

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KENNETH FLEMING, JOHN DOE,
R.K. and T.D.,

Plaintiffs,

v.

CORPORATION OF THE PRESIDENT OF THE
CHURCH OF JESUS CHRIST OF LATTER-DAY
SAINTS, a Utah corporation sole, a/k/a "MORMON
CHURCH"; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation,

Defendants.

NO. 04-2338 RSM

**DECLARATION OF
MARCUS B. NASH**

1. I am Marcus B. Nash, one of the attorneys of record for defendant in the above-captioned matter, and make this declaration on personal knowledge and belief.

2. On or about October 6, 2005, I met with Mr. Kosnoff and Mr. Pfau to discuss various issues arising in this case.

3. In our conversation, Mr. Pfau indicated that plaintiffs intended to file a motion to compel Bishop Borland to respond to questions posed in his deposition, and to which he asserted claims of privilege, privacy, and/or confidentiality.

4. To my memory, there was no discussion regarding Bishops Johansen or Coleman.

5. At the conclusion of our discussion, I asked plaintiffs' counsel to identify the questions they wished Bishop Boralnd to answer, and indicated that I would review his deposition transcript to re-familiarize myself with the context for the assertion of the privilege.

DECLARATION OF
MARCUS B. NASH - 1
7566-023128 36424

STAFFORD FREY COOPER

PROFESSIONAL CORPORATION
601 Union Street, Suite 3100
Seattle WA 98101.1374
TEL 206.623.9900 FAX 206.624.6885

1 6. Before I had the opportunity to complete a review of his deposition, the subject
2 motion to compel was served upon our offices.

3 7. Attached hereto as Exhibit 1 is a true and correct copy of the Church Handbook of
4 Instructions, Pages 22 and 93.

5 8. Attached hereto as Exhibit 2 is a true and correct copy of selected portions of the
6 transcripts of the Deposition of Bishop Frederick R. Johansen.


7 9. Attached hereto as Exhibit 3 is a true and correct copy of selected portions of the
8 transcript of the Deposition of Bishop Phillip Coleman.

9 10. Attached hereto as Exhibit 4 is a true and correct copy of selected portions of the
10 transcript of the Deposition of Bishop Randall Borland.

11 11. Attached hereto as Exhibit 5 is a true and correct copy of my October 7, 2005
12 correspondence confirming the CR 37(a)(2) (copy) conference. As the court will note, the letter
13 confirms that we discussed post-deadline deposition discovery, and I reiterated our position that,
14 while we would cooperate in conducting such depositions, the cooperation was to be done on a
15 witness-by-witness basis, not a carte blanche extension of the discovery cutoff. The court will
16 further note that I confirmed our discussion in which Mr. Pfau indicated his intent to file a
17 motion to compel Bishop Borland to respond to certain questions, to which I requested that they
18 supply me with a list of questions they wished to ask him. They have not supplied such a list.

19 I certify under the laws of the State of Washington and of the United States that
20 the foregoing is true and correct.

21 Signed at Seattle, Washington this 21st day of OCTOBER, 2005.

22 
23 _____
24 MARCUS B. NASH, WSBA #14471

CERTIFICATE OF SERVICE

I certify that on the date noted below I electronically filed Declaration of Marcus B. Nash using the CM/ECF system which will send notification of such filing to the following persons:

Michael T. Pfau
Gordon Thomas Honeywell Malanca Peterson & Daheim
600 University Street, Suite 2100
Seattle, WA 98101-4185
Email: mpfau@gth-law.com
Attorneys for Plaintiffs

Timothy D. Kosnoff
Law Offices of Timothy D. Kosnoff
600 University Street, Suite 2100
Seattle, WA 98101
Email: timkosnoff@comcast.net
Attorneys for Plaintiffs

DATED this 24th day of October, 2005, at Seattle, Washington.

/s/ _____

Church Handbook of Instructions

Book 1
Stake Presidencies and Bishoprics

THE CHURCH OF
JESUS CHRIST
OF LATTER-DAY SAINTS

EXHIBIT 1

The stake president or bishop should counsel members privately in his office. When meeting with a woman, he should ask a priesthood holder to be in an adjoining room, foyer, or hall. He should avoid circumstances that might be misunderstood.

The stake president or bishop should avoid making decisions for those he counsels. Instead, he helps them make their own decisions with the Lord's guidance. He also helps them analyze and resolve problems or questions in the context of the doctrines of the gospel and the plan of salvation.

When counseling, the stake president or bishop asks questions to help him understand the member's situation, though he should avoid unnecessary probing. Questions usually should bring out feelings and thoughts rather than *yes* or *no* replies. Members should do most of the talking.

While members talk, the stake president or bishop should listen carefully, giving full and sincere attention. Listening is vital in establishing confidence and trust. People often need someone they trust to listen to them as they work through their challenges and problems.

If a member has transgressed, the stake president or bishop firmly and lovingly helps him or her repent. He teaches that repentance includes having a broken heart and contrite spirit, recognizing and forsaking sin, seeking forgiveness, making restitution, and demonstrating a renewed commitment to keep the commandments. If necessary, he imposes informal Church discipline or initiates formal discipline. He should be familiar with the circumstances that may necessitate Church discipline and the procedures for initiating it.

When counseling members, the stake president and bishop help them take preventive action to resist temptations. For example, members who are courting, are having difficulty in their marriages, are separated or divorced, and are struggling with minor moral problems may be protected and strengthened by counseling designed to help them guard against transgression. Presiding officers need not wait for members to seek such help, but may call them in for counseling.

If a member needs professional counseling or therapy, the stake president or bishop should select or recommend a professional who will work in harmony with gospel teachings and principles. Leaders may work through LDS Social Services where it is available.

No priesthood officer is to counsel a person whom to marry. Nor should he counsel a person to divorce his or her spouse. Those decisions must originate and remain with the individual.

When a marriage ends in divorce, or if a husband and wife separate, they should always receive counseling from Church leaders. One or both may also need Church discipline if they have committed serious transgressions in connection with the divorce or separation.

The stake president or bishop may give a priesthood blessing if the member who is being counseled sincerely wants one.

Keeping Confidences

During and after their term of service in a calling, leaders must keep confidences about matters discussed when interviewing and counseling. A breach of confidence can damage trust, testimonies, and faith. A leader must not discuss confidential matters with others, including his counselors and wife, unless he receives consent from the person he is interviewing or counseling. If the bishop or a counselor in the stake presidency encounters matters that need to be discussed with the stake president, he should explain this to the member and refer the member to the stake president without delay.

Responding to Abuse

While interviewing or counseling a person, a priesthood leader may become aware of incidents of abuse of a child, spouse, or other person. Abuse cannot be tolerated in any form. Guidelines for responding to abuse are provided on pages 157–58.

Restitution

As part of the restitution required for repentance, transgressors should do all they can to restore what their transgression has taken from others. They also should seek forgiveness from the people they have wronged. The repentance of a married person who is involved in a sexual transgression usually should include confessing to and seeking forgiveness from his spouse. A young unmarried person who commits a sexual transgression should be encouraged to inform his parents.

Repentance may include disclosure to government authorities. If confidential information indicates that a member has violated applicable law, the bishop or stake president should urge him to report the matter to appropriate government authorities. To obtain guidance on local laws that govern reporting abuse, see the instructions on page 158.

Disclosure of the identity of others who participated in a transgression should be *encouraged* as part of the repentance process, especially when this can help Church leaders encourage the repentance of those participants.

Disclosure of the identity of others who participated in a transgression may be *required* when it is necessary to restore or protect persons who have been or may be seriously injured as a result of the transgression. For example, a sexual transgressor who has been exposed or who has exposed others to a sexually transmitted disease must make the disclosures necessary to protect others. Predators may need to be identified to protect potential victims. A transgressor who holds or has held a prominent position of trust may need to be identified to Church leaders for the spiritual protection of members.

Investigation

A bishop interviews any member of his ward who is accused of a serious transgression. If the member denies an accusation that the bishop has reliable evidence to support, the bishop (or the stake president if he will preside over the disciplinary council) gathers further evidence that would confirm or disprove the accusation. The presiding officer may conduct the investigation himself, or he may assign two reliable Melchizedek Priesthood holders to do so. He instructs them not to use methods that are unbecoming to priesthood holders or that could result in legal action. For example, they must not use electronic surveillance devices, hidden cameras, or tape recorders. They also must not maintain a watch on a member's home.

Confidentiality

Bishops, stake presidents, and counselors in a stake presidency have a solemn duty to keep confidential all information that members give them in confessions and interviews. The same duty of confidentiality applies to all who take part in Church disciplinary councils. It includes what is said in the presentation of evidence and in deliberations. Confidential information must not be shared with anyone except authorized ecclesiastical leaders.

Information received in a member's confession cannot be used as evidence in a disciplinary council without the member's consent. When necessary, a bishop attempts to persuade the member to give this consent. He explains that refusal reflects a lack of contrition and repentance, preventing justice and mercy from operating fully for the good of the transgressor. If consent is not given, the bishop can still impose informal discipline on the basis of the confession. A lack of consent to use a confession in evidence does not prevent a disciplinary council from proceeding on the basis of other evidence.

If a bishop learns that a Church member outside his ward may have been involved in a serious transgression, he informs that member's bishop confidentially. When members of different wards transgress together, and when one has disclosed to his bishop the identity of the other transgressor, the bishop to whom the disclosure was made consults with the bishop of the other member.

If civil authorities challenge the confidentiality required of a clergyman, the priesthood leader who is challenged should seek legal advice from the Office of Legal Services at Church headquarters (telephone 1-801-240-6301 or 1-800-453-3860, extension 6301) or from local legal counsel in Church area offices.

Informal Church Discipline

A bishop or branch president normally administers informal Church discipline. His counselors do not participate, and no disciplinary council is held. Except for the most serious transgressions, informal discipline may be sufficient for genuinely repentant persons (especially those who have confessed voluntarily), first offenders, those who have not violated temple covenants by their transgression, and those with significant mitigating circumstances. (See D&C 42:25-26 and pages 103-4.)

Informal Church discipline includes (1) private counsel and caution and (2) informal probation.

Byers & Anderson, Inc.
Court Reporters & Video

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING and JOHN DOE,)
)
Plaintiffs,)
)
vs.)
)
THE CORPORATION OF THE PRESIDENT)
OF THE CHURCH OF JESUS CHRIST OF) No. 4-2338 RSM
LATTER-DAY SAINTS, a Utah)
corporation sole, a/k/a "MORMON)
CHURCH"; LDS SOCIAL SERVICES a/k/a)
LDS FAMILY SERVICES, a Utah)
corporation,)
)
Defendants.)

DEPOSITION OF FREDERICK R. JOHANSEN

September 16, 2005

Seattle, Washington

Byers & Anderson, Inc.
Court Reporters/Video/Videoconferencing
One Union Square 2208 North 30th Street, Suite 202
600 University St. Tacoma, WA 98403
Suite 2300 (253) 627-6401
Seattle, WA 98101 (253) 383-4884 Fax
(206) 340-1316 scheduling@byersanderson.com
(800) 649-2034 www.byersanderson.com

25th Anniversary 1980-2005

Frederick R. Johansen
September 16, 2005

EXHIBIT 2

Byers & Anderson, Inc.
Court Reporters & Video

Page 26

1 Q Were there others besides Brent and Jimmy Allenbach
2 and your son that were part of that troop though?
3 A Yes.
4 Q Do you recall any of the last names of the children
5 that were part of that group, other than the
6 Allenbachs?
7 A I don't have a very good memory, but we had a lot of
8 boys in our ward. I would say we had 10 or 12, more
9 or less.
10 Q And were they all part of that Scout troop?
11 A Yes.
12 Q What were your impressions of Jack LoHolt as a
13 person?
14 A He was a good friend.
15 He worked for me.
16 Q How did he work for you?
17 A He was a contractor, bulldozer, backhoe.
18 Q So when you call Mr. LoHolt a good friend, did you
19 spend a lot of time with Mr. LoHolt just on a
20 one-on-one basis?
21 A Just professionally.
22 Q Ever have Mr. LoHolt over for dinner at your house?
23 A No.
24 Q What about the Allenbachs? Did you ever have them
25 over for dinner at your house?

