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 Candace Fisher
 SANDERS COUNTY CLERK OF DISTRICT COURT
 BY [Signature]
 DEPUTY

**MONTANA TWENTIETH JUDICIAL DISTRICT COURT
 SANDERS COUNTY**

ALEXIS NUNEZ and)
 HOLLY McGOWAN,)
 Plaintiffs,)
 vs.)
 WATCHTOWER BIBLE AND TRACT)
 SOCIETY OF NEW YORK, INC.;)
 WATCHTOWER BIBLE AND TRACT)
 SOCIETY OF PENNSYLVANIA, INC.;)
 CHRISTIAN CONGREGATION OF)
 JEHOVAH'S WITNESSES, and THOMPSON)
 FALLS CONGREGATION OF JEHOVAH'S)
 WITNESSES,)
 Defendants/Third-Party Plaintiffs,)
 vs.)
 MAXIMO NAVA REYES,)
 Third-Party Defendant.)

Cause No. DV 16-84
 Hon James A. Manley
**PLAINTIFFS' MOTION
 FOR PARTIAL SUMMARY
 JUDGMENT RE: DEFENDANTS'
 SIXTH AFFIRMATIVE DEFENSE
 And
 MEMORANDUM IN SUPPORT**

MOTION

Pursuant to Rule 56 of the Montana Rules of Civil Procedure, Plaintiffs respectfully move the Court for an order granting partial summary judgment on Defendants' Sixth Affirmative Defense. This motion is supported by the record in this case, and the following supporting Memorandum. A proposed Order accompanies the motion.

MEMORANDUM

I. INTRODUCTION

This is a mandatory reporting case. Montana law requires that members of the clergy report known or suspected child abuse. If they fail to report or prevent others from reporting, they are civilly liable for harm.

It is undisputed that Defendants' clergy members¹ received verbal and written notification that a church member had sexually abused children.² It is also undisputed that Defendants did not report the abuse.³ Defendants claim an exception excuses their failure to report, but neither the facts nor the law support their claimed exception. Plaintiffs move for partial summary judgment on Defendants' Sixth Affirmative Defense asserting the claimed exception.

II. SUMMARY OF UNDISPUTED MATERIAL FACTS

Defendants Watchtower Bible & Tract Society of New York ("WTNY"), Christian Congregation of Jehovah's Witnesses ("CCJW"), and Thompson Falls Congregation of Jehovah's Witnesses ("Thompson Falls") are organizations that make up the Jehovah's Witness religion.⁴

¹ Defendants admit that all Jehovah Witness elders are clergy for purposes of Montana law. *See* Chappel Deposition at 61 (Ex. C).

² *See* Written Notice of Abuse from Holly McGowan (Ex. A); Notification of Disfellowship for Child Sex Abuse (Ex. B); Documentation that Notice Received (Ex. I); Letter to CCJW 3-21-2004 (Ex. H); Chappel at 51 (Ex. C).

³ *See* Chappel at 51-52 (Ex. C); Letter to CCJW 3-21-2004 (Ex. H).

⁴ Defendants take inconsistent positions on the role of the Defendant organizations within the Jehovah's Witness religion. For example, their corporate representative wrote in an affidavit submitted to this Court that the department where he works operates separately from Defendants. *See* Chappel Affidavit at ¶16 (Exhibit

This case involves two occasions when Defendants were notified that children had been sexually abused: 1998 and 2004. Defendants deny that they were notified in 1998, but admit they received verbal and written notice in 2004 that multiple children were being sexually abused.⁵

In 2004, Plaintiff Holly McGowan, a Jehovah's Witness, provided verbal and written notice that she was abused by her step-father, a fellow Jehovah's Witness.⁶ Peter McGowan, her brother, reported the abuse as well.⁷ The reports were initially made to clergy member elders at Thompson Falls.⁸ The Thompson Falls elders then disclosed the reports to multiple clergy elders at the Jehovah's Witnesses headquarters in New York, which is operated by WTNY and CCJW.⁹ After being notified of the abuse, Defendants failed to keep the report confidential.¹⁰ Instead, Defendants notified the abuser.¹¹

Defendants admit they did not report the abuse to any authorities in Montana after learning of it in 2004, but instead assert the "Limited Exception" affirmative defense.¹² In asserting the affirmative defense, Defendants are claiming, "yes, we failed to report as required by the statute, but we are excused from reporting because of §41-3-201(6)(c)."¹³

E); Chappel at 58. But, he acknowledges that Defendants provide him with offices, housing, and stipends. Chappel at 58-59. Finally, he confessed that "I'm not sure that I was correct in that statement," that he said "two different things under oath," and that he doesn't "know the answer" to what he swore to under oath. *Id.* at 60. However, for purposes of determining whether the "Limited Exception" affirmative defense applies, the Court need not adjudicate those facts. And, Defendants should not further confuse the issue in their response.
⁵ See Written Notice of Abuse from Holly McGowan (Ex. A); Notification of Disfellowship for Child Sex Abuse (Ex. B); Documentation that Notice Received (Ex. I); Letter to CCJW 3-21-2004 (Ex. H); See Chappel at 51 (Ex. C).

⁶ See Written Notice of Abuse from Holly McGowan (Ex. A).

⁷ See Notification of Disfellowship for Child Sex Abuse (Ex. B); Documentation that Notice Received (Ex. I); Letter to CCJW 3-21-2004 (Ex. H).

⁸ Written Notice of Abuse from Holly McGowan (Ex. A); Documentation that Notice Received (Ex. I).

⁹ See Notification of Disfellowship for Child Sex Abuse (Ex. B); Documentation that Notice Received (Ex. I); CCJW Letter 4-12-2004 (Ex. F); CCJW Letter 8-25-2005 (Ex. G); Letter to CCJW 3-21-2004 (Ex. H).

¹⁰ Chappel at 135 (Ex. C).

¹¹ Chappel at 133 (Ex. C).

¹² Chappel at 51-52 (Ex. C); Letter to CCJW 3-21-2004 (Ex. H).

¹³ In asserting the "Limited Exception" affirmative defense, Defendants have contended and judicially admitted that the individuals that received the notice of abuse are "clergy." This is a required element of the affirmative defense that Plaintiffs do not oppose and is not at issue.

