

1 STATE OF ILLINOIS }  
2 COUNTY OF McHENRY }

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

5 THE PEOPLE OF THE  
6 STATE OF ILLINOIS,

7 Plaintiff,

8 vs.

9 MICHAEL M. PENKAVA,

10 Defendant.

No. 20 CM 1338

11 ELECTRONICALLY RECORDED REPORT OF  
12 PROCEEDINGS had in the above-entitled cause before  
the Honorable MARK R. GERHARDT, Judge of said Court  
of McHenry County, Illinois, on the 24th day of  
February, 2022, at the McHenry County Government  
Center, Woodstock, Illinois.

13 APPEARANCES:

14 MR. PATRICK D. KENNEALLY  
15 STATE'S ATTORNEY, McHENRY COUNTY  
16 BY: MR. PATRICK D. KENNEALLY  
State's Attorney  
BY: MR. ASHUR YOUASH  
Assistant State's Attorney

17 On behalf of the Plaintiff;

18 LAW OFFICE OF PHILIP A. PROSSNITZ  
19 BY: MR. PHILIP A. PROSSNITZ

20 On behalf of the Defendant  
21 Michael M. Penkava, via Zoom;

22 EKL, WILLIAMS & PROVENZALE, LLC  
23 BY: MR. TERRY A. EKL

24 On behalf of the Defendant  
[REDACTED], via Zoom  
Case No. 20 CM 1337.

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I N D E X

WITNESS

EXAMINATION

BRADLEY KELM

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1 THE COURT: Mr. Penkava, can you hear me?

2 MR. PENKAVA: Yes, your Honor.

3 THE COURT: [REDACTED], can you hear me?

4 MR. SCOTT: Yes, your Honor.

5 THE COURT: Okay. I'd ask you both to just mute  
6 your microphones, unless we need you to address  
7 myself or someone else in the courtroom. Okay?

8 May I have names for the record, please.

9 MR. YOUASH: Ashur Youash on behalf of the  
10 State.

11 MR. KENNEALLY: Patrick Kenneally on behalf of  
12 the State.

13 MR. PROSSNITZ: Good afternoon, your Honor.  
14 Philip Prossnitz on behalf of Michael Penkava.

15 MR. EKL: Good afternoon, your Honor. Terry  
16 Ekl; last name is E-K-L, on behalf of [REDACTED].

17 THE COURT: All right. The matter comes before  
18 the Court today for a hearing on a motion in limine  
19 that was filed by the State, I believe, on  
20 December 28th. One motion in limine in both  
21 matters, although the motions are otherwise  
22 identical. I think I picked the wrong date on that  
23 motion.

24 MR. YOUASH: Your Honor, if I may, I believe it

1 was January 6th.

2 THE COURT: Thank you. I picked the one before  
3 that.

4 It was January 6th, and it is entitled  
5 State's Motion -- I should say they're entitled  
6 State's Motion to Admit Statements of [REDACTED]  
7 [REDACTED] and the Confession of [REDACTED]  
8 [REDACTED]

9 On behalf of [REDACTED], Mr. Ekl filed a  
10 response to that request of the State. It's  
11 entitled [REDACTED] Response to the State's  
12 Motion to Admit Statements of [REDACTED] and  
13 Confession of [REDACTED]. That was  
14 filed on January 28th, 2022.

15 Mr. Prossnitz, I did not see a similar  
16 response in your file.

17 MR. PROSSNITZ: I did file a motion to adopt  
18 that, your Honor.

19 THE COURT: What day?

20 MR. PROSSNITZ: I don't have the date in front  
21 of me, but I filed a motion to adopt both his motion  
22 to strike, which was denied, and then his response  
23 to this motion.

24 THE COURT: I remember the motion, and I found

1       that earlier, I think, regarding the motion to  
2       adopt. Give me a moment.

3               And it does include the response, as well.  
4       I believe that was granted previously.

5               So knowing that, is there anything else  
6       before we proceed?

7       MR. YOUASH: Nothing from the State, Judge.

8       MR. PROSSNITZ: No, your Honor.

9       MR. EKL: No, your Honor.

10       THE COURT: All right. Any opening statement  
11       from the State?

12       MR. YOUASH: The State would waive, Judge.

13       THE COURT: From the defense?

14       MR. PROSSNITZ: No, your Honor.

15       MR. EKL: No, your Honor.

16       THE COURT: All right. State.

17       MR. KENNEALLY: Judge, the first piece of  
18       evidence that the Court would ask -- that the State  
19       would ask the Court to take judicial notice of is  
20       the prior testimony of John Miller. That would have  
21       been on December 16th of 2021 in this case, and it's  
22       available on the electronic docket, the transcripts.

23               We'd ask, first, that your Honor take  
24       judicial notice of that for purposes of this

1 hearing.

2 THE COURT: Any objection?

3 MR. PROSSNITZ: Not from Mr. Penkava.

4 MR. EKL: No objection.

5 THE COURT: Okay. Judicial notice is taken of  
6 John Miller's testimony from -- What was the date  
7 again?

8 MR. KENNEALLY: It was December 16th, your  
9 Honor, 2021.

10 THE COURT: Thank you. December 16th, 2021. I  
11 believe, if my memory is correct, that was the  
12 testimony regarding the motion to quash the  
13 subpoena; is that correct?

14 MR. KENNEALLY: Yes, Judge.

15 THE COURT: And Mr. Miller was the gentleman  
16 from New York?

17 MR. KENNEALLY: Yes, Judge.

18 THE COURT: Okay. Go ahead.

19 MR. KENNEALLY: Judge, on that same date, we'd  
20 also ask you to take judicial notice of the  
21 testimony of [REDACTED] who testified after  
22 Mr. Miller.

23 THE COURT: Any objection, Mr. Prossnitz?

24 MR. PROSSNITZ: We take no position on

1       that. And, again, as the Court is aware, we are  
2       just strictly announcing that we in no way want to  
3       waive any confidence or privilege in any of the  
4       discussions received and (indiscernible) privilege.

5               I don't know that I can prevent the Court  
6       from taking judicial notice of anything, though.

7       THE COURT: Well, do you have an objection?

8       MR. PROSSNITZ: As long as it is in no way  
9       construed as a waiver of --

10       THE COURT: Mr. Prossnitz --

11       MR. PROSSNITZ: I understand. There's --

12       THE COURT: -- no one is saying you're waiving  
13       anything, but at the same time, I don't accept  
14       conditional objections or conditional  
15       non-objections.

16               It's either an objection or not an  
17       objection.

18       MR. PROSSNITZ: Can I take no position?

19       THE COURT: To me, that is the functional  
20       equivalent of no objection.

21               Mr. Ekl.

22       MR. EKL: I have no objection, your Honor.

23       THE COURT: All right. I will take judicial  
24       notice, as there has been no objection by either

1 defense attorney

2 MR. KENNEALLY: Thank you, Judge.

3 Lastly, we'd ask the Court to take  
4 judicial notice of the testimony of the Defendant,  
5 Michael Penkava, in [REDACTED] that was attached to  
6 the State's Motion to Admit as [REDACTED]

7 THE COURT: And are you asking me to take  
8 judicial notice of that?

9 MR. KENNEALLY: Yes, your Honor.

10 THE COURT: One moment.

11 Is there any objection from Mr. Prossnitz?

12 MR. PROSSNITZ: No.

13 THE COURT: No objection.

14 Mr. Ekl.

15 MR. EKL: No, your Honor.

16 THE COURT: All right. I'll take judicial  
17 notice; no objection to the transcript from  
18 Case [REDACTED] from October 22nd, 2019, of  
19 Mr. Penkava.

20 And just for the sake of the record, that  
21 transcript is 57 pages in length.

22 State.

23 MR. YOUASH: Your Honor, the State would call  
24 Mr. Bradley Kelm to the stand.



1 THE COURT: Okay. Go ahead.

2 (Witness approaches.)

3 THE COURT: Sir, if you would, please come on up  
4 by the podium. Please raise your right hand.

5 (Witness sworn.)

6 THE COURT: You may lower your hand. If you'll  
7 head towards the flag and then turn right and have a  
8 seat in the witness stand.

9 Your name, again, sir?

10 MR. KELM: Bradley Kelm.

11 THE COURT: All right. Mr. Kelm, I'm about to  
12 put my mask on. I'm talking right now, which is why  
13 I don't have it on, and there's no one within about  
14 six feet of me. I'd ask, if you are comfortable,  
15 that while testifying you remove your face covering.  
16 I'm not requiring it, but it is so that we can hear  
17 you better and so that the recording picks up  
18 better, and when you see someone's face, it's easier  
19 to understand what they're saying.

20 MR. KELM: No problem.

21 THE COURT: If someone comes within six feet of  
22 you to hand you something or for some other reason,  
23 please feel comfortable to put that back on and  
24 remove it when they step away, and then, also, when

1 you're done testifying, to replace your face  
2 covering. Do you understand?

3 MR. KELM: Yes.

4 THE COURT: Do you have any questions?

5 MR. KELM: No.

6 THE COURT: Likewise, the attorneys, when they  
7 are making arguments, objections, questioning  
8 witnesses, et cetera, please feel free to take your  
9 face coverings off, but do your best to maintain  
10 social distancing at that time. Thank you.

11 MR. YOUASH: Thank you, your Honor.

12 WHEREUPON:

13 BRADLEY KELM,  
14 called as a witness herein, having been first duly  
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. YOUASH:

18 Q. Good afternoon, sir. Can you please state  
19 your name and spell your last name for the record.

20 A. Yes. It's Bradley, B-R-A-D-L-E-Y; Kelm,  
21 K-E-L-M, as in Mike.

22 Q. And where do you live, Mr. Kelm?

23 A. I live in Savoy, Illinois.

24 Q. And how long have you lived there?

1           A.    We've lived in that house for six years.

2           Q.    Who do you live with?

3           A.    I live with my wife, Kimberly.

4           Q.    Mr. Kelm, what church do you attend?

5           A.    Right now, I'm a member of the Meadowbrook  
6 Congregation of Jehovah's Witnesses in Urbana,  
7 Illinois.

8           Q.    How long have you been attending that  
9 church?

10          A.    I've been there since February 1st. They  
11 did a little reorganization, and I was assigned to  
12 the Meadowbrook Congregation February 1st, 2021.

13          Q.    Of last year. And how long have you been a  
14 Jehovah's Witness?

15          A.    I was raised one my entire life.  
16 Officially baptized when I was 15 in 1988.

17          Q.    How many different congregations of  
18 Jehovah's Witnesses church have you belonged to?

19          A.    I grew up in the Decatur, Illinois  
20 congregation, and then we moved over to the -- we  
21 were asked to move to the Monticello, Illinois  
22 congregation to help out. And then I also was asked  
23 to move to the Meadowbrook congregation in Urbana,  
24 and then to the Woodland Park congregation in Urbana

1 to help out. And as I mentioned, with the  
2 reorganization, I was moved back to the Meadowbrook  
3 where I'm currently at.

4 Q. And are there different roles in these  
5 congregations that you've attended?

6 A. Yes, there's different roles. There's  
7 publishers, which are the members of the  
8 congregation. There's regular pioneers that do more  
9 the ministry, and elders and ministerial servants.  
10 So, yes, there's different roles in the  
11 congregation.

12 Q. Okay. If we can unpack that a little bit.  
13 What is a publisher?

14 A. A publisher is -- There's two types of  
15 publishers; a baptized and unbaptized publisher.  
16 Basically, a publisher is someone that's identified  
17 as one of Jehovah's Witnesses. They are ones that  
18 do a monthly ministry, go out, and they're what the  
19 actual members of the congregation are called, are  
20 publishers.

21 Q. And were you a publisher at any point?

22 A. Yes. Yes, the entire time. I started when  
23 I was probably seven years old.

24 Q. And what year would that have been?

1           A.    That would have been in 1980.

2           Q.    Okay.  And then you mentioned a ministerial  
3 servant.  What is a ministerial servant?

4           A.    So in First Timothy, there's requirements  
5 set out of what a ministerial servant is, what an  
6 elder is.

7                    So a ministerial servant is someone that's  
8 appointed in the congregation, according to the  
9 scriptures, that fulfills that role of a ministerial  
10 servant.

11          Q.    And can both men and women be ministerial  
12 servants?

13          A.    No.  Only men are allowed to be ministerial  
14 servants.

15          Q.    How long were you a ministerial servant?

16          A.    I was appointed ministerial servant in  
17 1992, and I was a ministerial servant until I was  
18 appointed an elder.

19          Q.    And when did you become an elder?

20          A.    1999.

21          Q.    So for those seven years, you served as a  
22 ministerial servant?

23          A.    Correct.

24          Q.    And who appoints you -- or who appointed

1       you to become a ministerial servant?

2           **A.**    So the way the process works is the body of  
3       elders, they recommend a man -- or what we call a  
4       brother -- to be appointed a ministerial servant to  
5       the circuit overseer, and if they all agree, then it  
6       was sent to New York, and they are the ones that put  
7       the final stamp on it, and a letter was sent back  
8       saying that this person had been appointed.

9           **Q.**    And then you mentioned a position of an  
10      elder.   What is an elder?

11          **A.**    So an elder is the next step above a  
12      ministerial servant.   You have to be a ministerial  
13      servant first to become an elder.   And the  
14      requirements, again, are in the scriptures, several  
15      passages, and it's the same process.   It's appointed  
16      by a body of elders, recommended to the circuit  
17      overseer, and then you become an elder when the  
18      branch office approves it.

19          **Q.**    And did you ever become an elder?

20          **A.**    Yes.

21          **Q.**    And just to be clear, you mentioned you  
22      became an elder in 1997?

23          **A.**    1999.

24          **Q.**    I'm sorry.   1999.

1                   And how long were you an elder?

2           A.    I was an elder up until November of 2021.  
3    I resigned from being an elder.

4           Q.    And what training programs, if any, did you  
5    attend once you became an elder?

6           MR. EKL: Judge, at this point I'm going to  
7    object. This witness has no testimony relevant to  
8    the motion pending before the Court, which is a  
9    motion to admit testimony of [REDACTED] and  
10   the alleged confessions of [REDACTED].

11                So this testimony at this point on those  
12   motions is just simply not relevant.

13           THE COURT: Is there a particular question  
14   you're objecting to, Mr. Ekl?

15           MR. EKL: I'm objecting to the last question,  
16   and I'm going to have a continuing objection to this  
17   entire line of questioning of this witness.

18           THE COURT: Tell me the last question again,  
19   Mr. Youash.

20           MR. YOUASH: What training programs, if any, did  
21   you attend once you became an elder.

22           MR. EKL: I object. That's not relevant.

23           THE COURT: How is that relevant, Mr. Youash?

24           MR. YOUASH: Well, Judge, we're talking about

1 statements made by [REDACTED] to an elder.

2 What I'm asking Mr. Kelm to elaborate on is  
3 what trainings elders go to, what statements  
4 typically may be made to them, and what they  
5 typically do in response to those.

6 THE COURT: Training's irrelevant. Sustained.

7 Next question.

8 MR. YOUASH: You're saying the training programs  
9 were irrelevant, Judge? I just want to make sure --

10 THE COURT: The training he did is not relevant  
11 to your motion.

12 MR. YOUASH: Okay. Your Honor, I guess I have  
13 another response to that objection.

14 THE COURT: I've ruled. Ask your next question,  
15 please.

16 MR. YOUASH: Well, our intention is to lay  
17 foundation for this Defendant --

18 THE COURT: Mr. Youash, what did I just say to  
19 you? It's your opportunity to ask this gentleman  
20 questions. Ask your next question.

21 BY MR. YOUASH:

22 Q. Mr. Kelm, how many training sessions did  
23 you attend while being an elder?

24 MR. EKL: Objection, relevance.



1 THE COURT: Sustained.

2 BY MR. YOUASH:

3 Q. Have you attended any elder school  
4 sessions?

5 MR. EKL: Objection, relevance.

6 THE COURT: Sustained.

7 BY MR. YOUASH:

8 Q. Have you yourself conducted or led any  
9 trainings?

10 MR. EKL: Objection, relevance.

11 THE COURT: Sustained.

12 MR. YOUASH: Your Honor, at this time, the State  
13 tenders Bradley Kelm as an expert in confessions of  
14 the Jehovah's Witness process.

15 THE COURT: Any response? Mr. Prossnitz.

16 MR. PROSSNITZ: We object, your Honor. There is  
17 no indication he's an expert in that process, and  
18 it's not relevant to this motion before the Court.

19 THE COURT: Mr. Youash?

20 MR. YOUASH: Again, Judge, this is how the Court  
21 will be enlightened as to what the process is, the  
22 statements made by [REDACTED] and the Defendants'  
23 responses once hearing those statements.

24 If allowed to testify, this individual has

1 extensive background in the exact training that the  
2 Defendants went through as well. He would be able  
3 to share with this Court knowledge, having been --  
4 having served in the same position, having --

5 THE COURT: Mr. Youash, come up. All four of  
6 you.

7 This works a heck of a lot better if you'd  
8 give the Court a heads-up that you're going to try  
9 and qualify someone as an expert, first of all.

10 Number two, did you guys know they were  
11 going to try and qualify an expert? I understand  
12 it's a misdemeanor case and there's no, necessarily,  
13 need for disclosure, we're not under the felony  
14 discovery rules, but --

15 MR. YOUASH: Wait. Wait. Hold on.

16 What was your answer to his question as to  
17 whether or not I disclosed this as an -- that we  
18 were going to be calling (indiscernible).

19 MR. EKL: I don't recall that. I'm not saying  
20 you did or you didn't. I don't recall that, and you  
21 haven't qualified him as an expert in any stretch of  
22 the imagination.

