

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

11:10:43 1 this kind of value upon balance that can't be proven, but it
2 does speak to universal truths of the utmost importance.

3 MR. de HAAN: May I have a moment, Your Honor.

4 No further questions, Your Honor.

11:11:23 5 THE COURT: Cross-examination.

6 MR. de HAAN: Your Honor, briefly, may I approach
7 to --

8 C R O S S - E X A M I N A T I O N

9 BY MR. CLAUS:

11:15:19 10 Q Good afternoon, Mr. Misicko.

11 The first thing I want to talk to you about is you
12 were excluded from the courtroom pursuant to the invocation of
13 the rule on exclusion; correct?

14 A I don't know.

11:15:38 15 Q You were sitting outside abiding your testimony; correct?

16 A Correct. By my choice of sitting outside of the
17 courtroom.

18 Q I see.

19 I put some exhibits in front of you. Could you
11:15:54 20 please get the folder with Exhibit 76 in it, please.

21 Do you have Exhibit 76 in front of you, sir?

22 A I do.

23 Q Do you see how Exhibit 76 has the title Affiliation
24 Agreement?

11:16:26 25 A Correct.

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11:16:26 1 Q If you go to the last page, sir.

2 A Okay.

3 Q Do you see how the affiliation agreement is signed by

4 Michelle Shortt and Stu de Haan?

11:16:39 5 A I do.

6 Q You have never provided in this litigation any affiliation

7 agreement between the United Federation of Churches LLC and

8 anything calling itself the Arizona Chapter of The Satanic

9 Temple that is signed by any authorized party of the United

11:16:58 10 Federation of Churches LLC; correct?

11 A Correct.

12 Q And you have not produced in this litigation any

13 affiliation agreement at all; correct?

14 A I don't understand.

11:17:11 15 Q You have not produced in this litigation any affiliation

16 agreement between the United Federation of Churches LLC and

17 The Satanic Temple. You, meaning Mr. Misicko.

18 A Oh, I don't know. For all I knew I had provided this one.

19 Q Okay. Is Exhibit 76 the "this one" to which you are

11:17:35 20 referring?

21 A Yes.

22 Q Is Exhibit 76 the only affiliation agreement that you have

23 produced in this litigation?

24 A My understanding is that it is not, but I'm not certain.

11:17:49 25 Q You have not produced an affiliation agreement between the

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11:17:53 1 United Federation of Churches LLC and Michelle Shortt or The
2 Satanic Temple Arizona that contains an authorized signature
3 of the United Federation of Churches LLC; correct?

4 A I'll take your word for it.

11:18:08 5 Q No, sir, I'm asking you to testify under penalty of
6 perjury, have you --

7 A I'm under the impression that every statement I give is
8 under penalty of perjury.

9 Q It is, sir. And that's why I'm asking you to testify, not
11:18:22 10 taking my word for it.

11 Do you know, sir, that you have not produced in this
12 litigation anything called an Affiliation Agreement other than
13 Exhibit 76?

14 A No, I don't recall what all we handed over to you.

11:18:38 15 Q You've never spoken with Mayor Jim Lane; correct?

16 A Correct.

17 Q For any reason; correct?

18 A Correct.

19 Q You've never spoken with a Councilwoman Suzanne Klapp;
11:18:49 20 correct?

21 A Correct.

22 Q For any reason?

23 A Correct.

24 Q You've never spoken with any member of the Scottsdale city
11:18:55 25 council who was a member in 2016; correct?

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11:18:59 1 A That is correct.

2 Q And you've never spoken with a member of the Scottsdale
3 city council that was a member of the city council in any
4 year; true?

11:19:07 5 A True.

6 Q You have never requested the opportunity for anyone to
7 give an invocation before a Scottsdale City council meeting;
8 is that correct?

9 A I never directly contacted the city council about an
11:19:23 10 invocation.

11 Q And you've never spoken with any employee of the City of
12 Scottsdale for any reason; correct?

13 A Correct.

14 Q You've never delivered a written communication to the City
11:19:33 15 of Scottsdale describing the beliefs of the organization
16 calling itself The Satanic Temple; is that correct?

17 A I personally did not.

18 Q And you never directed anyone to send any written
19 communication on behalf of the United Federation of Churches
11:19:50 20 LLC doing business as The Satanic Temple, you never directed
21 anyone to send any written communication to a representative
22 of the City of Scottsdale describing the beliefs of the
23 organization calling itself The Satanic Temple; true?

24 A I believe that I gave Stu and Michelle explicit permission
11:20:13 25 to do that kind of correspondence and reach out and ask to

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11:20:17 1 give the invocation. But I directly did not.

2 Q At no time have you delivered a written communication to
3 the City of Scottsdale describing any connection between the
4 organization that calls itself The Satanic Temple and the City
11:20:35 5 of Scottsdale; correct?

6 A There is no reason I would do so.

7 Q So you did not; correct?

8 A We were never asked.

9 Q You did not; correct?

11:20:43 10 A Correct.

11 Q Let's talk about the organization. You claim to be a
12 cofounder of The Satanic Temple?

13 A I am.

14 Q And you just testified, quote, there have not, end quote,
11:20:58 15 ever been anything other than the seven tenets with respect to
16 The Satanic Temple. Do you recall that testimony?

17 A There was never any other codified set of beliefs in the
18 founding of The Satanic Temple.

19 Q United Federation of Churches LLC owns the trademark The
11:21:22 20 Satanic Temple; correct?

21 A Correct.

22 Q The United Federation of Churches LLC owns the domain name
23 www.thesatanictemple.com; correct?

24 A Correct.

11:21:36 25 Q You know as a matter of historic fact that you were

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11:21:41 1 involved with The Satanic Temple as of July 22, 2013; correct?

2 A Correct.

3 Q And you know as a matter of fact that as of July 22, 2013,

4 the website www.thesatanictemple.com stated that there are

11:22:03 5 nine fundamental tenets, with nine being a significant satanic

6 number; correct?

7 A Correct. That was a placeholder website preceding my

8 involvement with the Satanic Temple.

9 Q No, sir. July 22, 2013, was a day on which you had

11:22:21 10 already become involved in the Satanic Temple.

11 A Yes. Well, not everything happened on one day at one

12 time.

13 Q That wasn't my question, sir.

14 As of July 22, 2013, you had been involved with The

11:22:32 15 Satanic Temple for nearly seven months; correct?

16 A And we had not yet changed the placeholder website.

17 Q Sir, that wasn't my question. If you could answer my

18 question.

19 A Say again.

11:22:46 20 Q Sure. As of July 22, 2013, you --

21 A Yes, as of that date --

22 Q -- you had --

23 A -- we had not changed the placeholder website.

24 Q Let me ask my question, please.

11:22:59 25 A Carry on.

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11:23:00 1 Q As of July 22, 2013, you had been associated with The
2 Satanic Temple as its so-called spokesperson for nearly seven
3 months. Is that a true statement or a false statement?

4 A It could be either. I'm not that certain on the timeline.

11:23:22 5 Q Could you please look at Exhibit 56.

6 MR. CLAUS: In fact, could you get Exhibits 57, 58,
7 59, and 60, as well.

8 THE WITNESS: I do not have a 56.

9 MR. CLAUS: Oh.

11:23:49 10 And 56 apparently.

11 I apologize.

12 BY MR. CLAUS:

13 Q I have asked the courtroom deputy to give you Exhibits 56,
14 57, 58, 59, and 60.

11:24:26 15 You know that as of August 5, 2013, you were involved
16 as a purported spokesperson for The Satanic Temple; correct?

17 A Correct.

18 Q And do you know that as of September 4, 2013, you had been
19 involved with The Satanic Temple as its purported
11:24:47 20 spokesperson; correct?

21 A Yeah, I believe so.

22 Q And you know that as of November 3, 2013, you were
23 involved as the purported spokesperson for The Satanic Temple;
24 correct?

11:25:01 25 A Correct.

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11:25:01 1 Q And you know that as of December 12, 2013, you were
2 involved as a spokesperson for something that called itself
3 The Satanic Temple; correct?

4 A Correct.

11:25:15 5 Q And you also know that on July 22, 2013, August 5, 2013,
6 September 4, 2013, November 3, 2013, and December 12, 2013,
7 the domain name and website owned and controlled by the United
8 Federation of Churches LLC, www.thesatanictemple.com,
9 represented that there are nine fundamental tenets, with nine
11:25:48 10 being a significant satanic number associated with the thing
11 calling itself The Satanic Temple; correct?

12 A Yes, from --

13 MR. de HAAN: Objection.

14 THE WITNESS: -- from a placeholder website --

11:26:01 15 THE COURT: Hold on, please.

16 What's the objection?

17 MR. de HAAN: Your Honor, this is not relevant.

18 This has been disavowed multiple times as not being relative
19 to The Satanic Temple from an archive website. Additionally,
11:26:09 20 it is more prejudicial than probative because this has no
21 relevant value to the founders' statement of what The Satanic
22 Temple is.

23 THE COURT: Overruled.

24 BY MR. CLAUS:

11:26:19 25 Q You testified, on questioning by your counsel, when you

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11:26:24 1 were asked have there ever been anything other than seven
2 tenets, you testified under penalty of perjury, quote, there
3 have not, end quote; correct?

4 A Yes, I have testified everything under penalty of perjury.
11:26:38 5 And I will tell you again that that was a placeholder website
6 and nobody viewed any of that as codified -- a codified part
7 of the religion.

8 Q It was a placeholder website in July of 2013 when you were
9 acting as spokesperson? August, September, November, and
11:26:55 10 December of 2013, when you were acting as spokesperson?

11 A Yes. It was a placeholder website until it was changed to
12 the formal website with the codified tenets.

13 Q But in 2013, the thing that called itself The Satanic
14 Temple had already been engaging in activities; correct?

11:27:20 15 A Those activities probably prevented me from doing any web
16 work.

17 Q You know who Malcolm Jarry is; correct?

18 A Correct.

19 Q Malcolm Jarry is a fake name; correct?

11:27:33 20 A It's a pseudonym.

21 Q Mr. Jarry's real name is Cevin with a C, C-E-V-I-N,
22 Soling? True?

23 A Yes.

24 Q Cevin Soling, who also uses the name Malcolm Jarry, is the
11:27:52 25 managing member of the United Federation of Churches LLC; is

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11:27:56 1 that correct?

2 A Correct.

3 Q And UFC, United Federation of Churches LLC, not only owns
4 the domain name for The Satanic Temple, owns the trademark for
11:28:09 5 The Satanic Temple, but also owns all of the other trademarks
6 used and associated with The Satanic Temple; correct?

7 A Correct.

8 Q You know that Malcolm Jarry, aka -- or rather
9 Cevin Soling, aka Malcolm Jarry has the authority to act and
11:28:32 10 speak on behalf of the United Federation of Churches LLC;
11 correct?

12 A Correct.

13 Q You also know that Malcolm Jarry has admitted that The
14 Satanic Temple was founded --

11:28:53 15 MR. de HAAN: Objection. Hearsay.

16 THE COURT: What's your response on hearsay?

17 MR. CLAUS: He has just established that one of the
18 plaintiffs in this case, the United Federation of Churches
19 LLC --

11:29:05 20 THE COURT: Just tell me what your response is.

21 Under what rule?

22 MR. CLAUS: 801(2)(D)(2) -- 801(d)(2)(D),
23 801(d)(2)(C) it is not definitionally hearsay.

24 THE COURT: Objection is overruled.

25

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11:29:23 1 BY MR. CLAUS:

2 Q You know that Malcolm Jarry has stated that The Satanic
3 Temple was founded as, quote, a media stunt to expose what you
4 view as religious hypocrisy; correct?

11:29:40 5 A I do not believe that he ever said that.

6 Q You do not believe that Malcolm Jarry ever said that The
7 Satanic Temple was founded as a media stunt?

8 A I do not know what leads you to believe that and I don't
9 know that I've ever heard that.

11:30:00 10 Q You have seen the movie Hail Satan?