As such, this motion only focuses on the 2004 notice of abuse and the “Limited Exception” affirmative defense. Because Defendants deny they received notice in 1998, they cannot offer proof that the “Limited Exception” should apply to the 1998 report. Therefore, Defendants’ burden is to establish each element of the “Limited Exception” as it relates to the 2004 events. Significantly, Plaintiff Alexis Nunez was abused after Defendants received notice of child sex abuse in 2004.¹⁴

III. APPLICABLE LAW

A. *Montana’s Mandatory Reporting Statute*

When clergy “know or have reasonable cause to suspect” that a child is abused, “they shall report the matter promptly to the department of public health and human services.” Mont. Code Annot. §41-3-201. “Any person, official, or institution required by law to report known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.” Mont. Code Annot. §41-3-207.

B. *Limited Exception When Clergy are Required to Keep Certain Communications Confidential (The “Limited Exception” Affirmative Defense)*

Defendants claim an exception to the mandatory reporting requirements and assert the exception as an affirmative defense. See Defendants’ Answer at ¶73 (“Sixth Affirmative Defense”). The claimed exception states that a member of the clergy “is not required to make a report under this section if the *communication is required* to be *confidential* by canon law, church doctrine, or established church practice.” Mont. Code Annot. §41-3-201(6)(c). This affirmative defense contains a number of elements that Defendants must prove about the communication. Two key elements that Defendants must prove are as follows:

¹⁴ Alexis Nunez Deposition at 72-76 (Ex. J).

- (1) the communication must be *confidential*; and
- (2) the church must *require* that the communication is kept confidential.

These two elements are referred to in this motion as: (1) confidentiality and (2) requirement of confidentiality.

Defendants' "Limited Exception" Affirmative Defense fails as a matter of law for two reasons. First, Defendants did not keep the report confidential. Second, there is no requirement that such reports are to be kept confidential.

C. Summary Judgment Standard

"The party moving for summary judgment bears the initial burden of establishing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law." *Semenza v. Kniss*, 2008 MT 238, ¶18, 344 Mont. 427, 189 P.3d 1188. If met, "the burden shifts to the non-moving party" to avoid summary judgment by "establish[ing] with substantial evidence, as opposed to mere denial, speculation, or conclusory assertions, that a genuine issue of material fact does exist or that the moving party is not entitled to prevail under the applicable law." *Id.* A Plaintiff may move for summary judgment on an affirmative defense. *Ballas v. Missoula City Bd. of Adjustment*, 2006 Mont. Dist. LEXIS 824, *16 (striking affirmative defenses at summary judgment stage when undisputed facts did not support elements of defense); *Capital One, NA v. Guthrie*, 2017 MT 75, ¶21, 387 Mont. 147, 152, 392 P.3d 158, 163 (affirming denial of affirmative defense at summary judgment stage when party failed to provide evidentiary support for his affirmative defense).

Each of the Defendants asserts the "Limited Exception" to Montana's mandatory reporting statute as an affirmative defense. *See* Defendants' Answer at ¶73 ("Sixth Affirmative Defense"). As an affirmative defense, Defendants have the burden of proving every element of the defense.

Plaintiffs move for summary judgment because, as a matter of law, Defendants cannot establish these two required elements:

- (1) confidentiality; and
- (2) requirement of confidentiality.

IV. SUMMARY JUDGMENT SHOULD BE GRANTED AS TO DEFENDANTS' SIXTH AFFIRMATIVE DEFENSE

A. The "Communications" are Reports of Abuse from Victims

The "Limited Exception" affirmative defense requires the analysis of a "communication" to determine whether it is: (1) confidential; and (2) required to be kept confidential. The "communication" at issue is the verbal and written notice of child sex abuse provided by Plaintiff Holly McGowan and her brother, Peter McGowan.

After Defendants received notice of the abuse, they failed to keep the information confidential, instead notifying the abuser that the reports were received. After the abuser was notified, he confessed to some of the child sex abuse allegations. However, Defendants knew of the abuse even before his confession. Indeed, Defendants concluded on the disputed allegations that "the testimony of the children is more reliable."¹⁵ Defendants may attempt to manufacture an affirmative defense with the *confession* as the "communication" to be analyzed. This would be improper because Defendants received notice of the abuse before the confession, and Defendants obtained the partial confession by confronting the abuser with the accusations.

B. Defendants Do Not Treat Victim Reports of Sexual Abuse as "Confidential"

Defendants did not keep the notifications of child abuse confidential in this case. To the contrary, they followed a procedure that requires them to reveal the information to others. When

¹⁵ See Letter to CCJW 3-21-2004 (Ex. H); Notification of Disfellowship for Child Sex Abuse (Ex. B).

children report that they are being sexually abused to Defendants, the Defendants' procedure is to notify the abuser—exactly the procedure they followed in this case.¹⁶

Defendants will argue that they keep reports of child abuse “confidential” because they do not report the abuse to law enforcement. But, Defendants ignore that they notify others about the abuse, including the abuser. In essence, Defendants claim they satisfy the “confidential” requirement by keeping the information confidential from *some* people, while ignoring that they share the information with *other people*.¹⁷ Such an argument is absurd and stretches the definition of “confidential” beyond logic.¹⁸ If Defendants' argument was accepted by this court, their failure to report child abuse to the proper authorities would also be their excuse for failing to report child abuse to the proper authorities. In essence, Defendants would argue, “we didn't notify law enforcement, so that means we kept it confidential (from law enforcement), so we didn't violate the statute, but ignore that we did shared the information with others, including the child sex abuser.” The contradictions are obvious. And, as evidenced by this case, the implications are dangerous.

When clergy members within the Defendants' organizations receive reports from children that they are being sexually abused, **Defendants notify the abuser**, but refuse to notify law enforcement. Defendants claim this to be a policy of keeping the information provided by the

¹⁶ Chappel at 133 (Ex. C).

¹⁷ Defendant's illogical “confidentiality” argument stated in following testimony:

Q. Is it your position that that -- that they kept the accusations confidential even though they told Max about them?

A. Yes.

Chappel at 135-136 (Ex. C).

¹⁸ The absurdity of the argument is acknowledged in the following testimony:

Q. If you hired me as your lawyer and you said, “Hey, I need you to take some legal matters against somebody for me, keep it confidential,” and then I called the person you wanted to look at taking legal action against and I told them everything you said, would you agree that I haven't kept what you told me confidential?

A. Yes.

Chappel at 150.

children “confidential.”¹⁹ Plaintiffs, on the other hand, correctly point out that their report of abuse has not been kept “confidential” by the elders or the church. As such, the confidentiality requirement of Defendants’ affirmative defense cannot be satisfied. For this reason alone, the affirmative defense fails as a matter of law.