23 MR. YOUASH: That's correct, Judge, and if  
24 allowed to answer some of these questions --

1 THE COURT: Well, yeah, that's kind of my point.

2 MR. EKL: What is the relevance? Your Honor has  
3 already ruled.

4 THE COURT: Well, no, don't start backtracking  
5 on me, because your whole case and this issue is  
6 built on Mr. Miller's testimony as to what qualifies  
7 as a confession of the Jehovah's Witness; therefore,  
8 this is relevant.

9 I'm going to overrule all the objections I  
10 just made, and you can ask your questions. Sit  
11 down.

12 MR. YOUASH: Thank you, your Honor.

13 Your Honor, may I reask some questions?

14 THE COURT: You may.

15 MR. YOUASH: Thank you, your Honor.

16 BY MR. YOUASH:

17 Q. Mr. Kelm, what training programs, if any,  
18 did you attend once you became an elder?

19 A. I attended quite a few training programs.  
20 There are programs that are set up all the time for  
21 training of elders. Every six months when the  
22 circuit overseer comes, we have training sessions  
23 with him on Friday night. And then every two years  
24 we have what they call Kingdom schools that we go

1 to, and then there's also week-long elder schools  
2 that I've been to.

3 Q. And how many total training sessions have  
4 you attended personally?

5 A. I would say with the Kingdom Ministry  
6 Schools -- I've been an elder for over 20 years, so  
7 probably 25, 30 of those. Every six months was with  
8 the circuit overseer. And I've been to two  
9 week-long elder schools, which branch  
10 representatives come down and teach those with a big  
11 group of body of elders.

12 Q. And you said you attended two of those  
13 elder school sessions?

14 A. Correct.

15 Q. Okay. Have you attended any Kingdom  
16 Ministry Schools?

17 A. Yes. Those are the ones that are every  
18 two years that I attended.

19 Q. Okay. And have you yourself conducted or  
20 led any trainings during these schools that you  
21 attended?

22 A. Yes. I've received outlines from the  
23 branch and actually taught at those Kingdom Ministry  
24 Schools on two occasions.

1 MR. YOUASH: Your Honor, the State now tenders  
2 Bradley Kelm as an expert in the Jehovah's Witness  
3 confession process.

4 THE COURT: Mr. Prossnitz first.

5 MR. PROSSNITZ: May I be allowed to examine?

6 THE COURT: First off, just tell me if you have  
7 an objection.

8 MR. PROSSNITZ: Yes, I would object at this  
9 point. An inadequate foundation's been laid.

10 THE COURT: Mr. Ekl.

11 MR. EKL: We object on foundation. Also  
12 relevance.

13 THE COURT: Sustained as to foundation.

14 I haven't heard the word confession cross  
15 his lips, Mr. Youash.

16 MR. YOUASH: Sure. Judge, may I ask some more  
17 questions before --

18 THE COURT: Yes.

19 BY MR. YOUASH:

20 Q. So, Mr. Kelm, as part of your training, did  
21 you learn anything to do with confessions in the  
22 Jehovah's Witness process?

23 A. Yes. That was always part of the process  
24 when we'd go to these Kingdom Ministry Schools. At

1 the elder schools, we had elder manuals. We've had  
2 three different ones since I've served as elder, and  
3 we would always discuss those. And there would be  
4 parts in there of a -- of the judicial process of a  
5 confession.

6 (Noise interruption.)

7 THE COURT: Hold on. [REDACTED], can you mute  
8 your microphone, please, sir?

9 [REDACTED]: Okay. Sorry.

10 THE COURT: That's okay.

11 All right. Thank you. Go ahead,  
12 Mr. Youash.

13 BY MR. YOUASH:

14 Q. And did you yourself, as an elder, ever  
15 hear confessions from any of the congregates?

16 A. Yes, I did.

17 Q. And did you receive any instructions  
18 specifically to how to handle confessions from  
19 either the Kingdom Ministry School, elder schools,  
20 or any of your elder training?

21 A. Yes.

22 MR. YOUASH: Your Honor, at this time, the State  
23 tenders Bradley Kelm as an expert in the Jehovah's  
24 Witness confession process.

1 THE COURT: Mr. Prossnitz?

2 MR. PROSSNITZ: Same objection, an inadequate  
3 foundation.

4 THE COURT: Mr. Ek1.

5 MR. EKL: Same objections, foundation and  
6 relevance.

7 THE COURT: Overruled.

8 MR. YOUASH: Thank you, your Honor.

9 THE COURT: Yes, Mr. Prossnitz.

10 MR. PROSSNITZ: May I be allowed to  
11 cross-examine on the foundation only?

12 THE COURT: Any objection, Mr. Youash?

13 MR. YOUASH: Judge, you've already ruled.

14 THE COURT: No, I just overruled their  
15 objection.

16 MR. YOUASH: Oh. I have no objection to that.

17 THE COURT: All right. Go ahead, Mr. Prossnitz.

18 CROSS-EXAMINATION

19 BY MR. PROSSNITZ:

20 Q. Mr. Kelm, good afternoon.

21 A. Good afternoon.

22 Q. Just a few questions, if I might.

23 So I understand you received -- you've gone  
24 to some schools on confession; is that correct?

1           A.    That is correct.

2           Q.    All right.  And have you, as an elder in  
3 the Jehovah's Witness faith, ever received a  
4 confession?

5           A.    Yes.

6           Q.    And, Mr. Kelm, approximately how many  
7 confessions have you received?

8           A.    It would be the number of judicial  
9 committees that I've served on, so I would say  
10 anywhere from 15 to 20.

11          Q.    So my next question was if you had served  
12 on a judicial committee.  So both the confessional  
13 and judicial committee, about 15 to 20 times; is  
14 that correct?

15          A.    Correct.

16          Q.    Okay.  Have you ever participated in the  
17 creation of any policy or practice of Jehovah's  
18 Witnesses?

19          MR. YOUASH:  Objection, Judge.  This is beyond  
20 scope of him laying foundation as to whether or not  
21 he's an expert.

22          THE COURT:  Overruled.

23                 You may answer the question.

24          THE WITNESS:  No.



1 BY MR. PROSSNITZ:

2 Q. Have you ever participated in the creation  
3 of any policy or practice regarding the confessional  
4 process of the Jehovah's Witnesses?

5 A. No.

6 Q. Have you ever written on the subject?

7 A. No.

8 Q. Lectured on the subject?

9 A. Yes.

10 Q. Have you ever testified in a court of law  
11 as to the confessional process of the Jehovah's  
12 Witnesses before?

13 A. No.

14 Q. You would agree that you follow a Jehovah's  
15 Witness policy, correct?

16 A. Yes.

17 Q. And would you agree that you take guidance  
18 from the office in New York as to the Jehovah's  
19 Witness confessional process?

20 A. Yes, when I was serving as an elder. I'm  
21 not serving as an elder now, so when I was serving  
22 as an elder, yes.

23 Q. And would you, from time to time, consult  
24 with New York?

1           A.    Yes.

2           Q.    And was that also part of the judicial  
3 committee process, that you would call New York?

4           A.    Yes.  It depended on the circumstances, but  
5 yes.

6           Q.    But typically, you'd call New York and get  
7 guidance from them?

8           A.    Only in certain cases, cases such as child  
9 sex abuse or where we had questions that the body of  
10 elders couldn't answer.  That would be the only time  
11 that we would contact the branch.

12          Q.    But if there was a child abuse, you, in  
13 Illinois, would contact New York for guidance as to  
14 what the Jehovah's Witness confessional process was?

15          MR. YOUASH:  Objection, Judge.

16          THE COURT:  Basis?

17          MR. YOUASH:  Again, relevance here.

18          THE COURT:  Sustained.

19          BY MR. PROSSNITZ:

20          Q.    Would it be a fair statement that the  
21 elders in the office in New York from whom you  
22 received guidance on what to do in a child abuse  
23 confessional process are more knowledgeable than  
24 yourself as to --

1 MR. YOUASH: Objection, Judge, relevance.

2 BY MR. PROSSNITZ:

3 Q. -- as to the Jehovah's Witness confessional  
4 process?

5 THE COURT: Let him finish the question.

6 The objection is so noted. The objection  
7 is sustained.

8 BY MR. PROSSNITZ:

9 Q. And, Mr. Kelm, to be clear, your personal  
10 experience, again, as an elder with confessions  
11 would have been in the Monticello or Urbana  
12 congregation; is that correct?

13 A. Yes. Well, it was different congregations,  
14 the Monticello, Illinois, and then the Urbana  
15 congregations.

16 Q. Have you ever served on a judicial  
17 committee, part of the confessional process, with a  
18 child abuse case?

19 A. Yes.

20 Q. How many?

21 A. One.

22 Q. And have you ever served on a judicial  
23 committee participating in the Jehovah's Witness  
24 confessional process on a case of adultery?

1           A.    Yes.

2           MR. YOUASH:  Objection, Judge, relevance.

3           THE COURT:  Overruled.  The answer stands.

4           BY MR. PROSSNITZ:

5           Q.    And approximately how many times?

6           A.    I would say of the 15 to 20, that was  
7   10 to 12.  I don't remember exact numbers because  
8   it's been so many years, but my estimate would be  
9   10 to 12 times.

10          Q.    Okay.  But the sex abuse case, that one  
11   case, the child sex abuse case, do you recall the  
12   year that that occurred?

13          MR. YOUASH:  Objection, Judge, relevance.

14          THE COURT:  Overruled.

15                 You may answer.

16          THE WITNESS:  I don't remember the exact year,  
17   but I would assume it would be mid-2000s.

18          BY MR. PROSSNITZ:

19          Q.    And when we're saying mid-2000s, just so  
20   we're clear, 2010, is that --

21          A.    2008, 2009, somewhere around there.

22          Q.    And did you, at that time, have to consult  
23   for guidance with New York on the Jehovah's Witness  
24   confessional process associated with that child

1 abuse case?

2 MR. YOUASH: Objection, Judge, relevance.

3 THE COURT: You know, I sustained a similar  
4 objection, but this one, I think, is fair game  
5 because we're talking about the confessional  
6 process.

7 So the objection is overruled.

8 You may answer the question.

9 THE WITNESS: Not on the confessional process.  
10 You see, when we call New York, we're calling for  
11 two things. Well, first of all, we call for -- we  
12 call the legal department first when it's a child  
13 sex abuse case.

14 BY MR. PROSSNITZ:

15 Q. Why?

16 A. To get legal guidance.

17 Q. On what issues?

18 MR. YOUASH: Objection, Judge, relevance.

19 THE COURT: Sustained.

20 BY MR. PROSSNITZ:

21 Q. So if I can ask the question again, just to  
22 get us back on track.

23 The one child sex abuse case that you had,  
24 you've indicated and you just told us that you

1       contacted legal. Did you contact New York in  
2       addition to contacting legal in New York on that one  
3       child sex abuse case?

4           A.    No. We just talked to the legal  
5       department.

6           Q.    Just the legal department?

7           A.    At that time, yes.

8           Q.    And did you refer to any written materials  
9       associated with the Jehovah's Witness confessional  
10      process for that one child sex abuse case that you  
11      were involved in in approximately 2008 to 2010?

12           MR. YOUASH: Objection, Judge, relevance.

13           THE COURT: Sustained.

14                   Mr. Prossnitz, we're talking about the  
15      confessional process, not one case.

16      BY MR. PROSSNITZ:

17           Q.    Regarding the confessional process that  
18      you're being called as an expert to testify here  
19      today, do you have any written materials associated  
20      with that?

21           A.    Yes.

22           Q.    Have you supplied those to the prosecutors?

23           A.    I have not.

24           Q.    Have you met with the prosecution?

1           A.    Yes.

2           Q.    And was there any recording of your  
3 statement or your interview with the State, to your  
4 knowledge?

5           MR. YOUASH:  Objection, Judge, relevance.

6           MR. PROSSNITZ:  It's discovery.  It would be a  
7 violation if they don't disclose it.  We filed a  
8 written motion for Klatis (phonetic) and Schmidt  
9 discovery, and they've got to provide a written  
10 statement if there is one.

11          THE COURT:  If they intend on calling at trial,  
12 I'd agree with you.  This is not a trial.

13          MR. PROSSNITZ:  If I stand corrected, I stand  
14 corrected.

15                 I would have assumed, but maybe  
16 incorrectly, it covers discovery period.  But if the  
17 limitation is trial, I stand corrected, your Honor.

18                 Off the top of my, I don't know, and I  
19 don't want to guess.  But I --

20          THE COURT:  Give me a moment.

21          MR. PROSSNITZ:  Okay.  Thank you, Judge.

22          THE COURT:  Quoting from the 1974 case from the  
23 Illinois Supreme Court, People versus Schmidt, which  
24 I think we're all familiar with, the second to final

1 paragraph states, The State is required to furnish  
2 defendants in misdemeanor cases with a list of  
3 witnesses, any confession of the defendant,  
4 evidence negating the defendant's guilt, and in this  
5 particular case, results of breathalyzer test.

6 Additionally, the report which the  
7 defendant seeks will be available at trial for use  
8 in impeachment of the prosecution witness who  
9 prepared it.

10 That's it.

11 MR. PROSSNITZ: I stand corrected.

12 THE COURT: And as long as you're talking about  
13 it, Klatis was for videotapes but pertained  
14 specifically to DUI cases, although could be  
15 extended elsewhere.

16 So the objection is sustained.

17 Next question.

18 BY MR. PROSSNITZ:

19 Q. And then finally, Mr. Kelm, you indicated  
20 that you were an elder from approximately 1999 to  
21 November of 2021?

22 A. Yes.

23 Q. Is there any reason why you no longer serve  
24 as an elder with --



1 MR. YOUASH: Objection, Judge, relevance.

2 MR. PROSSNITZ: -- Jehovah's Witness faith?

3 THE COURT: Mr. Prossnitz, any response to  
4 Mr. Youash's objection?

5 MR. PROSSNITZ: Was it relevance?

6 THE COURT: It was.

7 MR. PROSSNITZ: He's being called as an expert.  
8 If he is no longer in the particular field, I think  
9 it might be an area of why someone has left their  
10 field of expertise.

11 THE COURT: The objection is sustained.

12 MR. PROSSNITZ: Thank you. I have no further  
13 questions.

14 THE COURT: Mr. Ekl, anything?

15 MR. EKL: No questions, Judge.

16 THE COURT: Mr. Youash.

17 MR. YOUASH: Thank you, Judge.

18 MR. PROSSNITZ: Judge, we would just ask the  
19 Court to reconsider its ruling on the foundation.

20 At issue here is the Jehovah's Witness  
21 confessional process in a child sex abuse case. We  
22 have a reported expert who has but one case  
23 experience.

24 We do not believe that that's adequate to

1       serve as foundation to qualify this gentleman as an  
2       expert. Thank you.

3           THE COURT: Mr. Youash.

4           MR. YOUASH: Your Honor, I would disagree  
5       wholeheartedly with what Mr. Prossnitz just shared.

6           We have an individual here who has 22 years  
7       of being -- of experience as an elder.

8           He's testified that he has attended  
9       training programs, elder school, Kingdom Ministry  
10      Schools. He's trained at these schools. He's  
11      trained and knowledgeable on the confession process.  
12      He has reviewed literature about the confession  
13      process. He served on judicial committees. He's  
14      attended elder trainings. He can assist the Court  
15      with what the Jehovah's Witness confession process  
16      entails.

17           And more specifically, Judge, to what  
18      statements, when they are being made by an innocent  
19      spouse, which is really the point of our hearing  
20      here, and how she may have -- those statements may  
21      or may not be involved in the spiritual  
22      development --

23           THE COURT: Mr. Youash.

24           MR. YOUASH: -- of a penitent. That's all.

1 THE COURT: Mr. Youash, I was going to say  
2 you're going a little bit far afield, but since you  
3 said that's all, I'll stop.

4 Are you requesting that I qualify him as an  
5 expert is the point I'm trying to get at.

6 MR. YOUASH: Yes, your Honor.

7 THE COURT: Mr. Prossnitz.

8 MR. PROSSNITZ: Well, my response to that is we  
9 have not heard any testimony at all from this  
10 purported expert that he has any familiarity with  
11 the last (indiscernible) prosecutor's presentation.

12 It's a question of the innocent spouse and  
13 their participation in the confessional process.  
14 We've heard nothing from this witness to indicate he  
15 has any (indiscernible). I don't think this  
16 gentleman, although otherwise vastly qualified, on  
17 that particular area of the role of the innocent  
18 spouse in the confessional process of a child abuse  
19 case, this witness does not have the experience to  
20 opine and provide us with testimony to guide this  
21 Court. Thank you.

22 THE COURT: Mr. Ekl.

23 MR. EKL: I have nothing further to add, Judge.

24 THE COURT: Give me a moment, please.

1           The objection is overruled. The witness is  
2 so qualified.

3           MR. YOUASH: Thank you, your Honor.

4                   FURTHER DIRECT EXAMINATION

5 BY MR. YOUASH:

6           Q. Mr. Kelm, did you review anything before  
7 coming here today?

8           A. Yes. I reviewed testimony that you sent me  
9 of a John Miller.

10          Q. And was that a transcript?

11          A. Yes.

12          Q. And did you form any opinions as to what  
13 you read in that transcript of what Mr. Miller  
14 testified to?

15          A. Yes.

16          Q. And do you hold your opinions to a  
17 reasonable degree of certainty?

18          A. Yes.

19          Q. All right. And at any point, Mr. Kelm,  
20 if I ask you about those opinions and you do not  
21 believe that your opinion is held to a reasonable  
22 degree of certainty, will you please let the Court  
23 know?

24          A. I most certainly will.

1           **Q.**    Thank you.