11 A I have.

12 Q You were in the movie Hail Satan?

13 A I was.

14 Q The movie Hail Satan that uses your likeness; correct?

11:30:13 15 A Correct.

16 Q Uses your pseudonym; correct?

17 A Correct.

18 Q You authorized the makers of Hail Satan to use your name
19 and pseudonym; correct?

11:30:21 20 A Correct.

21 Q The movie Hail Satan uses the trademark protected symbols
22 and words and phrases of the United Federation of Churches
23 LLC; correct?

24 A Correct.

11:30:33 25 Q And authorization was given for that as well; correct?

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11:30:36 1 A Correct.

2 MR. CLAUS: Can you pull up Exhibit 105.

3 Time stamp 4:30 to 4:50.

4 MR. de HAAN: Your Honor, I'm going to object as to
11:30:59 5 hearsay. He's about to show a documentary that was not
6 created by The Satanic Temple, that was created by a director
7 that's not present to testify who's -- their own creative
8 expression --

9 THE COURT: I hear your hearsay objection.

11:31:14 10 Are you going to seek admission of Exhibit 105?

11 MR. CLAUS: I'm going to seek admission of the
12 statement of Malcolm Jarry, and then the statements of
13 Doug Misicko in Exhibit 105. And for that --

14 THE WITNESS: I can guarantee you --

11:31:26 15 THE COURT: Hold on. Hold on, sir.

16 MR. CLAUS: And I'm not going to show --

17 THE COURT: What's your response to the hearsay
18 objection?

19 MR. CLAUS: I'm not going to show any hearsay and
11:31:34 20 I'm not going to ask for admission of any hearsay portions of
21 Exhibit 105. We had provided --

22 THE COURT: The film is hearsay.

23 MR. CLAUS: The film -- the film is not hearsay to
24 the extent it contains the statements of Mr. Misicko, the
11:31:49 25 statements of Mr. Jarry, the statements of Ms. Shortt.

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11:31:53 1 THE COURT: There's a double hearsay problem here.
2 We've got statements of -- I believe you're going to show
3 Mr. Jarry, but there's a second level of hearsay, which is
4 the film created by somebody else. How do you overcome that
11:32:06 5 hearsay problem?

6 MR. CLAUS: I'm not offering the film to prove the
7 truth of the statements made in the film. I'm offering the
8 statement of Malcolm Jarry to demonstrate that Mr. Misicko is
9 not telling Your Honor the truth about Malcolm Jarry, the
11:32:29 10 manager of the United Federation of Churches --

11 THE COURT: So you are offering the film to prove
12 the truth of what Mr. Jarry said?

13 MR. CLAUS: Malcolm Jarry's statement, Your Honor.

14 THE COURT: How do you overcome the second level of
11:32:41 15 hearsay?

16 MR. CLAUS: There is no second level of hearsay,
17 Your Honor, because we're not -- the second level --

18 THE COURT: Let me give you this example. Let's say
19 we have a police report that is hearsay, and within it is
11:32:51 20 quoted the statement of somebody that is also hearsay. That
21 is a double hearsay problem.

22 What we have here in effect is a document, a film,
23 that is hearsay, and we have within it a second statement of
24 Mr. Jarry that is hearsay. That is a double hearsay problem.
11:33:06 25 And for the film, with that statement to be admitted, you

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11:33:09 1 have to overcome both levels of hearsay.

2 So my question is how do you overcome the film
3 hearsay problem?

4 MR. CLAUS: I overcome it by using at least the
11:33:18 5 generalized exception. There is no -- there is no question
6 as to the authenticity of the film that Mr. Misicko just
7 said --

8 THE COURT: What do you mean by general exception?
9 Are you talking about the residual exception?

11:33:34 10 MR. CLAUS: No, Your Honor. The general exception
11 that permits the Court to allow out-of-court statements so
12 long as there is an ample demonstration that those
13 out-of-court statements -- the purpose of the hearsay rule,
14 Your Honor, is to protect against out-of-court statements.

11:33:54 15 THE COURT: I think you're talking about the
16 residual exception, Rule 807; is that right?

17 MR. CLAUS: Yes, Your Honor.

18 This statement has a circumstantial guarantee of
19 trustworthiness. The film is a transmittal media. It's a
11:34:16 20 recording mechanism for his statement.

21 And I will say, Your Honor, on this point, they did
22 not produce to us the recorded statements of Mr. Misicko.

23 THE COURT: That's not relevant to the hearsay
24 issue. Let's stay on Rule 807.

11:34:34 25 MR. CLAUS: Yes. There is no question as to the

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11:34:39 1 circumstantial guarantee of trustworthiness of the Hail Satan
2 documentary in which Mr. Misicko, Ms. Shortt, Mr. Soling,
3 Mr. de Haan made statements.

4 THE COURT: I think I understand your argument. Do
11:34:56 5 you have additional points to make?

6 MR. CLAUS: I do not have additional points,
7 Your Honor.

8 THE COURT: What is your response on 807?

9 MR. de HAAN: Your Honor, under 807(a)(2), there's
11:35:05 10 got to be a showing that this is more probative on point than
11 any other relevant evidence. He could have subpoenaed
12 Mr. Jarry. He's going to take, conceivably out of context,
13 part of an entire documentary for one statement, which also
14 raises a 403 objection.

11:35:20 15 So I would submit there's still double hearsay,
16 which this isn't the most probative evidence he could have
17 for this when -- when -- if he knew who Mr. Soling was the
18 entire time, he could have subpoenaed him.

19 THE COURT: I understand your point.

11:35:31 20 You could have deposed Mr. Jarry; correct?

21 MR. CLAUS: I could not have deposed Mr. Jerry,
22 Your Honor.

23 THE COURT: Why?

24 MR. CLAUS: Because this film was not released until
11:35:39 25 April 27, 2019. There is a body of people who knew about the

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11:35:44 1 statements long before the close of discovery. We were not
2 one of them.

3 THE COURT: You answered the question.

4 Was discovery closed by April of --

11:35:53 5 MR. CLAUS: Yes, it was, Your Honor.

6 THE COURT: What is your response, Mr. de Haan?

7 MR. de HAAN: First of all, this is a documentary
8 that was in production for three years where there's been
9 significant changes, there's an entire arc of the story of
11:36:03 10 this documentary that has things that are absolutely not
11 relevant --

12 THE COURT: He's not seeking to admit the whole
13 document. My question is, is it true that this film wasn't
14 produced and released until after the close of discovery in
11:36:16 15 this case?

16 MR. de HAAN: My recollection -- which date are we
17 talking about?

18 THE COURT: He said April 2019.

19 MR. KEZHAYA: Your Honor, may I?

11:36:40 20 THE COURT: Yes.

21 MR. KEZHAYA: Mr. Misicko was deposed in the second
22 wave of discovery. If I remember correctly, it was
23 approximately September of 2019. If they were aware of this
24 documentary, and they reasonably could have been since it was
11:36:56 25 produced in -- it was released, I should say, in April of

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11:36:58 1 2019, and they had the expectation that they might want to
2 use some of these statements to prove -- I gather that the
3 general relevance of this is that TST is not a real religion,
4 and they could have deposed Mr. Soling.

11:37:10 5 THE COURT: Is it right that you deposed Mr. Misicko
6 during the second wave of discovery?

7 MR. CLAUS: I did depose Mr. Misicko and found out
8 about Hail Satan during that.

9 THE COURT: So you could have deposed Mr. Jarry
10 during that period as well.

11 MR. CLAUS: No, Your Honor. Because your order
12 limited us to four depositions. Or strike that.

13 Your order limited us to four depositions of an hour
14 apiece only on the issue of standing and the issue of subject
11:37:37 15 matter jurisdiction. We could not have, under your Court's
16 order. And discovery ended, Your Honor, in this case, on
17 February 1, 2019. I will point out that to the best of my
18 knowledge, Mr. Soling is a Massachusetts resident and not
19 subject to the subpoena power of this Court.

11:38:04 20 THE COURT: Well, of course he is. Of course he is
21 for a deposition.

22 MR. CLAUS: No, no, no, Your Honor, for trial. One
23 of the arguments was that we could have subpoenaed Mr. Soling
24 for trial.

11:38:12 25 THE COURT: Okay.

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11:38:14 1 MR. CLAUS: We could not.

2 THE COURT: Well, I assume Exhibit 105 was listed in
3 the final pretrial order?

4 MR. CLAUS: It was, Your Honor.

11:38:21 5 THE COURT: Can you tell me where it's described.

6 MR. CLAUS: It's -- it is in Exhibit A -- I'm sorry,
7 strike that, your Honor.

8 THE COURT: A is the --

9 MR. CLAUS: Yes --

11:38:38 10 THE COURT: -- exhibit list of the plaintiffs.
11 I've got it in front of me.

12 MR. CLAUS: Thank you, Your Honor. You're better at
13 this than I am.

14 THE COURT: Actually, I'm not -- what I have is
11:39:02 15 defendants' exhibit list, but there's no objections.

16 MR. CLAUS: The objections are on page 28 of the
17 final pretrial order, which show what we have described it as
18 excerpts from Hail Satan video.

19 THE COURT: Okay. Let me look at that.

11:39:42 20 That's where the objection is. Where is your
21 description of Exhibit 108 and how you intended to use it at
22 trial?

23 I'm asking this because of the requirement in
24 Rule 807(b).

11:40:06 25 MR. CLAUS: One second, Your Honor.

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11:40:52 1 I have this, Your Honor. May I approach?

2 THE COURT: You may.

3 That's what I've got as well. But my copy doesn't
4 show any docket number so I don't know if that came from the
11:41:06 5 final pretrial order.

6 I think -- isn't this your trial exhibit list,
7 Mr. Claus?

8 MR. CLAUS: We're searching, Your Honor.

9 I apologize, Your Honor, that -- here's our copy of
11:41:28 10 our -- the joint pretrial order does not have our exhibit
11 list.

12 THE COURT: All right. How much longer do you have
13 in your questioning?

14 MR. CLAUS: Of Mr. Misicko?

11:41:39 15 THE COURT: Yeah.

16 MR. CLAUS: Approximately 45 minutes.

17 THE COURT: Let's carry on. We'll deal with this
18 during the lunch hour so we don't keep everybody waiting.

19 MR. CLAUS: Thank you, Your Honor.

11:41:54 20 BY MR. CLAUS:

21 Q You got involved with Malcolm Jarry and the thing called
22 The Satanic Temple because you are casting actors for a
23 mockumentary; correct?

24 A Incorrect.

11:42:05 25 Q A film project, sir?

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11:42:08 1 A I was not casting actors for a film project.

2 Q You got involved with Mr. Jarry for The Satanic Temple
3 because you were involved in some degree in the film project
4 that was to be a mockumentary; correct?

11:42:20 5 A I was consulting as a satanist on a project involving the
6 concept of satanism.

7 Q And you knew that Malcolm Jarry was producing a film
8 project to be a mockumentary; correct?

9 A I knew he was producing a film project about satanism.

11:42:44 10 Q Well, you knew that Mr. Jarry cast an actor pretending to
11 be the head of The Satanic Temple; correct?

12 A That is correct. And as a satanist, I was helping consult
13 on the authentic nature of satanism so it could be best
14 portrayed.

11:43:01 15 Q Well, the actor pretending to be the head of The Satanic
16 Temple wasn't a satanist; correct?

17 A He was not.

18 Q The goal of The Satanic Temple is to mock religion and
19 those who hold deeply and sincere religious beliefs; correct?

11:43:25 20 A That is incorrect. I'm not sure where you heard that.

