



1                   S T I P U L A T I O N

2                   IT IS STIPULATED AND AGREED,

3       by and between the parties, through their

4       respective counsel, that the deposition of

5       DIANE DERZIS may be taken before Teresa

6       Turquitt Davis, Commissioner, Certified Court

7       Reporter, Registered Professional Reporter and

8       Notary Public;

9                   That the signature to and reading

10       of the deposition by the witness is waived,

11       the deposition to have the same force and

12       effect as if full compliance had been had with

13       all laws and rules of Court relating to the

14       taking of depositions;

15                   That it shall not be necessary

16       for any objections to be made by counsel to

17       any questions, except as to form or leading

18       questions, and that counsel for the parties

19       may make objections and assign grounds at the

20       time of trial, or at the time said deposition

21       is offered in evidence, or prior thereto.

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A P P E A R A N C E S

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A P P E A R A N C E S (Continuing)

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1                   I, Teresa Turquitt Davis, a  
2           Certified Court Reporter and Registered  
3           Professional Reporter of Birmingham, Alabama,  
4           and a Notary Public for the State of Alabama  
5           at Large, acting as Commissioner, certify that  
6           on this date, pursuant to Rule 30 of the  
7           Alabama Rules of Civil Procedure and the  
8           foregoing stipulation of counsel, there came  
9           before me at 2127 14th Avenue South,  
10          Birmingham, Alabama, on October 27 & 28, 2010,  
11          commencing at 2:16 p.m., DIANE DERZIS, witness  
12          in the above cause, for oral examination,  
13          whereupon the following proceedings were had:

14  
15                                   DIANE DERZIS,  
16          being first duly sworn, was examined and  
17          testified as follows:

18  
19                                   (Off-the-record discussion.)

20  
21          EXAMINATION BY MR. EVANS:

22                   Q.          Okay. Have you stated your name  
23          for the record?

1 A. Diane Workman Derzis.

2 Q. Okay. And my name is Michael  
3 Evans and I believe we know each other, do we  
4 not?

5 A. It's been a long time.

6 Q. It has. I'm going to ask you  
7 some questions today having to do with the  
8 lawsuit that you filed against my client,  
9 Terry Gensemer, and others last week. And if  
10 at any time you don't understand what I am  
11 asking you, please stop me and tell me that so  
12 I can rephrase the question. I don't want to  
13 ask a question in such a way that is  
14 confusing. And if you answer that, it would  
15 be unfair to you because it might make it look  
16 as if you were saying something you weren't  
17 and it would be unfair to me because it  
18 wouldn't give me the correct answer to my  
19 question. So you would be doing both of us a  
20 favor if you would stop me and tell me if my  
21 question is unclear, and sometimes I do that.

22 A. Okay.

23 Q. And if you don't tell me that

1 it's unclear, then I'm going to assume that it  
2 is clear and that you understand it; is that  
3 fair enough?

4 A. Fair enough.

5 Q. Okay. Are you taking any  
6 medication or is there any other physical --  
7 are you feeling sickly today or is there any  
8 kind of physical impediment to being able to  
9 sit here for a while and answer questions  
10 about this?

11 MR. GRAVES: Object to the form  
12 of the question. Go ahead and answer, please.

13 A. I'm perfectly fine to sit here  
14 and answer your questions, sir.

15 Q. If you need to take a break, just  
16 let me know and we will try to accommodate  
17 you, okay?

18 A. Thank you.

19 Q. All right. Would you tell us  
20 where you work?

21 A. New Woman Health Care.

22 Q. All right. Is that the legal  
23 name of your employer?

1           A.       All Women's, Inc., but New  
2 Women's Health Care is what we are known as.

3           Q.       So All Women's, Inc. is that an  
4 Alabama corporation?

5           A.       It is.

6           Q.       Who owns the stock of All  
7 Women's, Inc.?

8           A.       I do, and Dr. Smith.

9           Q.       Pardon me?

10          A.       I do as well as Dr. Smith.

11          Q.       And how much -- what percentage  
12 do you own?

13          A.       60 percent.

14          Q.       And what about Dr. Smith?

15          A.       The remaining balance, 40.

16          Q.       What is Dr. Smith's full name?

17          A.       Patrick.

18          Q.       And where does he live?

19          A.       Birmingham.

20          Q.       Does he practice at your clinic?

21          A.       Not routinely.

22          Q.       Okay. Before I start asking  
23 questions and using the words "your clinic,"

1       why don't we be -- make sure I'm clear. All  
2       Women's, Inc. operates a clinic that goes by  
3       the name of New Woman All Women's, Inc.; is  
4       that correct?