2                   Did you form any opinions regarding the  
3 confession process as testified to by Mr. Miller?

4           **A.**    The one area that -- An opinion I formed  
5 that seemed a little misleading is when he discussed  
6 about the innocent spouse and that she was part of  
7 the actual confessional process.

8           **Q.**    And what do you mean? If you could,  
9 elaborate on misleading.

10          **A.**    It seemed, when I read that, it was -- he  
11 was saying that she was part of the confidential  
12 confession process, and that what she said was part  
13 of that actual confession. From my training,  
14 everything that I've done, I don't feel that's the  
15 case.

16          **Q.**    And what in your training makes you opine  
17 that you don't believe that that's the case?

18          **A.**    We have explicit instructions that when it  
19 comes to a confession, we have to have the actual  
20 confession from the person that committed the sin,  
21 or it has to be two witnesses to the actual sin and  
22 had to see it. That's what would constitute a  
23 confession.

24                   In fact, we can't proceed with a judicial

1 case if we do not have a confession from the actual  
2 person that made the mistake, the sin, or two  
3 witnesses to the actual act of what happened.

4 Q. And you're familiar with the term innocent  
5 spouse?

6 A. Correct. Yes.

7 Q. And you're familiar that [REDACTED]  
8 was the innocent spouse in this case?

9 A. Yes.

10 Q. Okay. And what involvement is the innocent  
11 spouse typically involved in when it comes to the  
12 confession process?

13 MR. EKL: Objection, relevance.

14 THE COURT: Sustained.

15 BY MR. YOUASH:

16 Q. In your review of the testimony from  
17 Mr. Miller, how was [REDACTED] involved in the  
18 confession process?

19 A. The actual confession process, from what I  
20 read, I don't see how someone concludes she was part  
21 of the confession itself.

22 Q. And what makes you say that, sir?

23 A. Because, again, the confession has to come  
24 from the individual. She's just relaying facts or

1       whatever she was telling the judicial committee or  
2       the elders, and so that's not an actual confession.  
3       That's just a discussion that she is having with the  
4       elders.

5           **Q.**    Mr. Kelm, did you receive any books when  
6       you became an elder?

7           **A.**    Yes.

8           MR. YOUASH: Your Honor, may I approach?

9           THE COURT: You may.

10          MR. PROSSNITZ: May I see the exhibit?

11          MR. YOUASH: Oh, I'm sorry.

12          MR. PROSSNITZ: Is this the whole thing? This  
13       is the whole --

14          MR. YOUASH: Yes.

15          MR. PROSSNITZ: Okay.

16       BY MR. YOUASH:

17           **Q.**    Mr. Kelm, I'm handing you what has been  
18       previously marked as People's Exhibit 1 for  
19       identification.

20                   Do you recognize that?

21           **A.**    Yes. This was a -- it's a photocopy. Ours  
22       was a bound book, but this is the book that we  
23       were -- when we were appointed elders -- when I was  
24       appointed as an elder. I believe it came out in

1 1991.

2 Q. And how do you recognize that to be the  
3 book that you received when you became an elder?

4 A. The title of it, Pay Attention to  
5 Yourselves and All the Flock, and then the contents  
6 of it.

7 Q. And is it in the same or substantially the  
8 same -- Is it a fair and accurate copy of the book  
9 that you received when you became an elder?

10 A. It appears to be, yes.

11 MR. YOUASH: Your Honor, the State seeks to  
12 enter Exhibit 1 into evidence.

13 MR. PROSSNITZ: Objection, relevance.

14 THE COURT: Mr. Ek1.

15 MR. EKL: Same objection, your Honor.

16 THE COURT: Mr. Youash.

17 MR. YOUASH: Your Honor, if allowed to testify,  
18 once this is entered, he will talk about the  
19 confession process that's outlined in this book and  
20 the training that he received with respect to that.

21 THE COURT: Well, let's keep in mind, you've  
22 seen a copy of the book, the witness has seen a copy  
23 of the book, Mr. Prossnitz is looking at a copy of  
24 the book. I haven't seen the book. I shouldn't see



1 the book because it's not in evidence right now, and  
2 I don't know if what you described is in it.

3 So at this point in time, the objection is  
4 sustained.

5 BY MR. YOUASH:

6 Q. Mr. Kelm, what topics are covered in that  
7 book?

8 A. There's a number of topics on how to --  
9 what we call shepherding. That's where the elders,  
10 we help take care of the flock spiritually, the  
11 members, the publishers. But there's also the  
12 sections in here of how to deal with judicial  
13 matters.

14 Q. And what sort of items fall under judicial  
15 matters?

16 A. It has the list that's identified in the  
17 scriptures and the 1 Corinthians of the things that  
18 constitute as gross sin that would require a  
19 judicial matter, such as adultery, fornication,  
20 bestiality, child sex abuse, things like that.

21 Q. Are those topics covered in the book?

22 A. Yes, they are.

23 MR. YOUASH: Your Honor, at this time, the State  
24 seeks to enter Exhibit 1 into evidence.

1 THE COURT: Mr. Prossnitz.

2 MR. PROSSNITZ: Same objection. Unless we have  
3 a specific section of a process that's relevant to  
4 this case, talking about the process associated with  
5 other things is irrelevant.

6 THE COURT: Yeah, I'm kind of confused as to why  
7 bestiality would be important to this case --

8 MR. PROSSNITZ: Thank you, Judge.

9 THE COURT: -- Mr. Youash. Can you help me out  
10 there?

11 MR. YOUASH: I'm just entering the book, Judge.  
12 I don't believe it's relevant, either, however  
13 the part we --

14 THE COURT: Well, I'm not admitting nonrelevant  
15 information.

16 MR. YOUASH: Your Honor, the objection would  
17 then be completeness, if I was to separate certain  
18 parts of this book. So I believe that this is the  
19 proper way to enter this into evidence and only the  
20 relevant information is what the Court will  
21 consider.

22 THE COURT: Mr. Prossnitz.

23 MR. PROSSNITZ: Again, if we could be directed  
24 to those portions of this that are germane to the

1 issues before this Court.

2 THE COURT: I'll tell you what, I'll give you an  
3 opportunity to take a look through that book right  
4 now and find that out.

5 Court is in recess. How long will it take  
6 you, Mr. Prossnitz?

7 MR. PROSSNITZ: I don't think it should be my  
8 burden to figure out what is relevant in his case.

9 I think the prosecution should be directing  
10 the Court to those parts of this book that are  
11 relevant to its motion and not waste the Court's  
12 time.

13 THE COURT: I understand that. But I also  
14 understand his argument regarding the doctrine of  
15 completeness.

16 MR. PROSSNITZ: It's 156 pages. I'm to read it  
17 and determine what is relevant to --

18 THE COURT: No, you're not, Mr. Prossnitz.  
19 Don't misconstrue what I'm saying.

20 MR. PROSSNITZ: All right.

21 THE COURT: You're asking me to make a ruling on  
22 arguments when you haven't even looked at it, and  
23 Mr. Youash is asking me to make a ruling on it when  
24 I don't know what's in it, other than bestiality,

1 adultery, fornication, criminal sexual abuse, and  
2 that's only in one little portion of it, as far as I  
3 know.

4 MR. PROSSNITZ: Your Honor, I think it would  
5 expedite it if the prosecution could let us know  
6 what section pertains to the confessional process  
7 associated with a child abuse case as contained in  
8 here, then I think we can move this forward.

9 THE COURT: That might be a fine idea.  
10 Mr. Youash, what do you say?

11 MR. YOUASH: Again, Judge, I'm just going to  
12 stand on the argument that I would be objected to  
13 for completeness unless I enter the exhibit as a  
14 whole.

15 If Mr. Prossnitz would rather that I  
16 specify one or two pages and then he won't object to  
17 those one or two pages and I won't hear a  
18 completeness objection, sure, I'll take the time to  
19 do so.

20 THE COURT: Well, maybe I'm being a little bit  
21 coy, but that's kind of exactly what I was trying to  
22 suggest without actually suggesting it, Mr. Youash.

23 MR. EKL: Judge, for what it's worth, the  
24 doctrine of completeness has nothing to do with the

1 issue. It's where you take something out of context  
2 and more information is needed to understand what  
3 you're offering. So the doctrine of completeness  
4 has nothing to do with this.

5 THE COURT: Mr. Ekl also makes a good point,  
6 Mr. Youash.

7 Court is going to be in recess. How long  
8 do you fellas need to discuss this topic? I'm going  
9 to guess it won't be very long.

10 MR. PROSSNITZ: If I could just be referred to  
11 the pages, I will read them as quickly as possible.

12 THE COURT: I'm going to be in recess until  
13 2:30.

14 Sir, you can get off the stand and you can  
15 walk around and go out in the hallway, but what you  
16 can't do is discuss your testimony with anyone  
17 because you're still under oath. You can even stay  
18 right there, if you'd like. Okay?

19 Court's in recess.

20 (A short recess was had.)

21 THE COURT: Back on the record. This is the  
22 matter of [REDACTED] and Mr. Penkava. Both of those  
23 gentlemen are still present via Zoom.

24 The attorneys that identified themselves

1 earlier are currently in the courtroom. Mr. Kelm is  
2 still on the stand.

3 Mr. Kelm, do you understand that you are  
4 still under oath?

5 THE WITNESS: Yes.

6 THE COURT: Mr. Youash.

7 MR. YOUASH: Thank you, Judge. Just some  
8 questions, Judge, before I do ask again for the  
9 Court to enter the exhibit.

10 BY MR. YOUASH:

11 Q. Mr. Kelm, that book that I handed you,  
12 Exhibit 1, identified by the -- for identification,  
13 marked as People's Exhibit 1, what's the title of  
14 the book?

15 A. It is Pay Attention to Yourselfs and to  
16 All the Flock.

17 Q. And is that an important book to elders?

18 A. Yes.

19 Q. Why is it so important?

20 A. Because this was our manual. This is what  
21 we were instructed to refer to any time that we  
22 handled judicial cases or anything else in the  
23 congregation.

24 Q. And how closely are elders expected to

1 follow the directives or the procedures that are  
2 outlined in that book?

3 A. We're not to deviate from it. This was  
4 where our instruction came from.

5 Q. Now, I know you mentioned that there's  
6 different versions of this book?

7 A. Yeah. This one was released in '91. In  
8 2012 we got an updated version, and then in 2015 we  
9 got our latest version. And then that's updated  
10 periodically as an electronic format, now that it's  
11 updated.

12 Q. This 1991 version of the book, would that  
13 have been in effect in 2006?

14 A. Yes. Correct.

15 Q. Okay. So no amendments were made until  
16 2012?

17 A. Correct.

18 Q. Okay. And does the book speak to a  
19 judicial committee?

20 A. Yes, in Chapter 5, Sections A, B, and C.

21 Q. And is that on Page 107 and 108?

22 A. Correct.

23 Q. Does the book speak to handling of  
24 wrongdoings or confessions of wrongdoings?

1           A.    Yes, throughout those chapters, but  
2 specifically Page 118.

3           Q.    And does that go through page 131?

4           A.    Correct.

5           MR. YOUASH: Your Honor, at this time, the  
6 people offer Exhibit 1 into evidence.

7           THE COURT: Mr. Prossnitz and/or Mr. Ekl.

8           MR. PROSSNITZ: Objection, foundation and  
9 relevance.

10          MR. EKL: Foundation, Judge, objection and  
11 relevance.

12          THE COURT: The objection is overruled, and I  
13 would note something that I think I mentioned many  
14 months ago in this case.

15                This is a bench trial, which means no  
16 matter what the Judge hears, the Judge is assumed  
17 and/or presumed to only accept that which is  
18 otherwise admissible and relevant, and I do have the  
19 ability to do so with this document.

20                Therefore, the objection is overruled. The  
21 exhibit is admitted.

22          MR. YOUASH: Thank you.

23                Your Honor, may I approach the witness to  
24 recover the exhibit?



1 THE COURT: You may.

2 BY MR. YOUASH:

3 Q. Mr. Kelm, in the Jehovah's Witness  
4 religion, what is the process for making a  
5 confession?

6 A. The process for a confession, it can happen  
7 several ways. The way it usually happens is you  
8 hear the report of someone that's committed a  
9 serious wrongdoing, and then the elders will  
10 approach that individual. Sometimes the individual  
11 approaches the elders first, and then two elders  
12 will meet with that individual to discuss the matter  
13 and see if he confesses to the matter.

14 Q. And are there always two elders?

15 A. Yes. You have to have the two elders for  
16 the confession. A lot of times the matter will be  
17 brought to the body of elders. There will be  
18 hearsay of something going on, and the body of  
19 elders are instructed to appoint two elders to  
20 investigate the matter and see if there's a  
21 confession there that comes from the sinner.

22 Q. And this process that you speak of, that's  
23 outlined in this book, correct?

24 A. Correct.

1           **Q.**    Okay.  Mr. Kelm, what is a judicial  
2           committee?

3           **A.**    A judicial committee is a forum when you  
4           have established evidence, either by confession or  
5           by two witnesses, that a grave sin has been  
6           committed as outlined in that book.  And the elders  
7           that are there at the Kingdom Hall -- that's our  
8           place of worship -- that night, that's where the  
9           three elders are picked up to form a judicial  
10          committee.  So there's always three elders on the  
11          judicial committee.

12          **Q.**    And what is the purpose of the judicial  
13          committee?

14          **A.**    The judicial committee is to see if there  
15          is repentance there from the wrongdoer, to see if he  
16          can remain within the Christian congregation.  So  
17          you're trying to bring this person back to  
18          repentance so that he can continue to be one of  
19          Jehovah's Witnesses.

20          **Q.**    Can you share for the Court what steps are  
21          typical in the process of the judicial committee  
22          once they are made aware of a wrongdoing?

23          **A.**    As I said, the body of elders appoints that  
24          committee.  You'll have a chairman of the committee

1 and then the two other elders. And then from that  
2 point, really, the three elders, they handle the  
3 matter. There's not a lot of details that are  
4 discussed with the rest of the body of elders, it's  
5 in the hands of these three elders.

6 They will meet with the accused or the  
7 person that's confessed using the scriptures.  
8 They'll talk to them, try to determine repentance,  
9 if a person is sorry for what they've done, whether  
10 they can be reprov'd and remain in the congregation,  
11 or they're disfellowshipped, where they are no  
12 longer one of Jehovah's Witnesses.

13 Q. And does a judicial committee only convene  
14 in response to confessions?

15 A. Yes, that is correct.

16 Q. And are you familiar with the term innocent  
17 spouse?

18 A. Yes.

19 Q. And what is an innocent spouse?

20 A. An innocent spouse is -- when adultery is  
21 committed, the spouse that did not commit the  
22 adultery is considered the innocent spouse.

23 Q. Are there other cases where an innocent  
24 spouse may exist?

1           **A.**    It could be in forms of fornica, it could be  
2    child sex abuse, those things. What it is, it's  
3    where the marriage can be broke. The scriptures say  
4    that only on the grounds of adultery can a marriage  
5    be broke in God's eyes. So that's why that term  
6    innocent spouse is there. When a spouse has  
7    committed adultery, they have the right to choose  
8    whether they are going to stay with that individual  
9    or not.

10          **Q.**    And if an individual commits child sex  
11    abuse, that's still adultery, correct?

12          **A.**    Yes. That is considered -- the Greek term  
13    fornica -- which that's the grounds for that.

14          **Q.**    Okay. And are you familiar with the role  
15    that the innocent spouse is involved in during  
16    judicial committee proceedings regarding child sex  
17    abuse?

18          **A.**    Yes.

19          **MR. PROSSNITZ:** Objection, foundation. I think  
20    they're asking this expert to go beyond the scope of  
21    his expertise. He has had one child sex abuse case.

22          **THE COURT:** Can you tell me what that question  
23    was again, Mr. Youash?

24          **MR. YOUASH:** Yes, Judge. Are you familiar with

1 the role the innocent spouse plays during judicial  
2 committees regarding child sex abuse?

3 THE COURT: And that's in that book, correct?

4 MR. YOUASH: He served on a --

5 THE COURT: Just -- It's in that book, correct?

6 MR. YOUASH: I don't believe that that specific  
7 language is in the book.

8 Judge, may I have a moment?

9 THE COURT: You may.

10 MR. YOUASH: Judge, yes, it is actually in here,  
11 how to handle child sex abuse, fornia, is all  
12 outlined here in the serving on judicial committees.

13 MR. PROSSNITZ: May I have a page number,  
14 please?

15 MR. YOUASH: 121.

16 MR. PROSSNITZ: Stand by.

17 Judge, I've been referred to page 121, but  
18 I don't see any --

19 MR. YOUASH: It's also on the bottom of  
20 Page 118.

21 MR. PROSSNITZ: I don't see anything regarding  
22 the innocent spouse in a child sex abuse case. I  
23 don't see innocent spouse at all, so it's -- it's  
24 not --

1 THE COURT: It's been admitted. Give it to me.

2 MR. YOUASH: The bottom of Page 118. I'm sorry.  
3 I should have asked to approach, your Honor.

4 THE COURT: It's okay.

5 MR. YOUASH: It's also mentioned on Page 93,  
6 Judge.

7 THE COURT: I know you mentioned 118 and 93.  
8 What was the other page?

9 MR. YOUASH: I believe it was 121, your Honor.

10 THE COURT: I believe the objection was  
11 relevance; is that correct?

12 MR. PROSSNITZ: It was foundation, Judge.

13 THE COURT: Foundation?

14 MR. PROSSNITZ: Looking at Page 93, 118, and  
15 121, your Honor, I don't see even the word innocent  
16 spouse, let alone --

17 THE COURT: Let me stop you, Mr. Prossnitz.  
18 You're heading down a road I didn't ask about.

19 What was the basis of the objection?

20 MR. PROSSNITZ: Relevance, no foundation. It's  
21 irrelevant to the innocent spouse participation in  
22 the Jehovah's Witness confessional process  
23 (indiscernible).