21 Q The Satanic Temple doesn't have an actual temple; true?

22 A Well, that's debatable. We have our headquarters in Salem
23 that we could refer to as a temple.

24 Q You could refer to as a temple. But on your website that
11:43:46 25 you published as of today, you don't refer to it as a temple,

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11:43:50 1 you refer to it as a museum; correct?
2 A I refer to it as The Satanic Temple.
3 Q That is a museum and a gift shop; correct?
4 A It is the Satanic Temple headquarters.
11:44:02 5 Q That has a museum and a gift shop; correct?
6 A It has a museum and a gift shop.
7 Q The Satanic Temple doesn't worship Satan; correct?
8 A Depends on what you mean by worship.
9 Q Well, The Satanic Temple does not believe that Satan
11:44:19 10 exists as an actual thing; correct?
11 A As an actual conscious entity, no.
12 Q No, I'm wrong? Or no, you don't believe that it exists?
13 A Please rephrase.
14 Q Sure. The Satanic Temple does not espouse a belief in an
11:44:37 15 entity or being referred to as Satan; correct?
16 A Not an isolate discrete conscious entity known as Satan,
17 no.
18 Q The Satanic Temple does not espouse a belief system that
19 calls for the worship of a superhuman controlling power;
11:45:03 20 correct?
21 A That is correct.
22 Q Because The Satanic Temple espouses beliefs that shun a
23 belief in a superhuman controlling power; correct?
24 A Depends what you mean by shun.
11:45:18 25 Q Well, The Satanic Temple tells the world that it, quote,

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11:45:21 1 does not wish to have anyone succumb to religious groupthink,
2 end quote; correct?

3 A I don't know where that quote is from.

4 Q Do you have Exhibit 103 in front of you, sir?

11:45:43 5 A I do.

6 Q The Satanic Temple Arizona chapter is authorized to use
7 the intellectual property owned by the United Federation of
8 Churches LLC; correct?

9 A Correct.

11:46:05 10 Q Is authorized to use a website directing the public to the
11 website maintained by The Satanic Temple Arizona; correct?

12 A Correct.

13 Q And The Satanic Temple, you, take very seriously the way
14 in which chapters utilize the brand of The Satanic Temple;
15 correct?

16 A Correct.

17 Q If you'd turn to page 2 of Exhibit 103.

18 You see how -- strike that.

19 Exhibit 103 is an FAQ, a frequently asked questions
11:46:56 20 printout of the website of The Satanic Temple Arizona.

21 A I see it.

22 MR. CLAUS: Move for admission --

23 BY MR. CLAUS:

24 Q Er, I'm going to impeach you first.

11:47:06 25 Do you see there is bolded language "Does TST." You

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

11:47:15 1 see that bolded language?

2 A Yes.

3 THE COURT: Are you moving this document into
4 evidence?

11:47:19 5 MR. CLAUS: I will, Your Honor. I just want to
6 focus the witness and then I'll ask --

7 THE COURT: You can't use it until it's in evidence.

8 MR. CLAUS: I understand, Your Honor. I just wanted
9 to focus the witness of where I was going.

11:47:30 10 MR. de HAAN: I have an objection to its admission.

11 THE COURT: If he asks him any question about the
12 document, I'll require it be admitted first.

13 MR. CLAUS: We move for admission of Exhibit 103.

14 THE COURT: All right. What's the objection?

11:47:40 15 MR. de HAAN: He's not the author of this document
16 as far as has been established, as far as I know. Also, I --
17 relevance. More prejudicial than probative. It's an excerpt
18 of the entire thing. I don't know how this is admissible.

19 THE COURT: Well, what is the basis for your
11:47:54 20 objection?

21 MR. de HAAN: First, relevance. I don't see --

22 THE COURT: Well, relevancy is overruled.

23 MR. de HAAN: Okay.

24 THE COURT: What else is the basis for your
11:48:02 25 objection?

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

11:48:03 1 MR. de HAAN: Also, I don't think he's established
2 that he had personal knowledge that this particular page of a
3 website existed that he didn't author.

4 THE COURT: Well, that's not a basis for opposing
11:48:12 5 the admissibility of a document. It may be a basis for
6 objecting to a question.

7 MR. de HAAN: Okay. Understood, Your Honor.

8 THE COURT: Those are all of your objections?

9 MR. de HAAN: Yes, Your Honor.

11:48:23 10 THE COURT: I'll admit Exhibit 103.

11 (Exhibit 103 admitted.)

12 MR. CLAUS: Thank you, Your Honor.

13 BY MR. CLAUS:

14 Q Now, directing you to that bold heading in the center of
11:48:30 15 the page that starts with the words "Does TST." Do you see
16 that?

17 A Yes.

18 Q So I'm going to ask you again, The Satanic Temple tells
19 the world that it does, quote, not wish to have anyone succumb
11:48:51 20 to religious groupthink, end quote; correct?

21 A The Satanic Temple Arizona apparently has that, but this
22 is the first I'm seeing it.

23 Q Sir, as the purported spokesperson of The Satanic Temple,
24 you just told the Court that you take very seriously the way
11:49:09 25 in which chapters use your brand and your trademarks; correct?

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

11:49:15 1 A Correct. And that does not conflict with my statement
2 that I had not read this before.

3 Q The Satanic Temple is a trademark that is owned by United
4 Federation of Churches LLC; correct?

11:49:27 5 A Correct.

6 Q Chapters of The Satanic Temple are authorized to operate
7 websites by you; correct?

8 A Correct.

9 Q And chapters of The Satanic Temple are authorized to use
11:49:45 10 the trademarks and intellectual property of The Satanic
11 Temple, that is actually the United Federation of churches
12 LLC, by you; correct?

13 A Correct. Nonetheless, this is the first I'm seeing this
14 page.

11:50:05 15 Q Do you see how this page told the public that, quote, The
16 Satanic Temple does not proselytize to the public nor do we
17 wish to have anyone succumb to religious groupthink"?

18 A Yes, I'm seeing that now for the first time.

19 Q And that statement is in response to a question, "Does TST
11:50:35 20 offer any public services, i.e., church, sermons," question
21 mark; correct?

22 MR. de HAAN: Objection. He has not established a
23 time that this was published.

24 THE COURT: Overruled.

11:50:51 25 THE WITNESS: I'm sorry, ask again.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

11:50:52 1 BY MR. CLAUS:
2 Q Sure. That statement that The Satanic Temple does not
3 proselytize to the public nor do we wish to have anyone
4 succumb to religious groupthink, was in response to the
11:51:05 5 question above it, "Does TST offer any public services, i.e.,
6 church," comma, "sermons," question mark; correct?
7 A I am seeing that on this page that I'm now viewing for the
8 first time.
9 Q Local chapters of the Satanic Temple did not have any
11:51:29 10 physical locations as of May 23, 2016; correct?
11 A I'm unsure.
12 Q As of the date this lawsuit was filed, Arizona chapter of
13 The Satanic Temple did not have any physical location;
14 correct?
11:51:53 15 A I don't know that that's correct.
16 Q Look at the first page of Exhibit 103, sir.
17 Do you see a date at the bottom of the page on the
18 right-hand side?
19 A I do.
11:52:17 20 Q 9/17/2019; correct?
21 A I believe that would be the date it was printed.
22 Q And this lawsuit had been filed as of 9/17/2019; correct?
23 A Correct.
24 Q Well, since you raised that, sir, do you see on
11:52:33 25 Exhibit 103, above the date there's a heading called "Recent

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

11:52:44 1 Posts"; correct?
2 A Correct.
3 Q And the post refers to TST AZ chapter head Michelle Shortt
4 resigns; correct?
11:52:52 5 A Correct.
6 Q And there is a date for that as well; correct?
7 A Correct.
8 Q What is that date, sir?
9 A June 11, 2019.
11:53:00 10 Q As of June 11, 2019, this lawsuit had been filed; correct?
11 A Correct.
12 Q Assuming that the website promulgated by The Satanic
13 Temple Arizona with your permission follows the laws of
14 physics, it would have been impossible for Exhibit 103 to
11:53:19 15 publish a post about Michelle Shortt's resignation on June 11,
16 2019, unless Exhibit 103 postdated that date; correct?
17 A You really don't need me up here to answer these
18 questions. Anybody could be looking at this. I'm seeing this
19 for the first time.
11:53:37 20 THE COURT: I'm not understanding your point,
21 Mr. Claus.
22 BY MR. CLAUS:
23 Q The point is you can now deduce that the statement that
24 The Satanic Temple local chapters do not have physical
11:53:50 25 locations is a statement that was made after the lawsuit in

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

11:53:54 1 this case was filed; correct?

2 A I don't see -- I don't recall you pointing out there was a
3 statement that we don't have physical locations.

4 Q Okay. Why don't you go to page 2 of Exhibit 103.

11:54:14 5 Above the bolded centered text, "Does TST offer any
6 public services, i.e., church, sermons," there is a sentence
7 that starts with the word "currently"; correct?

8 A Correct.

9 Q "Currently local chapter" --

11:54:29 10 THE COURT: What page are you on?

11 MR. CLAUS: Page 2 of Exhibit 103.

12 THE COURT: Okay.

13 BY MR. CLAUS:

14 Q "Currently local chapters of The Satanic Temple do not
11:54:40 15 have physical locations."

16 Correct?

17 A Right, it says that on this page.

18 Q And you testified that The Satanic Temple referred to its
19 physical headquarters as the temple. Do you recall that
11:54:53 20 testimony you just gave?

21 A Correct.

22 Q If you look at the first page of Exhibit 103, the question
23 "where's the temple located" is answered with the words "The
24 Satanic Temple headquarters, also known as the Salem Art
11:55:18 25 Gallery in Salem, Massachusetts, is open to the public."

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

11:55:23 1

Correct?

2

A Correct.

3

Q You talked, when you were being examined by Mr. Haan, that

4

The Satanic Temple engages in worship. Do you remember that

11:55:41 5

testimony?

6

A I do not.

7

Q It's a true statement that worship is antithetical to

8

satanism; correct?

9

A I'm not sure where you're getting this quote that I said

11:55:56 10

we engage in worship.

11

Q It's true, is it not, sir, that worship is antithetical to

12

satanism; correct?

13

A Depends on how you define worship.

14

Q If you turn to Exhibit 103, again page 2.

11:56:24 15

The third line from the bottom of the text above the

16

inverted house. The words that say "worship is antithetical

17

to satanism and we worship no beings save ourselves."

18

When you authorized The Satanic Temple Arizona to use

19

your brand, your trademark, and your intellectual property,

11:56:49 20

did you have any idea what was meant by worship when you

21

authorized The Satanic Temple Arizona to say worship is

22

antithetical to satanism and --

23

A You would have to speak to the author of this particular

24

text.

11:57:08 25

Q That wasn't my question, sir.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

11:57:10 1 A I did not directly authorize these words. This is the
2 first time I'm seeing this text. If you want answers about
3 this text, you would have to speak to the person who authored
4 this text.

11:57:23 5 MR. de HAAN: I'm going to object at this point to
6 relevance. I'm not sure what the relevance of any of this
7 is.

8 THE COURT: I'm not sure either.

9 MR. CLAUS: Your Honor, he testified on direct that
11:57:33 10 The Satanic Temple did engage in worship. That's the point.

11 BY MR. CLAUS:

12 Q You talked to Mr. de Haan about rituals performed by The
13 Satanic Temple. Do you recall that testimony?

14 A Yes.

11:57:50 15 Q The rituals performed by The Satanic Temple are completely
16 ad hoc; correct?

17 A Incorrect.

18 Q Well, they are rituals that you and Mr. Jarry have
19 invented; is that correct?

11:58:02 20 A That is incorrect.

21 Q You and Mr. Jarry have invented rituals that are intended
22 to mock individuals who actually hold deeply religious
23 beliefs; true?

24 A That is not true.

11:58:20 25 Q Well, you and Mr. Jarry created something that you called

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

11:58:24 1 a Pink Mass; correct?

2 A That is correct.

3 Q That was one of the rituals of The Satanic Temple;
4 correct?

11:58:33 5 A That is correct.