Page 27

1 A Allenbachs were close, close friends of ours.
2 Q So when you say that LoHolt was a good friend and the
3 Allenbachs were close, close friends, correct me if
4 I'm wrong, that says to me that the Allenbachs were
5 better friends of yours than LoHolt was.
6 A Yes.
7 Q What was your impression of Jack LoHolt's
8 relationship with the Allenbach family?
9 A I would say it was close. They were close friends.
10 Q How about the friendship between Dr. Allenbach and
11 Mr. LoHolt?
12 A Well, I think they were close, close friends.
13 Likewise-- they were good friends.
14 Q During your time as the bishop, were you ever aware
15 of any problems with Jack LoHolt's behavior?
16 A No.
17 (Mr. Frey exits.)
18
19 MR. NASH: Counsel, he stepped out, do
20 you mind if I kind of step in his shoes while he's
21 out?
22 We're shifting the voice, but I want to make sure
23 it's okay with you.
24 MR. REICH: That's fine.
25 Q (By Mr. Reich) During your time as bishop, did you

Page 28

1 ever learn about Jack LoHolt having any inappropriate
2 contact with children under the age of 18?
3 A State the question again, please.
4 (Mr. Frey present).
5
6 Q (By Mr. Reich) During your time as a bishop, did you
7 ever come to learn any information about Jack LoHolt
8 having inappropriate contact with children under the
9 age of 18?
10 A No.
11 MR. REICH: I want to go off the record
12 to talk to my client.
13 (Recess 9:50 to 9:52 a.m.)
14 (Exhibit No. 1 marked for
15 identification.)
16
17 Q (By Mr. Reich) Mr. Johansen, I am handing you what
18 I've marked as Exhibit No. 1.
19 For the purposes of my question, I'd like to
20 define the word "sexual contact" as it's stated in
21 Exhibit No. 1, okay?
22 Well, let me back up.
23 Why don't you go ahead and review Exhibit No. 1
24 for me, please.
25 A (Witness complies.)

Page 29

1 Q For the purposes of this question, I would like you
2 to refer to the definition of sexual contact if you
3 have any question about the definition, but during
4 your time as a bishop did you ever come to learn any
5 information about Jack LoHolt having sexual contact
6 as it's defined there in Exhibit No. 1, with any
7 children under the age of 18?
8 MR. FREY: Before you answer that, I am
9 going to claim privilege if he learned it in any
10 context in which he had a member of the ward coming
11 to him in his capacity as a bishop, either in a
12 confessional sense or in a sense of spiritual
13 counseling with him.
14 If he learned it otherwise, that he just heard a
15 rumor in the ward, he's free to answer that.
16 Do you understand what I'm saying?
17 A Yes.
18 MR. FREY: Then go ahead and answer.
19 THE WITNESS: The answer is no.
20 Q (By Mr. Reich) "No," meaning you've had no person in
21 any capacity approach you with any information about
22 LoHolt, Jack LoHolt, having sexual contact with
23 children under the age of 18?
24 MR. FREY: Again, I'm going to object
25 and instruct the witness not to answer that question

Byers & Anderson, Inc.
Court Reporters & Video

Page 30

1 with regard to anyone who came to see him in his
2 capacity as a bishop.
3 Other than that, he can answer, and I think he
4 has.
5 MR. REICH: Well, I want to explore that
6 because I'm not satisfied that there has been any
7 foundation yet for asserting that as a privilege.
8 I don't know whether he has learned of any
9 information. I am asking whether he has learned from
10 any source, any information-- I am not asking what
11 was stated in a confessional or what setting.
12 Q (By Mr. Reich) I just want to know whether at any
13 point in time you learned while you were bishop that
14 LoHolt had had sexual contact with children under the
15 age of 18.
16 MR. FREY: I am making the same
17 objection. You can go ahead and answer within the
18 confines that I told you.
19 THE WITNESS: The answer is no.
20 Q (By Mr. Reich) For the purposes of this question
21 then, have you heard from any source while you were a
22 bishop-- while you were bishop of the 2nd Ward have
23 you heard from any source whether Jack LoHolt engaged
24 in sexual intercourse as is defined in Exhibit No. 1
25 with a child under the age of 18?

Page 31

1 MR. FREY: The question has been asked
2 and answered, and I will allow him to answer within
3 the confines that I have made; that is, giving
4 spiritual counseling or hearing a confession, you are
5 not to answer the question. Otherwise, you may
6 answer it as to any other capacity which you were in
7 the ward.
8 Q (By Mr. Reich) Go ahead.
9 MR. FREY: You can answer the question.
10 I think you've already answered it, but go ahead and
11 answer it again.
12 THE WITNESS: No.
13 Q (By Mr. Reich) My previous questions had to do with
14 sexual contact as defined there. My last question
15 had to do with sexual intercourse as defined in
16 Exhibit No. 1, so those with two distinct questions.
17 Let me ask you a different way.
18 During the time you were a bishop, did you ever
19 learn any information, not in your capacity as a
20 bishop, but did you ever learn any information about
21 Jack LoHolt having sexual contact with children under
22 the age of 18?
23 A The answer is no.
24 Q During the time that you were a bishop but not in
25 your capacity as a bishop did you ever learn any

Page 32

1 information about Jack LoHolt having sexual
2 intercourse with children under the age of 18?
3 A You said-- state the question one more time.
4 Q Did anyone, during your time that you were a bishop,
5 just during that as a time frame, not necessarily in
6 your role as a bishop, not as somebody approaching
7 you as Bishop Johansen but more in the context of
8 somebody talking to you outside of a confessional
9 context, did you ever have anyone approach you,
10 during that time frame, and inform you that there
11 were potential issues of LoHolt having sexual contact
12 with children under the age of 18?
13 A The answer is no.
14 Q The same question with regard to sexual intercourse?
15 A No.
16 Q During your time that you were a bishop for the Kent
17 ward, did you ever hear rumors that Jack LoHolt was
18 having inappropriate interactions or sexual contact
19 or sexual intercourse with children under the age of
20 18?
21 A Could you state that one more time?
22 Q It was a poor question.
23 A I'm sorry to be so--
24 Q I appreciate you asking me to clarify that. It's
25 important.

Page 33

1 During your time that you were a bishop, did you
2 ever hear any rumors about Jack LoHolt having
3 inappropriate interactions with children under the
4 age of 18?
5 A The answer is no.
6 Q During the time you were a bishop, did you hear any
7 rumors about Jack LoHolt having any sexual contact
8 with children under the age of 18?
9 A No.
10 Q During your time as a bishop, did you ever hear any
11 rumors about Jack LoHolt having sexual intercourse
12 with children under the age of 18?
13 A No.
14 Q Before you were a bishop, did you ever hear or were
15 you aware of Jack LoHolt having inappropriate contact
16 with children under the age of 18?
17 A No.
18 Q Before you were bishop, were you aware of any
19 information about LoHolt having sexual contact with
20 children under the age of 18?
21 A No.
22 Q Before you were bishop did you have any-- were you
23 aware of Jack LoHolt having sexual intercourse with
24 children under the age of 18?
25 A No.

Byers & Anderson, Inc.
Court Reporters & Video

1 Q After you left the Kent ward in, I believe you said,
 2 1974, did you learn that Jack LoHolt was having
 3 inappropriate interactions with children under the
 4 age of 18?
 5 A Did you say before or after?
 6 Q After you left the Kent ward.
 7 A I don't remember any.
 8 Q So as you sit here today, you were never aware of any
 9 issues with regard to Jack LoHolt having
 10 inappropriate interactions with children under the
 11 age of 18?
 12 I am not trying to trick you.
 13 MR. FREY: This is after 1974?
 14 MR. REICH: Yeah.
 15 Q (By Mr. Reich) After you left the ward in 1974, did
 16 you ever learn information that Jack LoHolt was
 17 having inappropriate interactions with children under
 18 the age of 18?
 19 A No. The answer is no.
 20 Q Just to be thorough, since leaving the Kent ward in
 21 1974--
 22 A Kent 2nd.
 23 Q Thank you. Have you ever come to learn about Jack
 24 LoHolt having any sexual contact with any child under
 25 the age of 18, as "sexual contact" is defined in

1 Exhibit No. 1?
 2 A The answer is no.
 3 Q Since leaving the 2nd Ward in Kent in 1974, have you
 4 come to learn any information about Jack LoHolt
 5 having sexual intercourse with children under the age
 6 of 18 as it's defined in Exhibit No. 1?
 7 A No.
 8 Q So then as you sit here today, you have never heard
 9 of any allegations of any type regarding Jack LoHolt
 10 having inappropriate sexual contact or intercourse
 11 with a child under the age of 18; is that correct?
 12 THE WITNESS: Can I set it off-- can I
 13 shut you off for a minute?
 14 MR. FREY: You're all right. If you
 15 want to explain your answer, you should tell Counsel.
 16 THE WITNESS: I knew that Jack had some
 17 problems because he went to prison for it, but what
 18 those problems were, I never knew.
 19 Q (By Mr. Reich) Do you remember when Jack LoHolt went
 20 to prison?
 21 A No, I never did know, I don't think.
 22 The answer is no, I don't know when he went, but
 23 I know he went.
 24 Q Do you recall whether it was after you left the Kent
 25 ward in 1974?

1 A Oh, yes.
 2 It's the Kent 2nd.
 3 Q I am not doing that intentionally.
 4 Were you ever made aware of any counseling that
 5 Jack LoHolt was receiving at any time that you were
 6 at the Kent 2nd Ward?
 7 A No.
 8 Q Have you ever had discussions with any others in the
 9 church hierarchy, meaning other bishops, stake
 10 presidents, area presidents, regarding Jack LoHolt?
 11 MR. FREY: Before you answer that, if
 12 you had discussions with them in your capacity as a
 13 bishop, in your ecclesiastical capacity concerning
 14 Jack LoHolt, then that's protected in my opinion, and
 15 I instruct you not to answer.
 16 If you had discussions outside of that, then you
 17 should answer Counsel's question.
 18 THE WITNESS: The answer is no.
 19 Q (By Mr. Reich) The question wasn't as specific as
 20 the objection was.
 21 The question was: Did you ever have any
 22 conversations with anyone about Jack LoHolt that was
 23 within the hierarchy of the church, not the substance
 24 of the conversation, but have you ever had a
 25 conversation with anyone, including the other

1 bishops, stake presidents, area presidents, et
 2 cetera, regarding Jack LoHolt?
 3 What I am looking for is a "yes" or "no" answer,
 4 not an explanation of what was discussed.
 5 A State your question again.
 6 Q It's just a "yes" or "no" question, for the time
 7 being--
 8 A The answer is no.
 9 Q I need to make sure-- have you ever had any
 10 conversations with any other members of the church
 11 hierarchy, and when I say that, I mean bishops, stake
 12 presidents, area presidents, et cetera, regarding
 13 Jack LoHolt?
 14 A No.
 15 Q Have you ever had discussions with Jack LoHolt
 16 directly regarding any issues related to his behavior
 17 while you were a bishop?
 18 A While I was bishop, no.
 19 Q Ever had any conversations with Jack LoHolt directly
 20 about his behavior before you were bishop?
 21 A No.
 22 Q Have you ever had any discussions with Jack LoHolt
 23 directly about his behavior after you were bishop?
 24 A Yes.
 25 Q When did those conversations occur?

Byers & Anderson, Inc.
Court Reporters & Video

Page 46

Page 48

1 Q (By Mr. Reich) I am not asking what you talked
 2 about, but I was wondering if you looked at any
 3 documents to prepare for today.
 4 MR. FREY: You're right, we didn't look
 5 at any documents.
 6 MR. REICH: I would appreciate the
 7 answer coming from Mr. Johansen.
 8 Q (By Mr. Reich) Can you say what the answer--
 9 A No.
 10 Q Do you know whether Dr. Allenbach was living in a
 11 polygamist situation at any time?
 12 A No.
 13 Q You mean "no" he was not or you don't know?
 14 A I don't think he was, no.
 15 Q Okay. Has anyone at any time ever come and
 16 approached you about an issue related to Jack LoHolt?
 17 A No.
 18 Q And I am including your time as a bishop.
 19 Did anyone at any time ever approach you about a
 20 problem with Jack LoHolt?
 21 A No.
 22 I assume your question is relating to this.
 23 (Indicating.)
 24 The answer is no.
 25 MR. REICH: Thank you, Mr. Johansen,

1 STATE OF WASHINGTON) I, Terilynn Pritchard, CCR, RPR,
) ss CCR # 2047, a duly authorized
 2 County of Pierce) Notary Public in and for the State
 of Washington, residing at
 3 Auburn, do hereby certify:
 4
 5 That the foregoing deposition of FREDERICK R.
 JOHANSEN was taken before me and completed on September 16,
 6 2005, and thereafter was transcribed under my direction;
 that the deposition is a full, true and complete transcript
 7 of the testimony of said witness, including all questions,
 answers, objections, motions and exceptions:
 8
 9 That the witness, before examination, was by me
 duly sworn to testify the truth, the whole truth, and
 nothing but the truth, and that the witness reserved the
 10 right of signature;
 11 That I am not a relative, employee, attorney or
 counsel of any party to this action or relative or employee
 12 of any such attorney or counsel and that I am not
 financially interested in the said action or the outcome
 13 thereof;
 14 That I am herewith securely sealing the said
 deposition and promptly delivering the same to
 15 Attorney Johnnie Dano.
 16 IN WITNESS WHEREOF, I have hereunto set my hand
 and affixed my official seal this 19th day of September,
 17 2005.
 18
 19
 20
 21 _____
 Terilynn Pritchard, CCR, RPR
 22 Notary Public in and for the State
 of Washington, residing at
 Auburn.
 23
 24
 25

Page 47

1 that's all we have.
 2 (Deposition concluded at 10:32 a.m.)
 3 (Signature reserved.)
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Byers & Anderson, Inc.
Court Reporters & Video

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING and JOHN DOE,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
THE CORPORATION OF THE PRESIDENT)	
OF THE CHURCH OF JESUS CHRIST OF)	No. 4-2338 RSM
LATTER-DAY SAINTS, a Utah)	
corporation sole, a/k/a "MORMON)	
CHURCH"; LDS SOCIAL SERVICES a/k/a)	
LDS FAMILY SERVICES, a Utah)	
corporation,)	
)	
Defendants.)	

