]

1 THE COURT: Well, he -- respectfully, he interjected
2 context. What you call a lack of waiver was more I think
3 more properly described the interjection of context. Him
4 saying that what he spoke to Detective Eitel, he
5 referenced a meeting but was really a segmental meeting
6 where the elders met with your client and then met to
7 provide spiritual guidance to [REDACTED]

8 Isn't that what he said?

9 MR. MOURELATOS: Yes, Your Honor. That is clear.
10 I'm focusing on the initial communication that happened
11 between solely the elders and my client.

12 As far as what was said after the fact, Mr.
13 Penkava stated I believe -- and I hope I'm paraphrasing
14 this correctly -- that he did not directly state anything
15 that was spoken in confidence and what we're asking to be
16 protected under the privilege directly to the detective.

17 THE COURT: Ms. Groebner, two questions before the
18 Court rules on the issue.

19 Is it not correct in terms of Mr. Mourelatos'
20 argument that [REDACTED] said exactly that, that she
21 wasn't present?

22 MS. GROEBNER: Yes.

23 THE COURT: So if she said she wasn't present and
24 Mr. Penkava said she wasn't present, the linchpin of the

1 State's argument is the extraction from the statement,
2 the material Mr. Penkava now tries to contextually
3 identify?

4 MS. GROEBNER: Yes. I believe that the statement
5 that he wrote back in October of 2018, states that the
6 wife was present, that he was -- he was joined by the
7 elders to meet with [REDACTED] and his wife. In the meeting,
8 [REDACTED] admitted, and the wife was told by the elders
9 present that she could contact the authorities.

10 I believe that in the context of this statement that
11 was written by this witness, that he clearly is stating
12 that she was present during the meeting.

13 THE COURT: The second question is, if all of that
14 argument tilts in favor of the State, doesn't the
15 Appellate Court in Thomas, which is a recitation from a
16 Second District case, tell us that that's only part of
17 the issue? Don't we have to have some indication that
18 the Defendant is also waiving privilege?

19 MS. GROEBNER: Your Honor, the Defendant hasn't
20 raised privilege.

21 THE COURT: Well, I think he has. I think
22 Mr. Behof and or Mourelatos have asserted in arguing this
23 point that that exact proposition is in play, and [REDACTED]
24 [REDACTED] will not waive privilege.

1 MS. GROEBNER: Your Honor, our contention is that
2 the wife -- if the wife was present, then privilege is
3 waived by the Defendant as well.

4 THE COURT: So I appreciate that argument. The
5 State would say that if there's a waiver predicated on
6 the presence of [REDACTED] it's a total waiver? It
7 waives not only the privilege that Mr. Penkava could
8 assert but also the privilege that [REDACTED], the
9 Defendant, could assert?

10 MS. GROEBNER: Correct.

11 THE COURT: I understand.

12 When the Court addressed this issue
13 yesterday, again for purposes of record clarity, it was
14 presented not really by way of a motion from either side
15 but rather it was brought forward as an evidentiary issue
16 that the parties -- on which the parties wish to obtain
17 clarification.

18 The Court yesterday had lengthy discourse
19 with the parties and appreciates that and adopts that
20 argument into this ruling. Has now received testimony
21 from Mr. Penkava up to a point, wherein Mr. Penkava
22 asserted the privilege. And the Court wished to rule on
23 this issue outside the purview of the jury.

24 In addressing this issue yesterday, the Court

1 identified four potential scenarios that would affect the
2 outcome of this issue. It seems to the Court that based
3 upon the testimony of Mr. Penkava, what takes place
4 within the confines of the preliminary meeting for the
5 public reproof or a censure, which he says are the same,
6 is within the purview of Section 8-803; that is to say,
7 it's the elders providing spiritual guidance to a member
8 of the congregation.

9 Mr. Penkava has indicated that in that
10 session there is some inherent expectation of
11 confidentiality, which is really borne out by what has
12 transpired here because if there was not an expectation
13 of confidentiality, when an individual who was found to
14 have committed some transgression is brought to the
15 congregation for public reproof, there would arguably a
16 disclosure of the salient events that lead to the public
17 reproof.

18 The Court cited yesterday the Dirks
19 (phonetic) decision, and in Dirks (phonetic) the
20 Appellate Court addressed the proposition where a
21 minister met with the defendant in custody and took the
22 information -- the reverend met with the defendant in
23 custody and took the information to the sheriff's office
24 or state's attorney's office and conveyed that

1 information, and the court found that that was not
2 inappropriate.

3 In this situation based currently upon what
4 the Court has, the Court does believe that the discussion
5 in the preliminary public reproof meeting falls under
6 the auspices of Section 8-803.

7 The Court currently does not believe that
8 Mrs. Hernandez was present. The Court reaches that
9 conclusion based upon her own explicit testimony as well
10 as the information provided by Mr. Penkava outside the
11 presence of the jury that she was not present.

12 The Court appreciates the State's argument
13 that Mr. Penkava may have made a statement to the
14 investigating detective suggesting that Mrs. Hernandez
15 was present.

16 Mr. Penkava has brought some context to that
17 this afternoon saying that in his assessment, it was
18 really two different spiritual assessments.

19 Relative to the discussions that pertain to the
20 Defendant in the preliminary public reproof meeting, the
21 Court does find that there is a proper invocation of the
22 testimonial privilege afforded to Mr. Penkava, and will
23 not compel Mr. Penkava to testify about that.

24 The public reproof process is proper for

1 evidence. There's no evidence there would not be
2 application of privilege there. And the Court has yet to
3 see what the intent of the State is regarding eliciting
4 testimony about a meeting with [REDACTED]
5 [REDACTED] either separately, or if the State wishes to
6 pursue that line of inquiry with Mr. Penkava to see if he
7 will ultimately relent and acknowledge contrary to what
8 he has asserted at this point that [REDACTED] was
9 present, which would obviously re invite the ruling
10 because it's the Court's mind that if [REDACTED] is
11 present, it may or may not eviscerate the ability of Mr.
12 Penkava to assert the privilege.

13 And accordingly, that's the Court's ruling at
14 this juncture. Simply stated, the Court will --the State
15 will be allowed to continue its interrogation of Mr.
16 Penkava at least in regards to what took place in the
17 public reproof. If it wishes to pursue who attended
18 meetings, the Court will allow interrogation into that to
19 see where it takes us.

20 Mark, if you can get Mr. Penkava, please.

21 THE BAILIFF: Yes.

22 THE COURT: Mr. Penkava, you want to step forward,
23 sir. I appreciate your patience. I know your time is
24 valuable, sir.

1 The Court has ruled on the issue of your
2 assertion of the privilege. Currently it's finding that
3 you can properly assert the clergy-penitent privilege
4 relative to the pre public reproof meeting and any
5 issues regarding the actual public reproof. The Court
6 has found that those are public that would eliminate the
7 ability to assert the privilege.

8 The State may have additional questions
9 beyond the issues that relate to the meeting that you
10 have identified was attended by you, the two other
11 elders, and [REDACTED] And we'll address those
12 appropriately.

13 I apologize that you'll have to come back,
14 but I would like you to return at 1:30 so you can get out
15 and get some lunch, sandwich. Take care of some business
16 as you wish. If you can be back promptly at 1:30 so we
17 can continue your examination.

18 I will counsel you, sir, that you are
19 effectively on the witness stand even though we are
20 breaking. I'm telling you that because you cannot and
21 should not contact any members of the church to discuss
22 this situation. You cannot or should not review any
23 materials. Your testimony should continue at 1:30 as if
24 we did not take a break to address this legal issue.

1 With that, enjoy your lunch and I'll see you at
2 1:30.

3 THE WITNESS: Thank you

4 THE COURT: You're welcome, sir.

5 Counsel, I'll see you at 1:15 in case there's
6 any issues that the State wishes to re present or the
7 Defense regarding the issue vis-a-vis the Court's ruling.

8 Any other matters before we break for lunch?

9 MS. EISENSTEIN: No, Your Honor.

10 THE COURT: Defense?

11 MR. BEHOF: No.

12 THE COURT: See you all at 1:15.

13 THE BAILIFF: All rise.

14 (Whereupon, a break was taken.)

15 THE BAILIFF: All rise. Court's reconvened.

16 THE COURT: Thank you so much. Please be seated.

17 We are resuming in [REDACTED]

18 Ms. Eisenstein and Ms. Groebner for the State.

19 Mr. Behof and Mr. Mourelatos are for the Defense.

20 We are in the State's case.

21 Mr. Hernandez-Pedraza is now present.

22 You may be seated. I apologize.

23 We broke for the lunch hour. The Court

24 having ruled on an evidentiary issue that arose yesterday

1 and was addressed by the Court's ruling today.

2 Does the State have any preliminary matters
3 this afternoon?

4 MS. GROEBNER: Your Honor, I just have a question
5 for clarification.

6 THE COURT: Sure. No problem.

7 MS. GROEBNER: Based on the Court's ruling, can I
8 ask Mr. Penkava about having a meeting, who was present
9 at the meeting, and then depending on his answers,
10 proceed from there?

11 THE COURT: Yes. I believe that that is
12 permissible --

13 MS. GROEBNER: Okay.

14 THE COURT: -- in that it's within the realm of the
15 Court's ruling. The Court having expressed a belief that
16 if it is elicited by way of a recantation or by way of
17 other evidence that someone other than Mr. Penkava and
18 Mr. Hernandez were attending at the meeting, it might
19 change the Court's ruling.

20 MS. GROEBNER: Thank you, Your Honor.

21 THE COURT: You're very welcome. Any other
22 preliminary matters? Ms. Eisenstein?

23 MS. EISENSTEIN: If it's answers remain consistent
24 to what he testified to prior to lunch, is it still

1 permissible to ask the question where then he will assert
2 the privilege and Your Honor will acknowledge that there
3 is a privilege, or will we be barred from asking the
4 question?

5 THE COURT: That's a fair question,
6 Ms. Eisenstein; and the Court's response is there has
7 been a ruling on the motion indicating that it's the
8 Court's finding that the privilege is properly invoked.
9 So I don't think it's appropriate to revisit that issue.
10 But I will ask the State its position in terms of
11 advising the jury of that. How would the State, in view
12 of the fact that this is the State's witness, suggest the
13 Court's explanation, if any, to the jury?

14 MS. EISENSTEIN: I guess the confusion I think that
15 there may be is I believe he attempted to assert the
16 privilege on a question that was not privileged as to
17 whether or not the Defendant was censured.

18 I believe when the jury was brought out, that
19 was the question that was pending. So I think we
20 furthered the discussion after the jury was brought out
21 into the actual discussion where Your Honor had a ruling.
22 But I believe he attempted to bring up the privilege
23 regarding the censure issue, which I think Your Honor
24 said that that's not --

1 THE COURT: Well, I don't know that I agree with
2 that, Ms. Eisenstein. I certainly can stand corrected.
3 I think he already addressed the issue that his treatment
4 of the censure was the same thing as the public reproof.
5 I think we segwayed from that, and I think Ms. Groebner
6 started to ask about the substance or depth of what had
7 taken place.

8 MS. EISENSTEIN: I believe it was more as to whether
9 or not the Defendant was -- After the question about what
10 it was, was the Defendant censured; and that's when he
11 asserted the privilege again. I think we furthered it in
12 the discussion when the jury was outside of the
13 courtroom.

14 THE COURT: So recognizing if that is the correct
15 context of that -- of the gentleman's testimony, what
16 would the State like to do? Would you like to ask the
17 question, and have him assert the privilege? Is that the
18 suggestion?

19 MS. EISENSTEIN: I mean, I think we have to resume
20 with the question that we left off on; and I think that
21 Ms. Groebner should go into the area of the conversation.

22 THE COURT: We're missing each other a little bit.
23 It's my fault.

24 The expectation that Mr. Penkava at some

1 juncture is going to assert the privilege. So when he
2 does that, does the State have a position on ruling --
3 other than to sustain the assertion of the privilege? Do
4 you see what I'm saying?

5 MS. EISENSTEIN: I think that is sufficient.

6 THE COURT: Okay. Any preliminary matters from the
7 Defense, gentlemen?

8 MR. MOURELATOS: Judge, Mr. Penkava did approach us
9 prior to entering, wanting to ask the Court a question for
10 clarification. I advised him that he is under oath and I
11 cannot ask -- or answer any of his questions or speak to
12 him at this time. I believe he wanted to address the
13 Court regarding whatever.

14 THE COURT: It's certainly not your fault,
15 gentlemen, that he approached you. He was clearly
16 admonished not to have communication with anyone
17 regarding his testimony.

18 Mr. Caridei, if you or if someone can see if
19 Mr. Penkava is available? Thank you. I appreciate that.

20 Sir, if you can come forward. Mr.
21 Michael Penkava is present. Mr. Penkava, I'm advised by
22 the Public Defender, Mr. Mourelatos, that when I excused
23 you for lunch, that you approached Mr.
24 Mourelatos and or Mr. Behof with a question. And

1 depending upon what that question is, I will allow you to
2 ask it. I will not commit to answering it. Did you
3 have a question?

4 MR. PENKAVA: Yes, I didn't even mention the
5 question. I said I had a question, how do I go about
6 presenting my question, and they said they into let you
7 know.

8 THE COURT: They did. And the question is what?

9 MR. PENKAVA: So could you please review the -- what you
10 told me in terms of what I should testify about and what
11 I was must not testify about?

12 THE COURT: No, I will not do that because I think
13 that would be exceeding my authority in terms of giving
14 you guidance.