24 THE COURT: Part of this hearing that I'm

1 conducting contains -- There's no objection to the  
2 testimony of Mr. Miller from some time ago in which  
3 he spoke at great, great length about that process.  
4 I don't see how this is not relevant.

5 The objection is overruled.

6 MR. PROSSNITZ: One question. I don't see  
7 innocent spouse or the process outlined anywhere in  
8 this document. And I --

9 THE COURT: I don't either.

10 The objection is overruled.

11 MR. PROSSNITZ: All right. All right.

12 THE COURT: Although I've only looked at the  
13 pages Mr. Youash directed me to.

14 Go ahead, Mr. Youash. Next question.

15 MR. YOUASH: Thank you, your Honor.

16 And if I can ask that question again,  
17 Judge?

18 THE COURT: Please.

19 BY MR. YOUASH:

20 Q. Are you familiar with the role of the  
21 innocent spouse during judicial committee  
22 proceedings regarding child sex abuse?

23 A. Yes.

24 Q. And can you describe what role, for the

1 Court, the innocent spouse plays in those -- in  
2 those, I guess, meetings with the judicial  
3 committee?

4 MR. PROSSNITZ: Objection; foundation, beyond  
5 the scope of his expertise.

6 MR. EKL: Same objection, foundation.

7 THE COURT: Overruled.

8 BY MR. YOUASH:

9 Q. You may answer, Mr. Kelm.

10 A. It's the same process. It falls under the  
11 category of adultery because it all falls under that  
12 umbrella of fornia. Child sex abuse is fornia, so  
13 we would consider that a reason to let the spouse  
14 know -- the innocent spouse, that her husband or the  
15 wife has committed adultery and that they have  
16 grounds for divorce.

17 Q. And that's one of the purposes of the  
18 meeting with the innocent spouse?

19 A. Yes. That's the main purpose of the  
20 meeting with the innocent spouse, to let her know or  
21 him know that they are free to remarry. We don't  
22 give a lot of details as to what actually happened,  
23 but just to let them know that they are able to --  
24 they've done something where they could remarry, if



1       they want to.

2           **Q.**   And is the innocent spouse involved in this  
3       spiritual development of the penitent?

4           **A.**   In the sense of the spiritual development,  
5       I would say no. That really rests on the person  
6       that committed the mistake. The sinner is the one  
7       you're meeting with to see how their spiritual  
8       progress is going.

9           **Q.**   Is there any distinction or any difference  
10      if the innocent spouse is the male or the husband  
11      versus the female or the wife?

12          **A.**   Yes. We've been instructed when it's a  
13      husband that commits adultery, he chooses whether or  
14      not to allow his wife to sit in on the judicial  
15      proceedings. Whereas, if it's a wife that commits  
16      this fornica -- when I say adultery, that's fornica,  
17      child sex abuse. If it's a wife that commits it,  
18      her husband has a right to be there because he's  
19      considered her spiritual head.

20          **Q.**   And who is the spiritual head of the family  
21      in the Jehovah's Witness faith?

22          **A.**   It's the husband, the male.

23          **Q.**   Were you -- As an elder, did you receive  
24      any other instructions with respect to how to handle

1 child sex abuse cases other than what is in that  
2 book?

3 A. Yeah. We would receive letters from time  
4 to time from the branch department in New York that  
5 would be supplemental to what was in the book.

6 Q. And how did you receive these letters,  
7 typically?

8 A. These would come in the mail to -- at that  
9 time, it was called the presiding overseer. He was  
10 the elder in the congregation where the  
11 communications would go to, and then he would hand  
12 it back to the secretary of the congregation, who  
13 was an elder. It would go through the body of  
14 elders, they would all read it, and that's how we'd  
15 receive it is through the mail.

16 Q. Mr. Kelm, have you ever served as a  
17 secretary?

18 A. Yes.

19 Q. And so you would have received these  
20 letters?

21 A. Correct.

22 Q. And these letters spoke to handling of  
23 child sex abuse reports?

24 A. Yes. We would get letters concerning child

1 sex abuse.

2 MR. YOUASH: Your Honor, may I approach the  
3 witness?

4 THE COURT: You may.

5 MR. YOUASH: Thank you.

6 BY MR. YOUASH:

7 Q. Mr. Kelm, I'm handing you what's been  
8 marked as People's Exhibit 2 for identification.

9 Do you recognize that?

10 A. Yes. This would have been a letter -- Even  
11 though this letter was sent before I was serving as  
12 an elder, all our letters were in a confidential  
13 book, a policy letter book, we called it. So I  
14 would be responsible to make sure all the letters  
15 were in there, and this one would still be in there  
16 when I was appointed as elder.

17 Q. And you mentioned, even though you received  
18 it before -- What is the date on that letter?

19 A. July 1st, 1989.

20 Q. And do you recognize that to be a fair and  
21 accurate copy of the letter that you kept and  
22 maintained as a secretary in your congregation?

23 A. Yes.

24 MR. YOUASH: Your Honor, the State asks to enter

1 Exhibit 2 into evidence.

2 MR. PROSSNITZ: Objection, relevance.

3 MR. EKL: Same objection, relevance, Judge.

4 THE COURT: At this point, I've got to agree. I  
5 have no idea what the topic of that is. It could be  
6 talking about tickets to the baseball game.

7 MR. YOUASH: Sure.

8 Judge, I can elaborate some more?

9 THE COURT: Go ahead.

10 BY MR. YOUASH:

11 Q. Mr. Kelm, what is covered in that letter?

12 A. It handles judicial matters,  
13 (indiscernible) crimes and criminal investigations.

14 Q. Is there any reference to the handling of  
15 child sex abuse cases or confessions?

16 A. Yes.

17 Q. What page is that on?

18 A. On Page No. 3 under child abuse.

19 MR. YOUASH: Judge, at this time the State asks  
20 to enter Exhibit 2 into evidence.

21 MR. PROSSNITZ: Same objection.

22 The Court doesn't have the benefit of  
23 seeing this document, and I would acknowledge that  
24 at the top of Page 3 it says child abuse, but I

1 don't see how it's relevant to the material issue  
2 before this Court.

3 MR. EKL: Same objection, your Honor.

4 THE COURT: I just want to make one thing is  
5 clear before I rule, that Mr. Kelm is now testifying  
6 outside his scope as an expert witness. He was  
7 qualified as an expert witness as to the  
8 conventional process.

9 That being said, the objection is  
10 overruled.

11 MR. YOUASH: May I approach, Judge?

12 THE COURT: You may.

13 The foundation has been properly laid for  
14 both relevance and a business record at this point.  
15 BY MR. YOUASH:

16 Q. Mr. Kelm, did you receive any other notices  
17 or letters with respect to how to handle child sex  
18 abuse cases?

19 A. Yes.

20 Q. And did those letters also come from an  
21 organization outside of Illinois?

22 A. Yes.

23 Q. Where did they come from?

24 A. New York.

1 MR. YOUASH: I'm showing opposing counsel what  
2 has been marked as People's Exhibit 3 for  
3 identification.

4 BY MR. YOUASH:

5 Q. Mr. Kelm, I'm handing you what has been  
6 marked as People's Exhibit 3 for identification.

7 Do you recognize that?

8 A. Yes.

9 Q. What is it?

10 A. It's a letter to the body of elders dated  
11 August 1st, 1995. It deals with child sex abuse.

12 Q. And is this a letter that you also  
13 maintained as secretary in your congregation?

14 A. Yes.

15 Q. And did that letter -- Do you know if that  
16 letter went to all congregations?

17 A. It's addressed to all bodies of elders in  
18 the United States, so, yes, this would have been  
19 mailed to all congregations in the United States.

20 Q. And when is --

21 MR. PROSSNITZ: Objection, scope of knowledge on  
22 that.

23 MR. YOUASH: I can lay some foundation.

24 THE COURT: I'll reserve ruling on that

1 objection.

2 Go ahead.

3 BY MR. YOUASH:

4 Q. Mr. Kelm, these letters that you say come  
5 from headquarters, where do you -- how do you know  
6 that they would have gone to other -- other  
7 congregations?

8 A. Because when we would have our Kingdom  
9 Ministry Schools, a lot of times we would be told to  
10 bring certain letters, ones that dealt with  
11 different matters, even child sex abuse, and we  
12 would discuss those letters. That would be one way  
13 that I would know.

14 Q. And would you see these letters at those  
15 schools?

16 A. Yes.

17 Q. Or at your training sessions?

18 A. Yes. In addition to serving in different  
19 congregations, everyone had a policy book with the  
20 same letters in it, each congregation.

21 Q. And all the congregations you served in,  
22 they were here in Illinois, correct?

23 A. Correct.

24 MR. YOUASH: Judge, at this time, people would

1 offer Exhibit 2 into -- Exhibit 3 into evidence.

2 MR. PROSSNITZ: The objection of Mr. Penkava is  
3 it's irrelevant to the issue of the confessional  
4 process of Jehovah's Witnesses with child abuse  
5 cases.

6 MR. EKL: I join in the objection, Judge.

7 THE COURT: The objection is overruled. It's  
8 admitted.

9 MR. YOUASH: Thank you.

10 BY MR. YOUASH:

11 Q. Mr. Kelm, did you receive a subsequent  
12 letter in March of -- I'm sorry -- in February  
13 of -- on March 14th, 1997?

14 A. Yes.

15 MR. YOUASH: Showing opposing counsel what has  
16 been marked as People's Exhibit 4.

17 MR. PROSSNITZ: I have it. Thank you.

18 BY MR. YOUASH:

19 Q. Mr. Kelm, do you recognize this?

20 A. Yes. This would be a letter that came from  
21 the New York branch office.

22 Q. And how do you recognize that to be a  
23 letter that came from the New York branch office?

24 A. With the letterhead and the format that



1       it's in, and I've seen this in our policy book.

2           **Q.**   And is that letter a fair and accurate copy  
3       of the letter you received or would have maintained  
4       as the secretary -- as the secretary of your  
5       congregation?

6           **A.**   Yes.

7           **Q.**   And what topics are covered in that letter?

8           **A.**   Again, this was talking about child  
9       molestation, who was a known child molester, how to  
10      protect our children, and what kind of roles they  
11      could play in the congregation.

12          **Q.**   And does it talk about confessions?

13          **A.**   Let me review it real quick.

14          **Q.**   Sure.

15          **A.**   It does not have the word confession in  
16      here. It's talking more about someone that's  
17      already confessed to it, a known child molester.

18          **Q.**   Okay. But it talks about procedures on  
19      what to do by someone who is reported to be a child  
20      molester?

21          **A.**   Yes, correct.

22          **MR. YOUASH:** Your Honor, at this time the People  
23      would offer Exhibit 4 into evidence.

24          **MR. PROSSNITZ:** Same objection, relevance to the

1 issue of the innocent spouse's participation in the  
2 confessional process of a child abuse case.

3 MR. EKL: I'll join in the objection, Judge.

4 THE COURT: The objection is sustained.

5 BY MR. YOUASH:

6 Q. Lastly, Mr. Kelm, you served on judicial  
7 committees?

8 A. Correct.

9 Q. And you've heard confessions?

10 A. Yes.

11 Q. And when you served as a judicial -- a  
12 committee member, who did you report -- or who did  
13 you speak to with respect to any findings of the  
14 confessor?

15 A. During the judicial process or before the  
16 judicial process?

17 Q. During the judicial process.

18 A. We would discuss that among the three  
19 committee members there on the judicial committee.

20 Q. And did the judicial committee reach out to  
21 any other organizations or groups that are outside  
22 of your congregation?

23 A. The only time that would happen is if it  
24 was a child molestation case. Before the judicial

1 proceeding would happen, we would contact the legal  
2 department in New York.

3 Q. Was it the legal department that sent these  
4 letters to each congregation?

5 A. So they would come from the branch office.  
6 If they specifically came from legal, I'm not sure  
7 of that, but these would come from the Watchtower  
8 Bible and Tract Society. So we don't know who  
9 actually wrote the letter, we just knew it came from  
10 the branch office.

11 Q. Okay. And where is the legal department  
12 located?

13 A. To my knowledge, it's in -- at the branch  
14 office. There's different headquarters there and  
15 three locations. I'm not sure exactly where they're  
16 located now.

17 Q. But what state?

18 A. New York.

19 Q. They're all in New York, okay.

20 And what is their role -- If you're  
21 familiar with it, what is the legal department's  
22 role in assisting elders?

23 MR. PROSSNITZ: Objection; foundation, scope of  
24 his expertise.

1 THE COURT: Well, again, he's testifying outside  
2 of what he was qualified to. He's not testifying as  
3 an expert witness at this time, that's my finding.

4 The objection is overruled.

5 You may answer the question.

6 THE WITNESS: They are to help us with any legal  
7 matters that come up. In addition to child  
8 molestation, it could be if someone got hurt at one  
9 of our properties. Anything that involved any kind  
10 of legal operation, they would give us advice of how  
11 we're to respond, how we're to act.

12 BY MR. YOUASH:

13 Q. And does the legal department provide any  
14 sort of spiritual guidance or spiritual steps that a  
15 judicial committee should take with a penitent?

16 A. No. They are strictly legal, the legal  
17 aspect of it.

18 Q. And does any other group (indiscernible)  
19 guidance?

20 A. Yes. We have a service department, and any  
21 questions concerning the spiritual side of judicial  
22 committee would go through the service department.

23 Q. And how does the service department  
24 typically communicate with a judicial committee?

1           **A.**   Telephone, usually, but they can also send  
2 letters out for specific cases in response.

3           MR. YOUASH: Your Honor, may I have a moment?

4           THE COURT: You may.

5           MR. YOUASH: Your Honor, may I ask to retrieve  
6 an exhibit from the Court?

7           THE COURT: Which one would you like?

8           MR. YOUASH: Exhibit 1.

9           THE COURT: There you go.

10          MR. YOUASH: Thank you.

11          THE COURT: You're welcome.

12          BY MR. YOUASH:

13           **Q.**   Mr. Kelm, before forming a judicial  
14 committee, what do the elders -- or what is the  
15 elder that's received a confession required to do?

16           **A.**   They report back to the body of elders and  
17 they tell them whether they got a confession or not,  
18 whether it's an established gross sin. And it's at  
19 that point that the body of elders determines who is  
20 going to be on the judicial committee.

21           **Q.**   And if there's no confession, is there  
22 another way that that elder may need to report back  
23 to the body of elders?

24           **A.**   They would report back to the body of

1 elders if there was no confession there. And if  
2 there's not two witnesses, there's no confession,  
3 then it's just held in abeyance and nothing can be  
4 done judicially on that.

5 Q. You said two witnesses or a confession, so  
6 it's either/or, correct?

7 A. Yes.

8 Q. It doesn't have to be both?

9 A. No.

10 Q. Okay.

11 A. If there is a confession, there is no need  
12 for the two witnesses because the sinner has  
13 confessed to what's wrong.

14 Q. So the two witnesses only comes into play  
15 when there's no confession then?

16 A. Correct.

17 MR. YOUASH: Your Honor, a moment?

18 THE COURT: You may.

19 BY MR. YOUASH:

20 Q. Mr. Kelm, you serving on committees and  
21 having served on judicial committees, have you ever  
22 worked with a female spouse to assist you in  
23 spiritually developing a confessor?

24 A. We would meet with an innocent spouse after

1 the judicial proceedings were over to see how the  
2 family's doing. But as far as the person themselves  
3 that committed the sin, that's dependent on his  
4 actions of how he or she are doing and how their  
5 spiritual development is going.

6 Q. No involvement by the innocent spouse?

7 A. No.

8 Q. And have you ever heard of it being done in  
9 your trainings or in any of those schools that you  
10 attended by other elders?

11 A. No. Especially if it's a female because  
12 the females were not involved in the judicial  
13 process that was going on. In fact, if we talked to  
14 the innocent spouse to let her know she was free to  
15 remarry and she said that the husband had not  
16 relayed all the details, we were not to relay the  
17 details. We just say, well, something is not adding  
18 up here, and she would discuss that with her  
19 husband.

20 Q. And what opinion have you formed, if any,  
21 with relation to [REDACTED] involvement with  
22 the judicial committee after reviewing Mr. Miller's  
23 testimony?

24 MR. PROSSNITZ: Objection, legal conclusion.

1 THE COURT: Sustained.

2 BY MR. YOUASH:

3 Q. Mr. Kelm, is there a doctrine called  
4 theocratic warfare as part of the Jehovah's Witness  
5 religion?

6 A. Yes, I've heard that term before.

7 Q. What is that doctrine?

8 A. It's when things are being attacked, the  
9 spiritual side of Jehovah's Witnesses are being  
10 attacked, they consider that theocratic warfare,  
11 they are coming after our spiritual side.

12 Q. And what are you taught to say or do as an  
13 elder in response?

14 A. We haven't had specific training on that,  
15 so to speak. Publications have referred to -- not  
16 necessarily lie about it, but not give the full  
17 details when it comes to theocratic warfare.

18 MR. YOUASH: I'm just going to return to the  
19 Court People's Exhibit 1. I have no further  
20 questions. Thank you, your Honor.

21 THE COURT: Mr. Prossnitz.

22 MR. PROSSNITZ: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MR. PROSSNITZ:



1           Q.    Mr. Kelm, good afternoon.

2           A.    Good afternoon, again.

3           Q.    Mr. Kelm, I'd like to talk about the  
4    Jehovah's Witness confessional process in the case  
5    of child sex abuse cases, which you've acknowledged  
6    also involves adultery, okay?