C. No Requirement of Confidentiality

There is a second, related reason why the affirmative defense fails. No canon law, church doctrine, or established church practice within the Jehovah’s Witnesses *required* that the communication made by Holly McGowan be kept confidential. This is an element of the affirmative defense that is factually absent and beyond dispute.

Defendants admit there is no requirement against elders reporting the abuse if they so chose.²⁰ Instead, Defendants incorrectly claim a policy of “confidentiality”—keeping the report confidential from law enforcement, while sharing it with others. As discussed above, their definition of confidential is wrong. But, additionally, their policy has no “requirement” element.

Not only was there no requirement that the 2004 child sex abuse notifications be kept confidential, it was church policy to share the information with the child molester.²¹ Indeed, this is exactly what Defendants did—they notified the very person that was reported for child sex abuse. Defendants notified the abuser in accordance with their policies. As a matter of law, Defendants cannot claim a requirement of confidentiality, while having a policy of not keeping the information confidential. The lack of evidence to prove this element is another independent reason why the affirmative defense fails as a matter of law.

¹⁹ Q. Is it your position that that -- that they kept the accusations confidential even though they told Max about them?

A. Yes.

Chappel at 135-136 (Ex. C).

²⁰ Chappel at 140 (Ex. C); Herberger Deposition at 18 (Exhibit D).

²¹ Chappel at 133 (Ex. C).

D. *“Limited Exception” Affirmative Defense Not Applicable to These Facts*

The “Limited Exception” affirmative defense appears intended for circumstances when a church member mentions something during a confession with his minister. Plaintiffs in this case confessed to nothing because they did nothing wrong.²² To the contrary, they notified a clergy member about the crime of child sex abuse. It is important to reiterate that the report(s) of sexual abuse in this case came directly from a *victim of sexual abuse*. It was not the result of a wrongdoer’s confession who was seeking spiritual guidance or forgiveness under the expectation or promise of total confidentiality. Thus, the public policy concerns that underlay the clergy-penitent privilege—and by extension the “Limited Exception”—do not apply to this case. See *Trammel v. United States*, 445 U.S. 40, 51 (1980). (“The clergy-penitent privilege ‘recognizes the human need to disclose to a spiritual counselor, in total and absolute confidence, what are believed to be flawed acts or thoughts and to receive [spiritual] consolation and guidance in return.’”) The victims in this case did nothing wrong. They had nothing to confess. But because their mother doubted their allegations, they went to the only people the Jehovah’s Witnesses taught them were allowed to handle such serious criminal allegations—the local elders.

Nevertheless, Defendants contend that even reports made by *victims* are privileged and confidential. Defendants intentionally conflate a victim’s cry for help with a sinner’s confession, so they may try and cloak all reports of wrongdoing in secrecy, or what Defendants call “confidentiality.” As evidenced by this case, such a position undermines the entire purposes of the mandatory reporting statute. Indeed, Jehovah’s Witnesses’ policy of non-reporting protects pedophiles and puts children at further risk of abuse. The only purpose for Defendants’ unwavering commitment to secrecy is to protect the organization—not children. As one court

²² Herberger at 54 (Exhibit D).

wisely stated, “[t]here is no public policy reason to shield from the reporting requirement communications with a *victim* of child abuse. The identity of the child, as well as the child’s well-being, are intended to be protected from the ramifications of public revelations by the procedures that are part of the law enforcement process.” *State v. Laurel Del. Congregation of Jehovah’s Witnesses*, No. N14C-05-122 MMJ, 2016 Del. Super. LEXIS 49, at *10-11 (Super. Ct. 2016) (emphasis in original).

IV. CONCLUSION

Defendants have a policy of how they handle reports of child sex abuse in Montana—they notify headquarters and they notify the child abuser. Yet, for their affirmative defense, they must prove they are required to keep the information confidential. Because they have a policy of notifying the abuser and because they did notify the abuser, their affirmative defense fails, and partial summary judgment should be granted as to Defendants’ Sixth Affirmative Defense.

RESPECTFULLY SUBMITTED this 14th day of May, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all attorneys of record via Email on this the 14th day of May, 2018.

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Corrie Larson

Exhibit A

Written Notice of Abuse from Holly McGowan

Holly J Benavides
631 N. Colfax
West Point, Ne 68788
402-719-5830

3/19/04

To the body of elders of the Thompson Falls congregation,

As you are aware, I have recently disclosed information regarding the sexual abuse received from my stepfather Max, while under his and my mother's guardianship. This is my written testimony of some of the incidents.

Within weeks after their marriage in September of 1994, I would sometimes wake up to Max touching, fondling, and kissing me inappropriately, namely, the genitalia and breast regions. Being as I was too embarrassed to tell anyone, this only continued on until I was fifteen. Throughout that time, however, the touching and kissing had progressed to much more brazen acts. I believe it was the summer of 1995, we had taken a trip to Calgary, Canada for the District Convention. When we arrived at our friend's house, I had gone downstairs to take a nap on the air bed that was provided. Not long after I had fallen asleep, I was awakened by Max inserting his fingers to me, and then trying to force intercourse on me. I was able to squirm away and go upstairs. This instance however began a new threshold, as he became much more bold in his actions. From that time on he would not hesitate to try to force intercourse or oral sex on me. This would occur just about any time we at the house alone, and sometimes even with others around. About every evening Max would lie down for a nap. He would then call for me and sometimes Peter to come and cuddle with him. No matter how much we fought it, my mother would send us in there saying that we needed to show Max that we loved him and make him feel accepted. Many times extensive fights would break out over such matters and we would be reprimanded for being disrespectful and insensitive until we would give in and go cuddle with him. During this time, I was unaware that Max was fondling Peter as well, but he would me even with Peter lying right next to him.

Other times Max would say he needed to run some errands in town and would ask that I go with him. While in the car, would again fondle me, sometimes pulling over and trying to undo my pants, place my hand on his parts, and force me to perform oral sex. Many times I would get out of the car and move to the back seat. He would show disgust swearing in Spanish to me and then apologize for what he had done. However he never hesitated from doing it again.