6 Q That you and Mr. Jarry invented; correct?

7 A Correct. We authored that.

8 Q And the Pink Mass was designed specifically to demonstrate
9 your contempt for Fred Phelps of the Westboro Baptist Church;
11:58:57 10 correct?

11 A Incorrect.

12 Q Well --

13 THE COURT: We're going to break at this point,
14 Mr. Claus. We're at the noon hour. We will resume at
11:59:03 15 1 o'clock.

16 You can step down, sir.

17 I will give you the time you've used --

18 MR. CLAUS: Thank you, Your Honor.

19 THE COURT: -- before you leave the courtroom.

11:59:14 20 Folks can leave if you want to. We're going to be
21 here just a minute. Or you can stay.

22 MR. CLAUS: Your Honor, I noticed Mr. --

23 THE COURT: All right. Counsel, as of now,
24 plaintiffs have used four hours and 51 minutes. Defendants
12:02:09 25 have used three hours and 38 minutes from the time -- that

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

12:02:14 1 means there's a total of about two and a half hours remaining
2 in the 11 hours we set aside for the trial.

3 What I'd like you to do during the noon hour is,
4 unless you've already done it, identify the disclosure that
12:02:28 5 you made in the final pretrial order about Exhibit 105.

6 MR. CLAUS: Yes.

7 THE COURT: And then we'll address Exhibit 105 after
8 the lunch hour.

9 Are there other matters we need to address?

12:02:39 10 MR. CLAUS: May we have an admonishment that counsel
11 should not be speaking with Mr. Misicko about his examination
12 while cross is pending, please.

13 THE COURT: Well, he can prepare him for redirect.
14 We established at the final pretrial order -- at the final
12:02:55 15 pretrial conference that he can do that.

16 MR. CLAUS: That's fine. Thank you.

17 MR. KEZHAYA: There was one other matter,
18 Your Honor. It was my understanding of the Court's final
19 pretrial scheduling order that we had to produce a physical
12:03:06 20 copy of all of our exhibits on December 16 for them to be
21 admissible. Is that a correct understanding?

22 THE COURT: What is the point you're getting at?

23 MR. KEZHAYA: We did not receive a physical copy of
24 the Hail Satan documentary until much later than December 16,
12:03:21 25 as I recall.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

12:03:22 1 THE COURT: You knew it was -- what the documentary
2 was?

3 MR. KEZHAYA: We were aware of the documentary, but
4 on December 16 we did not get any kind of a notification of
12:03:30 5 these are what our exhibits are, as I recall. And I have to
6 say "as I recall," Your Honor.

7 THE COURT: Was it listed as an exhibit to be used,
8 the Hail Satan documentary?

9 MR. KEZHAYA: It was not, Your Honor. We have a
12:03:42 10 document that was actually produced as we were creating the
11 final pretrial order that has a list of what was originally
12 produced on Exhibit -- on December 16 as a sequential
13 beginning with 1, and then during the course of finalizing
14 the pretrial order it was renumbered. The ones that are
12:03:59 15 blank are the ones that were not produced to us on
16 December 16.

17 THE COURT: You had them by the time of the final
18 pretrial order?

19 MR. KEZHAYA: I do have it in front of us, yes,
12:04:09 20 Your Honor.

21 THE COURT: So --

22 MR. KEZHAYA: The pretrial order I do not currently
23 have in front of us.

24 THE COURT: You filed the pretrial order
12:04:16 25 January 3rd. Are you saying you didn't know their exhibits

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

12:04:18 1 by January 3rd?

2 MR. KEZHAYA: No, Your Honor. I may be mistaken.
3 I'm talking about the amended scheduling order that indicated
4 we, as I recall, had on December 30 was the initial timeline,
12:04:29 5 and two weeks before we had to provide --

6 THE COURT: I understand that. I'm not
7 understanding what your concern is. You knew by the time of
8 the final pretrial order that they were going to try to admit
9 that documentary or portions of it.

12:04:44 10 MR. KEZHAYA: Yes, Your Honor, and our objection is
11 noted in the pretrial order.

12 THE COURT: And are you saying that because you
13 didn't get a physical copy on December 16th, I should
14 preclude them from using it here?

12:04:53 15 MR. KEZHAYA: It's noncompliance with the order. I
16 just wanted to bring it to the Court's attention.

17 THE COURT: Okay. You've done that.

18 MR. KEZHAYA: Okay. Thank you, Your Honor.

19 THE COURT: We'll see you at 1 o'clock. Thanks.

12:05:08 20 (Recess taken from 12:05 to 1:00.)

21 THE COURT: Thank you. Please be seated.

22 All right, folks, let me just remind everybody in
23 the courtroom that phones cannot be used in the courtroom.
24 Tablets and computers can be used by counsel or if there's a
13:01:23 25 reporter, if they're on airplane mode, but phones should not

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:01:27 1 be used in the courtroom.

2 I want to come back to Exhibit 105, assuming you're
3 still wanting to admit portions of it.

4 MR. CLAUS: Yes, Your Honor.

13:01:39 5 THE COURT: The question or the argument that's been
6 made is that the film is admissible under the residual
7 exception 807.

8 I should make clear on the record that I believe
9 statements by Mr. Jarry are not barred by the hearsay rule
13:01:59 10 because the testimony in the case clearly indicated that
11 Mr. Jarry was authorized to speak on behalf of The Satanic
12 Temple and is, I think, a manager of The Satanic Temple. So
13 I think that falls within rule 801(d)(2)(C) and 801(d)(2)(D).

14 But we still have, in my view, a double hearsay
13:02:19 15 problem with the film.

16 I don't know if you all are looking at current
17 versions of Rule 807. It was amended five weeks ago. And
18 one of the comments made me think you might be looking at an
19 older version. So I printed out the recent version that was
13:02:40 20 amended effective December 1st.

21 Mr. Claus, sounds like you've got the current
22 version.

23 MR. CLAUS: I do, Your Honor. Thank you.

24 THE COURT: We'll hand the other new version to
13:02:50 25 plaintiffs' counsel.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:02:57 1 As far as the new Rule 807 is concerned, I think the
2 first part of (A) is satisfied -- well, this doesn't go to
3 admissibility, but I don't think it's admissible under any
4 other exception in 803 or 804.

13:03:11 5 So the question is whether it has sufficient
6 guarantees of trustworthiness and whether it is more
7 probative on the point for which it is offered than any
8 other evidence that the proponent can obtain through
9 reasonable efforts. We talked about that before lunch. I
13:03:27 10 understand the parties' arguments.

11 And then there is the notice requirement in
12 subsection B. I wanted to find out what the notice was. If
13 I could --

14 MR. CLAUS: I could pull that up, Your Honor.

13:03:37 15 THE COURT: Okay.

16 MR. CLAUS: Oh, can we ask for our monitors to be
17 on?

18 BY MR. CLAUS:

19 Q The written notification will be contained in the e-mail
13:03:48 20 that should be on your screen on December 16, 2019, at
21 3:03 p.m. "Hi Stu. Our packet and documents inadvertently
22 omitted one exhibit from our list because it is not in paper
23 form. We intend to use as an exhibit excerpts from the
24 documentary Hail Satan, which we will either send by a disk or
13:04:10 25 e-mail once we figure out the technical components of the

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:04:13 1 exhibit."

2 THE COURT: What's the date of that?

3 MR. CLAUS: December 16.

4 THE COURT: Okay.

13:04:18 5 MR. CLAUS: Can you see, Your Honor, on your screen?

6 THE COURT: I couldn't read the date.

7 There, I see it now. Okay.

8 What is your thought, Mr. Claus, with respect to
9 807(a)(1)? That is, that the statement is supported by
10 sufficient guarantees of trustworthiness after considering
11 the totality of circumstances under which it was made and
12 evidence, if any, corroborating the statement?

13 MR. CLAUS: Sure. Mr. Misicko, the witness, has
14 testified that he not only made statements in the documentary
15 Hail Satan, but did so only after providing a release on his
16 own behalf for the use of his likeness, image, and
17 statements.

18 He testified that the statements of Malcolm Jarry
19 were made as the manager, the only manager of the United
13:05:10 20 Federation of Churches LLC and that United Federation of
21 Churches LLC also gave the waiver for the use of the
22 intellectual property, brand, and statements contained
23 therein.

24 As far as the circumstantial guarantees of
13:05:32 25 trustworthiness, I think that's the real inquiry. There

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:05:38 1 doesn't seem to be any legitimate debate that Mr. Misicko and
2 Mr. Jarry and Ms. Shortt and Mr. de Haan made the statements
3 that they made in Hail Satan.

4 To satisfy any concern the Court may have over
13:05:56 5 trustworthiness, before we play any sound we can put the
6 image of Mr. Misicko or Mr. Jarry, although he is blacked out
7 but it says Malcolm Jarry on the screen, and have Mr. Misicko
8 either admit or deny that he is the person depicted in the
9 video.

13:06:20 10 There is a corollary to my argument with respect to
11 807(a)(1) and that does get back to the MIDP that required
12 written or recorded statements known by the plaintiff to be
13 disclosed. Mr. de Haan said that this had been in the works
14 for three years, that written and recorded -- or recorded
13:06:39 15 statements had existed for three years.

16 And in their MIDP response to paragraph 2, which
17 required them to state the names and addresses of persons who
18 have given written or recorded statements, they responded
19 with the name "all relevant recorded statements are in the
13:07:01 20 form of e-mail correspondence, public statements by or with
21 the City of Scottsdale and public statements made by or
22 behalf of City of Scottsdale."

23 If they had disclosed in the MIDP response the
24 existence of these recorded statements, we could have done
13:07:19 25 discovery to add any requirements necessary that the Court

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:07:24 1 believes are necessary to bring this -- these statements in
2 under 807. But I believe on the record that you have before
3 you, Your Honor, 807(A) and 807(B) are satisfied.

4 THE COURT: All right. Response from plaintiffs'
13:07:37 5 counsel.

6 MR. de HAAN: First of all, Your Honor, this
7 documentary was made by a filmmaker that's in New York. The
8 documentary has people's faces blanked out. The documentary
9 has stories told in the past tense. There's a whole context
13:07:58 10 between scenes of how TST started, where it went from there.

11 As far as trustworthiness, this is an artist's,
12 essentially, story about TST from the outside regarding an
13 entire history of an organization that was spanning over
14 years. As far as the context, I just don't see how -- first
13:08:21 15 of all, it has any bearing to this case, but also how it
16 still gets over the double hearsay in that this isn't made by
17 The Satanic Temple. This is someone's outside view of The
18 Satanic Temple. And the way that it's put together is that
19 artist's view within contexts throughout the film that, you
13:08:39 20 know, are their views, not ours. How it's put together
21 necessarily.

22 Also, as far as whatever statement that he wishes to
23 play, without context, it's just a statement in a vacuum by
24 someone who's not here to be cross-examined, and that's the
13:08:55 25 problem with the trustworthiness.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:08:58 1

THE COURT: Okay.

2

Mr. Claus, exactly what is it you propose to play from Exhibit 105?

3

4

13:09:06 5

MR. CLAUS: The statem- -- and that is the issue, Your Honor. We're not asking to play --

6

THE COURT: I'm asking what exactly you propose to play.

7

8

13:09:18 10

MR. CLAUS: The statements of Mr. Misicko, the statements of Mr. Jarry. I believe there's a statement of Stu de Haan. I believe there is a statement of

11

Michelle Shortt. Those are the statements that we wish to

12

play. None of the artistic gloss on those statements, merely

13

the statements. And this witness can be cross-examined.

14

THE COURT: All right.

13:09:38 15

As I've indicated, I believe that the statements of

16

Mr. Jarry are admissible under Rule 801(d)(2)(C) and (D). If

17

there's an objection to other individuals who might be shown

18

from the film, that hearsay objection can be made and I'll

19

consider whether their statements come within a hearsay

13:09:58 20

objection.