7                   And, again, in terms of confessional  
8    process, Jehovah's Witnesses, your experience is  
9    based upon one child sex abuse case; is that  
10   correct?

11          A.    That's not my full experience. That's the  
12   judicial -- I've served on one judicial committee,  
13   but I've received continuous training of how to deal  
14   with that.

15          Q.    Okay. But in terms of receiving -- in  
16   terms of participating in a judicial committee and  
17   receiving a confession associated with a child sex  
18   abuse case, it's one; is that correct?

19          A.    That is correct, yes.

20          Q.    Okay. And so -- and that is the body of  
21   your experience -- direct involvement in the  
22   judicial committee, correct?

23          A.    Yes.

24          Q.    Now, it would be a fair statement, would it

1 not, that the confessional process starts with the  
2 confession of the sinner, correct?

3 A. Yes.

4 Q. And as one reads through the Jehovah's  
5 Witness materials, it appeared to be replete that  
6 there's the notion that a sinner must show true  
7 repentance; is that correct?

8 A. In order to remain one of Jehovah's  
9 Witnesses, yes.

10 Q. And that is a fundamental issue for an  
11 elder, correct?

12 A. Correct.

13 Q. And it's not just merely the words of  
14 Jehovah's Witnesses, it comes from the Apostle Paul,  
15 repent and turn to God by doing works that befit  
16 repentance, correct?

17 A. Correct.

18 Q. So it would be a fair statement that one of  
19 the greatest challenges for elders handling the  
20 cases of wrongdoing is determining whether the  
21 sinner shows true repentance, correct?

22 A. That is correct.

23 MR. YOUASH: Objection, Judge, asked and  
24 answered.

1 THE COURT: Overruled. It stands.

2 Let's move along, Mr. Prossnitz.

3 BY MR. PROSSNITZ:

4 Q. The elder's responsibility in determining  
5 true repentance is a weighty one, correct?

6 A. Yes.

7 Q. So therefore, the discussion with the  
8 innocent spouse is significant, correct?

9 A. For what purpose?

10 Q. For determining the true repentance of the  
11 sinner in the case of adultery or child sex abuse,  
12 correct?

13 A. No, I would not consider the innocent  
14 spouse in that -- in what you said there.

15 Q. It would not be necessary to speak with the  
16 innocent spouse to verify the completeness of the  
17 confession? Is that your testimony?

18 A. If he confesses to adultery, there's no  
19 reason to get a confession from the innocent spouse.

20 Q. Not a confession, but if you have an  
21 alleged child abuser, slash, adulterer, it is  
22 significant to the elder, as we've discussed, to  
23 know the true repentance of the confessor, correct?

24 A. Yes.

1           Q.   And one way of confirming that would be to  
2 talk to the innocent spouse, correct?

3           A.   Yes, to see what she knows about it, yes.  
4 I see what you're saying.

5           Q.   Okay. And that discussion would be  
6 confidential, correct?

7           A.   Yes.

8           Q.   So the judicial committee should promptly  
9 inquire of the Christian wife as to what her husband  
10 has told her, correct?

11          A.   Correct.

12          Q.   And the judicial committee should maintain  
13 confidentiality, correct?

14          A.   Correct.

15          Q.   And that policy is so written and part of  
16 the Jehovah's Witness elder training, correct?

17          A.   That is correct.

18          Q.   I'm going to show you what I'm going to  
19 mark for identification purposes as Defendant's  
20 exhibit -- as Penkava Exhibit No. 1.

21                So Shepherd the Flock is a handbook created  
22 by the Jehovah's Witness faith for elders; is that  
23 correct?

24          A.   That is correct.

1           Q.    And although I've handed you a document  
2           that is -- was printed in 2010 -- I would direct you  
3           to Page 84, Paragraphs 12 and 13, and my question to  
4           you is, what is listed there, if that would also  
5           have been the Jehovah's Witness doctrine in 2006.  
6           More specifically, the judicial committee should  
7           promptly inquire of the Christian wife as to what  
8           her husband has told her, correct?

9           A.    Yes.

10          Q.    And also above that in Paragraph 12, the  
11          judicial committee should maintain confidentiality,  
12          correct?

13          A.    Correct.

14          MR. PROSSNITZ: I would move to introduce as  
15          Penkava Exhibit No. 1, the Shepherd the Flock --

16          MR. YOUASH: Judge, I would object to relevance.  
17          This document was created in 2010, four years after  
18          the incident.

19          THE COURT: He's just indicated it was the  
20          doctrine in place in 2006.

21                 I didn't really get a clear answer on that  
22          particular question, Mr. Prossnitz, so I'm going to  
23          hold off on that ruling.

24                 Go ahead.

1 MR. PROSSNITZ: Thank you, Judge.

2 BY MR. PROSSNITZ:

3 Q. Again, Mr. Kelm, referring to Shepherd the  
4 Flock, the document that I've just handed you,  
5 specifically the two paragraphs that I've read to  
6 you, in your training and experience as an elder,  
7 more particularly in 2006, were the doctrinal  
8 statements that we've just referred to on Page 84 in  
9 Paragraphs 12 and 13, was that the doctrine of the  
10 Jehovah's Witness faith in 2006?

11 A. It's spelled out a lot more in this 2010  
12 version. It wasn't expanded on as much in the 1991  
13 version. I would have to compare the two to see  
14 exactly word for word what the difference was.

15 Q. Do you have any reason to believe that in  
16 2006 it was not the role of an elder to promptly  
17 inquire of the Christian wife as to what her husband  
18 had told her?

19 A. I don't have any reason to believe that  
20 that's not the case, no.

21 Q. So you would agree that that would be what  
22 a judicial committee would do in 2006?

23 A. Yes.

24 Q. And you would also agree that in 2006, the

1 judicial committee would maintain confidentiality,  
2 correct?

3 A. Yes.

4 MR. PROSSNITZ: With that clarification, now  
5 that it is the doctrine in 2006, I'd move to  
6 introduce Penkava No. 1.

7 THE COURT: Mr. Youash.

8 MR. YOUASH: Judge, I would object, again, to  
9 relevance. The Court has been given the document  
10 that was in effect, as the witness just testified,  
11 and a document that was generated four years after  
12 this incident is irrelevant.

13 THE COURT: The objection is sustained; however,  
14 the testimony stands that the doctrine in 2006, as  
15 reflected in the document Mr. Prossnitz has, that  
16 the role of the elder was to inquire of the wife as  
17 to what the husband told her and maintain  
18 confidentiality stands.

19 MR. PROSSNITZ: Thank you, Judge.

20 BY MR. PROSSNITZ:

21 Q. So, again, in the case of child abuse, the  
22 elders would have a discussion with the innocent  
23 spouse, correct?

24 A. Correct.

1           **Q.**   And also, in that discussion with the  
2 innocent spouse, there would be counseling of a  
3 spiritual level with that spouse, correct?

4           **A.**   Yes. We would want to see how she was  
5 doing.

6           **Q.**   Okay. Also, that counseling of a spiritual  
7 level with the innocent spouse would remain  
8 confidential, correct?

9           **A.**   Yes.

10          **Q.**   And it would only be shared with the body  
11 of elders; is that correct, Mr. Kelm?

12          **A.**   Yes.

13          **Q.**   And then a determination could be made as  
14 to whether or not the sinner had fully confessed,  
15 correct?

16          **A.**   You're talking about two different things.  
17 There could be two different meetings that take  
18 place with the innocent spouse, after the judicial  
19 committee, and then one before if he hasn't fully  
20 confessed.

21          **Q.**   So there might be multiple meetings with  
22 the innocent spouse?

23          **A.**   Yes.

24          **Q.**   But certainly, one of the reasons for



1 meeting with the innocent spouse is, again, to find  
2 out what the -- in the case of the innocent spouse  
3 being a woman, what her husband had said, correct?

4 A. That is correct.

5 Q. It's also to verify the completeness of the  
6 confession that you received?

7 A. Yes.

8 Q. So it is part and parcel of this process,  
9 correct?

10 A. Correct.

11 Q. And it's confidential?

12 A. Yes.

13 Q. Because, again, as an elder, you're  
14 concerned whether or not the sinner has demonstrated  
15 repentance, correct?

16 A. That is correct.

17 Q. And it would be a fair statement that any  
18 information received from the innocent spouse is  
19 indispensable to this counseling or consoling  
20 activity of the elders; is that correct?

21 A. Yes.

22 Q. And as this information from the innocent  
23 spouse is indispensable to the counseling, you would  
24 also agree that the information received from that

1 innocent spouse is information the elders are  
2 obtaining in their professional character or as  
3 spiritual advisors, correct?

4 A. Yes.

5 Q. Now, you indicated that elders would  
6 contact the legal department out of New York; is  
7 that correct?

8 A. That's correct.

9 Q. And they would follow their legal advice,  
10 correct?

11 A. Yes.

12 Q. And one issue of legal advice would include  
13 whether or not they should or should not report it  
14 to authorities, correct?

15 A. That is correct.

16 Q. And as an elder, you would follow the legal  
17 advice obtained from New York, correct?

18 A. Yes.

19 MR. PROSSNITZ: One moment, Judge.

20 THE COURT: You may.

21 MR. PROSSNITZ: Mr. Kelm, thank you for your  
22 time.

23 THE COURT: Mr. Youash.

24 MR. YOUASH: Just briefly, Judge.

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REDIRECT EXAMINATION

BY MR. YOUASH:

Q. Mr. Kelm, Mr. Prossnitz just talked to you about the -- approaching the innocent spouse when it comes to --

THE COURT: Mr. Youash, hold on.

Did you have any questions, Mr. Ekl?

MR. YOUASH: Oh, I'm sorry, Judge.

MR. EKL: I felt neglected. But on the other hand, I certainly --

THE COURT: I'm glad I could bring you back into the realm here.

MR. EKL: I appreciate it, Judge, but I could not improve on what Mr. Prossnitz just did, so I'm going to keep my mouth shut.

THE COURT: Well, I'm not going to comment on that, but go ahead, Mr. Youash.

MR. YOUASH: Judge, I'm going to ask that he ask questions.

BY MR. YOUASH:

Q. Mr. Kelm, just briefly, with respect to the conversations with the innocent spouse, you answered to Mr. Prossnitz's question that there's a spiritual -- it's required for spiritual counseling,

1 correct?

2 A. Yes.

3 Q. And that's the spiritual counseling of the  
4 spouse, right, the innocent spouse?

5 A. Yes.

6 Q. So not the spiritual counseling of the  
7 penitent?

8 A. No. We're more concerned with that -- when  
9 meeting with the spouse, we're concerned of two  
10 things, that she was told the truth from the mate  
11 that committed the sin, and how her spiritual  
12 welfare is doing.

13 Q. And whether or not she wants to stay  
14 married, correct?

15 A. Correct. Right. That's her decision.

16 Q. Okay. And can you educate us a little bit  
17 of what that spiritual development entails, like  
18 what is done with the innocent spouse to spiritually  
19 help her?

20 A. We call that shepherding calls, because  
21 obviously it's a devastating blow that's happened to  
22 her. So it's two of the -- two of the elders that  
23 are on the committee will meet with her to see how  
24 she is doing, discuss scripture, see what kind of

1 encouragement we can give her.

2 Q. Just to be clear, though, nothing she  
3 offers the elders is indispensable to the spiritual  
4 counseling of the penitent, correct?

5 A. If he's confessed fully to what he's done,  
6 no, there's nothing more that she could tell us  
7 that's going to do anything for him.

8 MR. YOUASH: Thank you, Judge. No further  
9 questions. Oh, and I would just ask that the  
10 witness be excused, your Honor.

11 MR. PROSSNITZ: Mr. Penkava has no objection.

12 MR. EKL: Judge, on behalf of [REDACTED], could I  
13 ask one follow-up question, please?

14 THE COURT: No.

15 Thank you. You're excused.

16 (Witness excused.)

17 THE COURT: You had your opportunity for cross.  
18 You chose not to take it.

19 MR. EKL: It was based upon the redirect.

20 THE COURT: I don't allow cross on redirect.

21 MR. EKL: I won't argue about it, but based upon  
22 the redirect, I should be able to ask him questions.

23 THE COURT: It's within the Judge's discretion,  
24 Mr. Ek1.

1 MR. KENNEALLY: Judge, we have one final matter  
2 for your Honor's consideration.

3 THE COURT: Go ahead.

4 MR. KENNEALLY: Thank you, Judge.

5 At this time, the State would seek to  
6 introduce People's Exhibit 2 and 3, which were  
7 attached to it's motion.

8 People's Exhibit 2 is the judicial  
9 committee report, which was -- there is an  
10 electronic signature with regard to Michael Penkava  
11 and [REDACTED] that was also returned pursuant to  
12 your subpoena.

13 The State received a copy of this in the  
14 Arturo Hernandez case after it was unsealed for  
15 purposes of determining whether or not the privilege  
16 applied.

17 In addition, Judge, just for the record,  
18 People's Exhibit 3 is a --

19 MR. PROSSNITZ: Can we do these one at a time,  
20 please?

21 MR. KENNEALLY: And I'll enter them just with  
22 regard to -- Right. I'm just talking about pursuant  
23 to my motion for the Court's identification,  
24 I'll -- When I seek to admit them, I'll identify

1       them as 5 or 6.

2               But right now, one is People's Exhibit 2 to  
3       the State's motion to admit. The other is People's  
4       Exhibit 3. I know your Honor has a copy of that, so  
5       I'll just continue to refer to them that way until I  
6       seek to admit them.

7               The second is a letter from the Christian  
8       congregation of Jehovah's Witnesses. That's a  
9       responsive letter to the judicial committee of  
10      Defendant Penkava as well as Defendant Scott.

11              I believe that prior to this that -- and  
12      defense can correct me if I'm wrong -- we did have  
13      an agreement with the defense that there was going  
14      to be a stipulation as to the foundation of these  
15      documents in that they were business records kept in  
16      the regular course of Kingdom Hall's religious  
17      activity, as well as their business activity. But  
18      that does not settle the entire question of  
19      admissibility, and I do believe that defense has an  
20      objection.

21              With respect to Exhibit 2 attached to the  
22      Defendant's motion to admit, the State does, first  
23      of all, believe that we think it is self-evidently  
24      relevant.

1           I mean, the issue at stake is whether or  
2 not this -- what happened at this judicial  
3 process -- this is essentially the report by the  
4 Defendants with respect to the exact incident that's  
5 at issue in this case.

6           In addition, your Honor, we also believe  
7 that it's a party-appointed admission and should  
8 come in.

9           Moreover, Judge, with respect to Exhibit 3  
10 of the State's motion to admit, this is a responsive  
11 letter from the service department. One of the  
12 arguments in this case is whether or not the  
13 disclosure -- or I should say one of the issues in  
14 this case is whether or not the disclosure to the  
15 service department was done for purposes of  
16 spiritual guidance for [REDACTED], because that would be  
17 one of the things that would allow them to continue  
18 to claim privilege in this case after a disclosure  
19 of this kind.

20           I think their responsive -- I think that  
21 their response is an indication of how they viewed  
22 what that disclosure was and what purposes it was  
23 for and whether or not it actually was an  
24 indispensable part of the spiritual guidance of



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[REDACTED]

Judge, therefore, we'd ask that these two exhibits be entered into evidence.

THE COURT: For clarification, that's as -- it's marked as 5 and 6.

MR. KENNEALLY: Yes, and I will mark them as 5 and 6, and I'll tender them to your Honor for your consideration.

THE COURT: They're not admitted yet.

MR. KENNEALLY: Yes, Judge.

THE COURT: Just for clarification, No. 5, which was No. 2 in the attachment, is the document that we spent I don't know how much time discussing regarding the motion to quash.

MR. KENNEALLY: Yes. Yes.

THE COURT: This document was not produced pursuant to my ruling on that.

MR. KENNEALLY: Yes.

THE COURT: In fact, a heavily redacted version of this document was produced to the State subsequent to that hearing. I think everybody agrees with that, right?

MR. KENNEALLY: Yes.

THE COURT: Defense?

1 MR. PROSSNITZ: Okay. Judge, so --

2 THE COURT: I'm just asking if you agree with  
3 what I said.

4 MR. PROSSNITZ: I do, your Honor.

5 THE COURT: Mr. Ekl.

6 MR. EKL: Yes, I agree with what you said,  
7 Judge.

8 THE COURT: Mr. Kenneally, you mentioned how you  
9 received this. I would just question, when did you  
10 receive this document?

11 MR. KENNEALLY: So we received this document as  
12 part of this case when Mr. Prossnitz unsealed it. I  
13 think I adequately explained it in my motion -- in  
14 the response to the Defendant's motion to strike.

15 Mr. Prossnitz unsealed these documents and  
16 provided a copy --

17 THE COURT: I'm just asking --

18 MR. KENNEALLY: But I think the record --

19 MR. PROSSNITZ: I'm not a Judge, yet, I don't  
20 unseal anything. But --

21 MR. KENNEALLY: Okay. Sure.

22 MR. YOUASH: Judge, to answer your question, it  
23 may have been January or February of 2020, if I  
24 remember right.

1 THE COURT: The only reason I asked is why did  
2 we have that big long hearing over this document, if  
3 you already had it. It's just kind of a rhetorical  
4 question.

5 Mr. Prossnitz, go ahead.

6 MR. PROSSNITZ: Thank you, Judge.

7 Judge, I just want to be very careful here  
8 because this Court spent a lot of time and there was  
9 a lot of litigation over what they're calling 5,  
10 it's Exhibit No. 2.