Many times I had try to tell my mother of what was happening, but she was so quick to defend him when we would try to discuss other things that were bothering us, I

TF000001

Holly J. Benavides
Sincerely your sister,

I want to thank Jehovah's shepherds for looking after his flock and for taking care of this situation.
knew she would never believe anything like this. As with less significant grievances we had, telling her would just make it worse. She would first say that we were lying and only trying to stir up problems because we had never liked Max in the first place. This is why I had waited until I moved away to tell her. I told her I wasn't too surprised or upset if she didn't believe me because it would be made known soon enough. I do think however that deep down she knows the truth even if she doesn't admit it, not even to herself.

Exhibit B

Notification of Disfellowship for Child Sex Abuse

NOTIFICATION OF DISFELLOWSHIPING OR DISASSOCIATION

(Please type or print neatly in ink.)

Individual's full name: NaVa-Reyes Maximo
Last First Middle (Jr, Sr, II, III, etc.)

5-15-49 April 1, 2004
Date of birth Date of announcement of disfellowshipping or disassociation

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128215 Thompson Falls Thompson Falls MT
Congregation number Congregation name City State

Check if applicable: Elder Ministerial servant Regular pioneer (If so, include S-202 with this form.) Special pioneer
 Listed with the branch office as the person to receive literature and/or magazine shipments for the congregation. (If so, immediately submit an S-36 and/or M-206 form, showing a new name and address.)

1. DISFELLOWSHIPING. Specify offense(s) for which disfellowshipped (See ks91 92-6.): Pornia

At any point, did the wrongdoer confess to the committee? If not, what evidence substantiated the wrongdoing?

[Redacted]

DISASSOCIATION. Specify by what action(s) the person disassociated himself (such as resignation, non-neutral activity, failure to abstain from blood, or joining another religion):

Did the individual submit a signed letter of resignation? _____ If not, what evidence substantiated the disassociation?

2. Give a detailed summation of the case, explaining exactly what took place. (Use additional sheet only if more space is needed.) For a disfellowshipping, include the reasons why you judged the person to be unrepentant. For a disassociation, include what led to the person's decision, how he responded to efforts to assist him, and what convinced you that his position was adamant.

One of the victims came forward + informed 2 elders of the sexual abuse of himself from the age of 8 yrs. to 12 yrs old. The abuser was his stepfather. He also related that his sister had informed him of similar sexual abuse from 10 yrs to about age of 15. Both related a pattern of ongoing sexual abuse, which started shortly after the marriage.

The judicial committee all agreed the testimony of the two victims was more credible, we felt Maximo was unrepentant based on the seriousness of the sin, his unwillingness to confess, and that it was carried on over a long period of time, we also felt the purity of the children and the reputation of the cong. needed to be protected, w. 97 1-1 pp. 26-29 Esp. P. 29 Pa

3. Did the individual appeal your decision? _____ (If so, follow the instructions on the reverse side regarding appeals.)

4. If individual was previously disfellowshipped or disassociated show: Date of previous action _____
Person's full name at that time _____ Date of previous reinstatement _____
Congregation that took the action _____

Name of congregation _____ City _____ State _____

5. Each member of the appointed committee should sign this form and any additional sheets. (Type name below each signature.)

CHAIRMAN: Glenn Wilson Don Herberger Ken Riech
Glenn Wilson Don Herberger KEN RIECH

FOR OFFICE USE ONLY

Reinstated
 Deceased Date: June 16 2005 Glenn Wilson
(Month, Day, Year) (Signature of secretary)

Exhibit C

Chappel Deposition

1 Q. We're going to talk about Watchtower New York
2 and CCJW as it relates to the facts of the case, so I
3 want to understand what you and I are on -- are
4 familiar with, make sure we're on the same page.

5 Are you aware that it is undisputed that Max
6 Reyes sexually abused children?

7 **A. Undisputed. So in other words, am I aware**
8 **that he confessed to abusing children.**

9 Q. Yes, sir.

10 **A. Yes, I'm aware of that.**

11 Q. Are you aware that it's undisputed that elders
12 within the Jehovah Witness organization knew Max Reyes
13 admitted to abusing children?

14 MR. TAYLOR: Object to the form of the
15 question.

16 **A. Would you like to reword it?**

17 BY MR. SMITH:

18 Q. No.

19 **A. So what did you ask again?**

20 Q. Do you know that it's undisputed that the guy
21 confessed to abusing kids?

22 **A. Yes, I've already said that.**

23 Q. Okay. Are you aware that it's undisputed that
24 no one -- none of the Jehovah's Witnesses reported Max
25 Reyes to law enforcement?

1 A. I'm aware that the elders did not report it,
2 that is correct.

3 Q. And are you aware that the elders did nothing
4 to prevent him from abusing other kids?

5 MR. TAYLOR: Objection.

6 A. Yeah, I don't know anything about that.

7 BY MR. SMITH:

8 Q. What are you aware of them doing to prevent
9 other children from being abused by him?

10 A. The elders, when they became aware of it, knew
11 that they needed to call the legal department because
12 they needed to learn what they needed to do once they
13 learned as far as reporting it. So my understanding is
14 that they were told what the law was here, and they
15 followed it.

16 Q. So what did the elders do to prevent him from
17 abusing other children?

18 A. They met with him judiciously, and the
19 decision was to disfellowship.

20 Q. And was the decision to disfellowship him, was
21 that done to protect -- to prevent him from abusing
22 other children?

23 A. He was no longer a member of the congregation
24 at that point, and it was a warning for all of
25 Jehovah's Witnesses, yes, that he -- he was not someone

1 501(c)(3) not for profit -- profit with religious
2 purposes?

3 A. (Reviewing document.) I don't know. I -- I
4 know that it's -- it's used for religious purposes,
5 yes.

6 Q. All right. Let's look over at Paragraph 15
7 and 16.

8 A. (Reviewing document.)

9 Q. Now I'm looking at Paragraph 16, and it says,
10 "On the contrary." Do you see that?

11 A. (Reviewing document.) Um-huh.

12 Q. That sentence?

13 A. (Reviewing document.) Yes.

14 Q. It says, (As Read): "The U.S. Branch Committee
15 and the Service Department operate separately from
16 Watchtower and CCJW, although they have from time to
17 time collaborated with Watchtower and CCJW to provide
18 various services."

19 A. (Reviewing document.) Yes.

20 Q. Now, did we discuss earlier that CCJW gives
21 you a stipend?

22 A. Yes, we did.

23 Q. And CCJW provides you housing?

24 A. Yes, we did.

25 Q. CCJW provides you with an office.

1 **A. Apparently.**

2 Q. You think it's accurate to say that the
3 service department that you're in operates separately
4 from CCJW in light of the fact that they pay you, give
5 you housing, and give you an office?