DEPOSITION OF PHILIP J. COLEMAN

September 15, 2005

Seattle, Washington

Byers & Anderson, Inc.
 Court Reporters/Video/Videoconferencing
 One Union Square 2208 North 30th Street, Suite 202
 600 University St. Tacoma, WA 98403
 Suite 2300 (253) 627-6401
 Seattle, WA 98101 (253) 383-4884 Fax
 (206) 340-1316 scheduling@byersanderson.com
 (800) 649-2034 www.byersanderson.com

25th Anniversary 1980-2005

Philip J. Coleman
September 15, 2005

EXHIBIT 3

Byers & Anderson, Inc.
Court Reporters & Video

Page 42

1 that your predecessor served?
 2 A Well, I started in 1973, and this was 1970, so no
 3 less than three. How much less, I don't remember.
 4 Q Can you give me a general sense of the kind of
 5 communication or the types of communications that go
 6 on between a departing bishop and an arriving bishop
 7 regarding the transfer of responsibilities within the
 8 ward?
 9 MR. FREY: Could I ask for a
 10 clarification?
 11 Are you talking about then or now?
 12 MR. KOSNOFF: He can only testify as to
 13 his experience.
 14 Q (By Mr. Kosnoff) If it changed in your later
 15 bishopric, perhaps you can point that out, but I'm
 16 trying to get a sense of is there a practice, is
 17 there a custom. How are the reigns transferred?
 18 MR. FREY: I am going to object to the
 19 form of the question. It's indeterminate in time,
 20 but go ahead and answer.
 21 THE WITNESS: Is there a protocol? I
 22 don't remember.
 23 I can remember what might have taken place.
 24 There would be a transfer of records, keys, the
 25 current mechanics in progress as far as the

Page 43

1 organization is concerned, nonconfidential items of
 2 concern.
 3 Q (By Mr. Kosnoff) Now, I understand that the
 4 responsibilities of the bishop are great and
 5 multifaceted and include both administrative
 6 responsibilities and pastoral responsibilities.
 7 Do you recall having discussions of an
 8 administrative nature with your predecessor, Bishop
 9 Borland?
 10 MR. FREY: I am going to object to the
 11 form of the question.
 12 THE WITNESS: And I'm not sure I
 13 understand the question.
 14 Q (By Mr. Kosnoff) Well, you talked about keys,
 15 records. I'm assuming you're referring to things
 16 that had to do with the administrative operations of
 17 the ward.
 18 A Yes.
 19 Q Did it also involve discussions regarding personnel--
 20 strike that. Individuals in callings, positions, and
 21 offices under the purview of the bishop?
 22 A It might have.
 23 Q Do you have any specific recollection of any of those
 24 discussions?
 25 A I do not.

Page 44

1 Q Did you have, for example, a discussion about how the
 2 Boy Scout program was operating and what changes need
 3 to be made there?
 4 A I do not recall any.
 5 Q Are there any protocols or practices that you recall
 6 involving communicating confidential, sensitive
 7 issues involving members of the ward?
 8 A I don't remember a protocol for that.
 9 Q Do you have any recollection of Bishop Borland
 10 telling you any sensitive or confidential information
 11 concerning any members of the ward?
 12 A I do not.
 13 Q When you became bishop, at that point had you been
 14 aware of there being any complaints of sexual
 15 misconduct with boys by Jack LoHolt?
 16 A No.
 17 Q Had you heard any rumors to that effect?
 18 A No.
 19 Q To your understanding what kind of a job was Jack
 20 LoHolt doing within the ward Scout program when you
 21 became bishop?
 22 A A young men's secretary position is often given to a
 23 person who is-- who needs something to do.
 24 Q And in that instance Jack LoHolt needed something to
 25 do?

Page 45

1 A I can't infer the second from the earlier, but that
 2 was a statement of fact of the position.
 3 Q Okay.
 4 A I don't recall how well Jack was doing or why he was
 5 put in the position.
 6 Q He was already in that position when you became
 7 bishop?
 8 A I don't recall that either.
 9 Q At some point during the three years that you were
 10 bishop, did someone bring to your attention an
 11 allegation that Jack LoHolt was sexually molesting
 12 boys?
 13 A In the specific, I have to say no to sexually
 14 molesting.
 15 Q What about generally?
 16 A In the general to sexually molesting, I have to say
 17 no.
 18 Q Did you receive any information of any kind from any
 19 person that Jack LoHolt was allegedly engaging in
 20 sexually inappropriate activity?
 21 A Yes.
 22 Q From who whom did you learn that?
 23 MR. FREY: I am going to object at this
 24 point in time.
 25 Let me tell you the basis for the objection.

Byers & Anderson, Inc.
Court Reporters & Video

1 He was a bishop at the time, and we treat those
2 communications as confidential, and in trying to help
3 you with this answer, I'm not trying to present a
4 roadblock.
5 As an accommodation and because of the fact that
6 the individuals involved have not authorized this
7 information to be given, I think they have a right to
8 privacy in that regard and a right to have it
9 protected.
10 As an accommodation, I'll allow the witness to
11 tell you in a general sense what he heard had
12 happened, and I'm not waiving any privilege by doing
13 that.
14 If you'll accept that, we can go forward.
15 You don't have to accept my objection, but if you
16 want to go forward, I'm willing to do that on this
17 basis.
18 MR. KOSNOFF: Tom, I would like to take
19 a brief bathroom break and come back and continue
20 this dialogue on that point.
21 (Recess 10:27 to 10:33 a.m.)
22
23 MR. KOSNOFF: Mr. Frey, this is not
24 unfamiliar ground to the two of us, this point.
25 We've been at similar points in other cases.

1 you need to go--
2 MR. KOSNOFF: Before we go there, I
3 think this is important that we establish enough of a
4 factual record here for Judge Martinez so we only
5 have to take one trip up and bring Dr. Coleman back
6 one more time as opposed to two more times, so I
7 would propose that with respect to the assertion of
8 the claimed privileges that you're making, that you
9 take a moment and establish whatever factual basis
10 you would like with Dr. Coleman to support the
11 assertion of those privileges.
12 I'm inviting you to do that because, as you know,
13 it's the proponent of the privilege that carries the
14 burden of establishing it, and I just want to make
15 sure that when this goes up to Judge Martinez, that
16 you've had a full opportunity to make as full an
17 evidentiary record as you need to make your arguments
18 to him.
19 MR. FREY: It's not my burden. Under
20 the rule I'm exercising those privileges, and I've
21 enumerated them.
22 If you wish to question the witness, you are free
23 to do that. If you choose to go to Judge Martinez,
24 I'll be happy to supply whatever additional
25 information I need by way of affidavit or otherwise.

1 From your comments I take that you are making an
2 objection based upon a number of criteria. One, I
3 think I heard an assertion of the clergy penitent
4 privilege.
5 MR. FREY: I'll make it simple for you.
6 I'll tell you what the basis for my objection is:
7 one, it's a constitutional objection on the free
8 exercise clause; number two, it may also be on the
9 basis of the priest penitent privilege depending on
10 the circumstances under which he may have heard
11 something; and the third ground is that we've said in
12 our answers to interrogatories I'm not prepared to
13 reveal the names of anybody or have my client reveal
14 the names of anyone who has been molested without
15 that person's consent because I know for a fact, and
16 I've gotten court orders on this, that it can be
17 devastating to have someone knock on their door and
18 say, "I understand you've been abused and I'd like to
19 talk to you about it."
20 For those three reasons-- I am willing to go
21 forward because I know that you have the right to
22 determine knowledge and what they knew and should
23 have known, and I'm willing to let him tell you in a
24 general fashion, and I guess I could proffer this for
25 the record what he can tell you to get you to where

1 I've tried to explain to you, and you're free to
2 ask him the circumstances and free to ask him a
3 number of questions, and I think you can get the
4 information that you need without revealing these
5 names.
6 Quite frankly, Tim, I don't want to reveal any
7 names or my client to reveal any names that he may
8 have heard of that are not public right now because I
9 simply don't think it's appropriate.
10 As I've said before, I've gotten court orders
11 restricting that information.
12 MR. KOSNOFF: I understand that there
13 are--
14 MR. FREY: So you can question him now
15 and ask him--
16 MR. KOSNOFF: I just want the record to
17 reflect that I am not unaware of the fact that there
18 are protected limited privacy interests of third
19 parties that the Court has to be mindful of, and it's
20 a weighing of rights and interests that the Court
21 will have to make.
22 Let me go forward with some additional questions
23 so that at least we have some factual record for the
24 Court.
25 Q (By Mr. Kosnoff) Dr. Coleman, as I understand

Byers & Anderson, Inc.
Court Reporters & Video

Page 50

1 Mr. Frey's comments, you received a communication
2 from someone while you were bishop regarding an
3 allegation of sexual misconduct by Jack LoHolt; is
4 that correct?
5 A That's correct.
6 Q Was the person who communicated this to you a member
7 of the Mormon church?
8 A Yes.
9 Q Was this communication made to you in your capacity
10 as bishop?
11 A I think so.
12 Q Okay. Did it occur at, for example, the ward
13 building or your office?
14 A I don't remember that.
15 Q Okay. Was the person who communicated this to you,
16 in your view, making a statement of confession or
17 penitential contrition?
18 A No.
19 Q Under the doctrines and tenants of your faith, do you
20 believe that you are absolutely required to keep what
21 that person said to you confidential, and I mean that
22 you cannot repeat it to anyone?
23 A No.
24 Q Do you know the Harrison family?
25 A I do.

Page 51

1 Q Did a member of the Harrison family disclose to you
2 that Jack LoHolt had or was sexually molesting one or
3 more of their sons?
4 MR. FREY: I am going to object to the
5 question and instruct the witness that he does not
6 have to answer it.
7 THE WITNESS: I am going to say no.
8 MR. KOSNOFF: I'm sorry, Tom, I missed
9 what you said. Did you say that you were instructing
10 him not to answer?
11 MR. FREY: I instructed him not to
12 answer, but he already said "No."
13 Q (By Mr. Kosnoff) You knew the Harrison family?
14 A Yes.
15 Q And as I recall, she was a member of the church but
16 Mr. Harrison was not?
17 A That's as I recall.
18 Q And they had three sons who were members of the
19 church?
20 A I think so.
21 Q Did any member of the Harrison family tell you that
22 Jack LoHolt was sexually molesting them?
23 MR. FREY: If this is going to require
24 you to breach any confidential agreement or
25 understanding that you believe you have had and/or to

Page 52

1 confirm, I suppose, the name of a victim, then I'm
2 going to tell you you don't have to answer it.
3 THE WITNESS: To my own understanding of
4 the question, the answer is no.
5 Q (By Mr. Kosnoff) In October of 2003, did you get a
6 phone call from a woman that was asking you about
7 what you knew about Jack LoHolt?
8 A I did.
9 Q And did you tell her that Jack's problem came to your
10 awareness, "When some young boys came to me and told
11 me that Jack had been molesting them"?
12 A I did not say that, to my knowledge.
13 Q Did you tell that person that after talking with
14 those people, that you spoke with Jack LoHolt and his
15 parents?
16 A This question was contingent on the prior one about
17 boys having spoken to me, and the answer to that one
18 is no, and therefore the answer to this one is no.
19 May I take a moment with these gentlemen?
20 Q Of course.
21 Have you finished your last answer?
22 A On that question, yes.
23 (Recess 10:43 to 10:47 a.m.)
24
25 MR. FREY: We can go back on the record,

Page 53

1 and the witness wants to clarify the answer is maybe
2 the best way to put it.
3 Q (By Mr. Kosnoff) Dr. Coleman, do you want to clarify
4 an earlier answer?
5 A If I may.
6 With regard to an individual making me aware of
7 something that happened between her sons and Jack
8 LoHolt, the answer is yes, and the answer is that
9 there was an exposure.
10 In my own mind, at least at the time, maybe not
11 now, that did not constitute abuse.
12 That's why I gave "no" to those answers, but I
13 wanted you to be aware of what did happen.
14 Q What was your understanding of what Jack LoHolt had
15 done, allegedly?
16 A Exposed his private parts.
17 Q To whom and where?
18 A As I recall it--
19 MR. FREY: I am going to again instruct
20 the witness not to say the names of who, but he can
21 say anything else.
22 THE WITNESS: As I recall, two boys, as
23 I recall it, on an outing, which Jack frequently took
24 them, either fishing or camping-- he was a bit of a
25 replacement for an absentee father.