11 This Court very clearly ruled -- I believe  
12 it was December 17th of 2021, and heavily redacted  
13 it, and yet it shows up January 6th, a month later,  
14 in this motion.

15 A couple things. To be clear, on  
16 January 28th of 2021, about a year ago, Defendant  
17 Penkava, thinking it might assist parties, inquired  
18 and asked Judge Meyer, and Judge Meyer issued an  
19 order. Philip Prossnitz didn't do anything. But  
20 Judge Meyer indicated that the materials he had  
21 litigated and reviewed and discussed could be viewed  
22 by the parties but it may not be published to the  
23 public. Part of the sealed record, but he ordered  
24 that they may be -- they may only be viewed by

1 Mr. Prossnitz, Mr. Ekl, their respective clients,  
2 Michael Penkava, [REDACTED] Mr. Youash and  
3 Judge Gerhardt. That they may not be published to  
4 the public, period.

5 This Court spent a lot of time carefully  
6 ruling as it did. So I would acknowledge that the  
7 unredacted and the redacted version were the result  
8 of a subpoena brought to this Court. So I don't  
9 want to hide or run from that. But I don't want to  
10 run afoul of Judge Meyer's [REDACTED] order.

11 I think those materials were to be viewed  
12 only, and I don't want to participate in anything  
13 that might be perceived as violating Judge Meyer's  
14 order.

15 THE COURT: Mr. Ekl.

16 MR. EKL: Judge, it just baffles me that we  
17 spent all that time and your Honor spent all that  
18 time and your own time going through this Document  
19 No. 2 to determine what was privileged communication  
20 and what could be turned over to the State for them  
21 to use in this case. You heavily redacted it. And  
22 then low and behold, they are now trying to give you  
23 an unredacted version saying, we can use this at  
24 trial as-is. And I think that violates your Honor's

1 order and rule in connection with the motion to  
2 quash that we filed.

3 Now, as Mr. Prossnitz said, we are not  
4 disputing the foundation. You know, we know what  
5 they represent, but this unredacted version should  
6 not be used in any proceeding, including this motion  
7 in limine. Thank you.

8 MR. KENNEALLY: Judge, I can respond to that?

9 So neither of those, I think, necessarily  
10 constitutes an objection to the admissibility of  
11 those.

12 I think in order to comply with  
13 Judge Meyer's order, the State would have no  
14 objection to entering both of these exhibits under  
15 seal. The State has not violated Judge Meyer's  
16 order. In fact, in its motion to admit, we did file  
17 that under seal with the Circuit Clerk, and these  
18 documents have only been tendered to your Honor, to  
19 Mr. Ekl, to Mr. Prossnitz, as well as myself and  
20 Mr. Youash. So there's not a violation of  
21 Judge Meyer's order.

22 With respect to answering your question as  
23 to why we spent all that time fighting over --

24 THE COURT: Hold on. That was rhetorical.

1 MR. KENNEALLY: It was a rhetorical question, so  
2 I won't bother answering it.

3 But I don't think that anything they've  
4 said -- So they're not objecting to hearsay, they're  
5 not objecting to relevance. They seem to be saying  
6 that these are under seal, and we agree.

7 We would have no objection to putting these  
8 in under seal, especially in view of the fact that  
9 the Defendants have not mustered a sufficient  
10 objection -- or any objection to admissibility at  
11 this point.

12 THE COURT: Give me a moment. Well, let's keep  
13 in mind, the thing that I'm being asked to do right  
14 now is to admit People's Exhibit No. 5, not at trial  
15 but for the purpose of determining the outcome of  
16 the motion in limine.

17 MR. KENNEALLY: Yes, Judge.

18 THE COURT: For that limited purpose, it is  
19 admitted under seal for that purpose at this time  
20 only over objection of Defendants' counsels.

21 Moving on to No. 6, Mr. Kenneally.

22 MR. KENNEALLY: Judge, with respect to 6, I'll  
23 rest on my previous argument.

24 THE COURT: Mr. Prossnitz, anything further?

1 MR. PROSSNITZ: Just to be clear, as I  
2 understand it, this was received pursuant to  
3 subpoena. If I understand the State --

4 MR. KENNEALLY: No, this was received -- this  
5 was received pursuant to Judge Meyer's order.

6 MR. PROSSNITZ: Everything from Judge Meyer is  
7 pursuant to a subpoena. So there's been a subpoena  
8 issued and documents returned to Judge Meyer. So  
9 presumably a subpoena was issued to a custodian of  
10 records who answered and supplied it to Judge Meyer.

11 Mr. Penkava's objection would be relevance.

12 THE COURT: Mr. Ek1.

13 MR. EKL: Same objection, relevance.

14 THE COURT: Give me a moment.

15 For the same limited purpose as described  
16 in People's Exhibit No. 5, People's No. 6 is  
17 admitted under seal, again, only for the purpose of  
18 the Court's ruling as to this motion in limine.

19 Anything further from the State?

20 MR. KENNEALLY: Thank you, Judge. If I could  
21 just have a moment with co-counsel?

22 THE COURT: You may.

23 MR. KENNEALLY: Thank you.

24 Judge, at this time the State would rest.

1 THE COURT: Who is going first?

2 MR. EKL: We're not going to present any  
3 evidence, Judge, on behalf of [REDACTED].

4 THE COURT: So Mr. Ekl, you rest on behalf of  
5 [REDACTED]

6 MR. EKL: I do.

7 THE COURT: Mr. Prossnitz.

8 MR. PROSSNITZ: Yes, your Honor, we rest as  
9 well.

10 THE COURT: On behalf of Mr. Penkava?

11 MR. PROSSNITZ: Yes, your Honor.

12 THE COURT: Argument, State.

13 MR. KENNEALLY: The term confessional process is  
14 not a term that your Honor is going to find as  
15 stated by the Illinois legislature in any of the  
16 statutes. It's not a term that was -- that's going  
17 to be found in any of the case law that your Honor  
18 is going to review or any of the cases that have  
19 addressed this particular issue.

20 The term confessional process is  
21 essentially a term that's been injected into this by  
22 the defense. Their -- and -- and I think what is  
23 happening is that we are beginning to blur lines,  
24 and a lot of important distinctions are beginning to



1 break down.

2 So what is in the Jehovah's Witnesses own  
3 literature -- I would refer your Honor to  
4 Page 109 of Shepherd the Flock. There is a  
5 confession --

6 THE COURT: Mr. Kenneally, if you want to refer  
7 me to something, let me get to it first, okay?

8 MR. KENNEALLY: Of course.

9 THE COURT: Go ahead.

10 MR. KENNEALLY: There is a confession, which  
11 involves two witnesses, and it is then, thereafter  
12 the confession, that a judicial committee is formed.  
13 That's what the witness testified to today.

14 So what the defense is trying to do is they  
15 are trying to say, No, no, no, no, there's this  
16 confession which then necessarily bleeds into the  
17 judicial committee, which then necessarily bleeds  
18 into the conference with the wife, which then  
19 necessarily bleeds into this reproof process, and  
20 it's all just one big confessional process.

21 But, again, the word confessional process  
22 is never used. They talk about the legal department  
23 and how there's this legal department. And yes, the  
24 legal department is there to provide legal advice,

1 but then Mr. Miller also begins to sort of blur the  
2 lines there. They're not just providing legal  
3 advice and telling the elders whether or not they  
4 have to report in a given state; but no, no, no,  
5 they're also getting into the scriptures with the  
6 elders as somebody is making a run back and forth  
7 with regard to the legal advice.

8           There's this meeting with the spouse -- and  
9 if you look at the testimony that we've heard, the  
10 testimony of Defendant Penkava, which the State put  
11 in, I believe, as People's Exhibit 2, and I'm not  
12 going to sort of belabor the point because your  
13 Honor is going to have enough time to review all of  
14 these exhibits.

15           But what Defendant Penkava said with  
16 respect to that meeting with [REDACTED] was, he said it  
17 was for three purposes. The first purpose was to  
18 advise her of her right to a divorce. The second  
19 purpose was to advise her of her right to go to  
20 authorities, and the third purpose was to provide  
21 her -- her with spiritual comfort.

22           So now, instead of -- so what Defendant  
23 Penkava says is now, when you sort of put that  
24 through the lens of Mr. Miller's testimony is that,

1 no, no, no, this was all sort of part and parcel of  
2 the confessional process, and it was actually [REDACTED]  
3 was there -- despite what their own client is  
4 saying -- it was actually [REDACTED] that was there to  
5 provide, somehow, spiritual guidance to [REDACTED]

6 So let's talk about [REDACTED] I think that  
7 the case that is critical to your Honor's decision  
8 making here is going to be Campobello. And so the  
9 main problem with the defense's argument is that  
10 they are trying to say that [REDACTED] statements were  
11 somehow a confession. Because if you look at  
12 Campobello -- and this is the main part of the  
13 decision, Judge. I don't know if you have the  
14 decision in front of you. But for the record, I'm  
15 on Page 17. It talks about the clergy-penitent  
16 privilege. And it says, Therefore, to fall under  
17 the protection of Section 8-803, a communication  
18 must be an admission or confession. Stop.

19 THE COURT: It says stop?

20 MR. KENNEALLY: No, it doesn't say stop. I'm  
21 saying stop, Judge, and I'm doing that for  
22 rhetorical effect, if you'll excuse me, and please  
23 bear with me.

24 It must -- In order to fall under the

1 protection of the clergy-penitent privilege, it must  
2 be an admission or confession.

3 Now, Mr. Prossnitz, during his  
4 cross-examination today discussed with our witness  
5 whether or not, sort of, the spouse is also required  
6 to make a disclosure with respect to the spouse's  
7 confession.

8 So the idea would be is that they are  
9 basically hearing the confession from two places.  
10 First, they're hearing it from the confessor, and  
11 then they're comparing that with the confession that  
12 the confessant himself had made to the spouse. I  
13 hope that makes sense, Judge.

14 But I would draw your attention to Page 158  
15 of [REDACTED] testimony because that's not what she  
16 said. She was not --

17 THE COURT: Hold on. I believe that was one of  
18 your exhibits, was it not?

19 MR. KENNEALLY: It was, Judge. It's Page 158.  
20 I forget the exhibit number. It's either 2 or 3.

21 THE COURT: You're speaking about the testimony  
22 before Judge Coppedge?

23 MR. KENNEALLY: No, this should be before you.  
24 This would have been as part of our -- I have a copy

1 of it, your Honor.

2 THE COURT: Well, I don't believe it's an  
3 exhibit attached to this motion.

4 MR. KENNEALLY: No, not -- Yeah, this is  
5 something that you took judicial notice of, Judge.  
6 So I apologize for my clumsiness.

7 THE COURT: That's all right. I have it in the  
8 computer. Let me find the date. Do you have the  
9 date?

10 MR. KENNEALLY: It should be December 16th, your  
11 Honor.

12 THE COURT: Thanks. And the page number again?

13 MR. KENNEALLY: Page 158.

14 THE COURT: I'll let you know when I get there.  
15 Give me a moment.

16 MR. KENNEALLY: Of course.

17 THE COURT: Okay. Go ahead.

18 MR. KENNEALLY: Thank you.

19 So, Judge, Mr. Prossnitz conducted a more  
20 than competent cross-examination of our witness here  
21 today, and the point of his cross-examination was he  
22 was trying to say, like, look, all [REDACTED] was  
23 telling the elders in this case was merely the  
24 confession that [REDACTED] later provided them as well,

1 and she was required to do that as part of this  
2 confessional process. But that's not what happened.

3 What [REDACTED] told them -- and I'm quoting --  
4 Page 158. This is [REDACTED] talking. I talked to them  
5 about what my husband had done. Question, And did  
6 you tell them what your husband -- or did you --  
7 where you learned what your husband had done?

8 Answer, My daughter mentioned it to me. And did you  
9 tell Mr. Penkava and [REDACTED] what your daughter  
10 had told you? The answer is yes.

11 So the information that the [REDACTED] was  
12 telling the elders that day was not the confession  
13 of [REDACTED] The information that she was telling  
14 them that day was the outcry statement of her young  
15 daughter. That is not the confession.

16 And if you go back to Campobello, Judge,  
17 and again I'm at Page 17, their analysis starts  
18 with, A communication must be an admission or a  
19 confession. This does not constitute -- The  
20 statements of [REDACTED] to the elders at their meeting  
21 does not constitute an admission or a confession.

22 Judge, I'm on Page 146 of [REDACTED]  
23 December 16th, 2021 testimony before this Court, and  
24 I'm at --

1 THE COURT: Page number again?

2 MR. KENNEALLY: 146, your Honor. And I'm at the  
3 top of the page, Judge.

4 It provides, Question, Did you state any  
5 grave sins that you had committed -- that you had  
6 committed to these three men, and there's an  
7 objection, but then the witness responds, That I  
8 committed, no.

9 So it's not [REDACTED] providing a -- She's not  
10 only not confessing herself. She's not merely  
11 regurgitating the confession of [REDACTED] By the  
12 clear language of Campobello, therefore, the  
13 clergy-penitent privilege does not apply to this  
14 case.

15 And based on this blackletter law -- This  
16 is one of the reasons why the State has found the  
17 Defendants' position here so confusing, and I think  
18 why your Honor should find their position  
19 unavailing.

20 Now, if you go to sort of the Thodos line  
21 of cases, Judge, and that's People versus Thodos.  
22 For the record, 49 Northeast 3rd, 62.

23 What those cases indicate is that if a  
24 confessant tells a clergy member a confession and

1 then that clergy member tells a third party what  
2 that confession was, it could still be protected,  
3 okay? It's not waived, and the confession is still  
4 made in confidence provided that third party is  
5 indispensable and regularly engaged in providing the  
6 person who the confessant confessed to with  
7 spiritual help. In other words, he's telling a  
8 third party in order to get help and spiritual  
9 guidance for the third person.

10 Again, that's not what we have in this case  
11 with respect to [REDACTED] because she testifies -- Let  
12 me start with Defendant Penkava's testimony.

13 Again, I'm not going to belabor the point,  
14 and I don't have the case in front of me, but your  
15 Honor -- I would encourage your Honor to review the  
16 testimony. He talks about why they went to talk to  
17 [REDACTED] and he says there's three reasons why we  
18 went to talk to [REDACTED] which I've already talked  
19 about.

20 He also says that -- he says nothing about  
21 [REDACTED] providing spiritual guidance to [REDACTED]  
22 Nothing at all. Rather, Defendant Penkava  
23 explicitly states that it was [REDACTED] who was going  
24 to be responsible for providing [REDACTED] ongoing



1 spiritual guidance. That was also [REDACTED]  
2 understanding as well.

3 I'm going to refer your Honor to Page 161  
4 of [REDACTED] testimony.

5 THE COURT: Go ahead.

6 MR. KENNEALLY: Thank you, Judge.

7 The middle of the page, Question, Yes, and  
8 I'm asking you if you were asked to help him to  
9 treat your husband. Answer, No, no, no, he was  
10 going to receive help from -- I don't know how they  
11 decided it, but it was [REDACTED] who was going  
12 to help him, not me.

13 So that's not [REDACTED] understanding of  
14 what was happening, and that's also not Defendant  
15 Penkava's understanding of what was happening, that  
16 somehow [REDACTED] was being engaged to provide some  
17 sort of spiritual guidance or spiritual help towards  
18 [REDACTED] And even if she was, she's not  
19 indispensable to it.

20 As I talked about, there's Person A making  
21 a confession to Clergy Member A, okay? And then  
22 Clergy Member A talks to Clergy Member B, but the  
23 only thing that's protected, the only thing these  
24 cases deal with, is the confession of the

1 confessant.

2 Here, they want to protect not only  
3 █████ confession but also all of the statements  
4 of -- all of the statements as well as the  
5 conversation of █████ as well as the elders. That  
6 would take the clergy-penitent privilege and bring  
7 it to a categorically different area that has never  
8 been protected by any Illinois case.

9 The only thing any Illinois case has ever  
10 protected is the actual admission or confession by a  
11 confessant, not subsequent conversations that take  
12 place or are given rise to from the initial  
13 confession.

14 I just want to emphasize one point. The  
15 argument that the defense is making with regard to  
16 the fact that this is a process and it protects sort  
17 of everything that is acquired by clergy members as  
18 part of responding to a confession or learning of a  
19 grave sin is the exact same argument that was made  
20 in Campobello. And here's what -- Just to  
21 underscore the point, this is what the  
22 Second District said, We agree with -- I'm on -- For  
23 the record, Judge, I'm on Page 17, the right side,  
24 second paragraph down. We agree with the

1 Pennsylvania Superior Court in Hutchinson. The  
2 clergy-member privilege does not protect any  
3 information that a religious institution acquires  
4 independently of a communication that is privileged  
5 by Section 8-803, in other words, a confession or  
6 admission, even if that information is the same as  
7 that conveyed in the confidential communication.  
8 (Indiscernible) there was the admission or the  
9 confession and then they received the exact same  
10 information from [REDACTED] that she had learned from  
11 her daughter. According to Campobello, that is not  
12 protected.

13 THE COURT: What was the page number, please?

14 MR. KENNEALLY: Judge, I'm on Page 17.

15 THE COURT: Thank you. Go ahead.

16 MR. KENNEALLY: All right. Now, let's talk  
17 about the Defendant's statements, and I'm going to  
18 refer you back to Campobello.

19 This is also on Page 17, the left side of  
20 the -- left-side column. It says, We note, however,  
21 that the privilege extends only to admissions or  
22 confessions that are made in confidence. So, in  
23 other words, admissions and the confessions, there  
24 has to be an expectation of all of the parties

1 involved that they were made in confidence.