6 **A. Well, I don't know how -- I know that this**
7 **statement is true, that we're not a division,**
8 **subsidiary or sister corporation of either of those two**
9 **corporations, so where the money is from, I guess I --**
10 **I misspoke.**

11 Q. Okay. So, then, this sentence right here, did
12 you misspoke -- or misspeak when you signed saying that
13 that's a true statement? Is that --

14 **A. No --**

15 Q. That's not --

16 **A. -- this is a true statement.**

17 Q. I'm not talking about the first sentence, I'm
18 talking about the second sentence that says (As Read):
19 "the Service Department operates separately from
20 Watchtower and CCJW."

21 **A. (Reviewing document.) Well, that's correct,**
22 **because as I mentioned to you earlier, we do use CCJW**
23 **Corporation, we use that for communicating with**
24 **congregations.**

25 Q. And for paying you, correct?

1 A. I don't know where the pay comes from.

2 Q. Now, did you tell me earlier it came from
3 CCJW?

4 A. (Reviewing document.) Yeah, but I'm looking
5 at this now, and that -- I'm not sure that I was
6 correct in that statement.

7 Q. Well, sir, you've got two different things
8 under oath so far.

9 A. Yeah. I don't like that position, I can
10 assure you. I don't know where the money comes from
11 for my stipend.

12 Q. So you can't say as you've sworn to in
13 Paragraph 16 that the service department operates
14 separately from CCJW, can you?

15 A. I don't know the answer.

16 Q. Because you don't know where the money comes
17 from.

18 A. I do not.

19 Q. And you don't know if they're separate or not,
20 do you?

21 A. I do not know where the money comes from.

22 Q. Okay.

23 A. Which corporation.

24 Q. All right. Let's talk about who are clergy
25 members within the Jehovah Witness -- within the

1 Jehovah's Witnesses. Are elders clergy?

2 **A. We do not refer to ourselves as clergy. So**
3 **what do you understand "clergy" to be?**

4 Q. Well, I understand that you and your lawyers
5 are refusing to turn over documents because you claim
6 that elders are clergy. That's what I understand. So
7 I'm asking you, sir, are elders clergy members?

8 **A. Okay. So in that context you're talking about**
9 **clergy -- What's the term that the loss uses?**

10 Q. I don't know, sir. I'm simply asking you --

11 **A. Clergy --**

12 Q. -- are they clergy or not?

13 **A. -- client privilege I think is how it -- it**
14 **goes. So for the -- for the law, we do, yes, we -- we**
15 **do view ourselves as having that privilege.**

16 Q. So for purposes of Montana law, the Jehovah
17 witnesses take the position that elders are clergy
18 members.

19 **A. Yes. For law, because we can't dictate how**
20 **they're going to use terminology, so, yes.**

21 Q. Well, let's look at what the law says about
22 clergy. Are elders -- Do elders have to be approved?

23 **A. Elders have to meet the qualifications, as I**
24 **mentioned earlier this morning, in 1 Timothy 3 and in**
25 **Titus 1.**

1 A. -- might be, but I don't understand.

2 BY MR. SMITH:

3 Q. Did the elders go to Max about the accusations
4 levied against him?

5 A. They must have because he confessed them to
6 them.

7 Q. And that's what church policy says to do when
8 accusations are made, correct?

9 A. At some point, yes.

10 Q. So when Holly made an accusation against Max,
11 the elders did not keep her accusation confidential,
12 did they?

13 A. What year was this?

14 Q. What -- What does it matter?

15 A. Well, I'm just trying to get the context.

16 Q. Are there different rules for different years?

17 A. I -- I don't know. I just want to know.

18 Q. Well, we're talking about --

19 A. 'Cuz that's --

20 Q. -- the 2003, 2004 period --

21 A. 'Cuz if she --

22 Q. -- as it's outlined --

23 A. -- came forward and she made an accusation to
24 the elders, that's what you said in 2004? Was that it?

25 Q. Sir, I don't want to try to tell you what --

1 Q. Did you look over them?

2 A. Yeah.

3 Q. Do you have them in front of you?

4 A. Yes.

5 Q. All right. I'm going to ask you about what
6 you know to have happened based upon these documents.

7 Am I correct that Peter and Holly made
8 accusations about Max Reyes to elders?

9 A. Yes.

10 Q. Do you agree with me that the elders did not
11 keep those accusations confidential?

12 A. No. As far as I know they did.

13 Q. Did they go tell Max about the accusations?

14 A. It was about him, and, so, I suppose they did
15 in order to find out what he had to say. Either deny
16 or agree, right? Yes.

17 Q. So --

18 MR. TAYLOR: Can we take a break here?

19 MR. SMITH: Let me -- Let me wrap this up real
20 fast, and --

21 MR. TAYLOR: Okay.

22 MR. SMITH: -- give me two minutes.

23 BY MR. SMITH:

24 Q. Is it your position that that -- that they
25 kept the accusations confidential even though they told

1 Max about them?

2 **A. Yes.**

3 Q. Okay. Do you need to see your lawyer nodding
4 his head to answer the questions?

5 **A. No. Why?**

6 Q. Okay. We can take a break.

7 THE VIDEOGRAPHER: We are going off the record
8 at 2:14 p.m.

9 (Recess taken from 2:14 p.m. to 2:23 p.m.)

10 THE VIDEOGRAPHER: We are back on the record.

11 It is 2:24 p.m.

12 BY MR. SMITH:

13 Q. Let me go back and wrap up a few loose ends.

14 Am I right that all elders are ordained
15 ministers?

16 **A. Yes.**

17 Q. Let me hand you a couple of financial
18 documents.

19 EXHIBIT:

20 (Deposition Exhibit 41 marked for
21 identification.)

22 BY MR. SMITH:

23 Q. Take a look at Exhibit No. 41.

24 MR. SMITH: Uh-oh, make sure that that's,
25 yeah, one page. Give that to Joel. (Handing

1 don't have to report this. Is that fair?

2 **A. Yes.**

3 Q. Walking through those steps, if the legal
4 department says you're in a location where we don't
5 believe you are required to report this, if that
6 happens, is it permissible for the elder to report it?