21

My conclusion is that the video itself, Exhibit 105,

22

to the limited extent it will be used, is admissible under

23

Rule 807.

24

13:10:12 25

I conclude that there are sufficient guarantees of trustworthiness in that the only thing to be shown will be

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:10:17 1 the statements of individuals, not the artistic construction
2 of the film or any other messages in the film. And the fact
3 that it's apparent that the -- from Mr. Misicko's testimony
4 that the individuals with The Satanic Temple were willing
13:10:33 5 participants in the creation of the video.

6 I also conclude that it's more probative on the
7 point of what they said in the video than any other evidence
8 that could reasonably be obtained because the video wasn't
9 released until after the close of discovery in this case.

13:10:49 10 And I conclude that the December 16th e-mail
11 satisfies the written notice requirement of Rule 807(B).

12 When we get to playing those excerpts, Trish, I'm
13 going to ask you, if you can, to take down what is said in
14 the film. If you have trouble with that, let me know. I
13:11:06 15 want to have a clear record of what exactly was played at
16 trial and I think the easiest way to do that is to have it
17 transcribed. But we'll see how clear it is as it comes out.

18 All right. With that ruling, you can proceed.

19 MR. CLAUS: Thank you, Your Honor. May I just have
13:11:22 20 one brief to set up with my --

21 THE COURT: Yes.

22 MR. CLAUS: Thank you.

23 BY MR. CLAUS:

24 Q Mr. Misicko.

13:11:44 25 A Hi.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:11:44 1 Q Still Scot Claus, still with Dickinson Wright, still
2 representing the City of Scottsdale.

3 I'm going to go back and ask you about your initial
4 involvement with The Satanic Temple. Your initial involvement
13:11:55 5 was regarding a film project to film a rally regarding
6 Governor Rick Scott of Florida?

7 A My initial involvement was as a consultant, as a satanist
8 informing a project about satanists.

9 Q And that project included a rally ostensibly for
13:12:23 10 Rick Scott, the governor, or the then governor of Florida?

11 A Correct.

12 Q That utilized an actor to portray the head of The
13 Satanic Temple.

14 A Correct.

13:12:32 15 Q And that was the first activity that you were involved in
16 with The Satanic Temple; correct?

17 A I was involved in consulting on what constitutes authentic
18 satanism.

19 Q Right. I'm glad you used the word authentic.

13:12:49 20 That activity, which was your first involvement with
21 The Satanic Temple, was started, according to Mr. Jarry, as a,
22 quote, media stunt, end quote, to expose what The Satanic
23 Temple believed was religious hypocrisy; is that correct or
24 incorrect?

13:13:15 25 A That is incorrect. You're quoting the wrong person.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:13:19 1 MR. CLAUS: Could you pull up clip 2.

2 This is Exhibit 105, clip 2.

3 (Clip 2 played as follows:

4 PERSON IN FILM: The Rick Scott rally was a media
13:13:29 5 stunt to show the hypocrisy of what Rick Scott was
6 doing and it required a spokesperson.)

7 THE WITNESS: That was not Malcolm Jarry.

8 BY MR. CLAUS:

9 Q That --

13:13:42 10 A I guarantee you. Watch the film. You said you watched it
11 during my deposition.

12 Q Is that Cevin Soling, sir?

13 A That is not.

14 MR. de HAAN: Object. Move to strike, Your Honor.

13:13:59 15 THE COURT: What is it you're moving to strike?

16 MR. de HAAN: Whatever it was just played was not
17 what counsel purported to be playing.

18 THE COURT: There is no evidence before me, is
19 there, Mr. Claus, that the individual who just spoke was
13:14:10 20 Mr. Jarry?

21 MR. CLAUS: There is, Your Honor -- there is not in
22 that clip, Your Honor. We'll get to -- there are other clips
23 that have that same figure with -- I'll just ask the witness.

24 BY MR. CLAUS:

13:14:22 25 Q Who is that?

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:14:23 1 A I guarantee you that is not Malcolm Jarry.

2 Q Who is it?

3 THE COURT: Let's wait for a question, please.

4 THE WITNESS: Certainly.

13:14:29 5 BY MR. CLAUS:

6 Q Who is it?

7 A It is a man who went by the name of Nicholas Crowe, listed
8 as an original collaborator in the film, if you watch the
9 film.

13:14:38 10 Q Original collaborator in The Satanic Temple film?

11 A Correct.

12 Q And he was authorized to make those statements; correct?

13 A No. He was on his own.

14 THE COURT: Okay. On the basis of the current --

13:14:53 15 MR. CLAUS: We'll withdraw, Your Honor.

16 THE COURT: -- record, I'm not going to consider
17 clip 2 of Exhibit 105.

18 MR. CLAUS: We'll withdraw it, Your Honor.

19 BY MR. CLAUS:

13:15:03 20 Q You and Mr. Jarry created something called the Pink Mass?

21 A Correct.

22 Q Now, the Pink Mass was -- and that was the first ritual in
23 which you were involved as the spokesperson of the thing you
24 call The Satanic Temple; correct?

13:15:15 25 A Correct.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:15:16 1 Q And the Pink Mass was designed specifically to demonstrate
2 your contempt for a Baptist church; correct?

3 A Incorrect.

4 Q Well, the creation of the Pink Mass was intended as a
13:15:30 5 mockery of the deeply held religious beliefs of adherence to
6 the Mormon church; correct?

7 A Wildly incorrect.

8 Q So you and Mr. Jarry did not create the Pink Mass to mock
9 the belief by followers of the LDS faith in post death
13:15:54 10 baptism?

11 A It is correct that we did not create the Pink Mass to
12 disparage the LDS church.

13 MR. CLAUS: Clip 4, please.

14 Before we play much, I'm just going to confirm when
13:16:09 15 we start playing that it is Malcolm Jarry.

16 (Clip 4 played as follows:

17 MALCOLM JARRY: One of the things that I wanted to
18 play on is, you know, the Mormons have the belief --)

19 THE COURT: Stop it there.

13:16:18 20 BY MR. CLAUS:

21 Q That is Malcolm Jarry; correct?

22 A That is Malcolm Jarry; correct.

23 MR. CLAUS: So can we go back to the beginning and
24 play it?

13:16:26 25 MR. de HAAN: Your Honor --

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:16:27 1 THE COURT: Hold on just a minute.

2 This is clip 4?

3 MR. CLAUS: Clip 4 of Exhibit 105.

4 MR. de HAAN: I'm objecting to this as well for the
13:16:35 5 same issues. I don't know who's exactly going to be played
6 in this clip, I don't know who's going to be speaking, I
7 don't know what the relevance is of it either.

8 THE COURT: Well, he just identified it as Malcolm
9 Jarry as the speaker. So I assume that's all we're going to
13:16:48 10 see in this clip.

11 MR. CLAUS: It is, Your Honor.

12 THE COURT: All right. Objection is overruled.

13 (Clip 4 played as follows:

14 MALCOLM JARRY: One of the things that I wanted to
13:16:53 15 play on is, you know, the Mormons have the belief that
16 they can baptize the dead and do this postmortem
17 conversion, so that I propose that every time a
18 same-sex couple kisses, that she's pleased in the
19 afterlife.)

13:17:09 20 BY MR. CLAUS:

21 Q Who was going to be pleased in the afterlife using the
22 deeply held religious beliefs of the LDS church in post death
23 baptism, sir?

24 A This has nothing to do with the LDS church.

13:17:22 25 Q Sir --

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:17:22 1 A I'm not sure --

2 Q -- who was going to, according to the Pink Mass you
3 invented, going to be pleased in the afterlife based upon
4 the deeply held religious belief --

13:17:34 5 A You're wildly cherrypicking and taking things wildly out
6 of context.

7 THE COURT: Excuse me, let him finish the
8 question --

9 THE WITNESS: Okay.

13:17:40 10 THE COURT: -- and he'll let you finish the answer.

11 THE WITNESS: Okay.

12 THE COURT: Re-ask the question, please.

13 MR. CLAUS: I will, sir.

14 BY MR. CLAUS:

13:17:48 15 Q Who, whose mother were you seeking to baptize in the
16 afterlife?

17 A Nobody's.

18 Q Right. Because there was nothing sincere at all about
19 actually baptizing anyone in the afterlife; correct?

13:18:05 20 A Depends on how you define sincerity.

21 Q Well, you were using this thing you created called a Pink
22 Mass that utilized the deeply held religious beliefs of
23 members of the LDS faith in post death baptism to not actually
24 baptize anyone; correct?

13:18:25 25 A It had nothing to do with the LDS church.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:18:29 1 Q Well, it had to do with you mocking deeply held religious
2 beliefs and the pastor of a Baptist church; correct?

3 A No. This is where you're wildly cherrypicking and taking
4 things wildly out of context.

13:18:45 5 Q So there --

6 A The overall message --

7 THE COURT: Let him finish.

8 THE WITNESS: Exactly.

9 BY MR. CLAUS:

13:18:50 10 Q Since I'm wildly cherrypicking --

11 A Yes.

12 Q -- tell the Judge over whose grave your invented Pink Mass
13 was held?

14 A Okay. So since you want the full context of this, we
15 decided up front that we would never engage in activities that
16 were meant to just disparage a particular religious belief or
17 person, but that we'd always assert our own affirmative
18 values.

19 MR. CLAUS: Move to strike as nonresponsive. I
13:19:15 20 asked for who.

21 THE COURT: Please respond to the question. Your
22 counsel can ask for elaboration on redirect. But please
23 respond to that question.

24 THE WITNESS: Okay.

13:19:23 25 Well, what -- sorry, what was your question?

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:19:25 1 BY MR. CLAUS:

2 Q Over whose grave was this Pink Mass that you created
3 performed?

4 A Catherine Johnston.

13:19:34 5 Q And who was Catherine Johnston?

6 A A resident of Mississippi.

7 Q And mother of whom, sir?

8 A Fred Phelps.

9 Q And Fred Phelps was the pastor of what, sir?

13:19:45 10 A The Westboro Baptist Church.

11 Q So you -- and you performed the Pink Mass only over the
12 grave of Fred Phelps' dead mother; correct?

13 A Explicitly -- explicitly with the intention of celebrating
14 same-sex unions.

13:20:03 15 Q And you personally, as an act of this thing you call The
16 Satanic Temple, showed your contempt for sincere actual
17 religious belief by placing your bare testicles on the
18 gravestone of Fred Phelps' mother; correct?

19 A No. I was showing my acceptance of same-sex unions.

13:20:26 20 MR. de HAAN: Your Honor, I don't know how this
21 weights into this litigation at all.

22 THE COURT: What is the relevancy, Mr. Claus?

23 MR. CLAUS: Because a religion has to exist to bring
24 an Establishment Clause claim. A religion is not predicated
13:20:40 25 upon mocking the deeply held religious beliefs of others.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:20:44 1 That is not a religion. That is a sociopolitical
2 countermyth.

3 THE COURT: The objection is overruled, but I don't
4 think we ought to spend a great deal of time on this.

13:20:53 5 MR. CLAUS: We're almost done, Your Honor.

6 THE COURT: All right.

7 BY MR. CLAUS:

8 Q So you testified that the reason you put your bare
9 testicles on a pastor's dead mother's grave was, you just
10 testified, to celebrate same-sex unions?

11 A Correct. In contrast to the hateful message put out by
12 the Westboro Baptist Church specifically.

13 Q And was putting your bare testicles on the mother -- the
14 dead mother of a pastor part of a religious ritual, according
15 to you, sir?

16 A You're going to have to rephrase the question.

17 Q No -- I will ask it again.

18 A Okay. Then no, that played no part of it.

19 Q The Satanic Temple has also engaged in what it calls
20 rituals to mock adherence to the Catholic church, as well;
21 correct?

22 A Wildly incorrect.

23 Q You were involved in something called a Black -- that you
24 called a Black Mass; correct?

13:22:07 25 A Correct.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:22:07 1 Q Was the Black Mass described in Hail Satan as a, quote,
2 deliberate perversion of Catholic mass, end quote?