15 I have ruled on whether the privilege is
16 applicable, and you have the right to assert the
17 privilege. If you are going to assert the
18 clergyman-penitent privilege, it is your right to do so.
19 Depending upon to what questions you assert that
20 privilege, I will rule accordingly if that helps.

21 MR. PENKAVA: Thank you, thank you.

22 THE COURT: If you can step out for one quick
23 second.

24 Mr. Mourelatos, Mr. Behof, any additional

1 matters?

2 MR. MOURELATOS: No, Your Honor. Thank you.

3 THE COURT: I want to address this issue head-on
4 because I don't want this to turn into a perpetual
5 invocation of the privilege to every question which
6 creates potentially an unfair inference for
7 [REDACTED] and may be intrusive into his
8 rights as they are.

9 Ms. Groebner, if the question is asked and
10 Mr. Penkava asserts the privilege, the Court's intent is
11 to identify that he is asserting a privilege and is not
12 required to testify regarding any conversations that were
13 between he and the Defendant in private under the
14 auspices of providing spiritual guidance. If he chooses
15 to take it beyond that, then it's a so be it proposition.
16 But does that appease the State?

17 MS. GROEBNER: Yes.

18 THE COURT: Defense?

19 MR. MOURELATOS: Yes, Your Honor.

20 THE COURT: You seem a little bit reticent,
21 Mr. Mourelatos.

22 MR. MOURELATOS: I don't want to speculate what the
23 State is going to ask. However, I also have concerns
24 that questions will be asked regarding statements that

1 were had between my client and his wife before the
2 parties at another time. And I don't know if the State
3 is going to delve into that, but obviously Mr. Penkava is
4 going to assert a privilege at that point as well; but I
5 guess that's the unknown.

6 THE COURT: I don't know that that would fall into
7 the auspices of the privilege. That's the whole argument
8 we had this morning about the possibility of waiving the
9 privilege.

10 MR. MOURELATOS: I understand. I understand, Judge.

11 THE COURT: State, I'm going to address this
12 preemptively. When the jury comes back and Mr. Penkava
13 is re seated, I'm going to apprise the jury that he
14 asserted the privilege that contains to a clergyman and a
15 penitent and that he is not required to respond to --
16 I'll stop that. I don't know that that -- I'm going to
17 retract. We're going to treat it as previously addressed
18 by the Court.

19 Mr. Caridei, if you can get jury, please.

20 THE BAILIFF: Yes.

21 All rise.

22 (Whereupon, the jury entered.)

23 THE COURT: Thank you so much. Please be seated. We
24 are continuing in the State's case; and in that regard,

1 if Mr. Penkava can be brought forward, please.

2 Mr. Penkava, if you can kindly come forward, sir, and
3 re take the witness stand. You are still under oath.
4 Signal Ms. Groebner when you are comfortable.

5 And for continuity of record, this is
6 Mr. Michael Penkava being examined.

7 Are you comfortable?

8 THE WITNESS: Yes, I am.

9 (Whereupon, the examination of Mr. Michael Penkava by Ms.
10 Groebner continued.)

11 MS. GROEBNER:

12 Q. Mr. Penkava, has the Defendant ever been publicly
13 reprovved or censured by your congregation?

14 A. Yes, he has.

15 Q. When was it that the Defendant was censured or
16 publicly reprovved?

17 A. July, 2006.

18 Q. Mr. Penkava, was that public reprovval -- What was
19 that public reprovval based on -- What was that public
20 reprovval based on?

21 A. That would be privileged information.

22 THE COURT: Ladies and gentlemen, Illinois
23 recognizes what's called the clergy -- penitent
24 privilege. When a member who is providing spiritual or

1 clerical guidance to a penitent receives information, it
2 may be privileged; and Mr. Penkava has invoked that
3 privilege.

4 At this point the Court is going to sustain
5 that objection.

6 Next question, Ms. Groebner.

7 MS. GROEBNER:

8 Q. Was there a meeting with the Defendant prior to
9 the Defendant being publicly reproved?

10 A. Yes.

11 Q. How long before the public reproof was this
12 meeting?

13 A. A week -- About a week.

14 Q. And, Mr. Penkava, who ordered this meeting to be
15 had?

16 A. That would be privileged information.

17 THE COURT: I'm going to ask that you answer that
18 question, sir. The who ordered the meeting, I don't find
19 under the auspices of the privilege. Please answer that
20 question.

21 A. Yes, Your Honor.

22 A -- Another elder, [REDACTED], called a
23 meeting of the body of elders to discuss the situation
24 with regard to a member of the congregation.

1 Q. And who was present at this meeting set up by
2 Elder [REDACTED]

3 A. [REDACTED] notified the body, and so the
4 entire body of elders. At that time, I'm not sure how
5 many elders we had. That was back in 2006, but it was
6 maybe five or six elders on the body at that time. And
7 he informed the body of the situation that we needed to
8 deal with.

9 Q. Who was present for the meeting?

10 A. The body of elders. That would be [REDACTED], myself,
11 [REDACTED], and -- but I can't -- I can't recall the
12 names of the other ones back then with authority.

13 Q. Who did you meet with?

14 A. We met with the body to discuss how we could
15 handle the situation scripturally and what help we could
16 give to the alleged sinner.

17 Q. Did you ever have a meeting with the alleged
18 sinner?

19 MR. MOURELATOS: Objection, asked and answered, Your
20 Honor.

21 THE COURT: Overruled.

22 A. So I must answer that?

23 THE COURT: Yes, please.

24 A. Could you repeat the question?

1 THE COURT: 'Did you have a meeting --

2 MS. GROEBNER:

3 Q. Did you have a meeting with the alleged sinner?

4 A. Yes.

5 Q. And who was present for that meeting?

6 A. Myself, [REDACTED], and [REDACTED] and the
7 -- the alleged sinner.

8 Q. And who was the alleged sinner that you met with?

9 A. Is that privileged? May I --

10 THE COURT: If you're asking to invoke the
11 privilege, sir, I'm going to overrule that request and
12 ask to you identify who that individual was.

13 A. That would be [REDACTED]

14 MS. GROEBNER:

15 Q. Was the Defendant's wife, [REDACTED] present for that
16 meeting?

17 A. Not to the best of my -- of our knowledge -- of my
18 knowledge.

19 Q. Mr. Penkava, on October 20 of 2018, did you meet
20 with Detective Eitel, E-I-T-E-L, of the Crystal Lake
21 Police Department?

22 A. Yes, I did.

23 Q. And during the course of meeting with the
24 Detective Eitel, did you prepare a written statement in

1 regards to your knowledge on this case?

2 A. Yes, I did.

3 Q. Mr. Penkava, I'm showing you what has been
4 previously been marked as State's Exhibit Number 7 for
5 identification. Do you recognize what that is?

6 A. Yes, I do.

7 Q. What is that?

8 A. Well, it's a statement that I wrote out to -- to
9 the detective at his request.

10 Q. Is that a true and accurate copy of the statement
11 that you wrote out on October 20, of 2018?

12 A. It appears to be a copy of it.

13 Q. Is it a true and accurate copy?

14 A. All I can say is at the time that I wrote that, it
15 was true and accurate when I wrote that.

16 Q. And, Mr. Penkava, in that statement, didn't you
17 state, that [REDACTED] (phonetic) informed the body
18 of elders of the congregation and he was joined by [REDACTED]
19 [REDACTED] and I to meet with [REDACTED] and his wife about the
20 matter?

21 A. Yes. And those were two separate meetings. We met
22 with [REDACTED] as the three elders helping to -- helping
23 him to spiritually recover. And then there was another
24 meeting with [REDACTED] the wife, to inform her of her right

1 to contact the authorities and to offer spiritual counsel
2 and guidance.

3 Q. But nowhere within that statement did you state
4 that there was two separate meetings; isn't that correct?

5 A. I believe -- No. I said that as two different
6 things in one sentence. It's like saying if I said in
7 one sentence I was in Florida and Illinois, that's two
8 different states in that situation.

9 So I meant that she was -- she was helped
10 spiritually. We met with her, and we met with him in
11 terms of the -- the sin, the alleged sin.

12 Q. Who did you meet with first?

13 A. [REDACTED] I believe, talked with [REDACTED]
14 That's how he found out the information. And then he
15 informed us; and then I believe [REDACTED], who was assigned
16 to help the family, he met with [REDACTED] and talked to her
17 about her rights in contacting the authorities. So that
18 was separate.

19 Q. After the meeting with the Defendant, did you and
20 the elders meet with [REDACTED]

21 A. I do not recall that we did to the best of my
22 knowledge right now. That was some several -- many years
23 ago. I can't -- I cannot answer that. I don't know. I
24 can't recall.

1 MS. GROEBNER: Can I have a moment, Your Honor?

2 THE COURT: Sure.

3 (Whereupon, whispered discussion between Ms. Groebner and
4 Ms. Eisenstein took place.)

5 MS. GROEBNER:

6 Q. Mr. Penkava, what occurred during the meeting with
7 the Defendant?

8 A. That would be privileged information.

9 THE COURT: The Court is going to sustain the
10 assertion of the invocation of the privilege.

11 MS. GROEBNER:

12 Q. Now, Mr. Penkava, you stated that you don't recall
13 if you met with the wife, [REDACTED], after the
14 meeting with the Defendant; is that correct?

15 A. That is correct. I cannot recall. It is possible,
16 but I do not recall.

17 Q. When you spoke with Detective Eitel back on
18 October 20th of 2018, isn't it true that you told him
19 that you met with -- in the written statement that you
20 met with [REDACTED]?

21 MR. MOURELATOS: Objection, Your Honor, asked and
22 answered.

23 THE COURT: Sustained.

24 MS. GROEBNER:

1 Q. Is your memory exhausted as to whether you met
2 with [REDACTED] after the meeting with the Defendant?

3 A. I have thought deeply, prayed to recall all the
4 details and to testify to the truth. I'm bound by my
5 swearing in and by my dedication to God to be a man of
6 truth. That's -- I cannot recall that truthfully.

7 Q. Mr. Penkava, would the written statement, People's
8 Exhibit Number 7 before you refresh your recollection on
9 whether you met with [REDACTED] after the meeting the
10 Defendant?

11 MR. MOURELATOS: Objection, Your Honor.

12 THE COURT: What's your objection?

13 MR. MOURELATOS: Asked and answered.

14 THE COURT: It's an effort --

15 (Whereupon, indiscernible whispering being heard.)

16 THE COURT: Counsel.

17 MS. GROEBNER: Oh.

18 THE COURT: It's an effort at present recollection
19 or recording. To the extent that the gentleman has
20 candidly testified that he doesn't recall is an
21 appropriate manner by which to elicit the testimony as
22 an effort at present recollection to recall. The
23 objection is sustained.

24 If you want to pursue it from another angle,

1 Ms. Groebner, you certainly may.

2 MS. GROEBNER:

3 Q. Mr. Penkava, isn't it true that you -- that you
4 told --

5 Your Honor, may I have one moment?

6 THE COURT: Sure.

7 (Whereupon, whispered discussion between Ms. Groebner and
8 Ms. Eisenstein.)

9 MS. GROEBNER:

10 Q. Mr. Penkava, after the Defendant was publicly
11 reprovved, did his responsibilities change or privileges
12 change with the congregation?

13 A. Yes, they did.

14 Q. And how did his responsibilities or privileges
15 change?

16 MR. MOURELATOS: Your Honor, I'm going object as to
17 privileged.

18 THE COURT: I don't think it's your privilege to
19 assert in regard to whether his responsibilities changed;
20 but for completeness of record, Mr. Mourelatos, the
21 Defense is invoking what privilege?

22 MR. MOURELATOS: My client privilege. The penitent
23 privilege.

24 THE COURT: This is not seeking the disclosure of

1 conversational information that would fall under the
2 auspices of the clergy-penitent privilege, this is an ask
3 about how privilege changed. It is a public observation.

4 You may answer that question, sir.

5 A. Yes, Your Honor.

6 Any privileges that he had such as handling
7 the microphone during the meetings when there's question
8 and answer; or directing any type of activity, like
9 cleaning or such, any departmental privileges, were --
10 were taken from him and so he could not -- he could not
11 have those privileges anymore.

12 MS. GROEBNER:

13 Q. Mr. Penkava, was there any change in congregates
14 that he could have contact with alone?

15 A. That would be privileged.

16 MR. MOURELATOS: Objection to leading.

17 THE COURT: Sustained.

18 MS. GROEBNER:

19 Q. Was there any change in his contact with
20 congregates of the church?

21 MR. MOURELATOS: Same objection, Your Honor,
22 leading.

23 THE COURT: I don't think that is suggesting an
24 answer. Overruled.

1 You can answer the question, sir.

2 A. In terms of his relationships with ones in the
3 church?

4 MS. GROEBNER:

5 Q. Contact with those in the church.

6 A. There was -- He could be in contact with -- with
7 anyone in the church. He was not restricted from
8 contact.

9 Q. Was there any members of the congregation that he
10 could not be alone with?

11 MR. MOURELATOS: Objection, Your Honor, leading.

12 THE COURT: It is leading. Sustained.

13 MS. GROEBNER:

14 Q. Was he allowed contact with children of the
15 church?

16 MR. MOURELATOS: Objection, Your Honor.

17 THE COURT: Objection what, sir?

18 MR. MOURELATOS: Same objection as to leading, and
19 argumentative.

20 THE COURT: It's not argumentative yet. That
21 objection is overruled, but it's sustained as leading.

22 MS. GROEBNER:

23 Q. Was there any member of the church whom the
24 Defendant was not allowed to be in contact with alone?

1 MR. MOURELATOS: Objection, Your Honor, asked and
2 answered.

3 THE COURT: Sustained.

4 MS. GROEBNER: May I have one moment, Your Honor?

5 THE COURT: You may certainly.

6 (Whereupon, indiscernible whispering being heard.)