5             A.       That is correct.

6             Q.       And what is the location of that  
7       business?

8             A.       1001 17 Street South, Birmingham,  
9       35205.

10            Q.       Does All Women's, Inc. own or  
11       rent the property?

12            A.       All Women's, Inc. rents property.

13            Q.       And who is the landlord?

14            A.       Dipat.

15            Q.       Who?

16            A.       Dipat, LLC.

17            Q.       How do you spell that?

18            A.       D-I-P-A-T.

19            Q.       And how much time is left on your  
20       lease?

21            A.       I'm really not sure.

22            Q.       Do you have a copy of your lease?

23            A.       I have a copy, not with me.

1 Q. Okay. Did you bring with you the  
2 notice of deposition and the request for  
3 production of documents that I served on your  
4 lawyer in this case?

5 A. I have it with me, yes.

6 Q. Would you mind providing it to  
7 the court reporter?

8 A. (Witness complies.)

9 MR. EVANS: We would like to have  
10 that marked as Exhibit A.

11 (Whereupon, Defendant's Exhibit A  
12 was marked for identification.)

13 Q. I noticed the deposition of both  
14 you personally and the business. Are you here  
15 today on behalf of both, or are you the  
16 representative for All Women's, Inc.?

17 A. Yes.

18 Q. Okay. So I can now knock out two  
19 depositions with one person here today?

20 A. Yes.

21 Q. Okay. What sort of business does  
22 All Women's, Inc. operate at 1001 17th Street  
23 South?

1 A. It's women's health care.

2 Q. What sort of services do you  
3 provide?

4 A. Reproductive health care,  
5 pregnancy tests, abortions, gynecological  
6 services.

7 Q. And how long have you been  
8 providing those services at that location?

9 A. How long have I been providing  
10 those services?

11 Q. Well, the businesses, All  
12 Women's, Inc. or its predecessor. Any  
13 business operating under the same name, All  
14 Women's, Inc.; New Woman, All Women's, Inc.?

15 A. Since 1996.

16 Q. '96?

17 A. (Witness nods head.)

18 Q. In '96, who owned and operated  
19 the clinic?

20 A. That is when we purchased it.

21 Q. Oh, I see. And whom did you  
22 purchase it from?

23 A. Dr. Bruce Lucero.

1 Q. Had there been any litigation  
2 about people on your sidewalk outside the  
3 clinic prior to the time that you bought it?

4 A. Before we bought it?

5 Q. Yes.

6 A. I believe so.

7 Q. Tell me what you know about that  
8 prior litigation.

9 A. Are you referring to the case  
10 that Lucero brought which led to the federal  
11 injunction?

12 Q. Yes, I am. Tell me what you know  
13 about that.

14 A. I don't know anything about that.  
15 Well, I mean I'm not sure what you are asking  
16 me.

17 Q. Okay. What do you understand was  
18 the basis for that lawsuit?

19 A. It was a nuisance lawsuit.

20 Q. Okay. And it was filed by whom?

21 A. Bruce Lucero.

22 Q. And who was sued in that lawsuit?

23 A. A group of individuals who

1       picketed the clinic.

2             Q.       Can you recall their names?

3             A.       Minzor Chadwick.

4             Q.       Can you spell Minzor?

5             A.       Minzor?

6             Q.       Uh-huh.

7             A.       M-I-N-Z-OR Chadwick.  There were  
8       a group -- Eleanor Stisher.  I can't remember  
9       the rest of them.

10            Q.       Let me see if I can help you.  Is  
11       David Lackey one of the defendants in that  
12       case?

13            A.       I think so.

14            Q.       And John Edwin Williamson?

15            A.       Yes.

16            Q.       Well, would I be correct as far  
17       as you -- as the best of your recollection in  
18       saying that the four defendants in this case  
19       are Minzor Chadwick, David Lackey, John Edwin  
20       Williamson and Eleanor Stisher?

21            A.       That sounds familiar.

22            Q.       Okay.  I'm going to ask you some  
23       questions about that case and so we need to

1       come up with a name that we can call that case  
2       so that I won't have to keep making big, long  
3       explanations. And since Mr. Chadwick's name  
4       is the first defendant, I would suggest we  
5       call it the Chadwick case, but we could call  
6       it whatever you want.

7             A.       I'm willing for that -- to do  
8       that.

9             Q.       Okay. All right, then. The  
10       Chadwick case was filed in the United States  
11       District Court in the Northern District of  
12       Alabama. It is CV 95-BU-0188-S. And it's  
13       your testimony that that was filed by  
14       Dr. Bruce Lucero prior to your purchase of the  
15       clinic; is that correct?