7 **A. He would then make that decision on his own if**
8 **he went on ahead and reported it, and Romans 14:12 says**
9 **that each of us will render an account for himself to**
10 **God.**

11 Q. So it's up to him.

12 **A. It's his responsibility. He has to answer to**
13 **Jehovah God for his actions --**

14 Q. All right.

15 **A. -- and his decisionmaking on that.**

16 Q. Now, if it's a -- if the legal department
17 says, "We don't believe you're required to report
18 this," and the elder looks at the circumstances and
19 says, "I think I'm going to report this," and he calls
20 law enforcement, does he get into any trouble with the
21 Jehovah Witnesses -- his fellow members or the
22 organizations?

23 **A. No.**

24 Q. Nobody says, "Hey, we've got a policy, and you
25 broke the policy."

1 **They keep things confidential in that setting. This**
2 **setting is totally different.**

3 Q. But at least in my setting you would agree
4 that's not keeping something confidential.

5 **A. Correct.**

6 Q. If you hired me as your lawyer and you said,
7 "Hey, I need you to take some legal matters against
8 somebody for me, keep it confidential," and then I
9 called the person you wanted to look at taking legal
10 action against and I told them everything you said,
11 would you agree that I haven't kept what you told me
12 confidential?.

13 **A. Yes.**

14 Q. Okay. Going through our example, right now we
15 just have the one girl that's seeking help because
16 stepfather is abusing her, it's worked its way to the
17 service department, the next step is to have the elders
18 reach out to the accused child molester. What happens
19 if he says, "I didn't do this."

20 **A. Then it's one witness and we can't take**
21 **congregation action, we can't form a committee.**

22 Q. What if the mother says, "My daughter's crazy,
23 she's making this up."

24 **A. We still can't take congregation action. We**
25 **can still shepherd the family, we can still work with**

Exhibit D

Herberger Deposition

1 **A. -- one more time, please.**

2 Q. You told the legal department that this report
3 is coming from the actual victims of the abuse,
4 correct?

5 **A. Yes.**

6 Q. This wasn't a case where Max came to the
7 elders and said, "I need to confess."

8 **A. It was not.**

9 Q. Okay. And even under those facts, they still
10 advised that you did not have to call the authorities.

11 **A. That's correct.**

12 Q. Okay. They didn't say that you could not call
13 the authorities, did they?

14 **A. They did not.**

15 Q. Okay. So you still could have -- After that
16 phone call you could have personally called the -- the
17 -- the authorities; is that right?

18 **A. I could have.**

19 Q. Okay.

20 **A. Yes.**

21 Q. It would have been up to you?

22 **A. Well, it would be up to -- Yes.**

23 Q. Okay. And throughout the following
24 investigation and judicial committee, Thompson Falls
25 was corresponding with Christian Congregation of

1 Q. Okay. Does Thompson Falls deduct the
2 contributions they take in from any sort of disclosure
3 or taxes that you're aware of?

4 A. Not -- I -- No, no.

5 Q. Does Thompson Falls report the fact that it
6 takes in contributions to any authority of tax or
7 anything like that that you're aware of?

8 A. Not that I'm aware of.

9 Q. Okay. You would agree with me that when Holly
10 and Peter came to you in 2004 to report that they had
11 been sexually abused, they had done nothing wrong,
12 correct?

13 A. Correct.

14 Q. They weren't at fault for -- for being abused,
15 were they?

16 A. No.

17 Q. They weren't seeking to confess that they had
18 abused anybody, were they?

19 A. No.

20 Q. Okay. And they weren't seeking spiritual
21 counsel related to their abuse, were they?

22 A. They approached us in a -- in a spiritual
23 setting, I would say, as elders of the congregation.

24 Q. Simply because you're elders?

25 A. Because, yeah, we're the spiritual shepherds

Exhibit E

Chappel Affidavit

United States. The Order is an unincorporated Scriptural order whose members serve under vows of poverty and obedience.

10. CCJW supports the faith of Jehovah's Witnesses by entering into contracts to rent facilities for Jehovah's Witnesses to hold conventions and by providing services to facilitate communications between the Service Department at the branch offices of Jehovah's Witnesses and congregations of Jehovah's Witnesses throughout the United States Branch Territory.

11. The "Governing Body" of Jehovah's Witnesses directs the faith of Jehovah's Witnesses whose membership exceeds 8,000,000 worldwide. The Governing Body is an ecclesiastical body with offices in Warwick, New York. The Governing Body is unincorporated.

12. None of the officers or directors of Watchtower or of CCJW is a member of the ecclesiastical Governing Body. Thus, neither Watchtower nor CCJW is the organizational head of the entity Plaintiffs describe as "Jehovah's Witnesses' Church."

13. Throughout the world, spiritual and organizational assistance is provided to Jehovah's Witnesses by some 90 branches (akin to regional/national offices). The United States branch is one of them. Each branch is headed by a committee.

14. The United States Branch Committee (hereinafter "U.S. Branch Committee") provides spiritual and organizational assistance to over 13,000 congregations of Jehovah's Witnesses in the United States and a few surrounding islands (the "U.S. branch territory"). The U. S. Branch Committee is unincorporated. About 4,000 members of the Order support the activities of the U.S. Branch Committee, which operates out of the U.S. branch offices located in New York.

15. I serve in the Service Department at the U.S. branch. The Service Department provides Scriptural guidance and spiritual assistance to elders who serve in congregations of Jehovah's Witnesses in the U.S. branch territory.

16. Neither the U.S. Branch Committee nor the Service Department is a division, subsidiary, or sister corporation of Watchtower or of CCJW. On the contrary, the U.S. Branch Committee and the Service Department operate separately from Watchtower and CCJW,

although they have from time to time collaborated with Watchtower and/or CCJW to provide various services.

17. For example, from the 1970's through February 2001 Watchtower authorized the Service Department to communicate with congregations of Jehovah's Witnesses on its letterhead regarding matters related to the operation and spiritual oversight of congregations, including matters relative to sin and repentance. Beginning March 16, 2001, the Service Department ceased communicating through Watchtower in this capacity. At that time, CCJW began providing services to facilitate communications between the Service Department and congregations.

THE FAITH OF JEHOVAH'S WITNESSES

18. As an elder in the faith of Jehovah's Witnesses since 1984, I am familiar with the Scriptural beliefs and practices of Jehovah's Witnesses and with the Scriptural precedent for those beliefs and practices.