2 How could the elders in this case,  
3 Defendant Penkava and [REDACTED], as well as  
4 [REDACTED] expect that what he was going to say with  
5 regard to the admission or confession was going to  
6 remain in confidence when their own guidebooks, as  
7 well as their own letters when they provide guidance  
8 with respect to how to handle sexual assault cases  
9 say that the elders are required to disclose these  
10 statements to two parties; one is the legal  
11 department and the other is the service department.

12 Now, as we talked about before, pursuant  
13 to --

14 THE COURT: What page of Exhibit 1 is that found  
15 on?

16 MR. KENNEALLY: Say that again, Judge?

17 THE COURT: What page of Exhibit 1 is that found  
18 on?

19 MR. KENNEALLY: Exhibit 1 is -- Judge, these  
20 would be the Shepherd the Flock books. Oh, I see  
21 what you mean. I don't have an exact page number,  
22 Judge. I don't have an exact page number,  
23 unfortunately.

24 But I think that based on the testimony,

1 even, of Mr. Miller, as well as the testimony of the  
2 witness today, Judge, it's -- I don't think there's  
3 a dispute over the fact that when you have a child  
4 sex case there does need to be report from the  
5 elders to the legal department, as well as to the  
6 service department, and that's what they did in this  
7 case, as is evidenced by People's Exhibit 5.

8 If you look at People's Exhibit 5, which is  
9 the judicial report, the elders indicate that they  
10 did contact the legal department and that the legal  
11 department indicated that they were not required to  
12 report. And then in addition to that, they sent  
13 that to the service department, which sent its  
14 responsive letter, which is People's Exhibit 6.

15 So there cannot be an expectation of  
16 privacy among [REDACTED] or among the elders when the  
17 very first thing that they do is they go and  
18 disclose this to the legal department. And that's  
19 pursuant to the letters that your Honor -- and with  
20 regard to the legal department, that's stated that  
21 that has to be disclosed. That's stated explicitly  
22 in the three letters that provided guidance to the  
23 elders.

24 So the first thing that they do is they go

1 to the legal department. Now, that would be okay if  
2 they were disclosing the admission or confession for  
3 purposes of spiritually guiding [REDACTED], but that's  
4 clearly not the case. They went to the legal  
5 department for one reason and one reason only, and  
6 they told them that it was [REDACTED]  
7 gave a birth date, told them the name of the victim,  
8 told them the name of his wife, okay? And it was  
9 for one reason only, and that was to determine what  
10 their reporting responsibilities were in Illinois.

11 And then they go to the service department.  
12 Now, how do you know why they -- How you know what  
13 the purpose of going to the service department was  
14 is because you can (indiscernible) that from the  
15 responsive letter of the service department. They  
16 did not reach out to the service department and  
17 disclose the admission or confession for purposes of  
18 spiritually guiding [REDACTED]

19 Look at the service department's letter.  
20 They say that [REDACTED] has to have restrictions  
21 imposed upon him. But these are not being imposed  
22 upon him for purposes of penance or punishment or as  
23 an attempt to sort of instill him with self-control  
24 by having to go through hardship. No. They were

1 there to protect the congregation from two things.  
2 One, the restrictions were so that he wasn't going  
3 to be around kids in Kingdom Hall, and the second  
4 was for purposes of optics.

5 Basically, what they are saying is they  
6 don't want somebody who has this fleshy weakness to  
7 be in a position of power. That just simply doesn't  
8 look good both within our committee -- excuse me --  
9 both within our congregation, as well as outside.  
10 So it's a question of public relation.

11 Nowhere in that letter from the service  
12 department do they say anything about trying to help  
13 Arturo spiritually. They offer no advice with  
14 regard to that at all. So the purpose of disclosing  
15 this to the service department was to receive  
16 advice, not that was indispensable to counseling  
17 [REDACTED] but to receive advice that was indispensable  
18 to protect the congregation from [REDACTED]

19 Now, just in landing the plane, Judge, the  
20 State's Attorney's Office would encourage this Court  
21 to find -- and I know that -- I could have been  
22 clearer in my motion to admit, and I apologize to  
23 that, but the main thrust of what the State is  
24 asking the Court to find is that the clergy-penitent

1 privilege did not protect [REDACTED] statement, nor  
2 did it protect the confession of [REDACTED] to the  
3 elders.

4 Thank you, Judge.

5 THE COURT: Go ahead, Mr. Prossnitz.

6 MR. PROSSNITZ: Thank you, your Honor.

7 Judge, before I do a limited deep-dive into  
8 these facts, and I'll try not to make it too deep, I  
9 think the 30,000-foot view here is as follows:

10 I don't mean to aid and abet the enemy, but  
11 I think, basically, what the State is arguing is  
12 this: The State is somehow suggesting that [REDACTED]  
13 is analogous to an independent source on a Fourth  
14 Amendment issue. That it's an independent source of  
15 information that somehow puts an obligation upon  
16 them to report. And so they're trying to say [REDACTED]  
17 has nothing to do with the spiritual counseling, has  
18 nothing to do with the confession of [REDACTED] That,  
19 you know, it's completely separate and attenuated  
20 from the confession of [REDACTED] separate from that  
21 confessional process. Again, tantamount to a Fourth  
22 Amendment independent source, they independently  
23 receive this.

24 So a couple weeks later, it's at a coffee



1 klatch, it's on the playground, they somehow get  
2 independent information. That's utter nonsense.

3 If we were dealing with a Catholic  
4 confession and if we were in the confessional booth,  
5 it would be very black and white.

6 The fact of the matter is [REDACTED]  
7 participation in this matter is tantamount to her  
8 coming into the confessional box. They want to  
9 ignore the confessional process, and they want  
10 to -- they want the government to define the  
11 confessional process as they see fit, and they want  
12 to tell this religion what their confessional  
13 process is.

14 The elders sought out [REDACTED] The elders  
15 reached out to [REDACTED] And why? Because it's part  
16 of the confessional process when you have child  
17 abuse, slash, adultery.

18 And as Mr. Kelm was very candid with us  
19 about, one of the greatest challenges for an elder  
20 is deciding that the sinner shows true repentance.  
21 And one way of doing that is finding out whether or  
22 not, in fact, the husband has told her what has  
23 occurred.

24 Again, the State wants to, you know, ever

1 so slightly, you know, come up with all these  
2 distinctions, which at the end of the day are not at  
3 difference.

4           It's very, very clear that verification of  
5 the sin to determine the true nature of the  
6 repentance is critical to the confessional process.  
7 The government can't define that. The Jehovah's  
8 Witnesses have, and it's not absurd. The judicial  
9 committee should promptly inquire of the Christian  
10 wife as to what her husband has told her.

11           So what is the information, is the point.  
12 They are meeting with the innocent spouse not only  
13 to tell her she can go to the police, not only to  
14 tell her that she can get divorced, but they also  
15 want to confirm the sin. And they don't slice it as  
16 thin as the prosecution would have this Court  
17 suggest.

18           They are going to the innocent spouse to  
19 confirm whether or not the sinner is truly  
20 repentant.

21           And, again, they are going to her -- They  
22 need to verify whether or not the father is being  
23 truly repentant so that they can proceed with  
24 counseling him, and also, as we heard from

1 Mr. Miller, counseling her.

2 And so Thodos, as referred to by the State,  
3 talks about this and tells us, if the third person  
4 is regularly engaged in aiding the clergy and giving  
5 spiritual advice, the privilege survives. That's  
6 Thodos.

7 So going to an innocent spouse is something  
8 they regularly do. It aids the clergy to determine  
9 the validity of the confession, whether he's playing  
10 fast and loose, whether he's being evasive, or  
11 whether he's being truly repentant. They don't go  
12 to [REDACTED] for any other reason. It's not a waiver.  
13 Thodos tells us that.

14 If the third person, the innocent spouse,  
15 is regularly engaged in aiding the clergy and giving  
16 spiritual advice -- Thodos doesn't limit to who it  
17 is -- giving spiritual advice, the privilege  
18 survives.

19 Mr. Kelm testified, and he testified  
20 truthfully. The defense really has no quarrel with  
21 many of the things he said. He admitted the  
22 information received from the innocent spouse would  
23 be indispensable to the counseling or consoling  
24 activity of the elders, correct? Correct. And

1 that's what Campobello says. And it doesn't say to  
2 whom.

3 And, again, in our particular case, it's  
4 clearly to the husband. It's clearly to the wife.  
5 But Campobello tells us, An admission or confession  
6 is not privileged if made to a clergy in the  
7 presence of a third party, unless such person is  
8 indispensable to the counseling or consoling  
9 activity. The trial court erred in holding that  
10 privilege extends only to admissions or confessions  
11 made in a one-on-one setting.

12 So Mr. Miller testified, Mr. Kelm testified  
13 the innocent spouse and verification of the sin --  
14 The Apostle Paul tells us it's important. That's  
15 indispensable to the process.

16 The other thing that Mr. Kelm admitted to  
17 us was the information received from the innocent  
18 spouse would be information elders obtained in their  
19 professional character or as spiritual advisors, and  
20 that is 735 ILCS 588.03. A clergy member will not  
21 be compelled to divulge any information obtained by  
22 him in his professional character or as such  
23 spiritual advisor.

24 When Mr. Penkava went and spoke to [REDACTED]

1 he was going as a spiritual advisor. He was trying  
2 to pursue and develop his work as an elder, as part  
3 of the confessional process involving the husband.  
4 For no other reason.

5 The State references Burnidge. In all  
6 candor, Judge, I don't want to overstate the  
7 holding, and so I will -- I must be candid, but  
8 reading between the lines, I think we're getting  
9 some pretty strong direction. I think it's  
10 potentially (indiscernible).

11 But, again, just to reacquaint us all with  
12 the facts, two subpoenaed witnesses filed a motion  
13 in limine. It was granted by -- I think it's  
14 Judge Goshgarian out of -- Judge Goshgarian out of  
15 Lake County, and it really goes without comment.  
16 There were two individuals. There was a decan at  
17 the church and there was a Reverend Payne. Reverend  
18 Payne met with the defendant, the abuser, the young  
19 lady who had been abused, and her parents and  
20 obtained information, and he claimed that it was  
21 privileged. It's also interesting to note that that  
22 same Reverend Payne contacted DCFS and was informed  
23 that as a pastor he's not required to report. A  
24 position we're taking here.

1 But the trial court granted the motion of  
2 the two pastors to be excused from testifying  
3 against the defendant about conversations they had  
4 with him, and that was very analogous to a situation  
5 here where a Jehovah's Witness elder is going -- and  
6 not even so much counseling, as it was in Burnidge,  
7 but more to the scriptures, more to the biblical  
8 provisions of getting a truly repentant sinner and  
9 getting him to turn around.

10 There's the red book that the State has  
11 produced, and I would submit -- I may be wrong, but  
12 I see nothing relevant to the material issue in this  
13 case. The material issue before this Court right  
14 here and right now, and it potentially could end  
15 this prosecution, is whether [REDACTED] statement is  
16 an independent source unrelated to a confessional  
17 process involving adultery and child abuse or  
18 whether it's an independent source and they were  
19 obligated to report.

20 In my quick read of this book, your Honor,  
21 I see nothing that indicates or talks about, even,  
22 innocent spouse, the Jehovah's Witness confessional  
23 process as it relates to child abuse. And if there  
24 was some specificity, so be it. But as it turns

1 out, there's not.

2 We're then looking at Shepherding the  
3 Flock, we're looking at Watchtower, we're looking at  
4 other materials as testified to by Mr. Miller, and  
5 it's clear when Mr. Penkava went to [REDACTED] it was  
6 part of a confessional process. Campobello tells us  
7 she isn't -- if she is indispensable, it's part and  
8 parcel of that process, It's tantamount to her being  
9 in the confessional box.

10 So in conclusion, Mr. Penkava would ask the  
11 Court to enter an order providing the following:  
12 That he is and was, in July of 2006, an elder. That  
13 the Jehovah's Witness has a detailed and thorough  
14 clergy-penitent process. That that process includes  
15 meeting with the innocent spouse. That in terms of  
16 findings of fact and conclusions of law, we'd also  
17 ask the Court to adopt Thodos, that the presence of  
18 a third party does not destroy the privilege if the  
19 person is regularly engaged in aiding the clergymen  
20 in giving the spiritual advice. The privilege  
21 survives, and that doesn't say who it has to be to.

22 We also would ask the Court, as a finding  
23 of fact, that the conversation with [REDACTED] does not  
24 defeat the privilege. That the innocent spouse is

1 regularly engaged in aiding clergy in the Jehovah's  
2 Witness faith. That her presence as an innocent  
3 spouse was indispensable to what was being done  
4 here. That her conversation does not defeat the  
5 privilege with [REDACTED] I don't know how anyone gets  
6 around [REDACTED] because, as we know, it's replete in  
7 Burnidge and Thodos, that privilege has to be waived  
8 by both the clergy and the penitent, and there's no  
9 evidence whatsoever that the husband was waived at  
10 all.

11 We'd also ask that this Court, as a  
12 conclusion of law, adopt Campobello that accepted  
13 the Supreme Court language in Kederoff (phonetic),  
14 that the religious freedom guaranteed by the First  
15 Amendment encompasses the power of religious bodies  
16 to decide for themselves free from State  
17 interference matters of church, government, as well  
18 as those of faith and doctrine, and this  
19 confessional process is a matter of faith and  
20 doctrine.

21 We're also asking that, again, as stated in  
22 Burnidge, adopted by Burnidge, that the privilege is  
23 both parties. That there is no evidence whatsoever  
24 of a waiver of the clergy-penitent privilege by any



1 person in this case. That nothing presented by the  
2 State changes the Court's opinion that the  
3 confessional process was indispensable to the  
4 workings of the Defendant's clergy-penitent process,  
5 and that under 8-803, a clergyman cannot be  
6 compelled to divulge any information he obtained in  
7 his professional character.

8 So we're asking that the information from  
9 [REDACTED] -- that the Court finds that the information  
10 obtained from [REDACTED] was part of a clergy-penitent  
11 process of the Jehovah's Witnesses, that it's  
12 protected by 8-803, that the Defendants cannot be  
13 compelled to divulge that information, and her  
14 testimony shall not be admitted. And similarly, the  
15 confession from [REDACTED] was and remains confidential  
16 pursuant to 8-803, it shall not be admitted.

17 I have a proposed order that we would ask  
18 the Court to consider.

19 THE COURT: Mr. Ek1.

20 MR. EKL: Yes. Thank you, Judge.

21 Your Honor, Mr. Kenneally is a wonderful  
22 lawyer, terrific person, but he is flat-out wrong  
23 when he tells you the only communication protected  
24 under 8-803 is a confession or admission by the

1 sinner. That is absolutely 100 percent incorrect.

2 When I looked at this motion, I have to  
3 tell you, I was totally confused because the prayer  
4 for relief in this motion is to admit the statements  
5 of [REDACTED] and the confessions of [REDACTED]  
6 [REDACTED] with no attempt to limit the scope  
7 of that testimony. To me, it appeared to be an  
8 improper use of a motion in limine. They weren't  
9 even telling us in the motion exactly what they  
10 wanted to admit, what they wanted to be -- have a  
11 pretrial ruling on.

12 This has turned out to be a mini trial in  
13 advance of a Class A misdemeanor bench trial. For  
14 the life of me, Judge, I don't know why we're here  
15 today doing this when it can be done at trial.

16 The State apparently wanted your Honor to  
17 make a ruling before trial, which would give them  
18 options if they don't like your Honor's ruling. But  
19 everything we've done here today, to my way of  
20 thinking, should have been part of a bench trial.  
21 Call [REDACTED] as a witness, ask her questions, we  
22 object, your Honor rules, we move on from there.  
23 Put on Mr. -- the gentleman from Savoy, ask him  
24 questions, we'll object, we go forward. But

1       instead, we've gone through this mini trial here  
2       this afternoon.

3               One thing I liked about it was the  
4       testimony of their witness. When he was asked the  
5       question of what was the purpose of speaking with an  
6       innocent spouse, and he said it was to -- for the  
7       elders to find out what the confessor had said to  
8       determine whether he was completely honest to  
9       determine his level of repentance. The purpose of  
10      talking with the innocent spouse is to look for  
11      complete repentance.

12             And you know what else he said? He said  
13      that it was essential to the work of the elders.  
14      And he also told us that the information that the  
15      elders were (indiscernible) was needed in their  
16      capacity as a spiritual advisor.

17             All of that is consistent with John Miller,  
18      and it's also consistent with testimony your Honor  
19      had previously heard. And I don't think you've  
20      heard anything here today which cuts into the fact  
21      that the Defendants are clergy, for the purpose of  
22      Illinois law, the Jehovah's Witness has a detailed  
23      and thorough clergy-penitent process, which includes  
24      meeting with the innocent spouse. [REDACTED] is the

1 innocent spouse, and as an innocent spouse, is  
2 regularly engaged in aiding the clergymen in giving  
3 spiritual advice. The innocent spouse aids the  
4 clergymen in giving spiritual advice, which is a  
5 regular step in the Jehovah's Witness  
6 clergy-penitent process, and the conversation  
7 between the Defendants and [REDACTED] does not defeat  
8 the privilege between the Defendants and [REDACTED]  
9 [REDACTED]

10 Well, why do I say Mr. Kenneally is  
11 completely off-base when he says to this Court that  
12 the law in Illinois is that to be covered by the  
13 privilege that it must be a confession or admission  
14 by the confessor? Well, being a simple lawyer, the  
15 first place I look is I look at the clergy-penitent  
16 privilege statute, 735 ILCS5/8-803. What does it  
17 say in that statute? That no clergy shall be  
18 compelled to divulge any information which he --  
19 obtained by him or her in such professional capacity  
20 or as such spiritual advisor.