16            A.       That is correct.

17            Q.       Did you discuss that lawsuit or  
18       have knowledge of that lawsuit before you  
19       bought the clinic?

20            A.       Yes, I knew about that.

21            Q.       What did you know about it?

22            A.       I knew that the injunction was  
23       there, why it was there. And I can't remember

1       whether or not that is one of the cases I  
2       testified in or not, but I know I did testify  
3       for Dr. Lucero in some capacity, but I can't  
4       remember if it was that particular case.

5           Q.       And at some point there was an  
6       injunction entered against defendants Minzor  
7       Chadwick, David Lackey, John Edwin Williamson  
8       and Eleanor Stisher; isn't that correct?

9           A.       It was, and others. I mean I  
10      guess I should respond to that.

11          Q.       Sure. I want you to fully  
12      respond. I don't want any partial answers.

13          A.       Those are just the four named  
14      defendants, but it also pertained to anyone  
15      who was acting in concert with or  
16      participating with them or anyone who was in  
17      front of the clinic.

18          Q.       Okay. So it's your testimony  
19      that the four named defendants are defendants  
20      and that anyone who participated with -- is  
21      that what you said?

22          A.       I believe there -- I can't recall  
23      the exact verbiage of that case, but it was

1 anyone who was either acting in concert with,  
2 anyone who was praying, picketing,  
3 demonstrating, and there were other things as  
4 well within the buffer zone.

5 Q. Okay. At some point that  
6 injunction went up to the 11th Circuit Court  
7 of Appeals in Atlanta and was modified. Did  
8 you own the clinic at the time that it went up  
9 to the appellate court?

10 A. I can't recall.

11 Q. Do you have any recollections  
12 about the changes that were made in the  
13 injunction after it went up to the 11th  
14 Circuit?

15 A. Not that I recall.

16 Q. Okay. Did you or All Women's,  
17 Inc. ever file any motions to hold anyone in  
18 contempt or otherwise charge someone with  
19 violating the injunction in the Chadwick case?

20 A. Can you be a little more  
21 specific?

22 Q. I'll try. After you bought the  
23 clinic with the injunction that had been

1 issued in Chadwick, did you personally or the  
2 clinic ever file a motion or other paper in  
3 federal court asking for someone to be found  
4 in violation of the injunction?

5 A. Yes.

6 Q. And who was that filed against?

7 A. I think it was Minzor Chadwick.  
8 I have to tell you, I can't remember.

9 Q. And what was the result of it, if  
10 you recall?

11 A. It was not successful.

12 Q. Why was it not successful?

13 A. I think we didn't have -- that we  
14 didn't have enough evidence.

15 Q. In what way was your evidence  
16 insufficient, Ms. Derzis?

17 A. To be honest with you, I don't  
18 recall.

19 Q. Okay. Did your clinic file any  
20 papers against any other person in the  
21 Chadwick case arguing that they violated the  
22 injunction?

23 A. Probably so, but I can't recall.

1 Q. Have there been violations of  
2 that Chadwick injunction over the past  
3 12 years?

4 A. Yes.

5 Q. Okay. Tell me about those.

6 A. Well, there was -- the latest one  
7 was last week.

8 Q. Okay. Tell me about that.

9 A. Your defendants, your clients  
10 were in front of the facility within the  
11 buffer zone, which was a direct violation of  
12 that case.

13 Q. You are very soft spoken. I have  
14 been told that I am soft spoken, too. Am I  
15 talking loud enough for you?

16 A. Yeah, I think so.

17 Q. Okay. Can you pipe up just a  
18 little bit more for me?

19 A. Sure. Did you hear --

20 Q. I hate to admit it, but shotgun  
21 shells and rock music have impaired my  
22 hearing.

23 MR. GRAVES: What is that you

1 say?

2 Q. (BY MR. EVANS:) Okay. Now, what  
3 were you saying?

4 A. Your clients and actually you and  
5 Mr. Garmon, too, were in violation of the  
6 Chadwick order last week.

7 Q. Okay. In what way?

8 A. You were directly within the  
9 buffer zone in front of my facility.

10 Q. We were directly within the  
11 buffer zone and what?

12 A. In front of the facility within  
13 the stated buffer zone, you and your clients  
14 or both of you and your clients. You also  
15 engaged -- your clients engaged in loud  
16 noises, which is also in violation of the  
17 Chadwick order.