19. I have served in the U.S. branch since 1975, and I have worked in the Service Department since 1980. My assignment involves providing spiritual guidance and assistance to elders in congregations of Jehovah's Witnesses in the United States.

20. The basic beliefs of the faith of Jehovah's Witnesses explain why confession of sin is so essential to one's eternal salvation. (James 5:14-16, 19; Proverbs 28:13; 1 John 1:9; Ezra 10:11; Numbers 5:7; Joshua 7:19) And understanding that fundamental principle explains why the Bible (and Jehovah's Witnesses) places great value on confidentiality.

Organization of Congregations

21. Congregations of Jehovah's Witnesses are composed of individuals and families who gather together to worship in buildings called "Kingdom Halls." Congregations in the United States are usually named after the city or town where they hold meetings, and typically have between 75 and 125 members.

Exhibit F

CCJW Letter 4-12-2004

**Christian Congregation
of Jehovah's Witnesses**



2821 Route 22, Patterson, NY 12563-2237 Phone: (845) 308-1100
SDJ:SSM April 12, 2004

**BODY OF ELDERS
THOMPSON FALLS CONGREGATION OF
JEHOVAH'S WITNESSES, THOMPSON FALLS, MT
C/O KENNETH RIECH
PO BOX 562
PLAINS MT 59859-0562**

Dear Brothers:

Enclosed please find the S-77 forms you submitted to report the disfellowshipping of Maximo Nava-Reyes. We express our thanks to the judicial committee for handling matters of this sort in behalf of the congregation. Please have the judicial committee sign both forms, and type or print their names underneath the signatures, then return them in a special blue envelope.

In addition, the judicial committee should also compose a brief letter that answers each of the following questions: How long ago did he commit the sin? What was his age at the time? What was the age of his victim(s)? Was it a one-time occurrence or a practice? If it was a practice, to what extent? How is he viewed in the community and by the authorities? Has he lived down any notoriety in the community? Are members of the congregation aware of what took place? How do they and/or his victim(s) view him?

Thank you for providing this supplemental report and for signing the forms. When returning the forms, please mark the outside of the envelope with the date and desk symbols of this letter. We use this occasion to assure you of our warm love and best wishes.

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

TF000005

Exhibit G

CCJW Letter 8-25-2005

Christian Congregation
of Jehovah's Witnesses

1821 Route 22, Patterson, NY 12263-2237 Phone (845) 306-7100

SDJ:SSM August 25, 2005

K.R.
Don
Shum

BODY OF ELDERS
THOMPSON FALLS CONGREGATION OF
JEHOVAH'S WITNESSES, THOMPSON FALLS, MT
C/O KENNETH RIECH
PO BOX 562
PLAINS MT 59859-0562

Dear Brothers:

Thank you for notifying us of the reinstatement of Maximo Nava-Reyes on June 16, 2005. Since he was disfellowshipped for [REDACTED] we are providing specific comments on how the congregation should view him. If Brother Nava-Reyes is not associated with your congregation, please promptly return this letter and inform us of his current whereabouts so that we can contact the appropriate body of elders.

For good reason, the January 1, 1997, issue of *The Watchtower*, page 29, states: "A dedicated adult Christian who falls into the sin of child sexual abuse reveals an unnatural fleshly weakness. Experience has shown that such an adult may well molest other children. 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, in the best interest of the congregation and its members, neither the local congregation nor any legal corporations used by Jehovah's Witnesses should be viewed as delegating authority or position to one who is a known child molester.

Now that we have given careful and prayerful consideration to all the factors in the case of Brother Nava-Reyes, we believe that what is stated in the foregoing applies to him. Hence, you should not extend to him any specific responsibility that could be construed as an assigned duty, even though some assignments might be considered minor. He should not be used to handle accounts, literature, magazines, or territories. Nor would he be used as an attendant, microphone handler, to operate sound equipment, to represent the congregation in prayer, or to present "Announcements" on the Service Meeting. He would not be used as the reader at the Congregation Book Study or *Watchtower* Study, nor to conduct a meeting for field service. It would be advisable not to have a book study in his home. And, he would not qualify to auxiliary or regular pioneer. Whereas he could volunteer to assist with general care of the Kingdom Hall where he attends meetings, he could not be approved to work on other Kingdom Halls or Assembly Halls. It will be many years, if ever, before privileges of service can be restored. Even if in the distant future you were considering him for the privileges mentioned in this paragraph, you should contact the branch office.

TF000006

THOMPSON FALLS CONGREGATION, THOMPSON FALLS, MT

August 25, 2005

Page 2

Please be reminded of the following direction that appears in the March 14, 1997, confidential letter to all bodies of elders regarding known child molesters: "Individuals who have manifested a weakness in this regard should be sensitive to their need not to be alone with children. They should refrain from holding children or displaying other forms of affection for them. It would be appropriate for elders to give kindly cautions to any who are doing things that may be a temptation or a cause for concern to others in the congregation." (1 Corinthians 10:12, 32) This would include not allowing children (other than his own) to spend the night in his home, not working in field service with a child, not cultivating friendships with children, and the like.

Additionally, former child abusers should not work alone in the field ministry. They should always be accompanied by another adult publisher who is in good standing in the congregation. This also applies to working with their own minor children in the field ministry. If they choose to do so, there still should always be another adult present. This serves to protect the minor who might answer the door, the former abuser and the reputation of the congregation.

Lastly, in harmony with the direction in the August 1, 1995, and March 14, 1997, letters to all bodies of elders, if Brother Nava-Reyes moves to another congregation, you will need to write to the body of elders and "clearly and discreetly inform the elders in the new congregation about the problem," outlining the individual's background, the restrictions imposed, and any needed cautions. You should also send us a copy of your letter so that we will know his whereabouts.

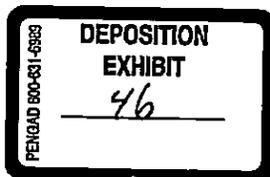
Certainly, in view of the problems Brother Nava-Reyes has had, the family will benefit from regular encouragement and shepherding from you brothers. In conclusion, we thank you in advance for loyally adhering to what we have stated in this letter, and we send an expression of our warm Christian love.

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

TF000007

Exhibit H

Letter to CCJW 3-21-2004



April 21, 2004

SSN APR 30

SSN APR 30 2004

Dear Brothers,

This letter is in response to your letter dated April 12, 2004, SDJ:SSM. According to the testimony of the two victims, Peter and Holly McGowan, the abuse started late in the year 1994. At that time Maximo was 45 years old and just newly married to their mother. Peter was 8 and his sister Holly was 11 years old when the abuse started.