Byers & Anderson, Inc.
Court Reporters & Video

Page 54

1 Q (By Mr. Kosnoff) In fact, Jack had become kind of a
2 surrogate father to the boys in absence of their
3 natural father?
4 A That's calling for a judgment.
5 Q Is that your understanding?
6 A I think what I said earlier would be appropriate.
7 Q But it was your understanding that Jack had been
8 spending a lot of time with these boys?
9 A I think so.
10 Q When you received this information, were you
11 concerned?
12 A Indeed.
13 Q Were you very concerned?
14 A Indeed.
15 Q Okay. Being very concerned, what did you do?
16 A Spoke to Jack.
17 Q Where did that conversation take place?
18 A In the bishop's office.
19 Q Did you call him in?
20 A I did.
21 Q What was said by Jack to you?
22 A I don't recall the details, but he denied it.
23 Q Jack denied that he'd engaged in the conduct?
24 A He did.
25 Q Did Jack acknowledge, however--

Page 56

1 that you had with Jack.
2 A That would fall under the auspices of a privileged
3 communication, yes, I think so.
4 Q After you talked with Jack, did you talk with his
5 parents?
6 A I did.
7 Q Where did that take place?
8 A Bishop's office.
9 Q Okay. What was said by the parents to you-- strike
10 that.
11 Did you tell the parents the information that you
12 had regarding Jack's behavior?
13 A I did.
14 Q What was their reaction?
15 A Disbelief.
16 Q Okay. After that exchange, what did you do with this
17 information?
18 A We released Jack from his church callings, and I
19 notified, as I recall, at least some key individuals
20 who would need to know about it.
21 Q And those were priesthood leaders?
22 A My counselors. I remember specifically-- I can't
23 honestly say I remember talking to the young men's
24 president, but that might have been usual, and
25 perhaps to the Scout master, but I don't remember

Page 55

1 MR. FREY: For the record, I want to
2 make this clear because this is going to come up
3 again.
4 In those conversations where you're acting with
5 your bishop's hat on and you're speaking to one of
6 your people and it involves what could be classified
7 as a transgression within the church, you do have the
8 right not to disclose that information.
9 On the other hand, I want you to be able to
10 answer Counsel's question as best you can because he
11 has a right to find out what we knew or didn't know
12 or should have known.
13 Q (By Mr. Kosnoff) I would add whether or not a
14 privilege really applies really depends on the
15 circumstances and the conduct and the intent of the
16 parties.
17 A I think in this context it would.
18 Q The question of whether or not under the doctrine and
19 beliefs of the Mormon church and the circumstances of
20 this communication between you and Jack, is it your
21 belief that this was a privileged communication
22 between bishop and member?
23 A May I make a statement?
24 The information came to me other than Jack.
25 Q I understand that, but I'm referring to the meeting

Page 57

1 that.
2 Q Richard Pettit was one of your counselors, correct?
3 A He was.
4 Q And, in fact, you did tell Richard Pettit?
5 A That's my recollection.
6 Q What else did you do?
7 A If I can digress for a moment, my role as a bishop
8 was to serve everyone, including, if possible, Jack.
9 During an era at that time where at least
10 personally and I think rather generally there was
11 little information about the recurrent nature or
12 problem of a sexual offender and indeed little about
13 how to deal with it in the social aspect, I continued
14 to work privately with Jack to try to help him to be
15 reconciled to Christ.
16 Q Through your work with Jack to be reconciled with
17 Christ, did you come away with a feeling that the
18 problem had been adequately addressed?
19 MR. FREY: In answering that question--
20 THE WITNESS: I can't answer that. I
21 can't say.
22 Q (By Mr. Kosnoff) Did you do anything to investigate
23 whether there may have been other incidents and other
24 victims?
25 A I want to say yes, but I frankly don't remember the

Byers & Anderson, Inc.
Court Reporters & Video

Page 94

1 Q You understood that, at that time, what Jack LoHolt
2 did was a crime; did you not?
3 A No, I did not understand that.
4 Q You did not believe it was a crime?
5 A I did not believe it was a crime.
6 Q So it's your testimony then, Dr. Coleman, that you
7 did not know that an adult man exposing his genitals
8 to young boys was a crime at that time?
9 Is that your testimony?
10 A That's my testimony.
11 Q I take it that you would not have wanted Jack LoHolt
12 to expose his genitals to your young children at that
13 time.
14 Is that fair to say?
15 A Fair to say.
16 Q Are you saying that you didn't believe that there was
17 a danger that Jack LoHolt would do the same thing to
18 the children of other members of the Kent 2nd Ward?
19 MR. FREY: I am going to object to the
20 form of the question.
21 You may answer.
22 THE WITNESS: I don't think I can
23 remember what I believed at the time.
24 Q (By Mr. Kosnoff) What is the source of your
25 statement that back during this period of time

Page 95

1 society had insufficient knowledge about problems
2 such as Jack's problem, such that they would not have
3 known to keep him away from other children or to warn
4 other parents?
5 MR. FREY: I am going to object to the
6 form of the question.
7 THE WITNESS: I'm a professional. I
8 deal with the public all the time. I see dozens of
9 people a day.
10 We were trained professionally to watch for child
11 abuse later, not earlier, not in dental school, not
12 for many years later. That's one I can think of.
13 I'm also fairly well read. I read the newspaper,
14 I'm fairly literate in reading books, at least those
15 that are nonfictional. I think I was fairly well
16 informed as to the level of society's stance or
17 understanding, recognition of, and treatment of such
18 things.
19 Q (By Mr. Kosnoff) What specific knowledge, education
20 or training did you have when you were bishop when
21 you learned about Jack LoHolt that made you think you
22 had the competency, qualifications or authority to
23 treat him?
24 MR. FREY: Object to the form of the
25 question.

Page 96

1 THE WITNESS: I can't answer that
2 question. I didn't say I was treating him.
3 Q (By Mr. Kosnoff) Or counseling him?
4 A I can't answer that question.
5 MR. KOSNOFF: Okay. I think I'm done.
6 MR. FREY: No questions.
7 (Deposition concluded at 12:17 p.m.)
8 (Signature reserved.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 97

1 STATE OF WASHINGTON) I, Terilynn Pritchard, CCR, RPR.
2) ss CCR # 2047, a duly authorized
3 County of Pierce) Notary Public in and for the State
4 of Washington, residing at
5 Auburn, do hereby certify:
6
7 That the foregoing deposition of PHILIP J. COLEMAN
8 was taken before me and completed on September 15, 2005, and
9 thereafter was transcribed under my direction; that the
10 deposition is a full, true and complete transcript of the
11 testimony of said witness, including all questions, answers,
12 objections, motions and exceptions;
13
14 That the witness, before examination, was by me
15 duly sworn to testify the truth, the whole truth, and
16 nothing but the truth, and that the witness reserved the
17 right of signature;
18 That I am not a relative, employee, attorney or
19 counsel of any party to this action or relative or employee
20 of any such attorney or counsel and that I am not
21 financially interested in the said action or the outcome
22 thereof;
23 That I am herewith securely sealing the said
24 deposition and promptly delivering the same to
25 Attorney Johnnie Dano.
IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal this 19th day of September,
2005.

Terilynn Pritchard, CCR, RPR
Notary Public in and for the State
of Washington, residing at
Auburn.

FLEMING v. THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
September 20, 2005 RANDALL BORLAND

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING and JOHN DOE, : No. C04-2338 RSM
: (Judge Ricardo Martinez)

:
Plaintiffs, :

-v- :

THE CORPORATION OF THE :
PRESIDENT OF THE CHURCH OF :
JESUS CHRIST OF LATTER-DAY :
SAINTS, a Utah corporation :
sole, a/k/a "MORMON CHURCH"; :
LDS SOCIAL SERVICES a/k/a :
LDS FAMILY SERVICES, a Utah : Videotaped Deposition of:
corporation, : RANDALL BORLAND

:
Defendants.:

September 20, 2005 - 9:08 a.m.

Location: Kirton & McConkie
60 East South Temple, Suite 1800
Salt Lake City, Utah

Diane W. Flanagan, RPR
Notary Public in and for the State of Utah

EXHIBIT 4

Page 54

1 University in the fall of 1973 and not in 1975?
 2 A Is it possible?
 3 Q Yes.
 4 A Instead of when?
 5 Q I believe you testified earlier that you thought
 6 you came to Utah in 1975 to begin your studies.
 7 A That was a guess, wasn't it? That was an
 8 approximate guess.
 9 Q Yes.
 10 A Yeah, it's possible then. It's possible, but I
 11 don't know, but very possible.
 12 Q Okay.
 13 A That would fall in line. This is -- in that
 14 regard that's helpful.
 15 Q Well, as we get older, we all need these little
 16 aids, don't we?
 17 So during this approximate three-year time period
 18 that you were bishop of the Kent Second Ward, you've
 19 indicated that you did receive a complaint regarding
 20 sexually inappropriate activity by Jack Loholt. Correct?
 21 MR. FREY: I'm going to object to the form of the
 22 question. It assumes something that he hasn't testified to.
 23 Go ahead.
 24 Q (By MR. KOSNOFF) Did you receive a complaint or
 25 report from anybody that Jack Loholt had engaged in sexually

Page 55

1 inappropriate activity during the time that you were bishop
 2 of the Kent Second Ward?
 3 MR. FREY: Now, again, Bishop, I'm going to
 4 caution you that if you learned any of this information in
 5 your capacity as a bishop in a confidential communication
 6 that you have the privilege not to answer it, in my opinion.
 7 Counsel may differ with that, but I would instruct you not
 8 to answer it if that's the basis upon which you gained your
 9 information.
 10 MR. KOSNOFF: I would like to ask a few foundation
 11 questions before he answers that question in light of your
 12 instruction to your client.
 13 MR. FREY: Okay.
 14 Q (By MR. KOSNOFF) Assuming the answer to the
 15 question is yes, did you receive this communication in your
 16 capacity as a clergy person for the Mormon church, that is,
 17 in your role as clergy in the Mormon church?
 18 MR. FREY: Object to the --
 19 A That was a hypothetical. That was hypothetical --
 20 MR. FREY: Excuse me. I'm going to object to the
 21 form of the question.
 22 You may answer, though. Go ahead. Have her read
 23 it back. Please wait until -- give me a second because I
 24 have the right to make objections.
 25 THE WITNESS: I'm sorry.

Page 56

1 MR. FREY: Okay. Go ahead.
 2 (The record was read as requested)
 3 A I'm answering a question based on an assumption?
 4 Q Yes. I'm not asking you for the content of the
 5 communication yet. I'm asking you questions about the
 6 circumstances under which the communication was made.
 7 A Yes.
 8 Q Was the communication made for purposes of
 9 pastoral response by you?
 10 A Are we still on an assumption? Are these
 11 questions or -- because you said assuming that the answer
 12 was yes. I've never answered that question yet, and forgive
 13 me. I'm being a little dense here, but I don't know if I'm
 14 still answering on an assumption. Am I saying that right
 15 even?
 16 Q Yes, you are.
 17 A Okay.
 18 Q Because the answer yes or no to the question could
 19 potentially violate a privilege. But before you answer that
 20 question, I'm asking you questions surrounding that
 21 communication. Okay? I'm not asking you about what was
 22 said or whether the answer to my -- that previous question
 23 was yes or no. I'm just asking you other questions related
 24 to the nature of that communication and the surrounding
 25 circumstances.

Page 57

1 A Okay.
 2 Q So again my question is: Was this something that
 3 you learned in connection with pastoral counseling within
 4 the Church?
 5 A Yes.
 6 Q Was the information that you received something
 7 that you are required to keep confidential under the
 8 doctrines and teachings of your church?
 9 A Yes.
 10 Q Was the communication that you received something
 11 that you in fact kept confidential, that is, that you did
 12 not disclose to any other person?
 13 A Let me make sure I understand that. A
 14 communication not disclosed to anybody else?
 15 Q Correct.
 16 A The answer to that question, if I've heard the
 17 question correct, is yes or -- let me rephrase it, and then
 18 tell you what I thought you said.
 19 Q Go ahead.
 20 A I did not disclose what was said confidentially to
 21 me to others.
 22 Q Just so that I'm clear on this, you did not
 23 disclose the content of what was said to you by that person
 24 to any other person?
 25 A The content of that conversation, that meeting, I

Page 58

1 did not.
 2 Q Okay.
 3 A The best of my recollection.
 4 Q Okay. Did you ever make a referral to LDS Social
 5 Services for counseling Jack Loholt?
 6 A I don't remember. I do not remember that.
 7 Q Did you do anything or say anything to anyone else
 8 following the communication that you received from this
 9 person?
 10 A Regarding specifics?
 11 Q Anything.
 12 A Yes.
 13 Q What did you do or say?
 14 A I talked --
 15 MR. FREY: Again I'm going to caution you that if
 16 you took any steps in your capacity as a clergyman and
 17 ecclesiastical in accordance with the teachings and beliefs
 18 of the LDS religion that you are not obligated to break that
 19 confidentiality if in fact you learned that in those
 20 circumstances.
 21 And for the record, Counsel, what I'm trying to do
 22 here is allow you to ask questions without reaching what I
 23 believe is a privilege that he has as a bishop to receive
 24 information, treat it with confidentiality, and act on it in
 25 an ecclesiastical fashion.