18 Q. Okay. What else?

19 A. I think that pretty much says it.

20 Q. Okay. So as to Trent and me, our  
21 violation is simply being in the buffer zone;  
22 is that correct?

23 A. No, you were actually leading --

1 or I'm not sure if Mr. Garmon was. He was  
2 praying in the buffer zone. But you were  
3 leading people into the buffer zone and  
4 advising people in the buffer zone.

5 Q. Okay. You say I was leading  
6 people into or that were in the buffer zone?  
7 I mean, was I like a Pied Piper --

8 A. Yeah, I would say that.

9 Q. -- leading people in there or was  
10 I in there and you considered me a leader who  
11 was inside of it?

12 A. You were dispensing advice while  
13 you were in the buffer zone to your client and  
14 the other people who were breaking the law.

15 Q. What else did I do that violated  
16 the injunction?

17 A. That is all I can think of at  
18 this point.

19 Q. Okay. What did my client do that  
20 violated the injunction?

21 A. Was in the buffer zone. He  
22 encouraged other people to be in the buffer  
23 zone, and I actually think you probably did,

1       too, Mr. Evans, but -- he preached within the  
2       buffer zone.

3               Q.       He what?

4               A.       He preached within the buffer  
5       zone. He also encouraged other people to come  
6       into the buffer zone. If I am not mistaken, I  
7       know he did, I'm not sure that you didn't,  
8       advise someone they didn't have to give their  
9       name to the --

10              Q.       Did you say I advised them?

11              A.       I'm not sure whether you did or  
12       not. You were there when it happened. But I  
13       know he did advise someone who was committing  
14       an act which was in violation of the Chadwick  
15       that they did have to give their name.

16              Q.       You think that advising someone  
17       not to give their name is a violation of  
18       Chadwick?

19              A.       No. The person was in violation  
20       of the Chadwick.

21              Q.       The what?

22              A.       The person was in violation of  
23       the Chadwick act.

1 MR. GARMON: Did you say Chadwick  
2 act?

3 A. Well, what are we calling it?

4 Q. Injunction, order.

5 A. The Chadwick order, whatever we  
6 are calling it.

7 MR. GRAVES: Just so we are  
8 clear, by the Chadwick order, we mean the one  
9 that is called the second amended permanent  
10 injunction?

11 MR. EVANS: That is correct. The  
12 one that you attached to your complaint.

13 MR. GRAVES: Exhibit B to the  
14 complaint.

15 MR. EVANS: That is fair.

16 MR. GRAVES: Just to make sure,  
17 because there were two or three.

18 MR. EVANS: You are right.

19 Q. (BY MR. EVANS:) Okay. Give me  
20 the names of everyone that you know who  
21 violated the Chadwick order last week.

22 A. You would have those names,  
23 Mr. Evans, I don't, because I believe you

1 admonished those people they didn't have to  
2 give their names.

3 Q. Just tell me the ones you know.

4 A. Ryan.

5 Q. Ryan?

6 A. (Witness nods head.)

7 MR. GRAVES: Is that a yes or no?

8 A. I'm sorry, Ryan, yes. Ryan was  
9 his name.

10 Q. Who else?

11 A. Ashley.

12 Q. Ashley?

13 A. Terry Gensemer, Jeff White,  
14 Patrick Mahoney, a woman named Ashley.

15 Q. Ashlyn?

16 A. Ashley.

17 Q. Ashley.

18 A. That is all that come to mind.

19 Q. Did you see any other people at  
20 or outside your clinic last week who were  
21 there because of their pro-life or  
22 anti-abortion position, but who did not enter  
23 into the buffer zone or in any other way

1 violate the Chadwick order?

2 A. Yes.

3 Q. Give me their names.

4 A. Minzor Chadwick.

5 Q. Who else?

6 A. David Lackey. Bill.

7 Q. Anybody else?

8 A. Bill, I can't remember his last  
9 name, but maybe it will come to me. Marianne.  
10 There were one or two others that their name  
11 escapes me at this time.

12 Q. The people who are named in that  
13 Chadwick order include somebody named John Ed  
14 Williamson. Do you know, have you seen him in  
15 a long time?

16 A. Actually, I saw him several  
17 months ago.

18 Q. What was he doing?

19 A. Picketing.

20 Q. At your clinic?

21 A. Yes.

22 Q. Did he violate the buffer zone?

23 A. No.

1           Q.       What about the lady who was a  
2   defendant in the injunction? I can't think of  
3   her name.

4           A.       Eleanor?

5           Q.       Pardon me?

6           A.       Eleanor?

7           Q.       Yes. How long since you have  
8   seen her.

9           A.       Several months ago.

10          Q.       Several or seven?

11          A.       Several.

12          Q.       And what was she doing?

13          A.       Picketing.

14          Q.       Outside your clinic?

15          A.       Yes.

16          Q.       Did she violate the buffer zone?

17          A.       No, she did not.

18          Q.       Have she, Ed Williamson, David  
19   Lackey and Minzor Chadwick violated the  
20   injunction in the past two years?