According to Maximo's testimony, [REDACTED]

[REDACTED] But according to Peter and Holly the abuse extended over a 4 to 5 year period. The judicial committee believes the testimony of the children is more reliable. Both children testified that the abuse was on-going and to quote Peter "to many times to remember".

The community nor the authorities are aware of this matter. The members of the congregation are also at this time unaware of what took place. The only ones that we are aware of that know are Maximo, his wife and mother of the children, Joan, Peter and Holly and an older sister, Ivy.

The victims feel disgust toward Maximo.


Glenn Wilson, Chairman


Ken Riech


Don Herberger

Exhibit I

Documentation that Notice Received

Dear Brothers

In Response to letter dated April 12th.
SDJ: 55m.

According to the testimony of the two victims Peter and Holly Mc Gowan the abuse started 10 years ^{late 1994} ago at the time Maximino was ~~10~~^{4.5} years old and just newly married to their mother.

Peter was 8 and his sister Holly was 11 yrs. old.

According to Maximino's testimony

But ~~also~~

According to Peter and Holly the abuse extended over a 5 yr. period.

The Judicial Committee believes the testimony of the children ~~is~~ more reliable.

The children testified that the abuse was ongoing and to quote Peter "to many times to remember".

The community nor the authorities are aware of ~~of~~ this matter.

The members of the congregation are also at this time unaware of what took place. The only ones that we are aware of that knows, are Maximo, his wife and mother of the children, ^{Jean} Peter and Holly and an older sister Ivy.

The victims feel a disgust toward Maximo.

Glenn Wilson
Chairman

Exhibit J

Alexis Nunez Deposition

Alexis Nunez

1 Castleberry, you moved in too?

2 A. Correct.

3 Q. Okay. And so around that time frame when
4 you made the move, it ceased being weekly?

5 A. Correct.

6 Q. How often would it occur after that?

7 A. Well, we would go over to my
8 grandmother's about once every month, and I can't
9 say it happened every time we were there, but I do
10 believe it was at least every other time we were
11 there.

12 Q. So 12 months in a year?

13 A. Six months, so --

14 Q. Okay. Did it ever reach a point, after
15 you moved into the home with Mr. Castleberry, that
16 it became less frequent than six times a year?

17 A. Yes. Yes.

18 Q. And do you have an awareness of how old
19 you might have been or what year that might have
20 been where it became even less frequent?

21 A. I would say 2007, 2006.

22 Q. And what happened in that time frame that
23 caused it to become less frequent?

24 A. I think it was just kind of -- I was
25 losing interest in the church, and so I didn't -- 76

Alexis Nunez

1 it was no longer weekly?

2 A. Yes.

3 Q. And when did that occur?

4 A. When we moved in with my now stepfather,
5 we were not traveling every weekend.

6 Q. Do you have a year in mind of when that
7 might have occurred? Okay, let's see, and maybe I
8 can help you based on what we heard yesterday.

9 MR. LEONOUDAKIS: I think you can answer
10 the question first before. Reask the question
11 first before he gets --

12 A. Oh.

13 MR. LEONOUDAKIS: Hold on, Alexis. Would
14 you read the last question, please.

15 [REQUESTED PORTION READ BACK BY THE
16 COURT REPORTER]

17 A. I believe that would have been 2003/2004.

18 Q. Around the time your mother was
19 disfellowshipped from the congregation?

20 A. Yes, I believe so.

21 Q. Because she moved in with Castleberry,
22 Mr. Castleberry?

23 A. I -- I mean, I don't have information on
24 that.

25 Q. When your mom moved in with Mr.

Alexis Nunez

1 that there was fondling both above and below the
2 waist, above and underneath the clothing; --

3 A. Correct.

4 Q. -- is that correct? Okay. You mentioned
5 that there was no digital or vaginal penetration;
6 is that correct?

7 A. Correct.

8 Q. And you mentioned that at least on one
9 occasion he made you kiss his penis; is that
10 correct?

11 A. Correct.

12 Q. Okay. Is -- is that the -- was that the
13 normal abuse that you suffered at the hands of
14 Max?

15 A. Yes.

16 Q. Okay. Did this occur -- you said you got
17 back from Montana, that would have been 2002,
18 somewhere around that time frame?

19 A. (Nods head affirmatively.)

20 MR. MOLLOY: Yes?

21 A. Yes.

22 Q. Did these events occur monthly, weekly,
23 in 2002, if you remember?

24 A. I believe it was weekly.

25 Q. Okay. Did there ever come a point when

Alexis Nunez

1 Q. No. And when Max fondled you, was it
2 above the clothing or under the clothing?

3 A. Both.

4 Q. Did Max ever engage in oral sex?

5 A. I don't think so.

6 Q. Did Max ever force you to perform oral
7 sex on him?

8 A. I don't remember oral sex. I think he
9 made me kiss his member once, but I don't remember
10 oral.

11 Q. Okay. And you think that happened at
12 least on one occasion?

13 A. (Nods head affirmatively.)

14 Q. Okay.

15 MR. MOLLOY: You have to say "Yes."

16 A. Yes.

17 MR. TAYLOR: Thank you.

18 Q. (BY MR. TAYLOR) Is that the extent of
19 the abuse that Max perpetrated on you?

20 A. I -- can you rephrase the question,
21 please?

22 Q. Okay. I hate to rehash it, --

23 A. No, you're fine.

24 Q. -- but bear with me, and I'll try to
25 rehash it as you've told me. You've indicated

Alexis Nunez

1 Did there come a point in time when Max
2 fondled you inappropriately?

3 A. Yes.

4 Q. Okay. And did it begin gradually and
5 escalate?

6 A. Yes.

7 Q. Okay.

8 A. Yes.

9 Q. Did it begin with fondling above the
10 waist? Below the waist?

11 A. Both. I can't remember one over the
12 other.

13 Q. And did it progress and become more and
14 more invasive, or did it just start with fondling?

15 MR. LEONOUDAKIS: Objection.

16 A. I guess I don't understand that question.

17 Q. All right. So your recollection is that
18 there was both fondling above and below the waist.
19 Was there digital penetration?

20 A. Not -- no, not penetration.

21 Q. So fondling?

22 A. Yes.

23 Q. Okay. Did he ever penetrate you with his
24 penis?

25 A. No.