7 MS. GROEBNER:

8 Q. So, Mr. Penkava, your testimony is that there was
9 no restriction of any -- no restrictions placed on the
10 Defendant with contact with persons of the congregation;
11 is that correct?

12 MR. MOURELATOS: Objection, Your Honor, asked and
13 answered again.

14 THE COURT: Sustained.

15 MS. GROEBNER:

16 Q. Mr. Penkava, when you spoke with Detective Eitel
17 back on October 20th of 2018, isn't it true that you told
18 him that he was not to be alone with any children in the
19 congregation?

20 MR. MOURELATOS: Objection, improper impeachment,
21 Your Honor.

22 THE COURT: I don't think so. Overruled.

23 A. Repeat the question, please.

24 MS. GROEBNER:

1 Q. Mr. Penkava, isn't it true that when you spoke
2 with Detective Eitel and wrote your written statement
3 October 20th of 2018, you wrote in that statement that,
4 he was not to be alone with any children in the
5 congregation?

6 A. That is not a privilege? I must answer that
7 question?

8 THE COURT: If you are invoking the privilege, the
9 objection is overruled. It purports to be in the
10 statement that is identified as People's Exhibit 7 --

11 A. Yes, that's what I wrote.

12 MS. GROEBNER: May I have one moment, Your Honor?
13 (Whereupon, indiscernible whispering being heard.)

14 Q. And, Mr. Penkava, how was it monitored that the
15 Defendant would not have contact with any children?

16 MR. MOURELATOS: Objection, Your Honor.

17 THE COURT: Basis?

18 MR. MOURELATOS: Judge, if I may have a moment?

19 THE COURT: Sure.

20 MR. MOURELATOS: Judge, I would object as to
21 improper impeachment of that question based on
22 Mr. Penkava's testimony, as well as the question being
23 argumentative.

24 THE COURT: Both of those grounds the objection is

1 overruled if those are the grounds advanced. Overruled.

2

3 You can answer, sir.

4 A. Repeat the question please.

5 MS. GROEBNER:

6 Q. How was it monitored that the Defendant not be
7 alone with any children of the congregation?

8 A. The -- The elders had the opportunity to talk with
9 family heads of children -- who had children to give them
10 advice to -- to not let their children be alone in his
11 presence.

12 MS. GROEBNER: Your Honor, may I retrieve my
13 exhibit?

14 THE COURT: Certainly.

15 MS. GROEBNER: Your Honor, I have no further
16 questions.

17 THE COURT: Cross?

18 MR. MOURELATOS: Your Honor, may I have a moment?

19 THE COURT: Sure. Absolutely.

20 MR. MOURELATOS: No questions for Mr. Penkava.

21 THE COURT: Mr. Penkava, sir, it has been a
22 pleasure. You may step down. You are excused. Enjoy the
23 rest of the day, sir.

24 THE WITNESS: Thank you, sir.

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THE COURT: You're welcome.

---END OF EXCERPT---

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ORGANIZED TO DO JEHOVAH'S WILL





Maintaining the Peace and Cleanness of the Congregation

EACH year thousands of people flock to Jehovah's house of pure worship, in fulfillment of Bible prophecy. (Mic. 4:1, 2) How happy we are to receive them into "the congregation of God"! (Acts 20:28) They appreciate the opportunity to serve Jehovah with us and to enjoy the clean and peaceful environment of our spiritual paradise. God's holy spirit and the wise counsel found in his Word help us to maintain peace and keep the congregation clean.—Ps. 119:105; Zech. 4:6.

² By applying Bible principles, we put on "the new personality." (Col. 3:10) We put aside petty disputes and personal differences. Viewing matters as Jehovah does, we overcome divisive worldly influences and work unitedly as an international brotherhood.—Acts 10:34, 35.

³ Nevertheless, from time to time, difficulties arise that affect the peace and unity of the congregation. What is the cause? In most cases, it is a failure to apply Bible counsel. We still have to cope with our imperfect human tendencies. Not one of us is without sin. (1 John 1:10) Someone may take a false step that could introduce moral or spiritual uncleanness into the congregation. We may offend someone by our thoughtless words or deeds, or we may be stumbled because of what someone has said or done. (Rom. 3:23) At times like these, what can we do to set matters straight?

⁴ Jehovah has lovingly taken all of this into consideration. His Word provides counsel on what to do when difficulties arise. Personal assistance is available from loving spiritual shepherds, the elders. By applying their Scriptural counsel, we can regain a fine relationship with others and maintain a good standing with Jehovah. If we receive discipline or reproof because of some wrongdoing on our part, we can be sure that such correction is an expression of our heavenly Father's love for us.—Prov. 3:11, 12; Heb. 12:6.

SETTLING MINOR DIFFERENCES

⁵ There may be times when personal disputes or difficulties of a minor nature arise between those in the congregation. These should quickly be settled in a spirit of brotherly love. (Eph. 4:26; Phil. 2:2-4; Col. 3:12-14) Very likely, you will find that problems of a personal nature involving your relationship with a fellow Christian can be resolved by applying the apostle Peter's counsel to "have intense love for one another, because love covers a multitude of sins." (1 Pet. 4:8) The Bible says: "We all stumble many times." (Jas. 3:2) By applying the Golden Rule, doing to others all things that we want them to do to us, we can usually forgive and forget minor offenses.—Matt. 6:14, 15; 7:12.

⁶ If you discern that someone was offended by what you said or did, you should take the initiative to make peace without delay. Remember, your relationship with Jehovah is also affected. Jesus counseled his disciples: "If, then, you are bringing your gift to the altar and there

you remember that your brother has something against you, leave your gift there in front of the altar, and go away. First make your peace with your brother, and then come back and offer your gift.” (Matt. 5:23, 24) There may have been a misunderstanding. If so, open up the lines of communication. Good communication among all in the congregation goes a long way toward preventing misunderstandings and solving problems that arise because of human imperfection.

PROVIDING NEEDED SCRIPTURAL COUNSEL

⁷ At times, overseers may find it necessary to give counsel in order to readjust a person’s thinking. This is not always easy. To the Christians in Galatia, the apostle Paul wrote: “Brothers, even if a man takes a false step before he is aware of it, you who have spiritual qualifications try to readjust such a man in a spirit of mildness.”—Gal. 6:1.

⁸ By shepherding the flock, overseers can protect the congregation from many spiritual dangers and may prevent serious problems from developing. Elders strive to make their service to the congregation measure up to what Jehovah promised through Isaiah: “Each one will be like a hiding place from the wind, a place of concealment from the rainstorm, like streams of water in a waterless land, like the shadow of a massive crag in a parched land.”—Isa. 32:2.

MARKING DISORDERLY ONES

⁹ The apostle Paul warned of certain ones who could exert an unhealthy influence on the congregation. Paul

said: "We are giving you instructions . . . to withdraw from every brother who is walking disorderly and not according to the tradition that you received from us." He clarified that statement by writing: "If anyone is not obedient to our word through this letter, keep this one marked and stop associating with him, so that he may become ashamed. And yet do not consider him an enemy, but continue admonishing him as a brother." —2 Thess. 3:6, 14, 15.

¹⁰ Occasionally, someone not guilty of practicing a grave sin for which he could be expelled from the congregation shows flagrant disregard for God's standard that should govern Christians. This could include such things as being extremely lazy, critical, or dirty. He could be "meddling with what does not concern [him]." (2 Thess. 3:11) Or he might be one who schemes to take material advantage of others or indulges in entertainment that is clearly improper. The disorderly conduct is serious enough to reflect badly on the congregation, and it has the potential to spread to other Christians.

¹¹ The elders will first try to help a disorderly person by giving him Bible-based counsel. However, if the individual persists in disregarding Bible principles in spite of repeated admonition, the elders may decide that a warning talk should be given to the congregation. Elders will use discernment in determining whether a particular situation is sufficiently serious and disturbing to others to warrant a warning talk. The speaker will provide appropriate counsel concerning disorderly conduct, but he

will not name the disorderly one. Consequently, those who are aware of the situation described in the talk will take care to avoid socializing with such an individual, although they will continue spiritual association, "admonishing him as a brother."

By maintaining the peace and cleanness of the congregation, we continue to let our light of Kingdom truth shine

¹² Hopefully, the firm stand taken by faithful Christians will help the disorderly one to become ashamed of his ways and will move him to change. When it is clearly evident that the individual has abandoned his disorderly course, it is no longer necessary to treat him as a marked individual.

RESOLVING CERTAIN SERIOUS WRONGS

¹³ Willingness to overlook offenses and to forgive does not mean that we are unconcerned about wrongdoing or that we approve of it. Not all wrongs can be charged to inherited imperfection; nor is it proper to overlook wrongs that go beyond minor offenses. (Lev. 19:17; Ps. 141:5) The Law covenant recognized that some sins are more serious than others, and the same is true in the Christian arrangement.—1 John 5:16, 17.

¹⁴ Jesus outlined a specific procedure for solving serious problems that may arise between fellow Christians. Note the steps that he set out: "If your brother commits a sin, [1] go and reveal his fault between you and him alone. If he listens to you, you have gained your

brother. But if he does not listen, [2] take along with you one or two more, so that on the testimony of two or three witnesses every matter may be established. If he does not listen to them, [3] speak to the congregation. If he does not listen even to the congregation, let him be to you just as a man of the nations and as a tax collector.”—Matt. 18:15-17.

¹⁵ In view of the illustration that Jesus subsequently gave, recorded at Matthew 18:23-35, it appears that one of the sins considered at Matthew 18:15-17 involves financial or property matters, such as failing to repay a loan or committing fraud. Or the offense might be slander, which seriously affects someone’s reputation.

¹⁶ If you have evidence that someone in the congregation has committed such a sin against you, do not be hasty to turn to the elders, asking them to intervene on your behalf. As Jesus counseled, speak *first* with the one against whom you have the complaint. Try to resolve the matter between just the two of you without involving anyone else. Keep in mind that Jesus did not say ‘*go only once* and reveal his fault.’ Therefore, if the person did not admit the wrong and ask forgiveness, it may be good to consider approaching him again later. If the matter can be resolved in this way, the one who sinned will certainly appreciate that you have not told others about his sin or marred his good reputation in the congregation. You will have “gained your brother.”

¹⁷ If the one who committed the offense accepts responsibility, seeks forgiveness, and takes steps to right

the wrong, there is no need to carry the matter further. Although the sin was serious, an offense of this kind can be settled between the individuals involved.

¹⁸ If you are not able to gain your brother by revealing his fault “between you and him alone,” then you may do as Jesus said, “take along with you one or two more,” and speak with your brother again. Those whom you take with you should also have the objective of gaining your brother. Preferably, they would be witnesses of the alleged wrongdoing, but if there are no eyewitnesses, you may choose to ask one or two more to be witnesses to the discussion. They may have experience in the matter at issue and may be able to establish whether what occurred was truly a wrong. Elders chosen to act as witnesses do not represent the congregation, since the body of elders has not specifically assigned them to do so.

¹⁹ If the matter has not been resolved after repeated efforts—you spoke with him alone and you went to him with one or two others—and you feel that you cannot let it pass, then you should report the matter to the overseers of the congregation. Remember that their goal is to maintain the peace and cleanness of the congregation. Having approached the elders, you will want to leave the matter in their hands and trust in Jehovah. Never should you allow the conduct of someone else to stumble you or to rob you of your joy in Jehovah’s service.—Ps. 119:165.

²⁰ The shepherds of the flock will investigate the matter. If it becomes evident that the person has indeed

committed a serious sin against you and is unrepentant and unwilling to make reasonable and appropriate amends, it may be necessary for a committee of overseers to expel the wrongdoer from the congregation. Thus they protect the flock and safeguard the cleanness of the congregation.—Matt. 18:17.

HANDLING CASES OF SERIOUS WRONGDOING

²¹ Some serious offenses, such as sexual immorality, adultery, homosexuality, blasphemy, apostasy, idolatry, and similar gross sins, require more than forgiveness from an offended individual. (1 Cor. 6:9, 10; Gal. 5:19-21) Because the spiritual and moral cleanness of the congregation are threatened, such serious sins must be reported to the elders and handled by them. (1 Cor. 5:6; Jas. 5:14, 15) Some individuals may approach the elders either to confess their own sin or to report what they know regarding the wrongdoing of others. (Lev. 5:1; Jas. 5:16) Regardless of the manner in which the elders first hear reports of serious wrongdoing on the part of a baptized Witness, an initial investigation will be made by two elders. If it is established that there is substance to the report and that evidence is available showing that a serious sin has been committed, the body of elders will assign a judicial committee of at least three elders to handle the matter.

²² The elders exercise watchful care over the flock, seeking to protect it from any elements that would be spiritually damaging. They also endeavor to use God's Word skillfully to reprove any who have erred and to re-

store them to spiritual health. (Jude 21-23) This is in harmony with instructions given to Timothy by the apostle Paul, who wrote: "I solemnly charge you before God and Christ Jesus, who is to judge the living and the dead, . . . Reprove, reprimand, exhort, with all patience and art of teaching." (2 Tim. 4:1, 2) Doing so may take much time, but this is part of the hard work of the elders. The congregation appreciates their efforts and considers them "worthy of double honor."—1 Tim. 5:17.