21          A.       Yes.

22          Q.       When?

23          A.       Sometimes weekly.

1 Q. Pardon me?

2 A. Sometimes weekly.

3 Q. What do they do?

4 A. They scream.

5 Q. Do they ever come over inside the  
6 buffer zone on the public sidewalk in front of  
7 your building?

8 A. Would you repeat that?

9 Q. Yeah. In the past two years,  
10 have the four named defendants --

11 (Phone going off.) -- excuse me,  
12 I need to turn that off -- in the past two  
13 years, have they come over inside the buffer  
14 zone on the public sidewalk in front of your  
15 business?

16 A. Not that I recall.

17 Q. Okay. Do you have somebody who  
18 works for you that takes photos such as the  
19 ones that you produced to me today when people  
20 are there picketing outside your business?

21 A. No.

22 Q. Who took the photos you brought  
23 with you today?

1 A. I think his name is Mr. Daniel.

2 Q. Mr. Daniel?

3 A. I think.

4 Q. Does he work for you or your  
5 clinic or your attorneys?

6 A. No, I just hired him.

7 Q. How did you choose him?

8 A. Recommendation of a friend.

9 MR. MORRO: Do you want me to  
10 clarify something?

11 MR. EVANS: Sure.

12 MR. MORRO: The photos you got  
13 today were from Carol Moore not from Jim  
14 Daniel.

15 A. Sorry.

16 MR. EVANS: Who does she work  
17 for?

18 MR. MORRO: She's an escort.

19 MR. EVANS: Okay.

20 Q. (BY MR. EVANS:) Okay. Who all  
21 has taken pictures of the people outside your  
22 clinic last week and this week?

23 A. I really don't know except for

1 Carol and Mr. Daniels.

2 Q. And Carol is an escort?

3 A. She does escort, yes.

4 Q. What days was she present at the  
5 clinic?

6 A. Would you say that again?

7 Q. What days was she present at the  
8 clinic last week and this week?

9 A. Last week, she was present  
10 Wednesday and Saturday.

11 Q. Okay. All right. What days do  
12 you allege that my client and others violated  
13 the Chadwick injunction?

14 A. Wednesday, the 20th; Thursday,  
15 the 21st; Friday, the 22nd; and Monday, the  
16 25th.

17 Q. And do you remember anything else  
18 that they may have done on those days that  
19 violate the injunction, other than the things  
20 you have already told me?

21 A. Well, they were not -- you mean  
22 besides being a nuisance, they prevented  
23 ingress and egress of the facility. They

1 blocked the sidewalk.

2 Q. Okay. Do you have any  
3 photographs of them blocking the sidewalks?

4 A. I don't know if I do or not.

5 Q. Do you have any videotapes of  
6 them blocking the sidewalks?

7 A. Actually, I don't have any tapes  
8 or video or photographs.

9 Q. Who does have the videotapes?

10 A. I guess Carol that gave that to  
11 you.

12 Q. What is her last name?

13 A. Moore.

14 Q. Pardon me?

15 A. Moore.

16 Q. M-O-O-R-E?

17 A. Correct.

18 Q. Is her first name spelled  
19 C-A-R-O-L?

20 A. Yes.

21 Q. And she was there Wednesday and  
22 Saturday?

23 A. She was there last week Wednesday

1 and Saturday.

2 Q. Okay. One of the purposes of the  
3 deposition is to find out all the witnesses  
4 and potential witnesses that either might help  
5 your side or might help my client's side and  
6 so I'm going to ask you a few questions  
7 designed to identify witnesses now.

8 Is Carol Moore a paid employee or  
9 a volunteer?

10 A. She is a volunteer.

11 Q. What else does she do? Is she a  
12 student or does she work elsewhere or what  
13 does she do?

14 A. She has a job.

15 Q. Do you know what her job is?

16 A. No, actually I don't.

17 Q. And how do you contact her?

18 A. By phone.

19 Q. Okay. What is her phone number?

20 MR. MORRO: I would have to  
21 object. We are not going to discuss anything  
22 that would breach security of any of these  
23 folks, whether it be personal phone numbers,

1       where they work, we are not going to discuss  
2       those items, so I am directing my client not  
3       to answer anything that has to do with  
4       personal security of any employee, any  
5       volunteer or herself.