3 A By who?

4 Q No, sir. My question is, was --

13:22:22 5 MR. de HAAN: Objection. Hearsay.

6 THE COURT: Sustained, unless the individual is
7 identified.

8 BY MR. CLAUS:

9 Q Did Malcolm Jarry describe Black Mass as a deliberate
10 perversion of Catholic mass?

11 A I can guarantee you he did not.

12 Q Did someone involved with The Satanic Temple, one of the
13 plaintiffs in this case, describe Black Mass as a, quote,
14 deliberate perversion of Catholic mass, end quote?

13:22:48 15 MR. de HAAN: Objection. Hearsay.

16 THE COURT: Sustained.

17 BY MR. CLAUS:

18 Q Did you authorize anyone or did Malcolm Jarry authorize
19 anyone to state with the release that was given for Hail Satan
13:23:07 20 that Black -- the Black Mass held by The Satanic Temple was a
21 deliberate perversion of a Catholic mass?

22 A No. Nobody ran that past me.

23 Q Your organization promotes a philosophy that's not
24 theistic at all; correct?

13:23:25 25 A Correct.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:23:26 1 Q Purely secular; correct?

2 A Correct.

3 Q You got involved in the Black Mass because you believed
4 that religion constitutes superstition; correct?

13:23:37 5 A That was not why I became involved with the Black Mass.

6 Q So you stated that you intended to put on the Black Mass
7 and be a part of the Black Mass as a, quote, declaration of
8 independence from superstition, end quote; correct?

9 A That is correct.

13:24:04 10 Q The Satanic --

11 A I believe it was a personal declaration of independence
12 from superstition.

13 Q The Satanic Temple is not itself a religion; correct?

14 A That's wildly incorrect.

13:24:51 15 MR. CLAUS: May I approach your courtroom deputy,
16 Your Honor?

17 THE COURT: You may.

18 BY MR. CLAUS:

19 Q Sir, do you recall being designated as a Rule 30(b)(6)
13:25:55 20 designee for the organization called the United Federation of
21 Churches LLC?

22 A Yes.

23 Q And you sat for a deposition as the designee on
24 September 24, 2019?

13:26:08 25 A Correct.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:26:08 1 Q Do you recall also being designated as a Rule 30(b)(6)
2 designee for the organization called The Satanic Temple, Inc.?

3 A Yes.

4 Q And you also sat for that deposition on September 24,
13:26:23 5 2019?

6 A Correct.

7 Q I've handed you the deposition transcripts that have
8 different colored covers. The deposition of the 30(b)(6)
9 designee of The Satanic Temple, Inc., has a red cover. And
10 United Federation of Churches LLC has an orange cover. So I
11 will try and help you by referring to the color of the covers.

12 MR. KEZHAYA: Your Honor, could we get copies of
13 these? We don't have red or -- looking at the first page of
14 this, it's not apparent which deposition is which.

13:27:01 15 MR. CLAUS: I will also state on the record which
16 one is which.

17 THE COURT: Will that help?

18 MR. KEZHAYA: Possibly, Your Honor. Depends on -- I
19 have an 83-page copy and a 59-page copy. There are two
13:27:12 20 depositions. Which one is the 83?

21 THE COURT: The 83 is the United Federation of
22 Churches.

23 MR. KEZHAYA: Thank you, Your Honor.

24 Ah. Thank you.

25

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:27:26 1 BY MR. CLAUS:

2 Q So just to remind you of the question I asked to which you
3 responded absolutely not, or words to that effect, The Satanic
4 Temple is not itself a religion.

13:27:41 5 And you answered?

6 A You tell me. I'm saying it is.

7 Q Okay. I'm going to have you look at the deposition
8 transcript of The Satanic Temple, Inc., which is the
9 red-covered transcript which has 59 pages.

13:28:20 10 At line 9, on page 36, sir, I'll let you get there.
11 Just look up when you get to page 36.

12 I'll read the question that I asked you.

13 "What is the religion promoted by the corporation
14 identified in Exhibit 18? I will avow Exhibit 18 is the
15 articles of incorporation for The Satanic Temple."

16 Did I read that question correctly?

17 A Yes.

18 Q And your answer was "Satanism;" correct?

19 A Correct.

13:28:55 20 Q And then my question was: "So accurately characterized,
21 satanism is the religion, not the Satanic Temple; correct?"

22 And your answer was: "Satanism is the religion of
23 The Satanic Temple."

24 Do you see that?

13:29:10 25 A I do.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:29:12 1 Q The seven tenets, you wrote the seven tenets; correct?

2 A I co-authored the satanic tenets. Or the seven tenets.

3 Q Who was the co-author, was that Mr. Jarry?

4 A Correct.

13:29:28 5 Q The seven tenets are unique to the Satanic Temple;
6 correct?

7 A I would argue that they describe something that was
8 pre-existing, but we were the first ones to really put it down
9 in codified form.

13:29:42 10 Q Well, even your own website, up through December of 2013,
11 did not have the seven tenets; correct?

12 A Correct.

13 MR. CLAUS: By the way, Your Honor, I'd like to move
14 to admit Exhibits 57, 58, 59, 60, 63. I'm sorry.

13:30:10 15 THE COURT: You need to speak into a mic, please.

16 MR. CLAUS: I apologize, Your Honor, I thought that
17 was picking me up.

18 I would like to move to admit, Your Honor,
19 Exhibits 56, 57, 58, 59, and 60.

13:30:28 20 MR. de HAAN: I'm just going to renew the objection
21 as to relevance and more prejudicial than probative since
22 this has been disavowed.

23 THE COURT: I'm going to overrule the relevance and
24 403 objections and admit Exhibits 56 through 60.

13:30:47 25 (Exhibits 56 through 60 admitted.)

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:30:59 1 MR. CLAUS: Could you also, unless you already have,
2 give the witness Exhibit 61 and Exhibit 63.

3 BY MR. CLAUS:

4 Q Before we get to those exhibits, Mr. Misicko, you know
13:31:36 5 what the Church of Satan is; correct?

6 A Correct.

7 Q And the Church of Satan does not promote or prescribe the
8 seven tenets you and Mr. Jarry wrote in the last seven years;
9 correct?

13:31:46 10 A Correct.

11 Q And you know what a theistic satanist is; correct?

12 A Correct.

13 Q And you know that theistic satanists practice a religion
14 they call satanism; correct?

13:31:59 15 A I don't know of any theistic satanic organizations, but I
16 do know that that is the definition. A theistic satanist is
17 somebody who venerates an actual Satan.

18 Q And the seven tenets you wrote are not prescribed by
19 theistic satanists; correct?

13:32:18 20 A I don't know. In fact, there are some who do embrace the
21 seven tenets who I have met out when giving public lectures
22 and the like.

23 Q Well, theistic satanists would believe that there is an
24 actual God and an actual Satan; correct?

13:32:31 25 A Correct.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:32:32 1 Q And those tenets, your seven tenets, specifically eschew
2 that notion; correct?

3 A Not necessarily.

4 Q But you're familiar with LaVeyan satanism; correct?

13:32:49 5 A Correct.

6 Q And LaVeyan satanists do not prescribe or promote the
7 seven tenets you wrote seven years ago with Mr. Jarry;
8 correct?

9 A They do not promote any concept of satanism that runs
10 outside of the satanic bible as authored by Anton LaVey.

11 Q I'm going to have you look now, sir, at Exhibit 63.

12 As of April 17, 2014, it is accurate to say that you
13 had been acting as a spokesperson for The Satanic Temple for
14 more than a year; correct?

13:33:29 15 A Maybe. But I was then.

16 Q And if you look at Exhibit 63, is an internet archive of
17 the domain name owned at that time by the United Federation of
18 Churches LLC for TheSatanicTemple.com; correct?

19 A Yes, this is the same placeholder website we went over
13:33:52 20 ad nauseam an hour ago.

21 Q In fact, Mr. Misicko, while I appreciate your commentary,
22 my question was that Exhibit 63 is an archived website for the
23 domain name owned by the United Federation of Churches LLC
24 SatanicTemple.com; is that correct or incorrect?

13:34:13 25 A I don't know that United Federation of Churches existed at

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:34:17 1 the time of the website. It certainly didn't exist at the
2 time this website was posted.

3 Q The United Federation of Churches LLC owned the --

4 A Yes, it's still owned, the Web domain --

13:34:34 5 THE COURT: Wait --

6 THE WITNESS: -- where the placeholder was.

7 THE COURT: Excuse me. Wait for the question,
8 please.

9 THE WITNESS: Sorry.

13:34:38 10 BY MR. CLAUS:

11 Q The United Federation of Churches owned and controlled,
12 according to your prior testimony, the website
13 www.SatanicTemple.com; correct?

14 A Yes, it owned the domain where the placeholder site
15 resided before it was revised.

13:34:53 16 Q And as of April 17, 2014, the website owned and controlled
17 by the United Federation of Churches described God as
18 supernatural and outside of this sphere; correct?

19 A Correct.

13:35:18 20 Q It also described the website owned and controlled by the
21 United Federation of Churches as of April 17, 2014, described
22 satanists subordinate to God but mankind's only conduit to the
23 dominion beyond the physical; correct?

24 A Correct. But to be fair, I would still describe God as
13:35:42 25 supernatural, even though I don't believe in a supernatural

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:35:45 1 god.

2 Q And as of April 17, 2014, the website owned by the United
3 Federation of Churches LLC told people who accessed the
4 website owned and controlled by the organization called The
13:35:57 5 Satanic Temple, quote, only Satan can hear our prayers and
6 only Satan can respond; correct?

7 A Yes, that was a placeholder website that pre-existed the
8 formal establishment of The Satanic Temple and was not revised
9 until later on thereafter.

13:36:33 10 Q Let's talk about The Satanic Temple, Inc., one of the
11 entities that is a plaintiff in this matter.

12 The Satanic Temple, Inc., was not organized as a
13 corporate entity until November 14, 2017; correct?

14 A I believe that's correct.

13:36:51 15 Q If you look at Exhibit 83, please, it should be in a
16 folder in front of you.

17 MR. CLAUS: Before we move on, Your Honor, I move to
18 admit Exhibit 63.

19 THE COURT: Is there an objection to Exhibit 63?

13:37:06 20 MR. KEZHAYA: Did you say 83 or 63?

21 THE COURT: He just moved 63. The one we've been
22 talking about.

23 MR. de HAAN: No objection.

24 THE COURT: Admitted.

09:25:03 25 (Exhibit 63 admitted.)

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:37:17 1 BY MR. CLAUS:

2 Q Now I'm having you look at the folder with Exhibit 83,
3 Mr. Misicko.

4 Is Exhibit 83 the Articles of Organization for the
13:37:23 5 Satanic Temple, Inc.?

6 A I'm so sorry, I keep doing that. I apologize.

7 Q Is Exhibit 83 the Articles of Organization for The Satanic
8 Temple, Inc.?

9 A Yes.

13:37:46 10 MR. CLAUS: I move to admit Exhibit 83, Your Honor.

11 MR. de HAAN: No objection.

12 THE COURT: Admitted.

13 MR. CLAUS: Thank you.

14 (Exhibit 83 admitted.)

13:37:52 15 BY MR. CLAUS:

16 Q Michelle Shortt has never been an officer or director of
17 The Satanic Temple, Inc.; correct?

18 A I don't know how you would describe her through the
19 affiliate agreement.

13:38:07 20 Q Would you please -- do you recall describing for me during
21 the deposition of The Satanic Temple, Inc., on September 24th,
22 2019, that Michelle Shortt was not an officer or director of
23 The Satanic Temple, Inc.?

24 A No.

13:38:23 25 Q It is the deposition with the red cover, the deposition of

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:38:26 1 Satanic Temple, Inc. I'm going to ask you to turn to page 24.
2 Just let me know when you've gotten there, please.