Page 59

1 MR. KOSNOFF: Could you identify the source of
 2 that privilege.
 3 MR. FREY: State v. Martin and the statute, the
 4 First Amendment.
 5 MR. KOSNOFF: So are you relying on the clergy
 6 penitent privilege?
 7 MR. FREY: And his First Amendment rights.
 8 MR. KOSNOFF: What First Amendment rights are you
 9 referring to?
 10 MR. FREY: Free exercise rights.
 11 MR. KOSNOFF: Specifically what in the free
 12 exercise clause are you basing this privilege?
 13 MR. FREY: That he has the right to free exercise
 14 of religion to be free from the restraint of having a civil
 15 court interfere and make him disclose confidential
 16 communications. We've been through this. We've briefed it.
 17 We've already argued it in the Court of Appeals and won it.
 18 MR. KOSNOFF: No. We've --
 19 MR. FREY: And that's what I'm doing here.
 20 MR. KOSNOFF: No. That was a completely different
 21 issue and very different narrow issue than --
 22 MR. FREY: And there's a third item involved here
 23 that we haven't gotten to yet, but that is the privacy
 24 rights of individuals who may be involved, if any. But I'm
 25 trying not to interfere with your legitimate discovery area,

Page 60

1 and so I'm trying to be very careful here. And I want you
 2 to understand that it's not my purpose here to frustrate
 3 your discovery, but I do want him to be careful that he
 4 doesn't breach any of the confidentiality that is imposed
 5 upon him by his position as a clergyman.
 6 So if you can read back the question. Sorry about
 7 the speech --
 8 MR. KOSNOFF: Well, I -- we have gone through the
 9 criteria for the appropriate assertion of the clergy
 10 penitent privilege, and that shields him from disclosing the
 11 content of privileged communications based upon that
 12 statute. My questions now are not directed at the content
 13 of that communication. My questions are directed at what he
 14 did or said to others following that communication.
 15 MR. FREY: But that may very well involve his
 16 working in an ecclesiastical capacity and involve
 17 conversations with other people that are privileged, and
 18 that's my point.
 19 MR. KOSNOFF: That -- it's our position that that
 20 would not be privileged and that he is required to answer
 21 those questions.
 22 MR. FREY: Just a second.
 23 (Defense counsel confer)
 24 MR. FREY: I -- I've made my objection. We
 25 disagree. Okay?

Page 61

1 MR. KOSNOFF: Are you directing him not to answer.
 2 MR. FREY: No, I'm not. I'm asking him if he can
 3 answer without violating -- if he can answer about what he
 4 did without violating any confidentiality that I believe he
 5 has the right to maintain as a bishop, then he may answer
 6 the question.
 7 A I believe I can do that. Confidentiality is very
 8 important to me. I -- the only reason I even hesitate at
 9 all is because of the conversation, and I'm very respectful
 10 of both of you. I didn't talk about, to another person, the
 11 content of my discussion with the ward member that contacted
 12 me, but the circumstance surrounding it I did, and that was
 13 Jack Loholt. I had to talk with him.
 14 Q And that conversation that you had with Jack
 15 Loholt took place fairly soon after?
 16 A Yes, sir.
 17 Q And what was said?
 18 MR. FREY: Again, you may answer that question if
 19 it will not violate any privilege that you have as a
 20 clergyman.
 21 A I don't believe I can answer that.
 22 Q Again let's go through some of the questions that
 23 I asked you before, a checklist, if you will.
 24 A Okay.
 25 Q Because there's -- may well be a judge that's

Page 70

1 Q Would you communicate this information to the
 2 police?
 3 A Not necessarily, no.
 4 Q Would you communicate it to the local Child
 5 Protective Services agency?
 6 A No.
 7 Q Would you attempt to substantiate the accusation
 8 yourself?
 9 A I suspect I would, uh-huh (affirmative).
 10 Q How?
 11 A It would depend on the circumstance. It would
 12 depend on the people. It would depend on the emotions. It
 13 would depend on a gamut of things, a wide range of things
 14 that would all focus in on is this legitimate, is this real,
 15 or is it just an accusation, is it somebody that's upset
 16 with somebody and angry, whatever it might be.
 17 Q Have you ever actually had to conduct such an
 18 investigation?
 19 A I'm sorry?
 20 Q Have you ever actually been presented with a
 21 scenario like this?
 22 A I'm going to have a difficulty answering that
 23 question --
 24 MR. FREY: Again, I'm going to instruct you if
 25 that's going to cause you -- or require you, pardon me, to

Page 71

1 go ahead and disclose any type of information that you
 2 received in your position as a clergy member.
 3 For the record, I want to make this clear,
 4 Counsel. I'm quoting from State v. Martin so we'll know
 5 exactly what we're talking about. And they there say that
 6 rather than the statute -- "Rather, the statute only
 7 requires the clergy member receiving the confidential
 8 communication be enjoined by the practices or rules of the
 9 clergy member's religion to receive the confidential
 10 communication and to provide spiritual counseling." That's
 11 what I'm trying to protect him with.
 12 MR. KOSNOFF: That's one of the elements.
 13 MR. FREY: Okay. Well --
 14 MR. KOSNOFF: They didn't throw out the elements
 15 of the statute, and I'm very well-acquainted with State v.
 16 Martin.
 17 Q (By MR. KOSNOFF) Let's get back to -- let's get
 18 back to Mr. Loholt. You testified earlier that you spoke
 19 with Jack Loholt. Are you asserting the privilege with
 20 respect to your communication with Jack Loholt regarding any
 21 allegations of child sexual abuse?
 22 A As being confidential?
 23 Q Yes.
 24 A Yes.
 25 Q Did you speak with anybody else other than Jack

Page 72

1 Loholt regarding information that he may have engaged in
 2 sexual misconduct with a child?
 3 A No.
 4 Q So anything that was said between Jack Loholt and
 5 yourself was kept strictly to yourself. Is that correct?
 6 A I can't speak for Jack Loholt. It was kept within
 7 me.
 8 Q Was that information shared with anyone else on
 9 the bishopric, such as your first or second counselor?
 10 A What information?
 11 Q Any information that Jack Loholt may have engaged
 12 in sexual misconduct with a child.
 13 MR. FREY: Again, these communications between you
 14 and your counselors are also privileged, but go ahead.
 15 A So the answer -- I guess my answer would be -- is
 16 my discussion with my counselors would be confidential. I
 17 don't -- I don't remember discussing that with anybody.
 18 Q So you have no recollection of discussing with
 19 anybody else?
 20 A I have no recollection of that.
 21 Q Okay.
 22 A That's correct. I do not.
 23 Q Did you remove Jack Loholt from any positions
 24 working with youth in the ward while you were bishop?
 25 A Did I remove him?

Page 73

1 Q Yes.
 2 A Released him --
 3 Q Okay.
 4 A -- yes.
 5 Q And what positions did you release him from?
 6 A His responsibility in scouting.
 7 Q Why did you release him?
 8 MR. FREY: You can't --
 9 A I can't divulge that.
 10 Q I'm not asking you to reveal any communications.
 11 I'm asking you your personal reasons why you released him
 12 from scouting.
 13 MR. FREY: Same objection. You're entitled to
 14 claim the privilege.
 15 One reveals the other, Counsel.
 16 Q (By MR. FREY) Isn't it a fact that you removed
 17 Jack Loholt from scouting because you knew that he presented
 18 a danger to boys of sexual abuse?
 19 A I -- I am not going to answer that.
 20 Q Did anybody ask you why you were releasing Jack
 21 Loholt from scouting?
 22 A Nobody asked me why I was releasing him that I can
 23 remember.
 24 Q Did you make any announcement to members of the
 25 ward, either in a general meeting or in meetings of any

Page 58

1 did not.
 2 Q Okay.
 3 A The best of my recollection.
 4 Q Okay. Did you ever make a referral to LDS Social
 5 Services for counseling Jack Loholt?
 6 A I don't remember. I do not remember that.
 7 Q Did you do anything or say anything to anyone else
 8 following the communication that you received from this
 9 person?
 10 A Regarding specifics?
 11 Q Anything.
 12 A Yes.
 13 Q What did you do or say?
 14 A I talked --
 15 MR. FREY: Again I'm going to caution you that if
 16 you took any steps in your capacity as a clergyman and
 17 ecclesiastical in accordance with the teachings and beliefs
 18 of the LDS religion that you are not obligated to break that
 19 confidentiality if in fact you learned that in those
 20 circumstances.
 21 And for the record, Counsel, what I'm trying to do
 22 here is allow you to ask questions without reaching what I
 23 believe is a privilege that he has as a bishop to receive
 24 information, treat it with confidentiality, and act on it in
 25 an ecclesiastical fashion.

Page 59

1 MR. KOSNOFF: Could you identify the source of
 2 that privilege.
 3 MR. FREY: State v. Martin and the statute, the
 4 First Amendment.
 5 MR. KOSNOFF: So are you relying on the clergy
 6 penitent privilege?
 7 MR. FREY: And his First Amendment rights.
 8 MR. KOSNOFF: What First Amendment rights are you
 9 referring to?
 10 MR. FREY: Free exercise rights.
 11 MR. KOSNOFF: Specifically what in the free
 12 exercise clause are you basing this privilege?
 13 MR. FREY: That he has the right to free exercise
 14 of religion to be free from the restraint of having a civil
 15 court interfere and make him disclose confidential
 16 communications. We've been through this. We've briefed it.
 17 We've already argued it in the Court of Appeals and won it.
 18 MR. KOSNOFF: No. We've --
 19 MR. FREY: And that's what I'm doing here.
 20 MR. KOSNOFF: No. That was a completely different
 21 issue and very different narrow issue than --
 22 MR. FREY: And there's a third item involved here
 23 that we haven't gotten to yet, but that is the privacy
 24 rights of individuals who may be involved, if any. But I'm
 25 trying not to interfere with your legitimate discovery area,

Page 60

1 and so I'm trying to be very careful here. And I want you
 2 to understand that it's not my purpose here to frustrate
 3 your discovery, but I do want him to be careful that he
 4 doesn't breach any of the confidentiality that is imposed
 5 upon him by his position as a clergyman.
 6 So if you can read back the question. Sorry about
 7 the speech --
 8 MR. KOSNOFF: Well, I -- we have gone through the
 9 criteria for the appropriate assertion of the clergy
 10 penitent privilege, and that shields him from disclosing the
 11 content of privileged communications based upon that
 12 statute. My questions now are not directed at the content
 13 of that communication. My questions are directed at what he
 14 did or said to others following that communication.
 15 MR. FREY: But that may very well involve his
 16 working in an ecclesiastical capacity and involve
 17 conversations with other people that are privileged, and
 18 that's my point.
 19 MR. KOSNOFF: That -- it's our position that that
 20 would not be privileged and that he is required to answer
 21 those questions.
 22 MR. FREY: Just a second.
 23 (Defense counsel confer)
 24 MR. FREY: I -- I've made my objection. We
 25 disagree. Okay?