²³ In every situation where guilt is established, the primary endeavor of the overseers is to restore the wrongdoer to spiritual health. If he is genuinely repentant and they are able to help him, their administering of reproof, either in private or before any possible witnesses who testified during the judicial hearing, will serve to discipline him and instill wholesome fear in the onlookers. (2 Sam. 12:13; 1 Tim. 5:20) In all cases of judicial reproof, restrictions are imposed. Thus the wrongdoer may be helped to make "straight paths" for his feet thereafter. (Heb. 12:13) In due course, the restrictions are removed as the individual's spiritual recovery becomes manifest.

ANNOUNCEMENT OF REPROOF

²⁴ If a judicial committee determines that an individual is repentant but that the matter is likely to become known in the congregation or in the community or if the congregation needs to be on guard concerning the repentant wrongdoer, a simple announcement will be made during the Life and Ministry Meeting. It should read: "[Name of person] has been reproved."

IF THE DECISION IS TO DISFELLOWSHIP

²⁵ In some cases, the wrongdoer will have become hardened in his course of sinful conduct and will thus fail to respond to efforts to help him. Sufficient “works that befit repentance” may not be in evidence at the time of the judicial hearing. (Acts 26:20) What then? In such cases, it is necessary to expel the unrepentant wrongdoer from the congregation, thus denying him fellowship with Jehovah’s clean people. The bad influence of the wrongdoer is removed from the congregation, thereby safeguarding its moral and spiritual cleanness and protecting its good name. (Deut. 21:20, 21; 22:23, 24) Upon becoming aware of the shameful conduct of someone in the Corinthian congregation, the apostle Paul admonished the elders to “hand such a man over to Satan . . . , so that the spirit [of the congregation] may be saved.” (1 Cor. 5:5, 11-13) Paul also reported the disfellowshipping of others who had rebelled against the truth in the first century.—1 Tim. 1:20.

²⁶ When it has been determined that an unrepentant wrongdoer should be disfellowshipped, a judicial committee should let the person know of the decision, clearly stating the Scriptural reason(s) for the disfellowshipping. Upon informing the wrongdoer of the decision, the judicial committee will tell him that if he believes that a serious error in judgment has been made and he wishes to appeal the decision, he should do so in a letter, clearly stating the reasons for his appeal. Counting from the time he was notified of the committee’s decision, he will

be given seven days for this. If an appeal is received, the body of elders will contact the circuit overseer, who will select qualified elders to serve on an appeal committee to rehear the case. They will make every effort to conduct the appeal hearing within one week after the letter is received. If there is an appeal, announcement of the disfellowshipping will be postponed. In the meantime, the accused person will be restricted from commenting and praying at meetings and from special privileges of service.

²⁷ An appeal is granted as a kindness to the accused and allows him a further hearing of his concerns. Thus, if the wrongdoer deliberately fails to appear at the appeal hearing, the disfellowshipping will be announced after reasonable efforts have been made to contact him.

²⁸ If the wrongdoer does not wish to appeal, the judicial committee will explain to him the need for repentance as well as what steps he can take toward being reinstated in due time. This would be both helpful and kind and should be done in hopes that he will change his ways and in time qualify to return to Jehovah's organization.—2 Cor. 2:6, 7.

ANNOUNCEMENT OF DISFELLOWSHIPING

²⁹ When it is necessary to disfellowship an unrepentant wrongdoer from the congregation, a brief announcement is made, stating: “[Name of person] is no longer one of Jehovah's Witnesses.” This will alert faithful ones in the congregation to stop associating with that person.—1 Cor. 5:11.

DISASSOCIATION

³⁰ The term “disassociation” applies to the action taken by a person who is a baptized Witness but deliberately repudiates his Christian standing by stating that he no longer wants to be recognized as, or known as, one of Jehovah’s Witnesses. Or he might renounce his place in the Christian congregation by his actions, such as by becoming part of a secular organization that has objectives contrary to Bible teachings and therefore is under judgment by Jehovah God.—Isa. 2:4; Rev. 19:17-21.

³¹ Concerning those who renounced their Christian faith in his day, the apostle John wrote: “They went out from us, but they were not of our sort; for if they had been of our sort, they would have remained with us.”—1 John 2:19.

³² When a person disassociates himself, his situation before Jehovah is far different from that of an inactive Christian, one who no longer shares in the field ministry. A person may have become inactive because he failed to study God’s Word regularly. Or perhaps he experienced personal problems or persecution and lost his zeal for serving Jehovah. The elders as well as others in the congregation will continue to render appropriate spiritual assistance to an inactive Christian.—Rom. 15:1; 1 Thess. 5:14; Heb. 12:12.

³³ In contrast, if a person who is a Christian chooses to disassociate himself, a brief announcement is made to inform the congregation, stating: “[Name of person]

is no longer one of Jehovah's Witnesses." Such a person is treated in the same way as a disfellowshipped person.

REINSTATEMENT

³⁴ A disfellowshipped person or one who has disassociated himself from the congregation may be reinstated when he gives clear evidence of repentance and over a reasonable period of time demonstrates that he has abandoned his sinful course. He shows that he is desirous of having a good relationship with Jehovah. The elders are careful to allow sufficient time—many months, a year, or even longer, depending on the circumstances—for the person to prove that his repentance is genuine. When the body of elders receives a letter requesting reinstatement, a reinstatement committee will speak with the individual. The committee will evaluate the evidence of "works that benefit repentance" on his part and decide whether to reinstate him at that time or not.—Acts 26:20.

³⁵ If the person requesting reinstatement was disfellowshipped from another congregation, a local reinstatement committee will meet with the person and consider the plea. If the members of the local reinstatement committee believe he should be reinstated, they will forward their recommendation to the body of elders in the congregation that originally handled the matter. The involved committees will work together to make sure that all the facts are gathered to arrive at a just decision. However, the decision to reinstate is made by a

reinstatement committee of the congregation that originally handled the matter.

ANNOUNCEMENT OF REINSTATEMENT

³⁶ When the reinstatement committee is convinced that the disfellowshipped or disassociated person is genuinely repentant and should be reinstated, an announcement of the reinstatement is made in the congregation that originally handled the matter. If the person is now in another congregation, the announcement will be made there as well. It should simply state: “[Name of person] is reinstated as one of Jehovah’s Witnesses.”

CASES INVOLVING MINOR BAPTIZED CHILDREN

³⁷ Serious wrongdoing on the part of minor children who are baptized should be reported to the elders. When the elders handle cases of serious sins involving a minor, it is preferable that the baptized parents of the young person be present. They will want to cooperate with the judicial committee, not attempting to shield the erring child from necessary disciplinary action. Just as when dealing with adult offenders, the judicial committee endeavors to reprove and restore the wrongdoer. However, if the young person is unrepentant, disfellowshipping action is taken:

WHEN UNBAPTIZED PUBLISHERS ARE WRONGDOERS

³⁸ What should be done when unbaptized publishers become involved in serious wrongdoing? Since they are not baptized Witnesses, they cannot be disfellowshipped. However, they may not fully understand the

Bible's standards, and kind counsel may help them to make "straight paths" for their feet.—Heb. 12:13.

³⁹ If an unbaptized wrongdoer is unrepentant after two elders have met with him and have tried to help him, then it is necessary to inform the congregation. A brief announcement is made, stating: "[Name of person] is no longer recognized as an unbaptized publisher." The congregation will then view the wrongdoer as a person of the world. Although the offender is not disfellowshipped, Christians exercise caution with regard to any association with him. (1 Cor. 15:33) No field service reports would be accepted from him.

⁴⁰ In time, an unbaptized person who was removed as a publisher may wish to become a publisher again. In that situation, two elders would meet with him and ascertain his spiritual progress. If he qualifies, a brief announcement is made, stating: "[Name of person] is again recognized as an unbaptized publisher."

JEHOVAH BLESSES PEACEFUL AND CLEAN WORSHIP

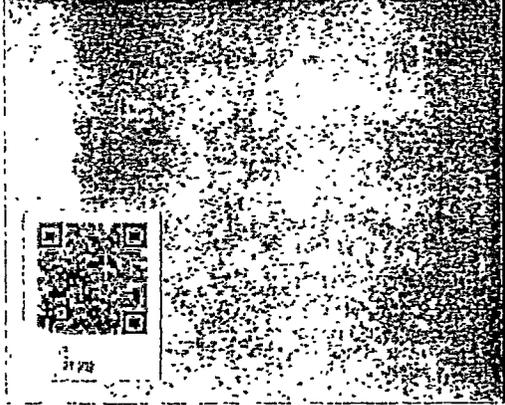
⁴¹ All who are associated with the congregation of God today can rejoice in the rich spiritual estate that Jehovah has given to his people. Our spiritual pastures are indeed lush, and we have an abundance of refreshing waters of truth. We also have Jehovah's protective care through his theocratic arrangement under the headship of Christ. (Ps. 23; Isa. 32:1, 2) Being in the spiritual paradise in these troublesome last days has given us a feeling of security.

⁴² By maintaining the peace and cleanness of the congregation, we continue to let our light of Kingdom truth shine. (Matt. 5:16; Jas. 3:18) With God's blessing, we will have the joy of seeing many more people come to know Jehovah and serve with us in doing his will.



**"SHEPHERD
THE FLOCK OF GOD"
1 PETER 5:2**





**"SHEPHERD
THE FLOCK OF GOD"**

1 PETER 5:2

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Unless otherwise indicated, Scripture quotations are from the modern-language New World Translation of the Holy Scriptures.

“Shepherd the Flock of God”—1 Peter 5:2
January 2019 Printing

English (SFE)

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**WATCH TOWER BIBLE AND TRACT SOCIETY OF
REPUBLIC OF KOREA, INCORPORATED ASSOCIATION**

Publishers
Christian Congregation of Jehovah's Witnesses
Walkill, New York, U.S.A.
Made in the United States of America

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DETERMINING WHETHER A JUDICIAL COMMITTEE SHOULD BE FORMED

1. Elders should act promptly when they receive a report of serious wrongdoing so as to safeguard the congregation and provide assistance to the wrongdoer. (Jude 4) Neglecting to care for such matters can hinder the flow of Jehovah's holy spirit to the congregation. Elders must first assess whether the wrongdoing, if established, is serious enough to require a judicial committee. --See 12:2-39; 15:1.

OFFENSES REQUIRING REVIEW BY THE ELDERS

2. Listed below are offenses that may require review by a judicial committee. Of course, this list is not comprehensive. There may be other matters that would also merit the attention of a judicial committee. The elders must use good judgment and reasonableness when evaluating the seriousness of the alleged wrongdoing. They should consider the extent and nature of the misconduct, intent and motive, frequency or practice, and so forth. If there is a question about whether certain wrongdoing merits judicial action, the body of elders may write to the Service-Department requesting further direction concerning the case.
3. **Sexual Immorality (Por-nei'a):** (Lev. 20:10, 13, 15, 16; Rom. 1: 24, 26, 27, 32; 1 Cor. 6:9, 10) *Por-nei'a* involves immoral use of the genitals, whether in a natural or in a perverted way, with lewd intent. There must have been another party to the immorality—a human of either sex or a beast. Willing participation incurs guilt and requires judicial action. It is not a casual touching of the sex organs but involves the manipulation of the genitals. It includes oral sex, anal sex, and manipulation of the genitals between individuals not married to each other. (w06 7/15 pp. 29-30; w04 2/15 p. 13; w00 11/1 p. 8 par. 6; w83 6/1 pp. 23-26; lvs p. 120) *Por-nei'a* does not require skin-to-skin contact, copulation (as in penetration), or sexual climax.
 - (1) "Immoral use of" conveys the thought not just of touching but of operating, manipulating, or employing

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something. For example, it is one thing to touch a musical instrument; it is something different to make "use of" a musical instrument.

- (2) "Lewd intent" identifies the motive. For example, a doctor may need to manipulate the genitals in examining a patient. A veterinarian, farmer, or rancher may do something similar to an animal. However, the intent is not sexual gratification.
- (3) "Manipulation" conveys the idea of operating something, whether by use of the hands or some other means, and does not require skin-to-skin contact. Momentary touching of another's genitals, even if intentional, would generally not be considered *por-nei'a*.

Masturbation of oneself is not *por-nei'a*.—lvs p. 250.

One who was raped would not be guilty of *por-nei'a*. Discernment is needed in considering claims of rape, taking into consideration such factors as the mental disposition of the person, the circumstances that led up to the incident, and any delay in reporting. —w03 2/1 pp. 30-31; w83 3/15 p. 30, fn.; it-1 pp. 862-864.

When determining if an individual is guilty of *por-nei'a*, it is important to establish the facts. This is especially true when Scriptural freedom to remarry is involved. (Mal. 2:16a) In situations in which the elders are uncertain or divided on their conclusions, it is best to write the Service Department.—See 12:71-76.

Strong Circumstantial Evidence of Sexual Immorality (*Por-nei'a*): If at least two eyewitnesses report that the accused stayed all night in the same house with a person of the opposite sex (or with a known homosexual) under improper circumstances, judicial action may be warranted. (w18.07 p. 32) The elders cannot apply one rule to every case; each situation has unique circumstances. After two elders have thoroughly investigated, the body of elders must use good judgment in determining whether serious wrongdoing has occurred. If the elders are unsure how to

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proceed, they should consult with the Service Department.—If questions are raised regarding Scriptural freedom to remarry, see Chapter 12, paragraphs 71-76.

- (1) Have the couple been pursuing a romantic relationship? Have they been previously counseled regarding their conduct with each other? What circumstances led to their spending the night together? Did they plan ahead to do so? Did they have a choice in the matter, or were there extenuating circumstances, perhaps an unforeseen occurrence or genuine emergency that left them with no choice but to spend the night together? (Eccl. 9:11) What were the sleeping arrangements? Since each situation is different, there may be other relevant factors. If there are no extenuating circumstances, a judicial committee would be formed on the basis of strong circumstantial evidence of sexual immorality.