3 A Okay.

4 Q Please follow along with me as I read the question
13:38:51 5 starting at line 5.

6 "No, I want to know if Michelle Shortt has ever held
7 a position as an officer of the corporation The Satanic
8 Temple, Inc."

9 Did I read that question correctly, sir?

13:39:07 10 A Correct.

11 Q What was your one word answer?

12 A My answer was "No." But here I'd offer the caveat that I
13 was referring to The Satanic Temple, Inc., as the overarching
14 organization. I'm not a corporate lawyer so I don't know how
15 that fits in with the affiliate agreement and those agreements
16 thereafter. I know we gave them the trademark rights and the
17 right to speak on behalf of us. But, I mean, our corporate --
18 our incorporation documents are something put together by
19 lawyers with the most useful structure for what we're doing in
13:39:41 20 mind.

21 Q I know you don't like me reminding you that when you
22 testify, you testify under penalty of perjury, but when I took
23 your deposition and asked you if Michelle Shortt has ever held
24 a position as officer in the corporation The Satanic Temple,
13:39:55 25 Inc., you did not say any of the words you just said; correct?

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:39:59 1 A Correct.

2 Q You said "No"; correct?

3 A Correct. But I'm offering you the caveat now.

4 Q And when I asked you, sir, "Has Michelle Shortt ever held
13:40:09 5 a position as a director of The Satanic Temple, Inc.," you
6 gave me the one word answer "No"; is that true or is that
7 false?

8 A It's true along with the caveat that you are pointing
9 exactly to the people who signed the paperwork as director and
10 as officer, pointing out that none of them were
11 Michelle Shortt, and I was agreeing with you.

12 Q No, sir, I wasn't pointing to anything. I asked you a
13 question and you responded with no caveats and nothing other
14 than a one word answer, "No"; true?

13:40:44 15 A Yes, if you take -- if you take this script in isolation,
16 we see that I said no to that question.

17 Q Yep. That's how it works.

18 The Satanic Temple, Inc., has never filed a
19 certificate with the Arizona Corporation Commission; is that
13:41:02 20 correct?

21 A I'm not actually certain of that. I don't know how the
22 affiliate agreements work; I'm not a corporate lawyer, I
23 didn't set up the corporate structure.

24 Q When I asked you -- if you'd turn to the next page,
13:41:17 25 please, page 25, beginning at line 12, "Has The Satanic

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:41:24 1 Temple, Inc., ever filed a document with the Arizona
2 Corporation Commission," you answered, "Not that I -- not that
3 I'm aware of, no."

4 Correct?

13:41:37 5 A Correct.

6 Q And when I asked you, sir, if The Satanic Temple had ever
7 filed a document with the Arizona Secretary of State, you
8 answered, "Not to my knowledge, no."

9 Correct?

13:41:50 10 A Correct.

11 Q The Satanic Temple, Inc., has no written agreement with
12 the owner of the trademark The Satanic Temple, the
13 intellectual property comprising The Satanic Temple, or any
14 other agreement with the United Federation of Churches LLC;
15 correct?

16 A I'm sorry, say again.

17 Q Sure. The owner of the intellectual property for The
18 Satanic Temple is the United Federation of Churches LLC.
19 You've testified to that numerous times today; correct?

13:42:29 20 A Correct.

21 Q There is no written agreement between the United
22 Federation of Churches LLC and the organization The Satanic
23 Temple, Inc.; correct?

24 A I don't know.

13:42:44 25 Q You knew on September 24th, 2019, sir, if you turn to

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:42:50 1 page 33 of the transcript of the deposition with the red
2 cover, the same transcript we've been talking about.

3 I asked you -- are you there, sir?

4 I asked you at line 25 of page 33, "Do you know if
13:43:18 5 The Satanic Temple has any written agreements with the United
6 Federation of Churches LLC?"

7 And you answered, as the only designee for that
8 entity, "Not that I -- not that I know of. I don't think
9 there's formal paperwork --"

10 I interrupted. I apologized for that.

11 "Okay." And you finished your answer "-- elucidating
12 that."

13 Do you see that, sir?

14 A No. Is this -- you say this is page 33?

13:43:49 15 Q Page 33, starting at line 25. The very last line.

16 I asked you, as the only designee of The Satanic
17 Temple, Inc., "Do you know if The Satanic Temple, Inc., has
18 any written agreements with the United Federation of Churches
19 LLC?"

13:44:08 20 And your answer, beginning at line 3, was: "Not that
21 I -- not that I know of. I don't think there's formal
22 paperwork elucidating that."

23 Correct?

24 A Correct. I didn't know then and I don't know now.

13:44:25 25 Q The Satanic Temple, Inc. -- strike that.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:44:32 1 The United Federation of Churches LLC, that entity
2 does not play any role in determining or governing who may
3 become a member of the Arizona chapter of The Satanic Temple;
4 true?

13:44:48 5 A I don't know what you mean by that.

6 Q I'll ask it again.

7 The United Federation of Churches LLC does not play
8 any role in governing or determining who may be a member of
9 the Arizona chapter of The Satanic Temple. Is that a true
10 statement or false statement?

11 A I don't know because I don't know what that means.

12 Q If you get out the deposition transcript with the
13 orange -- imagine that -- the deposition transcript of the
14 United Federation of Churches LLC, that is the 83-page
15 deposition.

16 If you turn, please, to page 55 of that deposition
17 transcript and just let me know when you're there.

18 You knew on September 24, 2019, when I was asking you
19 as the only designee of the United Federation of Churches LLC
20 that the United Federation of Churches has never played a role
21 in governing or determining who may be a member of The Satanic
22 Temple; correct?

23 A Correct.

24 Q And you told me then, because it was true then, that the
13:46:20 25 United Federation of Churches LLC has never played a role in

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:46:26 1 governing or determining who may be a member of the Arizona
2 chapter of The Satanic Temple; correct?

3 A I think what's going on here is that --

4 Q I want you to answer my question --

13:46:39 5 A -- I might not have known what you're talking about then,
6 and I don't think I know what you're talking about now. I'm a
7 designee of the United Federation of Churches. I spoke
8 directly with Michelle Shortt and Stu de Haan giving explicit
9 permission --

13:46:53 10 THE COURT: Hold on. Hold on. That's not the
11 question.

12 THE WITNESS: Okay.

13 THE COURT: If he asks you to answer a question yes
14 or no, do so if you can. If you can't, tell him you can't
15 answer it yes or no.

16 THE WITNESS: I understand.

17 THE COURT: And then if your counsel wants to give
18 you time to elaborate, they'll do that.

19 THE WITNESS: Thank you.

13:47:08 20 BY MR. CLAUS:

21 Q Sir, you just testified about your lack of understanding.
22 But I want to take to you line 9 on page 55 of the
23 September 24th, 2019, deposition of you as the only 30(b)(6)
24 designee of the United Federation of Churches LLC.

13:47:26 25 When I asked you at line 9: "Okay. Does the United

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:47:29 1 Federation of Churches LLC play any role in governing or
2 determining who may be a member of the Arizona chapter of The
3 Satanic Temple," you did not tell me in response that you were
4 confused; correct?

13:47:48 5 A Correct.

6 Q You did not tell me in response that you did not
7 understand my question; correct?

8 A Correct.

9 Q You did not tell me in your response that you could not
13:47:57 10 answer my question because it required you to exceed the
11 knowledge that you had as a designee; correct?

12 A Correct. And in that light, I can tell you what I think I
13 meant --

14 Q No, sir, I'm not asking --

13:48:08 15 A -- which is that the United States -- United Federation of
16 Churches --

17 THE COURT: Hold on. I know it's frustrating to
18 you, but you need to answer his questions.

19 THE WITNESS: Okay.

13:48:18 20 BY MR. CLAUS:

21 Q No, sir. The answer that you gave me was, "No. The
22 Arizona chapter is autonomous in that regard."

23 Is that the answer you gave me?

24 A Correct.

13:48:33 25 Q Thank you.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:48:37 1 A However --

2 Q You --

3 A -- that does not speak to the --

4 Q No, sir --

13:48:40 5 A -- membership the chapter has in management of that
6 chapter as a member.

7 THE COURT: Mr. Misicko, please confine your answer
8 to the question.

9 BY MR. CLAUS:

13:48:49 10 Q In fact, sir, chapters of The Satanic Temple are given a,
11 quote, maximum of autonomy; correct?

12 A I see what you're misunderstanding is here.

13 Q No, sir, I'm asking --

14 A There's a difference between membership and management.

13:49:06 15 MR. CLAUS: Your Honor --

16 THE COURT: Ask the question --

17 MR. CLAUS: -- I'm going to move to strike that
18 response as nonresponsive.

19 BY MR. CLAUS:

13:49:10 20 Q And ask: Chapters of The Satanic Temple are given, quote,
21 a maximum of autonomy. Is that incorrect or is that a correct
22 statement?

23 A The maximum that we can allow within --

24 Q Thank you.

13:49:22 25 A -- certain limitations.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:49:24 1 Q One does not need to be a satanist to be a member of the
2 Arizona chapter of The Satanic Temple; true?

3 A You'd have to ask the management of The Satanic Temple who
4 are all identified as satanists.

13:49:40 5 Q The Satanic Temple, Inc., talking about The Satanic
6 Temple, Inc., has never communicated with the City of
7 Scottsdale; correct?

8 A Not to my knowledge, no.

9 Q As of today -- strike that.

13:49:55 10 As of September 2019, you believed that there were
11 450 members of The Satanic Temple who lived in Arizona;
12 correct?

13 A Correct.

14 Q And you assumed that all 450 of those members were
15 secularists; correct?

16 A I assumed nothing.

17 Q Well, you told me during the deposition of you as the
18 30(b)(6) designee of The Satanic Temple, Inc., that you did
19 assume that all 450 were secularists; correct?

13:50:36 20 A Where's this?

21 Q Sure. The deposition with the red cover, the
22 September 24, 2019, deposition of you as the 30(b)(6) designee
23 of The Satanic Temple, Inc. Please turn to page 53.

24 Strike that.

13:50:58 25 We'll start at 52 to put it in context.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:51:04 1 Just tell me when you're there.

2 A I'm there.

3 Q I asked you, starting at line 18: "Today, as the designee
4 of The Satanic Temple, Inc., do you know how many members of
13:51:24 5 The Satanic Temple reside in the State of Arizona?"

6 You answered: "I don't know but I can give you a
7 minimum number."

8 I interrupted.

9 "If I check my -- my phone here, a minimum number of
13:51:42 10 450."

11 Did I read my question and your answer correctly,
12 sir?

13 A Correct.

14 Q And then I asked you, beginning at line 9: "Do you know,
13:51:52 15 of the members in Arizona today, those 450, how many are
16 secularists?"

17 Did I read that correctly?

18 A Correct.

19 Q Please tell the Court what you answered on that day.

13:52:09 20 A On that day I said, "I assume they're all secularists."

21 Q Thank you.

22 Being a member of the organization called The Satanic
23 Temple is not only available to a practicing satanist, but
24 also to those who wish to merely advance secularism or are
13:52:28 25 advocating for individual liberty; correct?

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:52:34 1 A Are you asking if that was your question or is that your
2 question now?

3 Q Sir, I'm asking you.

4 THE COURT: Clarify, please.

13:52:42 5 MR. CLAUS: I will, thank you.

6 BY MR. CLAUS:

7 Q Being a -- I'm asking you the question, standing here
8 right now.

9 Being a member of the organization called The Satanic
13:52:48 10 Temple is not only available to practicing satanists but also
11 to those who wish to merely advance secularism or advocate for
12 individual liberty. Is that a true statement or false
13 statement?

14 A That's true.

13:53:09 15 Q You do not know how many members of The Satanic Temple
16 resided in Scottsdale, Arizona, as of February 2016; correct?