Page 61

1 MR. KOSNOFF: Are you directing him not to answer.
 2 MR. FREY: No, I'm not. I'm asking him if he can
 3 answer without violating -- if he can answer about what he
 4 did without violating any confidentiality that I believe he
 5 has the right to maintain as a bishop, then he may answer
 6 the question.
 7 A I believe I can do that. Confidentiality is very
 8 important to me. I -- the only reason I even hesitate at
 9 all is because of the conversation, and I'm very respectful
 10 of both of you. I didn't talk about, to another person, the
 11 content of my discussion with the ward member that contacted
 12 me, but the circumstance surrounding it I did, and that was
 13 Jack Loholt. I had to talk with him.
 14 Q And that conversation that you had with Jack
 15 Loholt took place fairly soon after?
 16 A Yes, sir.
 17 Q And what was said?
 18 MR. FREY: Again, you may answer that question if
 19 it will not violate any privilege that you have as a
 20 clergyman.
 21 A I don't believe I can answer that.
 22 Q Again let's go through some of the questions that
 23 I asked you before, a checklist, if you will.
 24 A Okay.
 25 Q Because there's -- may well be a judge that's

Page 70

1 Q Would you communicate this information to the
 2 police?
 3 A Not necessarily, no.
 4 Q Would you communicate it to the local Child
 5 Protective Services agency?
 6 A No.
 7 Q Would you attempt to substantiate the accusation
 8 yourself?
 9 A I suspect I would, uh-huh (affirmative).
 10 Q How?
 11 A It would depend on the circumstance. It would
 12 depend on the people. It would depend on the emotions. It
 13 would depend on a gamut of things, a wide range of things
 14 that would all focus in on is this legitimate, is this real,
 15 or is it just an accusation, is it somebody that's upset
 16 with somebody and angry, whatever it might be.
 17 Q Have you ever actually had to conduct such an
 18 investigation?
 19 A I'm sorry?
 20 Q Have you ever actually been presented with a
 21 scenario like this?
 22 A I'm going to have a difficulty answering that
 23 question --
 24 MR. FREY: Again, I'm going to instruct you if
 25 that's going to cause you -- or require you, pardon me, to

Page 72

1 Loholt regarding information that he may have engaged in
 2 sexual misconduct with a child?
 3 A No.
 4 Q So anything that was said between Jack Loholt and
 5 yourself was kept strictly to yourself. Is that correct?
 6 A I can't speak for Jack Loholt. It was kept within
 7 me.
 8 Q Was that information shared with anyone else on
 9 the bishopric, such as your first or second counselor?
 10 A What information?
 11 Q Any information that Jack Loholt may have engaged
 12 in sexual misconduct with a child.
 13 MR. FREY: Again, these communications between you
 14 and your counselors are also privileged, but go ahead.
 15 A So the answer -- I guess my answer would be -- is
 16 my discussion with my counselors would be confidential. I
 17 don't -- I don't remember discussing that with anybody.
 18 Q So you have no recollection of discussing with
 19 anybody else?
 20 A I have no recollection of that.
 21 Q Okay.
 22 A That's correct. I do not.
 23 Q Did you remove Jack Loholt from any positions
 24 working with youth in the ward while you were bishop?
 25 A Did I remove him?

Page 71

1 go ahead and disclose any type of information that you
 2 received in your position as a clergy member.
 3 For the record, I want to make this clear,
 4 Counsel. I'm quoting from State v. Martin so we'll know
 5 exactly what we're talking about. And they there say that
 6 rather than the statute -- "Rather, the statute only
 7 requires the clergy member receiving the confidential
 8 communication be enjoined by the practices or rules of the
 9 clergy member's religion to receive the confidential
 10 communication and to provide spiritual counseling." That's
 11 what I'm trying to protect him with.
 12 MR. KOSNOFF: That's one of the elements.
 13 MR. FREY: Okay. Well --
 14 MR. KOSNOFF: They didn't throw out the elements
 15 of the statute, and I'm very well-acquainted with State v.
 16 Martin.
 17 Q (By MR. KOSNOFF) Let's get back to -- let's get
 18 back to Mr. Loholt. You testified earlier that you spoke
 19 with Jack Loholt. Are you asserting the privilege with
 20 respect to your communication with Jack Loholt regarding any
 21 allegations of child sexual abuse?
 22 A As being confidential?
 23 Q Yes.
 24 A Yes.
 25 Q Did you speak with anybody else other than Jack

Page 73

1 Q Yes.
 2 A Released him --
 3 Q Okay.
 4 A -- yes.
 5 Q And what positions did you release him from?
 6 A His responsibility in scouting.
 7 Q Why did you release him?
 8 MR. FREY: You can't --
 9 A I can't divulge that.
 10 Q I'm not asking you to reveal any communications.
 11 I'm asking you your personal reasons why you released him
 12 from scouting.
 13 MR. FREY: Same objection. You're entitled to
 14 claim the privilege.
 15 One reveals the other, Counsel.
 16 Q (By MR. FREY) Isn't it a fact that you removed
 17 Jack Loholt from scouting because you knew that he presented
 18 a danger to boys of sexual abuse?
 19 A I -- I am not going to answer that.
 20 Q Did anybody ask you why you were releasing Jack
 21 Loholt from scouting?
 22 A Nobody asked me why I was releasing him that I can
 23 remember.
 24 Q Did you make any announcement to members of the
 25 ward, either in a general meeting or in meetings of any

1 the Mormon church after you left Seattle asking you
 2 questions about Jack Loholt other than related to this
 3 immediate lawsuit?
 4 A No, no.
 5 MR. KOSNOFF: Thank you, Bishop. That's all I
 6 have.
 7 THE WITNESS: Thank you.
 8 MR. FREY: I have no questions. And we will get a
 9 copy of the transcript if it's ordered.
 10 MR. NASH: Do you want to waive signature?
 11 MR. FREY: We're not going to waive signature. He
 12 has to read it and sign it. We can go off the record.
 13 (Proceeding was adjourned at 12:14 p.m.)
 14 * * *
 15 Reading copy mailed to the witness.
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 CERTIFICATE
 2 STATE OF UTAH)
 3 COUNTY OF SALT LAKE)
 4 THIS IS TO CERTIFY that the sworn testimony of RANDALL
 5 BORLAND was taken before me, Diane W. Flanagan, a Registered
 6 Professional Reporter, and Notary Public in and for the State
 7 of Utah.
 8 That the said witness was by me, before examination,
 9 duly sworn to testify the truth in said cause.
 10 That said testimony was reported by me and thereafter
 11 transcribed into typewriting, and that a full, true, and
 12 correct transcription of said testimony is set forth in the
 13 foregoing pages, numbered from 3 through 106 inclusive.
 14 I further certify that after said testimony was
 15 transcribed, a reading copy of same was delivered to the
 16 witness for reading and signature and signed before a Notary
 17 Public.
 18 I further certify that I am not of kin or otherwise
 19 associated with any of the parties to said cause of action
 20 and that I am not interested in the event thereof.
 21 WITNESS MY HAND and official seal at Salt Lake City,
 22 Utah, this 26th day of September, 2005.
 23
 24
 25

 Diane W. Flanagan
 Registered Professional Reporter
 My notary commission expires:
 December 28, 2008