- (2) Depending upon the attitude of the accused, there might even be evidence of brazen conduct.

B. Consider an example in which judicial action would be warranted: A married brother spends an inordinate amount of time with his female secretary after work hours but insists there is no romantic interest. His concerned wife informs the elders, who give him strong counsel. Later, when he claims to be leaving overnight for a "business trip," his suspicious wife and a relative follow him to the secretary's home. They observe the secretary invite him inside at 10 p.m. and continue watching all night until he leaves the home at 7 a.m. When the elders speak to him, he admits that he spent the night with his secretary, but he denies that he committed adultery. In such a case, the elders have a basis to take judicial action because there is strong circumstantial evidence of *por-nei'a* and there may be elements of brazen conduct. The innocent mate's conscience may allow her to divorce him and remarry; she should not be criticized if that is her decision.

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Below are examples in which judicial action would likely not be warranted:

- (1) An elderly Christian living alone has a member of the opposite sex move into the home to help care for him. There is no evidence of a romantic attachment or reason to suspect sexual immorality.
- (2) After attending a social gathering at a single sister's home, a brother walks to a train station to catch the train home. After waiting for some time, the brother learns that the last train for the day has already left the station. He walks back to the sister's home, but by the time he arrives, everyone has left and it is quite late. The sister allows him to sleep in the living room while she sleeps in her bedroom.
- (3) A single brother visits a married couple for several days. One night after everyone goes to bed, the husband is called to an emergency at his place of work and does not return until morning. The wife and the single brother are alone in the home all night sleeping in separate bedrooms.

10. Adulterous Marriage: If a divorced person remarries and he was not Scripturally free to do so—in other words, if adultery and rejection by the innocent mate had not occurred—he has entered into an adulterous marriage. In Jehovah's eyes, he has married someone while still bound to another. Entering into such a marriage would call for judicial action.—See 12:76.

11. The elders should be very cautious in extending any special privileges to such an individual, even after judicial restrictions have been lifted. He could share in the cleaning and repair of the local Kingdom Hall. He may eventually present student assignments on the midweek meeting if his doing so would not disturb others. However, he would not be assigned to help with literature,

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accounts, attendants, sound, video, or similar privileges in the congregation as long as the innocent former mate is alive, unmarried, and has not been guilty of *por-nei'a*.

12. Although a Christian's remarriage may not be adulterous, if he deliberately committed adultery in a scheming way so as to end his previous marriage or he pressured his innocent mate to reject him so that she eventually agreed to a divorce, he has dealt treacherously with her. (Mal. 2:14-16) His conduct is similar to entering into an adulterous marriage, and he would not qualify for special privileges for many years.—See 22:26-27.

13. Child Abuse: Child abuse includes the sexual or physical abuse of a minor. It would also include the extreme neglect of a minor by her parent. Child sexual abuse is a perversion and generally includes sexual intercourse with a minor; oral or anal sex with a minor; fondling the genitals, breasts, or buttocks of a minor; voyeurism of a minor; indecent exposure to a minor; or soliciting a minor for sexual conduct. Depending on the circumstances of the case, it may include involvement with child pornography or "sexting" with a minor. "Sexting" involves the sending of sexually explicit messages or images electronically.—See Chapter 14.

14. Gross Uncleaness, Uncleaness With Greediness: (2 Cor. 12: 21; Gal. 5:19; Eph. 4:19) Galatians 5:19-21 lists many vices that are not classed as *por-nei'a* but that could lead to one's being disqualified from God's Kingdom. Among them are uncleanness (Greek, *a-ka-thar-s'i'a*). When one practices uncleanness to a serious degree, it can be grounds for disfellowshipping from the Christian congregation. Elders should use good judgment in discerning whether the conduct is minor uncleanness that can be handled by counsel or is gross uncleanness that requires the formation of a judicial committee.—w06 7/15 pp. 29-31; w83 3/15 p. 31; w5 p. 249.

15. Though this is not an exhaustive list, gross uncleanness may be involved in the following:

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- (1) **Momentary Touching of Intimate Body Parts or Carassing of Breasts:** If such conduct occurred on a few isolated occasions, especially between two persons involved in a courtship with the intent to marry, counsel from two elders may suffice to handle such minor uncleanness. The elders should inform the coordinator of the body of elders of the situation. However, if the conduct occurred on numerous occasions and the actions escalated in gravity and frequency, it may constitute gross uncleanness with greediness, requiring judicial action. Their wrongdoing may constitute brazen conduct if they give evidence of a disrespectful, insolent attitude toward God's laws. For example, the individuals may have no intentions of pursuing marriage.
- (2) **Immoral Conversations Over the Telephone or the Internet:** A practice of engaging in immoral conversations over the telephone or the internet, including "sexting," can involve obscene speech or gross uncleanness, either of which can be a basis for judicial action. If such conduct occurred on a few isolated occasions, judicial action may not be necessary. Counsel from two elders may be sufficient to handle such minor uncleanness. The elders should inform the coordinator of the body of elders of the situation. However, such conduct may escalate in gravity and by frequent repetition become gross uncleanness with greediness requiring judicial action, especially if the individual had been previously counseled. The elders must use good judgment in determining whether the wrongdoing has escalated to a point warranting judicial action.—w06 7/15 pp. 30-31.
- (3) **Viewing Abhorrent Forms of Pornography:** See 13:2-4.

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- (4) **Misuse of Tobacco or Marijuana and Abuse of Medical, Illicit, or Addictive Drugs:** Elders should use good judgment in weighing the circumstances and extent of the wrongdoing so as to determine whether a judicial committee should be formed. For example, one or two elders may handle matters by means of counsel if a Christian abused an addictive drug or smoked cigarettes on one or two occasions and the matter is not widely known. The coordinator of the body of elders should be informed. However, a judicial committee is required for a practice of abusing addictive drugs, including betel nut, marijuana, and tobacco. (2 Cor. 7:1; w06 7/15 pp. 30-31; vs pp. 110-117) If a medical doctor authorizes and/or prescribes marijuana for a medical problem, a Christian may choose to make use of this form of treatment. Although no judicial action would be taken, if an issue arises in the congregation, the elders will need to determine whether the individual can be viewed as exemplary. The proper use of addictive drugs under medical supervision, such as for pain management, would not require judicial review. When questions arise, consult with the Service Department.
- (5) **Extreme Physical Uncleanness:** (Deut. 23:12-14; 2 Cor. 7:1; vs pp. 108-110) Every effort should be made to help the offender see the need to keep his body and place of residence clean. Before judicial action would be considered, the elders would need to be certain that the uncleanness is pronounced and offensive, bringing much reproach upon Jehovah's good name and his people in the community. Appropriate counsel should be given. If this is not heeded, then a warning talk may be necessary. (See 12:77-80.) If there is blatant, willful disregard of the counsel given and extremely offensive

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unclean conditions continue, judicial action would be warranted.

18. Brazen Conduct: (2 Cor. 12:21; Gal. 5:19; Eph. 4:19; *lvs* p. 249) The Greek word translated "brazen conduct" is *a-sef'gei-a*. Strong's Exhaustive Concordance of the Bible uses very forceful terms to define it: "licentiousness . . . filth[iness], lasciviousness, wantonness." The New Thayer's Greek-English Lexicon of the New Testament adds to the list "unbridled lust, . . . outrageousness, shamelessness, insolence." Another lexicon defines *a-sef'gei-a* as conduct that "violates all bounds of what is socially acceptable." Rather than relating to bad conduct of a somewhat petty or minor nature, "brazen conduct" describes acts that reflect an attitude that betrays disrespect, disregard, or even contempt for divine standards, laws, and authority. Therefore, two elements are involved in brazen conduct: (1) The conduct itself is a serious violation of Jehovah's laws; and (2) the attitude of the wrongdoer toward God's laws is disrespectful, insolent.—*w06* 7/15 p. 30.

Though this is not an exhaustive list, brazen conduct may be involved in the following if the wrongdoer has an insolent, contemptuous attitude made evident by a practice of these things:

- (1) **Unnecessary Association With Disfellowshipped or Disassociated Individuals:** Willful, continued, unnecessary association with disfellowshipped or disassociated nonrelatives despite repeated counsel would warrant judicial action.—*Matt.* 18:17b; 1 Cor. 5:11, 13; 2 John 10, 11; *lvs* pp. 39-40.

If a member of the congregation is known to have unnecessary association with disfellowshipped or disassociated relatives who are not in the household, elders should use the Scriptures to counsel and reason with him. Review with him information from the *Remain in God's Love* book, page 241. If it is clear that a Christian is violating the spirit of the disfellowshipping

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decree in this regard and does not respond to counsel, he would not qualify for congregation privileges, which require one to be exemplary. He would not be dealt with judicially unless there is persistent spiritual association or he persists in openly criticizing the disfellowshipping decision.

- (2) **Dating Though Not Scripturally Free to Remarry:** Continuing to date or to pursue a romantic relationship with a person though one or both are not legally or Scripturally free to remarry, doing so despite repeated counsel and generally after a warning talk to the congregation, would warrant judicial action.—*Gal.* 5:19; 2 Thess. 3:6, 14, 15.

19. Drunkenness: (1 Cor. 5:11; 6:9, 10; *It-1* p. 656; *lvs* pp. 20-21, 83) A judicial committee is required when there is a practice of drunkenness or a single incident of drunkenness that brings notoriety. (*w89* 5/1 p. 8) A Scriptural description of drunkenness can be found in the following references: Job 12:25; Psalm 107:27; Proverbs 20:1; 23:29-35; Isaiah 24:20.

19. If an individual confesses to an elder that on one occasion he overindulged in alcohol to the point of drunkenness in a private setting, such as in his home, and there is no notoriety, it may suffice for the elder to give strong counsel. In any case, the elder should inform the coordinator of the body of elders of the matter.

20. Gluttony: (Prov. 23:20, 21; *w04* 11/1 pp. 30-31) A glutton routinely shows a lack of restraint, even gorging himself on food to the point of feeling very uncomfortable or becoming sick. Gluttony is determined, not by someone's size, but by his attitude toward food.

21. Stealing, Thievery: (1 Cor. 6:9, 10; Eph. 4:28; *w86* 11/15 p. 14) Though all stealing is wrong, the body of elders should use discernment in weighing the circumstances and the extent of the

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Involvement in wrongdoing to determine whether it is a judicial matter.—w10 3/1 pp. 12-14; w94 4/15 pp. 19-21; jd pp. 105-106.

23. **Deliberate, Malicious Lying; Bearing False Witness:** (Prov. 6: 16, 19; Col. 3:9; Rev. 22:15; It-2 pp. 244-245) Though all lying is bad, judicial action is taken only if there has been a practice of deliberate, malicious lying. "Malicious" means deliberately harmful, harboring ill will or enmity. Lying that requires judicial action involves more than just exaggerations or petty, misleading statements of relatively minor consequence or lying because of momentary pressure or fear of man.—Matt. 26:69-75.

24. Generally, elders should not consider administering discipline if a Christian charges another Christian with making false statements in a court dispute. For example, this may involve divorce, child custody and support, and so forth. The Christian making the charge can express his concerns to the court that has the responsibility to determine what is truthful when rendering a judgment.

Fraud, Slander: (Lev. 19:16; Matt. 18:15-17; w97 3/15 pp. 17-22; It-1 pp. 870, 989-991; od pp. 136-138 pars. 13-20; Ivs p. 163) Fraud is defined as the intentional use of deception, trickery, or perversion of truth for the purpose of inducing another to part with some valuable thing belonging to him or to give up a legal right. Slander is defined as a false report meant to do harm to the good name and reputation of another. Such talk is generally malicious. Slander is not identical to negative gossip. Negative gossip may be true; slander is always false. Negative gossip requires counsel but not judicial action. (w99 10/15 p. 10; It-1 p. 990 par. 2) The congregation would not consider forming a judicial committee unless the offended Christian had taken steps one and two of Matthew 18:15, 16 and had initiated step three as described in Matthew 18:17.—Ivs pp. 253-254.

25. If asked, elders could participate in step two, but they do not represent the body of elders. If the matter proceeds to step three,

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any elders who were witnesses in step two could serve only as witnesses in step three. They would not be used to serve on the judicial committee.

26. It is not the place of elders to become arbitrators of financial agreements. They are not debt collectors. Nor should they be involved in formulating contracts or written agreements, not even signing as witnesses to such. The same holds true should the matter reach step three.

27. The body of elders may first need to investigate before appointing a judicial committee. If so, the brothers involved in step two would not be used to investigate; they would be interviewed as witnesses.

28. One who reports an accusation to the police, the court, the elders, or others who have authority to look into matters and render a judgment would not be viewed by the congregation as guilty of committing slander. (It-1 p. 990) This is true even if the accusation is not proved.—w97 8/15 p. 28 par. 1.

29. **Reviling:** (1 Cor. 6:10; It-2 pp. 801-802; Ivs p. 164) Reviling involves subjecting a person to insulting speech, heaping abuse upon him. The body of elders should weigh the circumstances and extent of wrongdoing so as to determine whether a judicial committee should be formed. Elders should not be quick to take judicial action; a judicial committee would be formed only if the reviling is extreme, disrupts the peace of the congregation, and persists despite repeated counsel.

30. **Obscene Speech:** (Eph. 5:3-5; Col. 3:8; Ivs p. 162) Obviously, certain words are more offensive than others. Profanity is any kind of language that profanes. However, obscene speech involves sexually explicit, filthy expressions. (g03 6/8 pp. 19-20) Is the speech sexually explicit? Does it persist despite repeated counsel? This would include obscenities used both in written and

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in oral communication, such as Internet chat rooms, phone sex, or e-mail.—See 12:15.2.