6                   MR. EVANS:   Okay.

7                   MR. GRAVES:   I would also add  
8       that should the need be to serve them with  
9       formal process such as subpoena, we would be  
10      glad to enter into some sort of voluntary  
11      protective order so that we could keep their  
12      personal information maintained strictly  
13      amongst the attorneys in the case and that --  
14      you know, something along those lines.  We are  
15      not going to try to hide anybody from the  
16      defendants, but we will certainly make them  
17      accessible and available for any sort of  
18      testimony or trial as y'all need them.

19                  MR. EVANS:   Okay.  We will need  
20      it pretty quick if we go forward Monday.

21                  I'll show you the 11th Circuit  
22      Court of Appeals opinion -- I'm talking now to  
23      your lawyers, Ms. Derzis, to the 11th Circuit

1 Court of Appeals opinion in the Chadwick case  
2 that modified and affirmed the injunction with  
3 some modifications.

4 MR. GRAVES: Wait a minute. This  
5 is my client's deposition. If you want to ask  
6 me questions or debate the law later on, we  
7 can do that later on, Michael, but for right  
8 now why don't you depose my client --

9 MR. EVANS: I want to. I just  
10 want to put you in the position where you  
11 don't subject your client to any kind of  
12 sanctions. But this opinion, the 11th Circuit  
13 struck down a 200-foot buffer zone around  
14 their employees' residences, and so it's  
15 already been ruled that we can find out where  
16 the residences are. It's just that we can't  
17 get very close to them. (Indicating.)

18 Q. (BY MR. EVANS:) Now, I would ask  
19 you, what is her address, her residence  
20 address, Carol Moore?

21 A. She is not an employee,  
22 Mr. Evans, and I don't know her address.

23 Q. She took pictures, okay. All

1 right. Now, let's start with employees. Tell  
2 me who you employ there.

3 A. Who I employ there?

4 Q. Yes.

5 A. I'm not going to answer that. My  
6 employees are afraid of you. My employees are  
7 afraid of your clients.

8 Q. Let me say this: I can -- you  
9 may not answer it today, but you will answer  
10 that or you won't go forward.

11 A. Well, that is fine. Just what I  
12 am saying to you is we are afraid of you.  
13 What you call peaceful protest is nothing more  
14 than domestic terrorism. I'm afraid of you  
15 and my clients are afraid of you.

16 Q. Well, I'll be rescheduling the  
17 deposition and I'll be asking for sanctions  
18 and the cost of rescheduling it because I'm  
19 entitled to that. It's very clear under the  
20 11th Circuit opinion I'm entitled to it, not  
21 just the names, but the addresses.

22 Okay. Tell me how many employees  
23 you have.

1 A. Nine to ten.

2 Q. And what positions do they hold?

3 A. They range from nurses to lab  
4 technicians to receptionist, OR techs,  
5 sonographers.

6 Q. What did you say?

7 A. Sonographers, S-O-N.

8 Q. Oh, okay.

9 A. Sonographers.

10 Q. Yeah. Did you say -- right  
11 before that, did you say something about a  
12 surgical tech?

13 A. OR techs.

14 Q. OR tech. Anything else?

15 A. I think I got everybody.

16 Q. Okay. How many nurses do you  
17 have?

18 A. Five.

19 Q. How many lab techs?

20 A. It's hard to answer that  
21 question, some people cross-trained, so two,  
22 three.

23 Q. And how many receptionists do you

1 have?

2 A. Again, same answer, but let's say  
3 two, three.

4 Q. Okay. How many OR techs?

5 A. Same thing.

6 Q. Two or three?

7 A. Yes.

8 Q. And how many sonographers?

9 A. Two to three, four.

10 Q. Okay. Do you also have  
11 volunteers who work or help out at the clinic?

12 A. I have a volunteer.

13 Q. Being Carol Moore?

14 A. No.

15 Q. Okay.

16 A. I have a volunteer and her name  
17 is Desiree.

18 Q. How do you spell that?

19 A. D-E-S-I-R-E-E, I believe.

20 Q. What is her last name?

21 A. That is a good question.

22 Q. What does Desiree do?

23 A. She just occasionally will come

1 into the clinic and help out where she is  
2 needed. I can't think of her last name,  
3 Mr. Evans. And Carol Moore, who is an escort,  
4 that is the other.

5 Q. And exactly what does she do?  
6 What are her duties when she is helping out?

7 A. Which one?

8 Q. Carol Moore.

9 A. Carol simply escorts.

10 Q. Do you have any other escorts  
11 besides Carol?

12 A. There are some people who show  
13 up.

14 Q. Tell me all of those.

15 A. I don't have their -- I don't  
16 even know their names. There are people who  
17 come up sometimes that just come in.