21 Well, even by the State's witness here  
22 today, information was given over to our clients,  
23 and it was received in their spiritual capacity.  
24 That, your Honor, clearly covers that conversation

1 with [REDACTED].

2 Then we look at Campobello, and the  
3 State --

4 THE COURT: Well, what about the rest of the  
5 statute?

6 MR. EKL: I can read it, if you'd like.

7 THE COURT: Well, I can read it, too, but I --

8 MR. EKL: And it's in our pleadings.

9 THE COURT: I'm looking at the part that says,  
10 In such professional character, and that's described  
11 above --

12 MR. EKL: Right.

13 THE COURT: -- as a confession or admission.  
14 Go ahead and continue.

15 MR. EKL: Right. There's nothing about this  
16 line about divulging any information which has been  
17 obtained in a professional capacity which is somehow  
18 mitigated by the first portion of that statute.

19 And then we look at People versus  
20 Campobello. Campobello, again, talks about any  
21 information communicated in the course of an  
22 admission or confession made for the purpose of  
23 receiving spiritual consolation or counseling is  
24 privileged.

1           Your Honor, the bottom line here is that  
2           any information that these Defendants received in  
3           talking with [REDACTED] is privileged, and under 8-803,  
4           they are not permitted to divulge it to anyone.  
5           Consequently, how could [REDACTED] testimony about  
6           exactly what she told the elders based upon her  
7           conversation with her daughter should be admissible  
8           (indiscernible).

9           Thank you, your Honor.

10          MR. YOUASH: Your Honor, may I --

11          THE COURT: Yes, go right ahead.

12          MR. YOUASH: Judge, before responding, Mr. Ek1  
13          mentioned that we're having a mini trial here in  
14          advance of a Class A misdemeanor, almost  
15          de-minimizing why we're here. We're here, Judge,  
16          because the actions of their clients resulted in the  
17          ongoing abuse of a young girl for 11 more years.

18          MR. EKL: Objection.

19          MR. PROSSNITZ: Objection.

20          THE COURT: Sustained.

21                 That's not why we're here, Mr. Youash.  
22          We're here based on the allegations in your  
23          information. That is a complete mischaracterization  
24          of why we're here.

1 Continue with your argument.

2 MR. YOUASH: Judge, what it boils down to,  
3 ultimately, is whether or not [REDACTED] is  
4 involved in the spiritual development of [REDACTED]  
5 [REDACTED] That's what it boils down to.

6 Ultimately, if you feel that she is  
7 essential, that she is required in order to  
8 spiritually develop the penitent, then the Court  
9 should rule that none of what she says is  
10 admissible.

11 But what you have to go off of, Judge, is  
12 two-fold. You have the testimony of Mr. Miller.  
13 You have the statement -- I should say three-fold  
14 because it's the testimony of Mr. Miller, statements  
15 of [REDACTED] and then the statements today you've  
16 heard from Mr. Kelm.

17 If I could direct the Court's attention to  
18 Page 110 of the testimony from the same date, Judge,  
19 December 16th, Line 22.

20 THE COURT: Hold on. Of whose testimony?

21 MR. YOUASH: Of John Miller, Judge.

22 THE COURT: Give me a moment.

23 MR. YOUASH: I believe it's all part of one --

24 THE COURT: I think it is.

1 MR. YOUASH: Yeah. It's page 110, Judge,  
2 Line 22.

3 THE COURT: All right. Give me a moment to get  
4 there.

5 MR. YOUASH: Absolutely.

6 THE COURT: Go ahead.

7 MR. YOUASH: Judge, the question that was posed  
8 to Mr. Miller was, And when they go to meet with the  
9 spouse, the spouse isn't confessing anything to  
10 them, correct? Answer, no. And the spouse hasn't  
11 committed --

12 THE COURT: Hold on. Stop. I'm not following.  
13 I'm trying to follow in the transcript.

14 Are you on Page 110?

15 MR. YOUASH: Yes. Page 110, Line 22.

16 THE COURT: Okay.

17 MR. YOUASH: Would you like me to start over?

18 THE COURT: Go ahead.

19 MR. YOUASH: Okay. Answer, No. Sorry.  
20 Continuing on to Page 111, your Honor. Question,  
21 And the spouse hasn't committed any grave sins that  
22 she -- that she may have to confess to them,  
23 correct? Answer, We've already assumed that she's  
24 innocent, correct? So correct. So she has nothing



1 to confess? Answer, She is merely telling the  
2 elders what the sinner confessed to her in order to  
3 determine whether the sinner has confessed fully to  
4 the elders.

5 In this case, Judge, that's actually  
6 not what happened. Because what [REDACTED] as  
7 Mr. Kenneally just mentioned in opening argument,  
8 [REDACTED] did not tell them what [REDACTED] had shared.  
9 [REDACTED] was very direct. She advised the elders what  
10 her daughter had told her, and that's a distinction,  
11 Judge. Because, again, she is not repeating a  
12 confession that her husband made, rather, she is  
13 identifying or sharing the statements made by her  
14 daughter to the Defendants.

15 Directing the Court's attention to  
16 Page 159, Line 5. I'm sorry. I should back up,  
17 Judge, because I believe there was an objection, so  
18 it starts on Page 158, Line 21.

19 THE COURT: Go ahead.

20 MR. YOUASH: Question, And what had your  
21 daughter -- and what had your daughter told you that  
22 you told [REDACTED] and Mr. Penkava? Objection,  
23 hearsay. You overruled it as being, again, it's a  
24 motion in limine. You may answer. Answer, What her

1 father was doing to her. I know this is hard. What  
2 exactly had she told you that her father was doing  
3 to her? That he was touching her. And you told  
4 Mr. Penkava and [REDACTED] that your daughter had  
5 told you this, that he was touching her? Answer,  
6 yes.

7 Finally, Judge, directing the Court's  
8 attention to Page 161, Line 9.

9 THE COURT: Go ahead.

10 MR. YOUASH: At any point were you asked by  
11 Mr. Penkava or [REDACTED] to help spiritually develop  
12 your husband? Answer, Yes. And what did they ask  
13 you to do? Answer, That I was going to help him?  
14 Yes. I'm asking if you were asked to help him treat  
15 your husband. Answer, No, no. He was going to  
16 receive help from -- I don't know how they decided  
17 it, but it was [REDACTED] who was going to help  
18 him, not me.

19 Those are the words of [REDACTED],  
20 Judge, who they claim is essential -- is  
21 indispensable to the spiritual development of  
22 [REDACTED]. Counseling her, Judge, going and  
23 giving her bible verses to read.

24 And the testimony -- I'm not going to keep

1 citing, Judge, but those weren't bible verses she  
2 was supposed to read to [REDACTED] so that she could  
3 help spiritually develop him. Those were Bible  
4 verses for her. For her. For her own healing.

5 And, again, Judge, you've already ruled and  
6 made it quite clear that [REDACTED] is not a  
7 confessor in any of this proceeding, that any of the  
8 steps that -- whether the Defendants were talking to  
9 kind of confirm the confession made by [REDACTED] or  
10 not.

11 Judge, Mr. Prossnitz was very wise in his  
12 choice of words, right, that -- the questions were  
13 asked and answers were obtained in a professional  
14 character, right? In their professional character.

15 Well, we all know why he asked that. We  
16 all know why he asked that. But, again, look who  
17 he's talking to. He's not talking to the confessor.  
18 He is talking to a third party who clearly --  
19 clearly, through her own words, is not an  
20 indispensable party.

21 What did Mr. Kelm tell you today, Judge?  
22 That a spouse is not involved -- is not involved in  
23 the spiritual development. That's handled by the  
24 judicial committee. They handle that. The only

1 thing they are approaching the spouse for is: One,  
2 to advise her, again, since he's committed adultery,  
3 that she has a right to divorce. That's why. And  
4 in the words of the Defendant himself, to tell her  
5 that she can report it to the police.

6 But, again, in no way was [REDACTED]  
7 involved in the spiritual development of [REDACTED]  
8 [REDACTED]

9 Judge, they say that there's nothing in  
10 those letters or nothing in the exhibits or nothing  
11 in that book that mentions even the words innocent  
12 spouse.

13 Well, I would proffer to the Court that  
14 that cuts both ways, Judge. If you have this  
15 confessional process -- Again, because they have to  
16 stretch the confession into a process in order to  
17 shelter all of these statements, but if you have  
18 this confessional process and -- and a most  
19 important step of part of this process is that the  
20 innocent spouse be spoken to, be brought in, be part  
21 of this process, how come not a single one of those  
22 letters mentions that? How come the Shepherding the  
23 Flock book doesn't mention that? How would these  
24 elders learn what to do with an innocent spouse if

1 they get no instruction about it? How can that be  
2 such a vital part of their process and yet it's not  
3 mentioned once? Makes no sense.

4 The reason why it's not mentioned in there  
5 is because the innocent spouse isn't indispensable.  
6 It's because it's not vital to the spiritual  
7 development of a penitent. That's why.

8 Judge, with respect to [REDACTED] statements,  
9 that's what is outlined in those letters, the steps  
10 that they are supposed to take when a confession is  
11 made. And what are those steps? Judge, you've  
12 heard them a few times now in a few different  
13 hearings, right? What are those steps? Call the  
14 legal department. Call the legal department, Judge.

15 I'll direct your attention one last time --  
16 I hope you still have the document up. I apologize,  
17 Judge. It's Page 117, Line 21. It's Line 17.

18 THE COURT: Did you say line --

19 MR. YOUASH: Page 117, Line 17.

20 THE COURT: Give me a moment.

21 MR. YOUASH: Sure.

22 THE COURT: Hang on. There's a problem with my  
23 computer. Give me a moment.

24 Go ahead.

1           MR. YOUASH: Judge, the question was, And of all  
2 of -- This was a question posed to Mr. Miller. And  
3 of all of the instructions that they are given as to  
4 who to communicate and whether to communicate, all  
5 of those come from either the legal department or  
6 the service department, correct? Answer, Everything  
7 legal comes from any lawyer they consult. Anything  
8 spiritual comes from their review of the bible or  
9 from their assistance they receive from the service  
10 department. Question, So you're saying any  
11 communications between the service department and  
12 the judicial committee are all spiritual in nature?  
13 Answer, Absolutely.

14           Judge, you're going to review those  
15 letters. That's not true. That's not true, and  
16 Mr. Kelm just offered some testimony supporting  
17 that. That's not true at all. That's not true at  
18 all.

19           Rather, the instruction the service  
20 department is giving has nothing to do with the  
21 spiritual development of the penitent. That's  
22 handled by the judicial committee members. That's  
23 what Mr. Kelm just testified to, an expert, someone  
24 who has been an elder here in this state. He's

1 somebody who has received instructions from the same  
2 service department and the same legal department as  
3 the Defendants did.

4 And, Judge, again, what he said was the  
5 judicial committee will handle that. The judicial  
6 committee handles that. In the correspondence  
7 Mr. Kenneally pointed out, the service department is  
8 more concerned with the congregation and their  
9 image. They have nothing -- no concern for the  
10 spiritual development of the penitent. It's clear.  
11 There's communications that are made that are  
12 outside of the confession. It's clear that that is  
13 the intent, to have those communications, because  
14 that's the instructions they are given. And the  
15 penitent himself knew that. He knew that when he  
16 made those statements.

17 Lastly, Judge, I would offer that Mr. Ekl's  
18 take on Campobello isn't anywhere near what  
19 Campobello has to say. Isn't anywhere near it.  
20 Campobello, in fact, is just -- it's their argument  
21 already made, and the Court has already ruled  
22 against it.

23 We'd ask that you do the same, Judge.  
24 Thank you.

1 THE COURT: All right. Thank you all for your  
2 time and attention to these matters. And thank you,  
3 Mr. Kelm, for taking the time to join us from  
4 Central Illinois.

5 I have to admit a little bit of confusion,  
6 because what was asked for by both parties in their  
7 prayers for relief is not what is being asked of me  
8 today.

9 Mr. Kenneally asked in his prayer for  
10 relief that I would grant the State's motion to  
11 admit the statements of [REDACTED] I know I keep  
12 mispronouncing that. Help me out.

13 MR. YOUASH: It's [REDACTED]

14 THE COURT: Thank you. [REDACTED] and the  
15 confession of [REDACTED]

16 However, today, Mr. Kenneally asked me to  
17 make the ruling as to whether privilege applies. I  
18 know that may be part and parcel of the same thing,  
19 but it is a different ask.

20 Mr. Ekl's motion, as joined in my  
21 Mr. Prossnitz, just asked me to deny the State's  
22 Motion to Admit Statements of [REDACTED] and the  
23 Confessions of [REDACTED]

24 Mr. Prossnitz has a laundry list of things



1 he wants me to grant.

2 So what is it you fellas are asking for?  
3 Do you want me to stick by what you asked for in  
4 your motions, or is there an agreement to somehow  
5 amend what relief I'm supposed to be granting each  
6 party?

7 MR. EKL: On behalf of [REDACTED], we're asking  
8 you to deny the prayer for relief as contained in  
9 their motion.

10 THE COURT: Okay.

11 MR. EKL: Really simple.

12 MR. KENNEALLY: Judge, on behalf of the State,  
13 yes, I would agree with your Honor -- the State was,  
14 I guess, (indiscernible) is the word I'll use. The  
15 State was not entirely specific in its request. I  
16 think that I stated what the State's position is  
17 today, and your Honor has accurately reiterated it.

18 So the State would ask that your Honor make  
19 a ruling that the statements of [REDACTED] to the elders  
20 with respect to the abuse of [REDACTED] of her daughter  
21 is not subject to the privilege.

22 In addition, the State would ask that your  
23 Honor make a ruling that the clergy-penitent  
24 privilege does not apply to the admission and

1 confession of Arturo to either Defendant.

2 THE COURT: And, Mr. Prossnitz, do you join in  
3 what Mr. Ekl stated?

4 MR. PROSSNITZ: I do. And just to add, Judge,  
5 what we are saying, contrary to what the prosecution  
6 is requesting, is that the conversations with [REDACTED]  
7 were part of the --

8 THE COURT: I'm not asking for a renewed  
9 argument. I'm talking about prayers for relief  
10 here.

11 MR. PROSSNITZ: So I -- I would -- [REDACTED]  
12 statements are privileged. Can't come in.

13 THE COURT: Okay. You didn't address my  
14 question, so I'll assume the answer is yes, you are  
15 joining in what Mr. Ekl said.

16 MR. PROSSNITZ: I understand. But the only  
17 response I can say is that -- I did not understand  
18 the question. [REDACTED] testimony is part of the  
19 confessional process.

20 THE COURT: Stop. I'm not asking for a  
21 continued argument. I'm asking about the prayer for  
22 relief. The prayer for relief was simply, as  
23 Mr. Ekl restated that he is sticking by, is to deny  
24 the State's request to set forth in the written

1 motion -- Am I capturing that right, Mr. Ekl?

2 MR. EKL: Absolutely, Judge. And I don't think  
3 you need -- you can go anything beyond that.  
4 Whatever their -- the prayer for relief, don't go  
5 anything further.

6 THE COURT: Again, I'm not asking for any  
7 argument. I'm just clarifying, that's what you're  
8 asking for?

9 MR. EKL: That's it.

10 THE COURT: Mr. Prossnitz, is that what you're  
11 asking for?

12 MR. PROSSNITZ: Yes.

13 THE COURT: All right. There are basically two  
14 requests here, the admission of [REDACTED]  
15 testimony and the admission of [REDACTED]  
16 [REDACTED] testimony.

17 I'll be frank with you. I'm about that  
18 close to ruling on one of them and not as close on  
19 the other. However, since you've now given me  
20 additional information that I have not had the  
21 advantage of reviewing, we have evidence -- which I  
22 did not have previous -- is Mr. Penkava's  
23 transcript. I don't believe that was part of any  
24 previous proceeding. It wasn't admitted in any

1 previous proceedings that I have done.

2 Obviously, I've listened to and heard the  
3 testimony of Mr. Miller and [REDACTED]  
4 previously. Also, I now have Exhibits 1, 2, 3, 5,  
5 and 6. I can't get to that today and give you a  
6 decision right now.

7 So as Mr. Ekl so eloquently stated, this is  
8 a bench trial and this is a motion in limine in  
9 bench trial, which Mr. Ekl finds odd, and I would  
10 remind defense counsel that the first motion in  
11 limine I was asked to decide and decided was theirs  
12 some time ago.

13 MR. EKL: That was a proper motion in limine on  
14 a very --

15 THE COURT: Mr. Ekl, I'm not asking for  
16 rebuttal. I'm pointing out the obvious.

17 I'm going to take this under advisement. I  
18 will rule at the time of trial, which is next  
19 Thursday, 1:30 p.m. Excuse me. Wednesday at  
20 1:30 p.m. See you all there.

21 I would further add that without having  
22 read the additional materials, I'm bereft of enough  
23 information to make a final ruling on this motion.

24 Anything further from anyone before I let

1 [REDACTED] and Mr. Penkava go from the Zoom forum?

2 MR. EKL: No, your Honor.

3 MR. PROSSNITZ: Nothing further.

4 MR. YOUASH: An order to come, Judge.

5 THE COURT: We are now done for the day.

6 (Which were all the proceedings  
7 had in the above-entitled cause  
8 this date.)  
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1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF McHENRY )  
4

5 I, KATHLEEN STROMBACH, an official  
6 Court Reporter for the Circuit Court of McHenry  
7 County, Twenty-Second Judicial Circuit of Illinois,  
8 transcribed the electronic recording of the  
9 proceeding in the above-entitled cause to the best  
10 of my ability and based on the quality of the  
11 recording, and I hereby certify the foregoing to be  
12 a true and accurate transcript of said electronic  
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