31. Greed, Gambling, Extortion: (1 Cor. 5:10, 11; 6:10; 1 Tim. 3:8; *It-1* pp. 789, 1005-1006) Elders do not generally involve themselves in what an individual does with regard to petty gambling solely for entertainment. However, if such petty gambling affects his spirituality or becomes a cause of stumbling for others, counsel should be given. If he does not respond favorably to the counsel and his conduct continues to have a negative effect on him or others, he could not be viewed as exemplary in the congregation. (Isa. 65:11; *w1* 3/1 pp. 12-14; *w02* 11/1 p. 31; *g* 3/15 pp. 14-15) If an individual's gambling reveals a course of greediness, perhaps causing harm to himself or others, and he ignores repeated counsel, judicial action would be appropriate.

32. An individual continuing in employment directly involved with gambling or employment-making him a clear accomplice or promoter of gambling would be subject to judicial action, usually after being allowed six months to make the needed adjustments. (lvs pp. 204-209) In questionable cases, consult the Service Department.

33. If a business gives out prizes or prize money to winners of a contest or to potential customers for advertising, accepting the gift is an individual's decision to make. However, a person needs to be careful that accepting such a prize does not stir up greed. —Rom. 14:21; 1 Cor. 10:31-33; *w73* p. 127; *g75* 7/8 p. 28.

34. A Christian who greedily and unrepentantly extorts a high bride-price may be dealt with judicially.—1 Cor. 5:11, 13; 6:9, 10; Heb. 13:5; *w98* 9/15 pp. 24-25.

35. Refusal to Provide for Family: (1 Tim. 5:8; *lvs* p. 251) Adamant refusal to provide materially for one's own family, leaving wife and children destitute when having the means to provide, may warrant judicial action. Some of the factors the body of elders should consider before forming a judicial committee are the following:

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- (1) Does the husband adamantly refuse to provide for his family or is the failure to provide for them because of other factors, such as health or financial difficulties? Is he doing what he reasonably can do to provide necessities for the family?
- (2) Has counsel been previously given, and has there been an opportunity for him to respond?
- (3) Does his wife have material resources affording a secure life so that the family is not destitute?
- (4) If the family is destitute, is it because they have rejected the family head's provisions by choosing to live apart from him?
- (5) When a separation is involved, to what extent is the wife responsible?

36. Fits of Anger, Violence, Domestic Violence: (Mal. 2:16; Gal. 5:20; Col. 3:19) A Christian who cannot control his anger cannot be viewed as exemplary in the congregation. After his attitude, the pattern of behavior, and the severity of damage to the lives of others have been considered, a person who gives in to uncontrolled fits of anger may need to be dealt with judicially. (*g97* 6/8 p. 20) In questionable cases, consult the Service Department.

37. If a Christian took up professional boxing and refused to stop despite repeated counsel, judicial action would be appropriate. —*w81* 7/1 pp. 30-31.

38. Manslaughter: Aside from deliberate murder, bloodguilt may be incurred if a person causes loss of life through carelessness or because of violating a traffic law or other safety law of Caesar. The elders should investigate and if warranted appoint a judicial committee to hear the matter. The committee should base its decision on clearly established facts, not simply on a decision that

Received 01-06-2022 03:51 PM
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may have been made by secular authorities.—Deut. 22:8; w06 9/15 p. 30.

Apostasy: Apostasy is a standing away from true worship, a falling away, defection, rebellion, abandonment. It includes the following:

- (1) **Celebrating False Religious Holidays:** (Ex. 32:4-6; Jer. 7:16-19) Not all holidays directly involve false religion and require judicial action.
- (2) **Participation in Interfaith Activities:** (2 Cor. 6:14, 15, 17, 18) Apostate acts include bowing before altars and images and sharing in false religious songs and prayers.—Rev. 18:2, 4.
- (3) **Deliberately Spreading Teachings Contrary to Bible Truth:** (2 John 7, 9, 10; Jvs p. 245; It-1 pp. 126-127) Any with sincere doubts regarding the Bible truth taught by Jehovah's Witnesses should be helped. Loving assistance should be provided. (2 Tim. 2:16-19, 23-25; Jude 22, 23) If one obstinately is speaking about or deliberately spreading false teachings, this may be or may lead to apostasy. If there is no response after a first and a second admonition, a judicial committee should be formed.—Titus 3:10, 11; w86 4/1 pp. 30-31.
- (4) **Causing Divisions, Promoting Sects:** (Rom. 16:17, 18; Titus 3:10, 11) This would be deliberate action disrupting the unity of the congregation or undermining the confidence of the brothers in Jehovah's arrangement. It may involve or lead to apostasy.—It-2 p. 886.
- (5) **Employment Promoting False Religion:** Continuing in employment that makes one an accomplice to or a promoter of false worship would subject one to disfellowshipping after being allowed six months to

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make the needed adjustments.—w99 4/15 pp. 28-30; Jvs pp. 204-206.

- (6) **Spiritism:** (Deut. 18:9-13; 1 Cor. 10:21, 22; Gal. 5:20; Jvs pp. 216-217)
- (7) **Idolatry:** (1 Cor. 6:9, 10; 10:14) Idolatry includes the use of images, including pictures, in false religious worship.

EVIDENCE ESTABLISHING WRONGDOING

40. Even though a Christian has been accused of wrongdoing serious enough to require judicial action, a judicial committee should not be formed unless the wrongdoing has been established by sufficient evidence. Please note the following regarding evidence:

- (1) **Confession:** Admission of wrongdoing, either written or oral, may be accepted as conclusive proof without other corroborating evidence. (Josh. 7:19) There must be two witnesses to a confession, and the confession must be clear and unambiguous. For example, a statement from a married Christian that his mate is "Scripturally free" would not by itself be viewed as a clear confession of adultery. A guilty plea entered in court by a Christian as part of a plea bargain, perhaps on the advice of an attorney so as to avoid the possibility of a harsher sentence, would generally not in itself be viewed by the congregation as an admission of guilt.
- (2) **Eyewitnesses:** There must be two or three eyewitnesses, not just people repeating hearsay; no action can be taken if there is only one witness. (Deut. 19:15-17; John 8:17; 1 Tim. 5:19, 24, 25) If there are two or three witnesses to the same kind of wrongdoing but each one is witness to a separate incident, the

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elders can consider their testimony. While such evidence is acceptable to establish guilt, it is preferable to have two witnesses to the same occurrence of wrongdoing. The testimony of youths may be considered; it is up to the elders to determine whether the testimony has the ring of truth. The testimony of unbelievers and disfellowshipped or disassociated ones may also be considered, but it must be weighed carefully.

41. If wrongdoing has not been established but serious questions have been raised, the body of elders should appoint two elders to investigate the matter promptly. For example, there may be just one witness. In some cases, it may be appropriate for the witness to encourage the accused to approach the elders. (Jas. 5:14) The elders can then allow the accused a few days to approach them; in other cases, it may not be advisable for the witness to confront the accused. For example, the witness may be extremely timid. A victim of rape or of child sexual abuse is never required to confront the accused. (If the accusation involves child sexual abuse, see Chapter 14.) Whether the witness approaches the accused or not, the two elders appointed should speak with the accused regarding the accusation.—w97 8/15 p. 27.

42. If the accused denies the accusation, the investigating elders should try to arrange a meeting with him and the accuser together. (If the accusation involves child sexual abuse, see Chapter 14.) If the accuser or the accused is unwilling to meet with the elders or if the accused continues to deny the accusation of a single witness and the wrongdoing is not established, the matter cannot be handled judicially. The investigating elders should compose a record, sign it, put it in a sealed envelope, and give it to the secretary to be placed in the congregation's confidential file. (See 22:21-27.) Additional evidence may later come to light to establish matters.

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THOSE HAVING CERTAIN PRIVILEGES OF SERVICE

43. If the elders learn of an accusation of serious wrongdoing against a member of the congregation who serves as a Bethel family member, a construction servant, a full-time or part-time commuter to Bethel, a full-time or part-time construction commuter, a remote servant or volunteer, a Bethel consultant, a field missionary, a special pioneer, an Assembly Hall servant, or a Bible school facility servant, two elders with knowledge of the circumstances should immediately contact the Service Department for direction on handling the matter.

THOSE WHO HAVE NOT ASSOCIATED FOR MANY YEARS

44. In deciding whether or not to handle such a person judicially, the body of elders should consider the following:

- (1) Does he still profess to be a Witness?
- (2) Is he generally recognized as a Witness in the congregation or the community?
- (3) To what degree have lives been affected or damaged by the wrongdoing? For example, does the matter involve child abuse or adultery?
- (4) Does the person have a measure of contact or association with the congregation so that a leavening, or corrupting, influence exists?
- (5) Is the person willing to meet with a committee, thus admitting accountability to the Christian congregation?

45. Depending upon the length of inactivity and other factors noted above, the elders may determine to hold the matter in abeyance. In such a case, they would make a record of the person's

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questionable conduct for the congregation file. (See 22:21-27.) If the individual shows interest in returning to the congregation, the elders can clarify matters at that time.—w08 11/15 pp. 14-15 pars. 12-13.

49. If the sinful conduct is known only to believing family members and no congregation action has been taken, believing relatives will likely determine to curtail family association severely, viewing the relative as bad association.—1 Cor. 15:33; w05 7/15 p. 19 par. 14.

UNBAPTIZED PUBLISHERS

50. The elders should promptly handle a case of serious wrongdoing by an unbaptized publisher. While a judicial committee would not be formed, the body of elders should select two elders to meet with him, perhaps the ones who approved him as an unbaptized publisher. (If the unbaptized publisher is a minor, see Chapter 12, paragraph 55.) They should try to readjust him and to determine whether he continues to qualify. (cp pp. 144-145 pars. 38-40) The body of elders should be updated on the results, including whether any restrictions will be imposed and whether any announcement will be made to the congregation.

51. If the individual is repentant, the assigned elders may decide to place certain restrictions on the individual for a time, such as not commenting at meetings, not presenting student assignments on the midweek meeting, or not sharing in the field ministry.

52. If the individual is repentant but the assigned elders determine that (1) the wrongdoing is widely known or might become widely known later or (2) the congregation needs to be on guard concerning the individual, the coordinator of the body of elders should arrange for an elder to make the following announcement at the next midweek meeting: "A matter involving [name of person] has been handled, and he [she] continues to serve as an unbaptized publisher with the congregation."

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50. There may be reasons for the body of elders to determine that a Scriptural talk about the sort of wrongdoing involved should be given to the congregation a few weeks after the announcement.

51. If the individual is unrepentant, the two elders should inform him that he no longer qualifies as an unbaptized publisher. Or if he informs the elders that he no longer desires to be a publisher, they will accept his decision. In either case, the coordinator of the body of elders should arrange for an elder to make the following announcement at the next midweek meeting: "[Name of person] is no longer recognized as an unbaptized publisher." Because of his unrepentant wrongdoing, it would be best for a time not to call on him if he raises his hand to comment at meetings.

52. If the elders see that such a person is a threat to the flock, they can privately warn those endangered. For example, despite the announcement, the wrongdoer might attempt to socialize with youths in the congregation. In that situation, the elders would speak privately to the parents of the endangered ones and perhaps to those youths.

53. There is no specific arrangement for an appeal or a seven-day waiting period before announcing the decision that one is no longer recognized as an unbaptized publisher. If he expresses dissatisfaction with the conclusion, the body of elders should choose two different elders to review the case.

54. If someone who was previously removed as an unbaptized publisher begins to make progress and wishes once again to share in the ministry, two elders (perhaps those who met with him earlier) should meet with him to determine his qualifications. If he qualifies, the coordinator of the body of elders should arrange for an announcement to be made that he is an unbaptized publisher. There is no need to wait until he reports field service again to make the announcement.

55. If the unbaptized publisher is a minor, the two elders should meet with the Christian parents to discern what occurred, the child's

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attitude, and the corrective steps that the parents are taking. If the parents have the situation in hand, the two elders may discern that it is not necessary to include the minor in the meeting. The elders will check with the parents from time to time to offer helpful counsel, specific suggestions, and loving encouragement.—See Chapter 14, paragraphs 29-30, if the minor engaged in sexual misconduct.

56 At the conclusion of the case, the two elders should prepare a written record. The secretary files this record in the congregation's confidential file.—See 22:21-27.

SERIOUS WRONGDOING THAT OCCURRED YEARS IN THE PAST

57 Depending upon the circumstances, serious wrongdoing that occurred years in the past may need to be handled by a judicial committee. However, if wrongdoing occurred more than a few years ago and the individual is genuinely repentant and recognizes that he should have come forward immediately when he sinned, counsel by two elders may be sufficient.

58 The body of elders should appoint two elders to gather the facts so that the body can determine whether a judicial committee is needed or not, taking into consideration answers to the following questions:

- (1) When did the wrongdoing take place?
- (2) How widely known is the matter?
- (3) Does the erring one show evidence of spiritual progress as opposed to evidence that progress is being hindered?
- (4) Will counsel be sufficient to restore him, or will more be required for him to have a clean conscience?

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- (5) Are there works befitting repentance?
- (6) Did he voluntarily confess, or did the matter come to light by other means?
- (7) If the body of elders decides not to form a judicial committee, will the elders continue to have the respect of the congregation?
- (8) If por-ne'a was involved, has a confession been made to the innocent mate?—See 16:10.5.
- (9) To what degree have lives been affected or damaged by the wrongdoing? For example, does the matter involve child abuse or adultery?