18 Q. And they don't get paid?

19 A. No.

20 Q. Do those escorts undergo any  
21 training?

22 A. Carol. Carol instructs them.

23 Q. How long does their training

1 last?

2 A. I don't have any idea.

3 Q. What does she teach them?

4 A. I don't know.

5 Q. Is a part of the duty of the  
6 escort to take pictures or preserve evidence  
7 of any type whatsoever?

8 A. There is not a job description.

9 Q. Do you know if any of them do  
10 take pictures?

11 A. Carol clearly took pictures last  
12 week.

13 Q. Any of the others?

14 A. I don't know.

15 Q. Have you asked any of the  
16 volunteer escorts whether they have pictures  
17 or other evidence that could be used in this  
18 case?

19 A. No, I haven't.

20 Q. Have you asked Carol if she had  
21 evidence that could be used in this case?

22 A. I haven't.

23 Q. How did it come about that Carol

1 produced the photos that were delivered to me?

2 A. I guess she gave them to  
3 officer -- to Attorney Morro.

4 Q. Going back to the person you  
5 hired to take photographs, how many days is  
6 that person out there?

7 A. Wednesday, Thursday, Friday,  
8 Saturday.

9 Q. And tell me his name again.

10 A. I believe it was Jim Daniels.

11 Q. Does he have an office here in  
12 town?

13 A. I have no idea.

14 Q. Did he take any videotape?

15 A. Did he take videotape?

16 Q. Yes.

17 A. I believe he did.

18 Q. And still shots?

19 A. I don't know.

20 Q. I need his contact information.

21 MR. GRAVES: I will get it for  
22 you. If you will, make a note to shoot me an  
23 e-mail about that so it doesn't go in one ear

1 and out the other.

2 Q. (BY MR. EVANS:) Do you have one  
3 or more doctors who perform abortions there in  
4 the clinic?

5 A. Yes, I do.

6 Q. How many doctors perform  
7 abortions there?

8 A. Four to five.

9 Q. Who all are they?

10 A. I'm sorry, I'm not going to tell  
11 you that.

12 Q. You are not going to identify the  
13 doctors?

14 A. No, sir, I'm not.

15 Q. Not even by name?

16 A. Not unless I'm instructed to do  
17 so by the Court, sir. As I told you before,  
18 they are afraid.

19 Q. You understand this will  
20 follow --

21 A. I'm sorry, I didn't hear you.

22 Q. I just want to put you on notice,  
23 this will fall under the same notice and

1 request for sanctions. We will expect another  
2 deposition just like the employees.

3 Were any of those doctors present  
4 at your clinic last Wednesday through  
5 Saturday?

6 A. Yes, they were.

7 Q. How many?

8 A. Two.

9 Q. Did they see any of the  
10 defendants outside your clinic?

11 A. I don't know whether they did or  
12 not.

13 Q. What days were they there?

14 A. The doctors?

15 Q. (Nods head.)

16 A. Wednesday and Saturday.

17 MR. GRAVES: I'm sorry, was that  
18 Wednesday through Saturday or Wednesday and  
19 Saturday?

20 A. Wednesday and Saturday. Sorry.

21 Q. Do you have abortions scheduled  
22 on Thursday or Friday of last week?

23 A. I did not.

1 Q. So the failure of the doctors to  
2 be there on Thursday and Friday and to perform  
3 no abortions had nothing to do with the  
4 actions of the defendants in this case?

5 A. That is correct.

6 Q. Okay. On Wednesday -- well, let  
7 me go back. How many abortions do you  
8 schedule on a normal day when you have a  
9 doctor present?

10 A. There is no restriction.

11 Q. What is the maximum number you  
12 would schedule?

13 A. I don't know.

14 Q. Twenty?

15 A. It's possible.

16 Q. Forty?

17 A. Possibly.

18 Q. Sixty?

19 A. Probably not.

20 Q. Fifty, would fifty be a max?

21 A. I don't know. I don't have a  
22 max.

23 Q. You don't have a maximum number

1 of abortions you will do on a given day?

2 A. I don't have a maximum or a  
3 minimum.

4 Q. Pardon me?

5 A. I don't have a maximum or a  
6 minimum.

7 Q. How many people show up?

8 A. No, it's how many people are  
9 scheduled.

10 Q. Now, is it your experience that  
11 everybody who schedules an abortion shows up  
12 and has it?

13 A. No.

14 Q. What percentage of people  
15 generally show up and have one when they are  
16 scheduled?

17 A. I don't have those numbers.

18 Q. Do you have a ballpark figure  
19 like you would usually expect that if you have  
20 got twenty scheduled, you will probably do  
21 sixteen, so it runs about twenty percent that  
22 don't show up or anything like that?