17 A I knew there were members in Scottsdale.

18 Q Sir, that's not my question. You do not know how many
19 members of The Satanic Temple resided in Scottsdale, Arizona,
13:53:28 20 as of February 2016. Is that true or is that false?

21 A I did not have an exact number. No.

22 Q In fact, you cannot testify under penalty of perjury that
23 any members of The Satanic Temple resided in Scottsdale as of
24 February 8, 2016; correct?

13:53:50 25 A I believe that I can.

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:53:52 1 Q Sir, take out the deposition with the orange cover.
2 Please turn to page 13. Tell me when you're there.
3 Are you there, sir?

4 A I'm there.

13:54:23 5 MR. CLAUS: Let the Judge get there as well.

6 THE COURT: I'm good.

7 BY MR. CLAUS:

8 Q I asked you at line 15: "Do you know, under penalty of
9 perjury, if any members of the Satanic Temple resided in the
10 City of Scottsdale, Arizona, as of February 8, 2016?"

11 And you responded at line 19: "I -- I could not tell
12 you that with 100 percent certainty."

13 That was my question and that was your answer when
14 you sat as the only designee of the United Federation of
15 Churches LLC on September 24, 2019; correct?

16 A Well, this is going to be a procedural issue because I've
17 done research since then and I don't know where the Court
18 stands on me introducing that into testimony.

19 MR. CLAUS: I know where I stand, Your Honor. And
13:55:13 20 it has not been disclosed ever.

21 THE COURT: You're asking the questions.

22 MR. CLAUS: I'm asking --

23 THE COURT: Witnesses don't have to disclose
24 testimony ahead of time. You don't have every witness coming
13:55:25 25 forward disclosing information. If you choose to ask it, he

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:55:27 1 can give the answer.

2 MR. CLAUS: But my question was as of September 24,
3 2019.

4 THE COURT: Well, and as of the deposition.

13:55:36 5 MR. CLAUS: Right.

6 THE COURT: That was his answer as of the
7 deposition.

8 BY MR. CLAUS:

9 Q And that was your answer as of the deposition; correct?

13:55:42 10 A As of the deposition; correct.

11 Q Michelle Shortt has never been a manager of the United
12 Federation of Churches LLC; correct?

13 A Correct.

14 Q The United Federation of Churches LLC, the organization
13:55:55 15 that owns and controls all of the trademarks and intellectual
16 property of The Satanic Temple, has never sought tax-exempt
17 status; correct?

18 A I'm sorry, who has not?

19 Q The United Federation of Churches LLC, which owns and
13:56:11 20 controls all of the trademarks and intellectual property of
21 The Satanic Temple, that entity has never sought tax-exempt
22 status; correct?

23 A I don't know if it's considered tied in with that through
24 its relationship to The Satanic Temple, Inc. Again, I'm not a
13:56:30 25 corporate lawyer, I don't know how these things are

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:56:33 1 intertwined.

2 Q You had no problem answering my question during the time
3 you testified as the designee on September 24, 2019. If you
4 look at the orange deposition --

13:56:44 5 THE COURT: Excuse me. Is that a question?

6 BY MR. CLAUS:

7 Q -- at the orange deposition --

8 THE COURT: Let's ask the question, please.

9 BY MR. CLAUS:

13:56:50 10 Q The orange deposition, sir. Page 28.

11 Are you there?

12 A Yes.

13 Q At line 17, I asked you the question: "Has the United
14 Federation of Churches LLC ever sought tax-exempt status from
15 the IRS?"

16 And you answered as the Rule 30(b)(6) designee: "To
17 my knowledge, that was never, never, the route we pursued that
18 with."

19 That was your answer; correct?

13:57:40 20 A I believe that was also my answer this time.

21 Q Cevin Soling, who goes by the name Malcolm Jarry, is the
22 only manager of the United Federation of Churches LLC;
23 correct?

24 A Correct.

13:58:00 25 Q You do not know of any document that permits The Satanic

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:58:03 1 Temple, Inc., to lawfully use the trademarks and intellectual
2 property owned by the United Federation of Churches LLC;
3 correct?

4 A I do know of such a document.

13:58:17 5 Q Sir, when you testified as the Rule 30(b)(6) designee of
6 the United Federation of Churches LLC you told me you knew of
7 no such document; correct?

8 A Right. As of deposition, I did not know of such a
9 document.

13:58:32 10 Q If you look at page 34, line 23, of the orange-covered
11 deposition.

12 "Question: Okay. Do you know if the United
13 Federation of Churches LLC has entered into a licensing
14 agreement with The Satanic Temple, Inc., whereby The
15 Satanic Temple, Inc., is permitted to lawfully use the
16 trademark, quote, The Satanic Temple?"

17 And your answer was, "Again, let me say I know of no
18 legal documentation that would -- that would confer that
19 right."

13:59:27 20 Correct?

21 A Correct.

22 Q And you knew --

23 A Now I do.

24 Q -- you knew when you were sitting for your deposition on
13:59:34 25 September 24, 2019, that you had been designated as the only

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

13:59:39 1 deponent knowledgeable about the topics listed in the notice
2 of Rule 30(b)(6) deposition; correct?

3 A Incorrect.

4 Q Turn, sir, to page 6 of the orange-covered deposition, the
14:00:07 5 deposition of United Federation of Churches LLC. I'm going to
6 start at line 19 on page 6.

7 "Exhibit 7 is the notice of 30(b)(6) deposition of
8 the United Federation of Churches LLC. Do you see that?

9 "Answer: Yes.

14:00:30 10 "Question: And please take a look at Exhibit A to
11 Exhibit 7, which is the list of topics for which you've been
12 designated as deponent. Exhibit A to Exhibit 7.

13 "Answer: Okay. Yes.

14 "Question. Do you agree that you are the person
14:00:49 15 most knowledgeable about the topics listed in Exhibit A of
16 Exhibit 7?"

17 And your answer was: "The most knowledgeable
18 representative of the company in question."

19 And I clarified. "Question: Of the United
14:01:09 20 Federation of Churches LLC?"

21 And you answered: "Correct, yeah."

22 Right?

23 A I see no discrepancy in my answer today.

24 Q You sat for the Rule 30(b)(6) deposition of the United
14:01:25 25 Federation of Churches as the only designee produced with

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

14:01:30 1 knowledge about the topics identified in the notice of
2 deposition. That is a true statement; correct?

3 MR. de HAAN: Objection. Relevance at this point,
4 Your Honor. Also asked and answered.

14:01:41 5 THE COURT: Overruled.

6 THE WITNESS: As the only knowledgeable
7 representative of the company in question.

8 BY MR. CLAUS:

9 Q Which --

14:01:49 10 A The lawyers who put together the paperwork, they would be
11 more knowledgeable, they would be more knowledgeable
12 deponents. I cannot say that I would be the most
13 knowledgeable deponent about the corporate structure of The
14 Satanic Temple. But as a representative of the company
14:02:03 15 itself, I'm what we've got.

16 Q You know, as the designee of the United Federation of
17 Churches, that Michelle Shortt never asked the manager of the
18 United Federation of Churches LLC for authority to speak on
19 behalf of that organization; correct?

14:02:22 20 A Incorrect.

21 Q Could you please turn to page 35 of the orange colored
22 deposition, the deposition of you as the designee of the
23 United Federation of Churches LLC.

24 Starting at line 25.

14:02:59 25 "okay. Prior to February 8, 2016, did

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

14:03:05 1 Michelle Shortt ever ask Cevin Soling, as the manager of the
2 United Federation of Churches LLC for permission to speak on
3 behalf of that legal entity?"

4 And your answer was: "Not that I'm aware of."

14:03:21 5 Correct?

6 A Again, I'm not seeing the discrepancy. I'm still not
7 aware of it today. But I'm not making the absolute claim that
8 she did not.

9 Q The operating agreement for the United Federation of
14:03:36 10 Churches LLC does not confer agency authority on anyone other
11 than the manager of that entity; correct?

12 A Correct.

13 Q You do not know the date that Michelle Shortt became a
14 member of The Satanic Temple, do you?

14:03:59 15 A I do not.

16 MR. CLAUS: Let me just check, Your Honor, and I
17 think I'm done.

18 BY MR. CLAUS:

19 Q Do you --

14:04:34 20 MR. CLAUS: I'm sorry, can I ask for the witness,
21 unless he's already been given it, Exhibit 61.

22 THE WITNESS: I've got it.

23 THE COURT: He has it, Christine.

24 MR. CLAUS: Oh. Okay. Thank you.

25

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

14:04:58 1

BY MR. CLAUS:

2

Q Sir, I've asked for you to be handed Exhibit 61. Can you

3

take a look at it, please.

4

A Yes.

14:05:09 5

Q Do you recognize Exhibit 61 to be the certificate of

6

organization for the entity called the United Federation of

7

Churches LLC?

8

A Yes.

9

Q And dated February 4, 2014?

14:05:25 10

A Correct.

11

Q Which predated Exhibit 63, which identified God and Satan

12

as supernatural on April 17, 2014; correct?

13

A Correct.

14

MR. CLAUS: I move for admission of Exhibit 61,

14:05:42 15

Your Honor.

16

MR. de HAAN: If I may have a moment to examine

17

this, Your Honor.

18

No objection.

19

THE COURT: Admitted.

14:06:06 20

(Exhibit 61 admitted.)

21

MR. CLAUS: Could you hand the witness Exhibit 78,

22

please. And 79. And 81. And 85.

23

This is just getting it in evidence. I apologize,

24

Your Honor.

14:06:37 25

THE COURTROOM DEPUTY: Any others?

CROSS-EXAMINATION - DOUGLAS ALEXANDER MISICKO

14:06:38 1 THE COURT: Why don't you ask plaintiffs' counsel if
2 they object to the admission of any of those.

3 MR. CLAUS: Thank you.

4 THE COURT: Give them the numbers.

14:06:46 5 MR. CLAUS: I will. I'm going to actually bring it
6 over to them if Your Honor will allow.

7 THE COURT: That's fine.

8 MR. CLAUS: Thank you.

9 (Counsel confer.)

14:07:25 10 MR. de HAAN: No objections.

11 THE COURT: All right. What are those exhibits
12 again?

13 MR. CLAUS: 78, 79, 81, 85, Your Honor.

14 THE COURT: All right. Those exhibits are admitted.

14:07:48 15 (Exhibits 78, 79, 81, and 85 admitted.)

16 MR. CLAUS: We can just -- if you can put
17 Exhibit 85, I just have a couple of questions about it, in
18 front of the witness.

19 BY MR. CLAUS:

14:08:14 20 Q Exhibit 85 is a restated certificate of organization for
21 the United Federation of Churches LLC that was submitted to
22 the Massachusetts Corporations Division on May 21, 2018. Do
23 you see that? The last page. Certification from
24 William Galvin, Secretary of the Commonwealth.

14:08:41 25 A Correct.

REDIRECT EXAMINATION - DOUGLAS ALEXANDER MISICKO

14:08:43 1 Q And in box 3, the United Federation of Churches LLC is
2 asked to describe the general character of the business and if
3 the limited liability is organized to render professional
4 service, the service to be rendered; correct?

14:09:04 5 A Correct.

6 Q And in the general character of business in the restated
7 certificate of organization filed with the Commonwealth of
8 Massachusetts on 5/21/2018, the United Federation of Churches
9 LLC, did not mention religion at all; correct?

14:09:23 10 A Correct.

11 Q The lawsuit in this case had been filed as of May 21,
12 2018; true?

13 A Correct.

14 MR. CLAUS: That's all I have for this witness,
15 Your Honor.

16 THE COURT: Redirect?

17 MR. CLAUS: It will just take me a second to get my
18 many binders out of the way here.

19 R E D I R E C T E X A M I N A T I O N

14:10:26 20 BY MR. de HAAN:

21 Q In order to do anything public, public facing in The
22 Satanic Temple, does there have to be permission sought by the
23 organization?

24 A There does.

14:10:45 25 Q Which, if someone were to request to do a ritual or