59. If the individual is serving in an appointed capacity, such as a ministerial servant, elder, or pioneer, his qualifications should be reviewed.—See 8:25-27; 9:4.

VALIDITY OF WRONGDOER'S BAPTISM

60. When dealing with a wrongdoer, the elders should not raise questions about the validity of the individual's baptism. If the individual raises the issue, the elders may refer him to the February 15, 2010, Watchtower, page 22.

61. At times a wrongdoer will claim that his baptism is not valid and that he feels he is not accountable to a judicial committee because he secretly engaged in wrongdoing shortly before he was baptized. If the elders had been aware of his serious wrongdoing committed just before baptism, likely they would not have approved him for baptism. However, this does not necessarily mean that he did not make a valid dedication. Some individuals make a dedication long before their baptism; others have made a dedication shortly before. The elders are not in a position to read the heart and know for a certainty how Jehovah viewed the person at the time he was baptized. If the elders learn that a baptized

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individual secretly engaged in serious wrongdoing while he was an unbaptized publisher but the wrongdoing ceased before baptism, they should give counsel and encouragement. A judicial committee should not be formed for prebaptism wrongdoing. (1 Cor. 6: 9-11) However, if the individual resumed serious wrongdoing after baptism, the elders would generally deal with him on the basis of what he has professed to be, a dedicated and baptized Christian, and would meet with him judicially.

65. There are rare occasions when it is obvious that the baptism was invalid because serious wrongdoing did not cease before baptism, even for a brief period of time. For example, it may be that at the time of baptism, the individual was living immorally with a member of the opposite sex or the same sex, was a member of a nonneutral organization, or something similar. If there are questions, the Service Department should be consulted.

DETERMINING WHICH CONGREGATION SHOULD HANDLE THE MATTER

Bodies of elders should cooperate if there is a question regarding which congregation should handle a case of wrongdoing. Which congregation has the facts? Which congregation can handle the case most effectively? Jurisdiction should not become an issue.

64. If a wrongdoer moves before a case has been concluded, it is usually best for the elders of the original congregation to follow through if possible and if distance permits. They are acquainted with the person and his circumstances. If he has moved a great distance away, the elders of the original congregation should not insist on handling matters if the wrongdoer says he is unable to return to the congregation for the meeting. In such a case, it may be advisable to refer matters to the elders of the congregation where he now lives. There should be good communication between the two bodies.

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65. If the elders learn that a publisher who is visiting the area for a short period of time is guilty of wrongdoing, they should promptly report the matter to the elders of his congregation.

WRONGDOING INVOLVING INDIVIDUALS FROM DIFFERENT CONGREGATIONS

66. If an individual confesses to wrongdoing that involves a person in another congregation, the elders should promptly pass along what they know to the elders of the other congregation and allow them time to investigate. Does the other individual admit the wrong? Do their accounts match, or are there significant differences? The elders handling the matter should communicate freely and cooperate in obtaining the facts. There are many advantages to interviewing individuals jointly to ascertain what actually occurred and to clarify discrepancies. (Prov. 18:13, 17) If a joint meeting is held, thereafter the elders handling the matter from each congregation will withdraw and handle the case of the person from their own congregation. The elders in one congregation should generally not conclude their case before the elders of the other congregation have fully investigated the situation.

PERMITTING INDIVIDUALS TO COMMIT SEXUAL IMMORALITY IN THE HOME

67. If a publisher were to allow an individual to commit sexual immorality while living in the publisher's home, he would be giving tacit approval to immoral conduct. This would also be true of allowing an individual to commit sexual immorality while visiting the publisher's home. Such a publisher would not be exemplary.

68. When congregation elders come to know of such a situation, they should patiently provide Scriptural counsel. The publisher should be helped to see that what he is allowing could stumble others. He may then take action to change the situation so as "not to

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put a stumbling block or an obstacle before a brother."—Rom. 14:13.

69 Perhaps the publisher is genuinely concerned that what he has been allowing may be a cause for stumbling. For certain reasons, however, he may feel that he has no recourse at the present time. For example, elderly Witness parents may need the assistance of an unbelieving son or daughter. Under such circumstances, no judicial action would be taken, but the qualifications of the publisher to serve in an exemplary position would be reviewed by the body of elders.

70 Suppose the publisher, upon being approached by the elders, manifests a brazen attitude, not really caring if others are stumbled. Even if he does not encourage others to do what he is doing, the elders may decide to arrange for a talk to be given that serves as a warning to the congregation. (2 Thess. 3:14, 15; see 12:77-80.) On the other hand, if a baptized publisher actively promotes allowing individuals to commit sexual immorality in the home, then the matter could be handled judicially on the grounds of condoning sexual immorality, causing divisions, and, in effect, speaking against "the teaching of the Christ."—2 John 9-11; Gal. 5:19, 20; Rev. 2:20.

SCRIPTURAL FREEDOM TO REMARRY

71 It is the responsibility of the individual desiring to remarry to produce convincing evidence to establish Scriptural freedom to remarry. If an individual's divorce occurred before baptism, the elders should not assume the individual is Scripturally free, as baptism does not dissolve previous marital ties. Elders should be very careful when it comes to giving direction on whether an individual is Scripturally free and should consult with the Service Department on any questions. This is especially true since the decisions a person makes in such matters will affect not only his relationship with his marriage mate but also his relationship with

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Jehovah. Elders shoulder a heavy responsibility in such matters and need to be cautious when offering counsel, especially when the answer may not be readily apparent.—Luke 12:48; Jas. 3:1.

72. Scriptural freedom to remarry requires three conditions: (1) sexual immorality (*por-nei'a*); (2) a rejection (refusal to reconcile) by the innocent mate; and (3) a legal, final divorce. (Matt. 5:31, 32; 19:9; Heb. 13:4) For example, if an individual contemplating remarriage confesses that he has been guilty of sexual immorality after his former mate legally divorced him or if his former mate has admitted to committing sexual immorality since the legal divorce, both are Scripturally free to remarry.

73. If a baptized Christian who accuses his believing mate of adultery and wishes to establish freedom to divorce and remarry approaches an elder, the matter should be referred to the body of elders. The accuser is not free unless the evidence establishing wrongdoing is sufficient to warrant the formation of a judicial committee on a charge of *por-nei'a*. (Deut. 19:15; John 8:17) If the accused mate is associated with another congregation, the evidence should be presented to the elders of that congregation for review and a determination. The publisher should be advised that he is not to view himself as Scripturally free until the elders have investigated the matter and guilt of *por-nei'a* is established.

74. In some cases adultery is not established. However the accused may confess or two eyewitnesses may report that the accused stayed all night in the same house with a person of the opposite sex (or a known homosexual) under improper circumstances. (See 12:7-9.) The elders should carefully consider the situation. (See 12:7.1.) Although the elders cannot tell the innocent mate that he is free to remarry, if the innocent mate is convinced that adultery did occur, the elders may allow him to take responsibility before Jehovah for obtaining a Scriptural divorce; if he remarries, no judicial action will be taken.

75. Even if the accused mate is not one of Jehovah's Witnesses (disfellowshipped, disassociated, or never baptized), two witnesses

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are also generally required to establish wrongdoing that would provide a basis for Scriptural freedom. An exception may be made, however, if the unbeliever privately makes an unambiguous confession of adultery to the Christian mate. In such a case, if the innocent Christian mate believes that the confession is true and does not wish to reconcile, he can submit a letter to the elders outlining his situation. The body of elders should then consider the letter. Is there any known reason to conclude other than that the unbelieving mate has been immoral? For example, was the confession worded ambiguously? Did the unbeliever later deny making the confession? If the unbeliever is willing to speak with the elders and matters are unclear, the elders may choose to ask the accused mate directly. If there is no known reason to conclude otherwise, the innocent mate can be allowed to take responsibility before Jehovah for obtaining a Scriptural divorce; if he remarries, no judicial action will be taken.

The following constitutes rejection by the innocent mate:

- (1) The innocent mate initiates a divorce either before or after learning of the adultery.
- (2) The innocent mate signs a divorce decree or in some other way indicates he does not object to a divorce initiated by the guilty mate, either before or after learning of the adultery. In some lands it is possible for the innocent mate to sign legal documents that stipulate custody of the children and financial support without indicating he agrees with the divorce; his signing such papers in itself would not indicate a rejection.—w00 12/15 pp. 28-29.
- (3) Though verbally expressing forgiveness and not seeking a divorce, the innocent mate refuses to resume sexual relations for a very prolonged period of time, a year or even years. Before indicating to the guilty mate that he is free to pursue a Scriptural divorce, the elders should

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consult with the Service Department. The innocent mate is not required to make a quick decision to forgive or not.

MARKING DISORDERLY ONES

- 77. At times it may be necessary to mark those who display a flagrant disregard for Jehovah's standards though not practicing a grave sin that merits judicial action. (2 Thess. 3:6, 14, 15; w99 7/15 pp. 29-31) This could include such things as being grossly lazy or critical or being a profitless talker who is a constant 'meddler with what does not concern him.' (2 Thess. 3:11) It may involve one who schemes to take material advantage of others, indulges in entertainment that is clearly improper, dates an unbeliever, or dates when not legally or Scripturally free.—od pp. 134-136 pars. 9-12.
- 78. If the disorderly conduct is generally unknown to others and poses no threat to their spiritual well-being, usually it is best to handle things through admonition and counsel. The body of elders should not be hasty in deciding to give a warning talk. However, if the individual does not see the error of his way but continues to be an unwholesome influence, a warning talk may be given to the congregation. Elders must use reasonableness and discernment in determining whether a particular situation is sufficiently serious and disturbing to require a warning talk.
- 79. For example, if a baptized Christian is dating an 'unbeliever,' the elders should first counsel him and try to help him. (2 Cor. 6:14; w04 7/1 pp. 30-31) If he persists in disregarding Bible principles in spite of repeated admonition, the body of elders may decide that a warning talk should be given to the congregation. If an individual is dating an unbaptized publisher, a warning talk may not be needed. Much would depend on the circumstances, on the attitude of the Christian, on the level of disturbance to the congregation, and other factors. Nonetheless, if he is dating with a

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view to marrying someone who is unbaptized, he is not obeying the Bible's counsel at 1 Corinthians 7:39 to marry "only in the Lord," and loving counsel should be given.

80 If the disorderly one is moved to change, the elders can individually decide to resume personally socializing with him. This will indicate to the congregation that they consider that the individual is no longer marked.

ATTEMPTED SUICIDE

81 A suicide attempt may be the result of deep despair or major depression. Elders should deal carefully and compassionately with such a person. In most cases, a judicial hearing is not required. —Ps. 88:3, 17, 18; Prov. 15:13; Eccl. 7:7; g 4/14 pp. 6-9.

CHAPTER THIRTEEN

Pornography

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1. Helping a Christian break free from the habit of viewing pornography requires firm Scriptural counsel by loving shepherds. (Jas. 5:14, 15) Therefore, when an elder learns that a Christian has deliberately viewed pornography, the body of elders should assign two elders to meet with him to establish the facts and determine the extent of the problem. If he is married, he should be kindly encouraged to reveal the matter to his mate. After the initial investigation, the assigned elders should provide an update to the body of elders.—See 12:40-42.

DETERMINING WHETHER A JUDICIAL HEARING IS REQUIRED

2. The deliberate viewing of pornography is a sin. (Matt. 5:28, 29) It can result in an addiction to sex, perverted desires, and serious marital problems. (Prov. 6:27; vs pp. 121-123 pars. 9-12) However, not all cases require handling by a judicial committee.—See 12:1-2; w12 3/15 pp. 30-31; w06 7/15 p. 31.
3. An entrenched practice of viewing, perhaps over a considerable period of time, abhorrent forms of pornography would be considered gross uncleanness with greediness and needs to be handled

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involved in only a few brief viewings of nonabhorrent forms of pornography and he took the initiative to confess to the elders, he may be recommended to serve again as an elder.

CHAPTER FOURTEEN

Child Abuse

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Sexual Misconduct Involving Only Minors	29-30

1. Elders should adhere closely to the direction in this chapter when a matter involving child abuse comes to their attention. Doing so will uphold the sanctity of Jehovah's name and contribute toward the safety of minors.—Isa. 32:1, 2; 1 Pet. 2:12.
2. While the information in this chapter refers to an accused in the masculine gender and to the victim in the feminine gender, it applies equally regardless of the gender of the accused or the gender of the victim. References to parents and family heads apply equally to legal guardians.
3. Child abuse includes the sexual or physical abuse of a minor. It would also include the extreme neglect of a minor by her parent.

Child sexual abuse is a perversion and generally includes sexual intercourse with a minor; oral or anal sex with a minor; fondling the genitals, breasts, or buttocks of a minor; voyeurism of a minor; indecent exposure to a minor; or soliciting a minor for sexual conduct. Depending on the circumstances of the case, it may include involvement with child pornography or sexting with a minor. Sexting involves the sending of sexually explicit messages or images electronically.