1 Case: Fleming vs. The Corporation of the President
 2 Date Taken: September 20, 2005 No.: C04-2338 RSM
 3 Reporter: Diane W. Flanagan, RPR
 4 WITNESS CERTIFICATE
 5 I, RANDALL BORLAND, HEREBY CERTIFY that I have read the
 6 foregoing testimony consisting of 104 pages, numbered from 3
 7 through 106, inclusive, and the same is a true and correct
 8 transcription of said testimony, with the exception of the
 9 following corrections listed below, giving my reasons
 10 therefor.
 11 PAGE LINE
 12 NOW READS: _____
 13 SHOULD READ _____
 14 REASON FOR CHANGE _____
 15 NOW READS: _____
 16 SHOULD READ _____
 17 REASON FOR CHANGE _____
 18 NOW READS: _____
 19 SHOULD READ _____
 20 REASON FOR CHANGE _____
 21 NOW READS: _____
 22 SHOULD READ _____
 23 REASON FOR CHANGE _____
 24 NOW READS: _____
 25 SHOULD READ _____
 26 REASON FOR CHANGE _____
 27 NOW READS: _____
 28 SHOULD READ _____
 29 REASON FOR CHANGE _____
 30 NOW READS: _____
 31 SHOULD READ _____
 32 REASON FOR CHANGE _____
 33 NOW READS: _____
 34 SHOULD READ _____
 35 REASON FOR CHANGE _____
 36 NOW READS: _____
 37 SHOULD READ _____
 38 REASON FOR CHANGE _____
 39 NOW READS: _____
 40 SHOULD READ _____
 41 REASON FOR CHANGE _____
 42 NOW READS: _____
 43 SHOULD READ _____
 44 REASON FOR CHANGE _____
 45 NOW READS: _____
 46 SHOULD READ _____
 47 REASON FOR CHANGE _____
 48 NOW READS: _____
 49 SHOULD READ _____
 50 REASON FOR CHANGE _____
 51 NOW READS: _____
 52 SHOULD READ _____
 53 REASON FOR CHANGE _____
 54 NOW READS: _____
 55 SHOULD READ _____
 56 REASON FOR CHANGE _____
 57 NOW READS: _____
 58 SHOULD READ _____
 59 REASON FOR CHANGE _____
 60 NOW READS: _____
 61 SHOULD READ _____
 62 REASON FOR CHANGE _____
 63 NOW READS: _____
 64 SHOULD READ _____
 65 REASON FOR CHANGE _____
 66 NOW READS: _____
 67 SHOULD READ _____
 68 REASON FOR CHANGE _____
 69 NOW READS: _____
 70 SHOULD READ _____
 71 REASON FOR CHANGE _____
 72 NOW READS: _____
 73 SHOULD READ _____
 74 REASON FOR CHANGE _____
 75 NOW READS: _____
 76 SHOULD READ _____
 77 REASON FOR CHANGE _____
 78 NOW READS: _____
 79 SHOULD READ _____
 80 REASON FOR CHANGE _____
 81 NOW READS: _____
 82 SHOULD READ _____
 83 REASON FOR CHANGE _____
 84 NOW READS: _____
 85 SHOULD READ _____
 86 REASON FOR CHANGE _____
 87 NOW READS: _____
 88 SHOULD READ _____
 89 REASON FOR CHANGE _____
 90 NOW READS: _____
 91 SHOULD READ _____
 92 REASON FOR CHANGE _____
 93 NOW READS: _____
 94 SHOULD READ _____
 95 REASON FOR CHANGE _____
 96 NOW READS: _____
 97 SHOULD READ _____
 98 REASON FOR CHANGE _____
 99 NOW READS: _____
 100 SHOULD READ _____
 101 REASON FOR CHANGE _____
 102 NOW READS: _____
 103 SHOULD READ _____
 104 REASON FOR CHANGE _____
 105 NOW READS: _____
 106 SHOULD READ _____
 107 REASON FOR CHANGE _____
 108 NOW READS: _____
 109 SHOULD READ _____
 110 REASON FOR CHANGE _____
 111 NOW READS: _____
 112 SHOULD READ _____
 113 REASON FOR CHANGE _____
 114 NOW READS: _____
 115 SHOULD READ _____
 116 REASON FOR CHANGE _____
 117 NOW READS: _____
 118 SHOULD READ _____
 119 REASON FOR CHANGE _____
 120 NOW READS: _____
 121 SHOULD READ _____
 122 REASON FOR CHANGE _____
 123 NOW READS: _____
 124 SHOULD READ _____
 125 REASON FOR CHANGE _____
 126 NOW READS: _____
 127 SHOULD READ _____
 128 REASON FOR CHANGE _____
 129 NOW READS: _____
 130 SHOULD READ _____
 131 REASON FOR CHANGE _____
 132 NOW READS: _____
 133 SHOULD READ _____
 134 REASON FOR CHANGE _____
 135 NOW READS: _____
 136 SHOULD READ _____
 137 REASON FOR CHANGE _____
 138 NOW READS: _____
 139 SHOULD READ _____
 140 REASON FOR CHANGE _____
 141 NOW READS: _____
 142 SHOULD READ _____
 143 REASON FOR CHANGE _____
 144 NOW READS: _____
 145 SHOULD READ _____
 146 REASON FOR CHANGE _____
 147 NOW READS: _____
 148 SHOULD READ _____
 149 REASON FOR CHANGE _____
 150 NOW READS: _____
 151 SHOULD READ _____
 152 REASON FOR CHANGE _____
 153 NOW READS: _____
 154 SHOULD READ _____
 155 REASON FOR CHANGE _____
 156 NOW READS: _____
 157 SHOULD READ _____
 158 REASON FOR CHANGE _____
 159 NOW READS: _____
 160 SHOULD READ _____
 161 REASON FOR CHANGE _____
 162 NOW READS: _____
 163 SHOULD READ _____
 164 REASON FOR CHANGE _____
 165 NOW READS: _____
 166 SHOULD READ _____
 167 REASON FOR CHANGE _____
 168 NOW READS: _____
 169 SHOULD READ _____
 170 REASON FOR CHANGE _____
 171 NOW READS: _____
 172 SHOULD READ _____
 173 REASON FOR CHANGE _____
 174 NOW READS: _____
 175 SHOULD READ _____
 176 REASON FOR CHANGE _____
 177 NOW READS: _____
 178 SHOULD READ _____
 179 REASON FOR CHANGE _____
 180 NOW READS: _____
 181 SHOULD READ _____
 182 REASON FOR CHANGE _____
 183 NOW READS: _____
 184 SHOULD READ _____
 185 REASON FOR CHANGE _____
 186 NOW READS: _____
 187 SHOULD READ _____
 188 REASON FOR CHANGE _____
 189 NOW READS: _____
 190 SHOULD READ _____
 191 REASON FOR CHANGE _____
 192 NOW READS: _____
 193 SHOULD READ _____
 194 REASON FOR CHANGE _____
 195 NOW READS: _____
 196 SHOULD READ _____
 197 REASON FOR CHANGE _____
 198 NOW READS: _____
 199 SHOULD READ _____
 200 REASON FOR CHANGE _____
 201 NOW READS: _____
 202 SHOULD READ _____
 203 REASON FOR CHANGE _____
 204 NOW READS: _____
 205 SHOULD READ _____
 206 REASON FOR CHANGE _____
 207 NOW READS: _____
 208 SHOULD READ _____
 209 REASON FOR CHANGE _____
 210 NOW READS: _____
 211 SHOULD READ _____
 212 REASON FOR CHANGE _____
 213 NOW READS: _____
 214 SHOULD READ _____
 215 REASON FOR CHANGE _____
 216 NOW READS: _____
 217 SHOULD READ _____
 218 REASON FOR CHANGE _____
 219 NOW READS: _____
 220 SHOULD READ _____
 221 REASON FOR CHANGE _____
 222 NOW READS: _____
 223 SHOULD READ _____
 224 REASON FOR CHANGE _____
 225 NOW READS: _____
 226 SHOULD READ _____
 227 REASON FOR CHANGE _____
 228 NOW READS: _____
 229 SHOULD READ _____
 230 REASON FOR CHANGE _____
 231 NOW READS: _____
 232 SHOULD READ _____
 233 REASON FOR CHANGE _____
 234 NOW READS: _____
 235 SHOULD READ _____
 236 REASON FOR CHANGE _____
 237 NOW READS: _____
 238 SHOULD READ _____
 239 REASON FOR CHANGE _____
 240 NOW READS: _____
 241 SHOULD READ _____
 242 REASON FOR CHANGE _____
 243 NOW READS: _____
 244 SHOULD READ _____
 245 REASON FOR CHANGE _____
 246 NOW READS: _____
 247 SHOULD READ _____
 248 REASON FOR CHANGE _____
 249 NOW READS: _____
 250 SHOULD READ _____
 251 REASON FOR CHANGE _____
 252 NOW READS: _____
 253 SHOULD READ _____
 254 REASON FOR CHANGE _____
 255 NOW READS: _____
 256 SHOULD READ _____
 257 REASON FOR CHANGE _____
 258 NOW READS: _____
 259 SHOULD READ _____
 260 REASON FOR CHANGE _____
 261 NOW READS: _____
 262 SHOULD READ _____
 263 REASON FOR CHANGE _____
 264 NOW READS: _____
 265 SHOULD READ _____
 266 REASON FOR CHANGE _____
 267 NOW READS: _____
 268 SHOULD READ _____
 269 REASON FOR CHANGE _____
 270 NOW READS: _____
 271 SHOULD READ _____
 272 REASON FOR CHANGE _____
 273 NOW READS: _____
 274 SHOULD READ _____
 275 REASON FOR CHANGE _____
 276 NOW READS: _____
 277 SHOULD READ _____
 278 REASON FOR CHANGE _____
 279 NOW READS: _____
 280 SHOULD READ _____
 281 REASON FOR CHANGE _____
 282 NOW READS: _____
 283 SHOULD READ _____
 284 REASON FOR CHANGE _____
 285 NOW READS: _____
 286 SHOULD READ _____
 287 REASON FOR CHANGE _____
 288 NOW READS: _____
 289 SHOULD READ _____
 290 REASON FOR CHANGE _____
 291 NOW READS: _____
 292 SHOULD READ _____
 293 REASON FOR CHANGE _____
 294 NOW READS: _____
 295 SHOULD READ _____
 296 REASON FOR CHANGE _____
 297 NOW READS: _____
 298 SHOULD READ _____
 299 REASON FOR CHANGE _____
 300 NOW READS: _____
 301 SHOULD READ _____
 302 REASON FOR CHANGE _____
 303 NOW READS: _____
 304 SHOULD READ _____
 305 REASON FOR CHANGE _____
 306 NOW READS: _____
 307 SHOULD READ _____
 308 REASON FOR CHANGE _____
 309 NOW READS: _____
 310 SHOULD READ _____
 311 REASON FOR CHANGE _____
 312 NOW READS: _____
 313 SHOULD READ _____
 314 REASON FOR CHANGE _____
 315 NOW READS: _____
 316 SHOULD READ _____
 317 REASON FOR CHANGE _____
 318 NOW READS: _____
 319 SHOULD READ _____
 320 REASON FOR CHANGE _____
 321 NOW READS: _____
 322 SHOULD READ _____
 323 REASON FOR CHANGE _____
 324 NOW READS: _____
 325 SHOULD READ _____
 326 REASON FOR CHANGE _____
 327 NOW READS: _____
 328 SHOULD READ _____
 329 REASON FOR CHANGE _____
 330 NOW READS: _____
 331 SHOULD READ _____
 332 REASON FOR CHANGE _____
 333 NOW READS: _____
 334 SHOULD READ _____
 335 REASON FOR CHANGE _____
 336 NOW READS: _____
 337 SHOULD READ _____
 338 REASON FOR CHANGE _____
 339 NOW READS: _____
 340 SHOULD READ _____
 341 REASON FOR CHANGE _____
 342 NOW READS: _____
 343 SHOULD READ _____
 344 REASON FOR CHANGE _____
 345 NOW READS: _____
 346 SHOULD READ _____
 347 REASON FOR CHANGE _____
 348 NOW READS: _____
 349 SHOULD READ _____
 350 REASON FOR CHANGE _____
 351 NOW READS: _____
 352 SHOULD READ _____
 353 REASON FOR CHANGE _____
 354 NOW READS: _____
 355 SHOULD READ _____
 356 REASON FOR CHANGE _____
 357 NOW READS: _____
 358 SHOULD READ _____
 359 REASON FOR CHANGE _____
 360 NOW READS: _____
 361 SHOULD READ _____
 362 REASON FOR CHANGE _____
 363 NOW READS: _____
 364 SHOULD READ _____
 365 REASON FOR CHANGE _____
 366 NOW READS: _____
 367 SHOULD READ _____
 368 REASON FOR CHANGE _____
 369 NOW READS: _____
 370 SHOULD READ _____
 371 REASON FOR CHANGE _____
 372 NOW READS: _____
 373 SHOULD READ _____
 374 REASON FOR CHANGE _____
 375 NOW READS: _____
 376 SHOULD READ _____
 377 REASON FOR CHANGE _____
 378 NOW READS: _____
 379 SHOULD READ _____
 380 REASON FOR CHANGE _____
 381 NOW READS: _____
 382 SHOULD READ _____
 383 REASON FOR CHANGE _____
 384 NOW READS: _____
 385 SHOULD READ _____
 386 REASON FOR CHANGE _____
 387 NOW READS: _____
 388 SHOULD READ _____
 389 REASON FOR CHANGE _____
 390 NOW READS: _____
 391 SHOULD READ _____
 392 REASON FOR CHANGE _____
 393 NOW READS: _____
 394 SHOULD READ _____
 395 REASON FOR CHANGE _____
 396 NOW READS: _____
 397 SHOULD READ _____
 398 REASON FOR CHANGE _____
 399 NOW READS: _____
 400 SHOULD READ _____
 401 REASON FOR CHANGE _____
 402 NOW READS: _____
 403 SHOULD READ _____
 404 REASON FOR CHANGE _____
 405 NOW READS: _____
 406 SHOULD READ _____
 407 REASON FOR CHANGE _____
 408 NOW READS: _____
 409 SHOULD READ _____
 410 REASON FOR CHANGE _____
 411 NOW READS: _____
 412 SHOULD READ _____
 413 REASON FOR CHANGE _____
 414 NOW READS: _____
 415 SHOULD READ _____
 416 REASON FOR CHANGE _____
 417 NOW READS: _____
 418 SHOULD READ _____
 419 REASON FOR CHANGE _____
 420 NOW READS: _____
 421 SHOULD READ _____
 422 REASON FOR CHANGE _____
 423 NOW READS: _____
 424 SHOULD READ _____
 425 REASON FOR CHANGE _____
 426 NOW READS: _____
 427 SHOULD READ _____
 428 REASON FOR CHANGE _____
 429 NOW READS: _____
 430 SHOULD READ _____
 431 REASON FOR CHANGE _____
 432 NOW READS: _____
 433 SHOULD READ _____
 434 REASON FOR CHANGE _____
 435 NOW READS: _____
 436 SHOULD READ _____
 437 REASON FOR CHANGE _____
 438 NOW READS: _____
 439 SHOULD READ _____
 440 REASON FOR CHANGE _____
 441 NOW READS: _____
 442 SHOULD READ _____
 443 REASON FOR CHANGE _____
 444 NOW READS: _____
 445 SHOULD READ _____
 446 REASON FOR CHANGE _____
 447 NOW READS: _____
 448 SHOULD READ _____
 449 REASON FOR CHANGE _____
 450 NOW READS: _____
 451 SHOULD READ _____
 452 REASON FOR CHANGE _____
 453 NOW READS: _____
 454 SHOULD READ _____
 455 REASON FOR CHANGE _____
 456 NOW READS: _____
 457 SHOULD READ _____
 458 REASON FOR CHANGE _____
 459 NOW READS: _____
 460 SHOULD READ _____
 461 REASON FOR CHANGE _____
 462 NOW READS: _____
 463 SHOULD READ _____
 464 REASON FOR CHANGE _____
 465 NOW READS: _____
 466 SHOULD READ _____
 467 REASON FOR CHANGE _____
 468 NOW READS: _____
 469 SHOULD READ _____
 470 REASON FOR CHANGE _____
 471 NOW READS: _____
 472 SHOULD READ _____
 473 REASON FOR CHANGE _____
 474 NOW READS: _____
 475 SHOULD READ _____
 476 REASON FOR CHANGE _____
 477 NOW READS: _____
 478 SHOULD READ _____
 479 REASON FOR CHANGE _____
 480 NOW READS: _____
 481 SHOULD READ _____
 482 REASON FOR CHANGE _____
 483 NOW READS: _____
 484 SHOULD READ _____
 485 REASON FOR CHANGE _____
 486 NOW READS: _____
 487 SHOULD READ _____
 488 REASON FOR CHANGE _____
 489 NOW READS: _____
 490 SHOULD READ _____
 491 REASON FOR CHANGE _____
 492 NOW READS: _____
 493 SHOULD READ _____
 494 REASON FOR CHANGE _____
 495 NOW READS: _____
 496 SHOULD READ _____
 497 REASON FOR CHANGE _____
 498 NOW READS: _____
 499 SHOULD READ _____
 500 REASON FOR CHANGE _____
 501 NOW READS: _____
 502 SHOULD READ _____
 503 REASON FOR CHANGE _____
 504 NOW READS: _____
 505 SHOULD READ _____
 506 REASON FOR CHANGE _____
 507 NOW READS: _____
 508 SHOULD READ _____
 509 REASON FOR CHANGE _____
 510 NOW READS: _____
 511 SHOULD READ _____
 512 REASON FOR CHANGE _____
 513 NOW READS: _____
 514 SHOULD READ _____
 515 REASON FOR CHANGE _____
 516 NOW READS: _____
 517 SHOULD READ _____
 518 REASON FOR CHANGE _____
 519 NOW READS: _____
 520 SHOULD READ _____
 521 REASON FOR CHANGE _____
 522 NOW READS: _____
 523 SHOULD READ _____
 524 REASON FOR CHANGE _____
 525 NOW READS: _____
 526 SHOULD READ _____
 527 REASON FOR CHANGE _____
 528 NOW READS: _____
 529 SHOULD READ _____
 530 REASON FOR CHANGE _____
 531 NOW READS: _____
 532 SHOULD READ _____
 533 REASON FOR CHANGE _____
 534 NOW READS: _____
 535 SHOULD READ _____
 536 REASON FOR CHANGE _____
 537 NOW READS: _____
 538 SHOULD READ _____
 539 REASON FOR CHANGE _____
 540 NOW READS: _____
 541 SHOULD READ _____
 542 REASON FOR CHANGE _____
 543 NOW READS: _____
 544 SHOULD READ _____
 545 REASON FOR CHANGE _____
 546 NOW READS: _____
 547 SHOULD READ _____
 548 REASON FOR CHANGE _____
 549 NOW READS: _____
 550 SHOULD READ _____
 551 REASON FOR CHANGE _____
 552 NOW READS: _____
 553 SHOULD READ _____
 554 REASON FOR CHANGE _____
 555 NOW READS: _____
 556 SHOULD READ _____
 557 REASON FOR CHANGE _____
 558 NOW READS: _____
 559 SHOULD READ _____
 560 REASON FOR CHANGE _____
 561 NOW READS: _____
 562 SHOULD READ _____
 563 REASON FOR CHANGE _____
 564 NOW READS: _____
 565 SHOULD READ _____
 566 REASON FOR CHANGE _____
 567 NOW READS: _____
 568 SHOULD READ _____
 569 REASON FOR CHANGE _____
 570 NOW READS: _____
 571 SHOULD READ _____
 572 REASON FOR CHANGE _____
 573 NOW READS: _____
 574 SHOULD READ _____
 575 REASON FOR CHANGE _____
 576 NOW READS: _____
 577 SHOULD READ _____
 578 REASON FOR CHANGE _____
 579 NOW READS: _____
 580 SHOULD READ _____
 581 REASON FOR CHANGE _____
 582 NOW READS: _____
 583 SHOULD READ _____
 584 REASON FOR CHANGE _____
 585 NOW READS: _____
 586 SHOULD READ _____
 587 REASON FOR CHANGE _____
 588 NOW READS: _____
 589 SHOULD READ _____
 590 REASON FOR CHANGE _____
 591 NOW READS: _____
 592 SHOULD READ _____
 593 REASON FOR CHANGE _____
 594 NOW READS: _____
 595 SHOULD READ _____
 596 REASON FOR CHANGE _____
 597 NOW READS: _____
 598 SHOULD READ _____
 599 REASON FOR CHANGE _____
 600 NOW READS: _____
 601 SHOULD READ _____
 602 REASON FOR CHANGE _____
 603 NOW READS: _____
 604 SHOULD READ _____
 605 REASON FOR CHANGE _____
 606 NOW READS: _____
 607 SHOULD READ _____
 608 REASON FOR CHANGE _____
 609 NOW READS: _____
 610 SHOULD READ _____
 611 REASON FOR CHANGE _____
 612 NOW READS: _____
 613 SHOULD READ _____
 614 REASON FOR CHANGE _____
 615 NOW READS: _____
 616 SHOULD READ _____
 617 REASON FOR CHANGE _____
 618 NOW READS: _____
 619 SHOULD READ _____
 620 REASON FOR CHANGE _____
 621 NOW READS: _____
 622 SHOULD READ _____
 623 REASON FOR CHANGE _____
 624 NOW READS: _____
 625 SHOULD READ _____
 626 REASON FOR CHANGE _____
 627 NOW READS: _____
 628 SHOULD READ _____
 629 REASON FOR CHANGE _____
 630 NOW READS: _____
 631 SHOULD READ _____
 632 REASON FOR CHANGE _____
 633 NOW READS: _____
 634 SHOULD READ _____
 635 REASON FOR CHANGE _____
 636 NOW READS: _____
 637 SHOULD READ _____
 638 REASON FOR CHANGE _____
 639 NOW READS: _____
 640 SHOULD READ _____
 641 REASON FOR CHANGE _____
 642 NOW READS: _____
 643 SHOULD READ _____
 644 REASON FOR CHANGE _____
 645 NOW READS: _____
 646 SHOULD READ _____
 647 REASON FOR CHANGE _____
 648 NOW READS: _____
 649 SHOULD READ _____
 650 REASON FOR CHANGE _____
 651 NOW READS: _____
 652 SHOULD READ _____
 653 REASON FOR CHANGE _____
 654 NOW READS: _____
 655 SHOULD READ _____
 656 REASON FOR CHANGE _____
 657 NOW READS: _____
 658 SHOULD READ _____
 659 REASON FOR CHANGE _____
 660 NOW READS: _____
 661 SHOULD READ _____
 662 REASON FOR CHANGE _____
 663 NOW READS: _____
 664 SHOULD READ _____
 665 REASON FOR CHANGE _____
 666 NOW READS: _____
 667 SHOULD READ _____
 668 REASON FOR CHANGE _____
 669 NOW READS: _____
 670 SHOULD READ _____
 671 REASON FOR CHANGE _____
 672 NOW READS: _____
 673 SHOULD READ _____
 674 REASON FOR CHANGE _____
 675 NOW READS: _____
 676 SHOULD READ _____
 677 REASON FOR CHANGE _____
 678 NOW READS: _____
 679 SHOULD READ _____
 680 REASON FOR CHANGE _____
 681 NOW READS: _____
 682 SHOULD READ _____
 683 REASON FOR CHANGE _____
 684 NOW READS: _____
 685 SHOULD READ _____
 686 REASON FOR CHANGE _____
 687 NOW READS: _____
 688 SHOULD READ _____
 689 REASON FOR CHANGE _____
 690 NOW READS: _____
 691 SHOULD READ _____
 692 REASON FOR CHANGE _____
 693 NOW READS: _____
 694 SHOULD READ _____
 695 REASON FOR CHANGE _____
 696 NOW READS: _____
 697 SHOULD READ _____
 698 REASON FOR CHANGE _____
 699 NOW READS: _____
 700 SHOULD READ _____
 701 REASON FOR CHANGE _____
 702 NOW READS: _____
 703 SHOULD READ _____
 704 REASON FOR CHANGE _____
 705 NOW READS: _____
 706 SHOULD READ _____
 707 REASON FOR CHANGE _____
 708 NOW READS: _____
 709 SHOULD READ _____
 710 REASON FOR CHANGE _____
 711 NOW READS: _____
 712 SHOULD READ _____
 713 REASON FOR CHANGE _____
 714 NOW READS: _____
 715 SHOULD READ _____
 716 REASON FOR CHANGE _____
 717 NOW READS: _____
 718 SHOULD READ _____
 719 REASON FOR CHANGE _____
 720 NOW READS: _____
 721 SHOULD READ _____
 722 REASON FOR CHANGE _____
 723 NOW READS: _____
 724 SHOULD READ _____
 725 REASON FOR CHANGE _____
 726 NOW READS: _____
 727 SHOULD READ _____
 728 REASON FOR CHANGE _____
 729 NOW READS: _____
 730 SHOULD READ _____
 731 REASON FOR CHANGE _____
 732 NOW READS: _____
 733 SHOULD READ _____
 734 REASON FOR CHANGE _____
 735 NOW READS: _____
 736 SHOULD READ _____
 737 REASON FOR CHANGE _____
 738 NOW READS: _____
 739 SHOULD READ _____
 740 REASON FOR CHANGE _____
 741 NOW READS: _____
 742 SHOULD READ _____
 743 REASON FOR CHANGE _____
 744 NOW READS: _____
 745 SHOULD READ _____
 746 REASON FOR CHANGE _____
 747 NOW READS: _____
 748 SHOULD READ _____
 749 REASON FOR CHANGE _____
 750 NOW READS: _____
 751 SHOULD READ _____
 752 REASON FOR CHANGE _____
 753 NOW READS: _____
 754 SHOULD READ _____
 755 REASON FOR CHANGE _____
 756 NOW READS: _____
 757 SHOULD READ _____
 758 REASON FOR CHANGE _____
 759 NOW READS: _____
 760 SHOULD READ _____
 761 REASON FOR CHANGE _____
 762 NOW READS: _____
 763 SHOULD READ _____
 764 REASON FOR CHANGE _____
 765 NOW READS: _____
 766 SHOULD READ _____
 767 REASON FOR CHANGE _____
 768 NOW READS: _____
 769 SHOULD READ _____
 770 REASON FOR CHANGE _____
 771 NOW READS: _____
 772 SHOULD READ _____
 773 REASON FOR CHANGE _____
 774 NOW READS: _____
 775 SHOULD READ _____
 776 REASON FOR CHANGE _____
 777 NOW READS: _____
 778 SHOULD READ _____
 779 REASON FOR CHANGE _____
 780 NOW READS: _____
 781 SHOULD READ _____
 782 REASON FOR CHANGE _____
 783 NOW READS: _____
 784 SHOULD READ _____
 785 REASON FOR CHANGE _____
 786 NOW READS: _____
 787 SHOULD READ _____
 788 REASON FOR CHANGE _____
 789 NOW READS: _____
 790 SHOULD READ _____
 791 REASON FOR CHANGE _____
 792 NOW READS: _____
 793 SHOULD READ _____
 794 REASON FOR CHANGE _____
 795 NOW READS: _____
 796 SHOULD READ _____
 797 REASON FOR CHANGE _____
 798 NOW READS: _____
 799 SHOULD READ _____
 800 REASON FOR CHANGE _____
 801 NOW READS: _____
 802 SHOULD READ _____
 803 REASON FOR CHANGE _____
 804 NOW READS: _____
 805 SHOULD READ _____
 806 REASON FOR CHANGE _____
 807 NOW READS: _____
 808 SHOULD READ _____
 809 REASON FOR CHANGE _____
 810 NOW READS: _____
 811 SHOULD READ _____
 812 REASON FOR CHANGE _____
 813 NOW READS: _____
 814 SHOULD READ _____
 815 REASON FOR CHANGE _____
 816 NOW READS: _____
 817 SHOULD READ _____
 818 REASON FOR CHANGE _____
 819 NOW READS: _____
 820 SHOULD READ _____
 821 REASON FOR CHANGE _____
 822 NOW READS: _____
 823 SHOULD READ _____
 824 REASON FOR CHANGE _____
 825 NOW READS: _____
 826 SHOULD READ _____
 827 REASON FOR CHANGE _____
 828 NOW READS: _____
 829 SHOULD READ _____
 830 REASON FOR CHANGE _____
 831 NOW READS: _____
 832 SHOULD READ _____
 833 REASON FOR CHANGE _____
 834 NOW READS: _____
 835 SHOULD READ _____
 836 REASON FOR CHANGE _____
 837 NOW READS: _____
 838 SHOULD READ _____
 839 REASON FOR CHANGE _____
 840 NOW READS: _____
 841 SHOULD READ _____
 842 REASON FOR CHANGE _____
 843 NOW READS: _____
 844 SHOULD READ _____
 845 REASON FOR CHANGE _____
 846 NOW READS: _____
 847 SHOULD READ _____
 848 REASON FOR CHANGE _____
 849 NOW READS: _____