4. From the Bible's standpoint, child sexual abuse is a gross sin. (Deut. 23:17, 18; Gal. 5:19-21; w97 2/1 p. 29) Jehovah's Witnesses abhor child sexual abuse. (Rom. 12:9) Thus, the congregation will not shield any perpetrator of such repugnant acts from the consequences of his sin. The congregation's handling of an accusation of child sexual abuse is not intended to replace the secular authority's handling of the matter. (Rom. 13:1-4) Therefore, the victim, her parents, or anyone else who reports such an allegation to the elders should be clearly informed that they have the right to report the matter to the secular authorities. Elders do not criticize anyone who chooses to make such a report.—Gal. 6:5.
5. The Scriptures place the responsibility on parents for teaching and protecting their children. (Eph. 6:4) As spiritual shepherds, elders can help parents to shoulder their Scriptural responsibility. Our publications and website contain much helpful information to assist parents.—w10 11/1 p. 13; w08 10/1 p. 21; w96 12/1 pp. 13-14 pars. 18-19; g 10/07 pp. 3-11; g99 4/8 pp. 8-11; g97 4/8 p. 14; g93 10/8 pp. 5-13; g85 1/22 pp. 3-10; fy pp. 61-62 pars. 24-26; fr pp. 170-171.

LEGAL CONSIDERATIONS

6. Child abuse is a crime. In some jurisdictions, individuals who learn of an allegation of child abuse may be obligated by law to report the allegation to the secular authorities.—Rom. 13:1-4.

7. To ensure that elders comply with child-abuse reporting laws, two elders should immediately call the Legal Department for legal advice when the elders learn of an accusation of child abuse. A call should be made even when both persons involved are minors. The elders should not ask an alleged victim, the accused person, or anyone else to call the Legal Department on the elders' behalf. The elders should call the Legal Department even in the following situations:

- (1) The alleged abuse occurred many years ago.
- (2) The alleged abuse is based on the testimony of only one witness.
- (3) The alleged abuse is believed to be a repressed memory.
- (4) The alleged abuse involved perpetrators or victims who are deceased.
- (5) The alleged abuse is believed to have already been reported to the secular authorities.
- (6) The alleged perpetrator or victim is not a member of your congregation.
- (7) The alleged perpetrator is a non-Witness associating with the congregation.
- (8) The alleged abuse occurred before the alleged perpetrator or victim was baptized.
- (9) The alleged victim is now an adult.
- (10) The alleged abuse occurred in the past, and it is unclear whether your congregation elders ever called the Legal Department for direction.

8. The Legal Department will provide legal advice based on the facts and the applicable law. If the individual who is accused of the

child abuse is associated with your congregation, the two elders calling should provide the Legal Department with the individual's full name, date of birth and, if applicable, date of baptism. After speaking with the Legal Department, the caller will be transferred to the Service Department.

9. **Prison Inmates:** Two elders should immediately call the Legal Department regarding any prison inmate, baptized or unbaptized, who has been accused of child abuse and who is now associating with a congregation. This would include his attending congregation meetings held in the prison. In some cases, elders may not be permitted to inquire about the offense that an inmate may have committed. However, if the elders learn that the alleged offense has to do with child abuse, they should immediately call the Legal Department.

10. **Child Pornography and Sexting:** If the elders become aware of an adult associated with a congregation who has been involved with child pornography, two elders should immediately call the Legal Department. Likewise, if the elders become aware of an adult or a minor associated with a congregation who is sexting with a minor, the Legal Department should be called immediately. The Legal Department does not need to be informed when the elders receive reports of adults sexting one another.

CONGREGATION CONSIDERATIONS

11. When discussing child sexual abuse from a congregation standpoint, we are not considering a situation in which a minor who is a willing participant and who is approaching adulthood is involved in sexual activity with an adult who is a few years older than the minor. Nor, generally speaking, are we discussing situations in which only minors are involved. (See 14:29-30.) Rather, we are referring to an adult guilty of sexually abusing a minor who is a young child, or an adult guilty of sexual involvement with a minor who is approaching adulthood but was not a willing participant.

PROVIDING SPIRITUAL ASSISTANCE TO VICTIMS

- 12. Elders should demonstrate empathy and compassion when anyone approaches them about a matter involving child abuse. Ongoing spiritual shepherding is especially important for victims of child sexual abuse and their families.—Isa. 32:1, 2; Eph. 4:32; 1 Pet. 5:2.
- 13. Two elders should always be involved when shepherding an adult sister who is a victim of child abuse. An elder should never become the sole confidant of a sister to whom he is not closely related.—See 25:12.
- 14. When shepherding a child abuse victim who is still a minor, two elders and the minor's parents should be involved. (Deut. 6:6, 7; Eph. 6:4) Of course, if one of the parents is the accused, the accused parent would not be involved. If neither parent can be present, then another adult member of the congregation who is a confidant of the victim should be included.
- 15. As spiritual shepherds, elders should be good listeners. (Prov. 21:13; Jas. 1:19) While some victims may prefer not to talk about past abuse, others have found it helpful to talk with empathetic elders who can listen and then "speak consolingly" from God's Word. (1 Thess. 5:14; Prov. 12:25; Jas. 5:13-15) Though it may be necessary for the elders to ask a few tactful questions to help an afflicted one express herself, they should avoid probing unnecessarily or repeatedly into the details of the abuse. However, discussing Biblical examples of others who endured a difficult childhood and yet succeeded in becoming faithful servants of Jehovah may provide needed comfort. In time, Jehovah God will heal "the brokenhearted."—Ps. 30:2; 94:19; 147:3; w11 10/15 pp. 23-27; w01 4/15 pp. 25-28; w83 10/1 pp. 27-31; g 7/09 pp. 6-9; g91 10/8 pp. 3-11.
- 16. The time that elders can spend shepherding a member of the congregation who is a victim of child abuse is limited, so they must

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balance this important responsibility with their other responsibilities, which include caring for the spiritual, emotional, and material needs of their own family. In some cases, a victim of child abuse may seek more spiritual support from the elders than they can reasonably give. In such cases, some elders have found it beneficial to set limits on the time for such shepherding. It may take several visits to assist a victim effectively. When circumstances limit the extent of the assistance the elders can provide on a particular occasion, elders should still seek to share words of encouragement, assuring a victim of Jehovah's love, reading an appropriate scripture, and offering a prayer. This will confirm the elders' interest and willingness to help to the extent possible.

- 17. In addition to the spiritual shepherding provided by the elders, the victim or her family may desire other assistance. For example, an adult sister who suffered abuse as a child may choose to approach an empathetic sister for emotional support and encouragement. (Prov. 17:17) Or the victim or her family may decide to consult a mental-health professional. Whether a victim or her family pursues treatment from psychiatrists, psychologists, or therapists is a personal decision. (Gal. 6:5) If an elder is asked for advice on this matter, he may direct attention to appropriate Bible principles and material in our publications.—w15 9/15 pp. 9-11; w08 11/15 pp. 23-27.

INVESTIGATING ALLEGATIONS

- 18. The elders may learn of an allegation of child sexual abuse directly from the victim, through her parents, or through a trusted confidant of the victim. After receiving assistance from the branch office and if the accused is a member of the congregation, the body of elders will appoint two elders to investigate. These elders should carefully follow Scriptural procedures and the Bible-based direction in this chapter and in Chapter 12. During the investigation process and during the judicial committee process, a victim

of child sexual abuse is not required to make her allegation in the presence of the alleged abuser. Generally, elders should be able to obtain necessary information from the parents. In addition, sufficient evidence needed to establish wrongdoing on the part of an alleged abuser may already be available to the elders. (See 12:40-42.) In the exceptional event that the two elders believe it is necessary to speak with a minor who is a victim of child sexual abuse, the elders should first contact the Service Department.

JUDICIAL COMMITTEE

- 19. If the body of elders concludes that there is sufficient Scriptural evidence to warrant the formation of a judicial committee on the grounds of child sexual abuse, the coordinator of the body of elders should first contact the circuit overseer. (See 12:40-42; 15:1-2.) The circuit overseer will designate an experienced elder to serve as chairman of the judicial committee. If an appeal committee is needed, the circuit overseer will select experienced elders to serve on the committee and will designate the chairman. (See 17:1.) If wrongdoing is established and the wrongdoer is not repentant, he should be disfellowshipped. (See 16:26-31.) On the other hand, if the wrongdoer is repentant and is reproofed, the reproof should be announced to the congregation at the next mid-week meeting. (See 16:20-25.) This announcement will serve as a protection for the congregation. Victims of child sexual abuse are not handled judicially. However, if the body of elders believes that congregation action may be warranted in the case of a mature minor who was a willing participant in wrongdoing, two elders should call the Service Department before proceeding.

REINSTATEMENT COMMITTEE

- 20. If a person who has been disfellowshipped for child sexual abuse applies for reinstatement, the coordinator of the body of elders

should contact his circuit overseer and provide the names of those who served on the original committee. The circuit overseer will designate an experienced elder to serve as chairman of the reinstatement committee. If the decision is to reinstate, two elders serving on the committee should immediately call the Service Department. This call must be made before the reinstatement is announced to the congregation.—See 19:10-12.

21. If a person who has been disfellowshipped for child sexual abuse has moved and applies for reinstatement in a different congregation, the coordinator of the body of elders of the new congregation should contact his circuit overseer. The circuit overseer of the new congregation will designate an experienced elder to serve as chairman of the reinstatement committee in the new congregation. If that committee recommends that the person be reinstated, the committee should contact the coordinator of the body of elders of the original congregation, who should then contact his circuit overseer and provide the names of those who served on the original judicial committee. That circuit overseer will designate an experienced elder to serve as chairman of the reinstatement committee in the original congregation. If that committee agrees to reinstate, two elders from each congregation's committee should immediately call the Service Department. These calls must be made before the reinstatement is announced in both congregations.—See 19:10-12.

RESTRICTIONS

22. The elders should carefully adhere to all direction provided by the Service Department. For example, the Service Department will provide direction when (1) it is determined that a publisher (baptized or unbaptized) who is guilty of child sexual abuse is repentant and will remain in the congregation, (2) one disfellowshipped for child sexual abuse is reinstated, (3) a publisher (baptized or unbaptized) who denies an accusation of child sexual abuse is convicted by the secular authorities, or (4) one viewed as a child

molester by the community or the congregation becomes a publisher or becomes a baptized member of the congregation.

23. In such cases, direction from the Service Department to the elders will include restrictions imposed on the individual's activities within the congregation, on his participation in the field ministry, and on his interaction with minors. The elders will be directed to caution the individual never to be alone with a minor, not to cultivate friendships with minors, not to display affection for minors, and so forth. The Service Department will direct the elders to inform family heads of minors within the congregation of the need to monitor their children's interaction with the individual. The elders would take this step only if directed to do so by the Service Department. The coordinator of the body of elders should ensure that newly appointed elders and elders who move into the congregation are made aware of the Service Department's direction regarding such individuals.
24. One who has engaged in child sexual abuse does not qualify to receive any privileges in the congregation for many years, if ever; this includes minor privileges. Paul's counsel to Timothy has special relevance in the case of baptized adults who have molested children: "Never lay your hands hastily on any man; neither become a sharer in the sins of others." (1 Tim. 5:22; w97 1/1 pp. 26-29) If the body of elders believes that one who has engaged in child sexual abuse decades ago may now qualify for minor privileges, such as carrying or adjusting microphones, operating sound and video equipment, serving as an attendant, or assisting with accounts, literature, or territories, they should assign two elders to call the Service Department. The assigned elders should call the Service Department before any congregation privileges are extended.

FILING

25. Information concerning individuals associated with the congregation and accused of child sexual abuse (established or not),

including letters of introduction, should be placed in an envelope labeled with the individual's name and marked "Do Not Destroy." This envelope should be kept in the congregation's confidential file. This would include *Notification of Disfellowshipping or Disassociation (S-77)* forms on individuals who have committed child sexual abuse, even if later reinstated.

MOVING TO ANOTHER CONGREGATION

26. When an individual who has been accused of child sexual abuse (established or not) moves to another congregation, two elders from the congregation the individual moves from should immediately call the Legal Department. The elders should be prepared to provide the name of the new congregation, if known. This should be done even if the individual is disfellowshipped or is in prison and is transferred to another facility or is released. The congregation Service Committee should not send any information to the new congregation until after receiving legal advice from the Legal Department and direction from the Service Department.
27. When the elders are informed that an individual who has been accused of child sexual abuse (established or not) has moved to the congregation, two elders should immediately call the Legal Department. This should be done even if the individual is disfellowshipped or is in prison and has transferred from another facility or is released. If the individual is disfellowshipped and living within the congregation's territory, the elders should list that address on the appropriate congregation territory card as a "Do Not Call."

NOTIFICATION BY SECULAR AUTHORITIES

8. From time to time, secular authorities may inform the elders that a sex offender is living in the area. The notice may provide the

address of the individual and may state the nature of his criminal activity. In such a case, the elders should list that address on the appropriate congregation territory card as a "Do Not Call."

SEXUAL MISCONDUCT INVOLVING ONLY MINORS

29. What steps should elders take when minors engage in sexual misconduct with one another? As stated earlier, two elders should immediately call the Legal Department even when both persons are minors. Minors who engage in sexual misconduct with one another are not generally considered by the congregation as having engaged in child sexual abuse. However, regardless of the ages of those involved, such misconduct is serious and may even warrant congregation judicial action. The body of elders should work with the parents to ensure that the minors receive spiritual assistance. If elders have questions regarding a specific case, they should call the Service Department.—See 15:15.
30. When baptized minors become involved in "sexting," the elders must use good judgment in determining whether the wrongdoing has escalated to a point warranting congregation judicial action. Helpful information can be found in "Questions From Readers" in the July 15, 2006, issue of *The Watchtower*. Please review this material carefully before concluding that a baptized minor is guilty of gross uncleanness or brazen conduct. (See 12:14-17.) If a baptized minor has been previously counseled on this matter and persists in the wrong course, in most cases, judicial action would be taken. However, each case must be evaluated on its own merit. In all cases, the body of elders should work with the parents to ensure that the minors receive spiritual assistance. If elders have questions regarding a specific case, they should call the Service Department.