STAFFORD FREY COOPER

PROFESSIONAL CORPORATION

601 Union Street, Suite 3100, Seattle, WA 98101-1374 TEL (206) 623-9900 FAX (206) 624-6885

October 7, 2005

Via U.S. Mail & Fax: (206) 676-7575

Michael T. Pfau
Gordon Thomas Honeywell Malanca Peterson & Daheim
600 University Street, Suite 2100
Seattle, WA 98101-4185

Timothy D. Kosnoff
Law Offices of Timothy D. Kosnoff
600 University Street, Suite 2100
Seattle, WA 98101-4185

Re: Fleming, et al. v. COP, et al.
Our File: 7566-025226

Gentlemen:

This letter will confirm our CR 37(a)(2)(A) conference relating to deposition discovery in this case. To date, we have been able to work cooperatively in completing the discovery that needs to be done. Following the deposition of Mr. Jensen, we met and agreed as follows: (1) that you will continue to attempt to schedule the deposition of Mr. LoHolt prior to the discovery deadline if possible; and (2) that you would give me a list of the witnesses you would like to depose after the discovery cut-off.

You indicated that if we continue to cooperate in discovery, you would not move the Court for an order striking our expert witnesses. While I maintain that the parties have already agreed that COP may use their identified experts, I have nonetheless indicated to you that we do intend to continue to work cooperatively within reason, in the conduct of discovery in this case. However, I cautioned that we are not agreeable to a carte blanche extension of the discovery cut-off, and that any extension of discovery would have to be done on a witness-by-witness basis so that the decisions are made with some specificity as opposed to just a general discussion. Again, we wish to cooperate in the conduct of discovery in this case, but on a witness-specific basis. Thus, I ask that you give me a list of the witnesses, and I will do likewise.

The list of post-deadline discovery to be completed within a reasonable amount of time may include: (1) selected fact witnesses to which we mutually agree; (2) depending on the circumstances, Jack LoHolt's deposition may need to be taken after the discovery cut-off, depending on how quickly his deposition can be arranged; (3) if necessary, depositions of Richard Pettit and Don Boren may be taken before or after discovery cut-off – assuming that we cannot find open dates prior to the Cavalieri trial;

EXHIBIT 5

Michael T. Pfau
Timothy D. Kosnoff
Re: Fleming, et al. vs COP, et al.
October 7, 2005
Page 2

(4) in addition to those fact witnesses you have identified (which I ask be confirmed in writing), we hereby inform you that we intend to depose Arlene Land, Linda Herman, and Tony Asworth; and (5) we intend to depose your experts, including your rebuttal expert. If you will cooperate in calendaring the depositions of these individuals, our office will work with your office in arranging our respective schedules; otherwise, because of the impending deadline, we will be forced to simply note the depositions.

You stated your intent to move the Court to compel Bishop Borland to respond to certain questions regarding conversations which were asserted in his deposition to be privileged and/or confidential under both the First Amendment and the Priest-Penitent privilege statute. I suggested that you supply me with a list of questions which you wish to ask him, and frankly do not recall whether you agreed to supply the list or not. We disagreed as to the scope of the protection afforded by the Priest-Penitent privilege statute, as well as under the First Amendment for clergy-parishioner spiritual counseling in the religious context.

Lastly, given the recent spate of cancellations and re-schedulings of depositions, I suggest that your assistant, Johnnie, call Mary Ann and that a new, updated discovery schedule be provided so that each of us is aware of what discovery remains to be completed.

Please do not hesitate to give me a call or to reply in writing if you feel that my letter is inaccurate or incomplete in any way.

Very truly yours,

STAFFORD FREY COOPER

Marcus B. Nash
Attorney at Law

MBN/as
cc: Thomas D. Frey