23 A. No.

1 Q. There is not a rule of thumb?

2 A. There really isn't.

3 Q. The week before the defendants  
4 were outside your clinic, how many people did  
5 you have scheduled on the Wednesday --

6 A. I don't know.

7 Q. -- for abortion? Do you have  
8 records that would show that?

9 A. Of how many people we had  
10 scheduled?

11 Q. Yes.

12 A. Probably.

13 Q. And how many people actually  
14 showed up and had abortions?

15 A. I don't know.

16 Q. Do you have records that will  
17 show that?

18 A. I'm sure I do.

19 Q. The same thing for the Saturday  
20 before the defendants went out to your clinic,  
21 would you have records showing the number of  
22 people scheduled?

23 A. Uh-huh, yes.

1 Q. And the number of people that you  
2 performed abortions on?

3 A. Yes.

4 Q. But you don't have those either  
5 today? You don't have those records with you?

6 A. No.

7 Q. Is it your belief that the  
8 presence of the defendants in the buffer zone  
9 outside your clinic caused you to lose any  
10 abortions on Wednesday or Saturday of last  
11 week?

12 A. I don't know.

13 Q. Are you claiming any damages for  
14 lost abortions in this lawsuit?

15 A. I don't know.

16 Q. Well, it's your lawsuit. Do you  
17 want the Court to -- do you think the Court  
18 can and should give you money for running  
19 people away or preventing people from having  
20 abortions last week or Monday of this week?

21 MR. GRAVES: I object to the form  
22 of that question. It's argumentative. Answer  
23 it as best you can.

1 A. I don't think I alleged that.

2 Q. So you don't really want any  
3 damages for losing abortion business?

4 A. That was not a statement made  
5 last week.

6 Q. Pardon me?

7 A. That was not a statement made  
8 last week.

9 Q. I didn't understand that.  
10 Explain to me what that means.

11 A. I didn't make a statement or an  
12 allegation that I lost abortion patients last  
13 week.

14 Q. Okay. You are talking about in  
15 the lawsuit in state court?

16 A. That is correct.

17 Q. Okay. What about Monday of this  
18 week, do you claim that you lost any abortions  
19 on Monday of this week?

20 A. No, I don't.

21 Q. Did you have a doctor scheduled  
22 to be there for abortions on Monday?

23 A. No, I didn't.

1 Q. So all the time that is involved  
2 in the state court lawsuit, the entire time  
3 frame that we are talking about here actually  
4 only involved two days when there were  
5 abortions being performed in the clinic; is  
6 that correct?

7 A. That is correct.

8 Q. Are there any other type of  
9 damages that you want the Court to award you  
10 in the state court lawsuit you filed last week  
11 in Judge Ramsey's court?

12 A. Would you repeat that for me, I'm  
13 sorry?

14 Q. Sure. Are there any other types  
15 of money damages that you want Judge Ramsey's  
16 court to award you in your state court lawsuit  
17 against the defendants?

18 A. Yes.

19 Q. Okay. Tell me about those.

20 A. The interference with my business  
21 relationship.

22 Q. What sort of damages are you  
23 seeking for that?

1 A. Being scared to death.

2 Q. Okay. Scared to death?

3 A. The nuisance.

4 Q. Pardon me?

5 A. The nuisance that you caused --  
6 well, excuse me, Mr. Evans, I didn't mean to  
7 say you caused, but -- and I want punitive  
8 damages.

9 Q. Any other damages?

10 A. I'm sorry?

11 Q. Any other kind of damages?

12 A. Compensatory damages, punitive  
13 damages.

14 Q. Okay. Compensatory damages have  
15 to compensate you for a particular type of  
16 loss. Do you claim that you have had any  
17 business losses?

18 A. No, I am not talking about  
19 business losses. I'm just saying any other  
20 losses.

21 Q. Okay. Tell me what other kinds  
22 of losses you may have had.

23 A. I don't know.

1           Q.       If you think of any other kinds  
2       of losses that you may be entitled to collect  
3       money from -- strike that.

4                    If you think of any other kinds  
5       of damages that you intend to claim, stop me  
6       wherever I am and tell me that, okay?

7           A.       Yes, sir.

8           Q.       How did it affect you that you  
9       were, to use your words, scared to death, in  
10      what way were you affected?

11          A.       Stressed, very much stressed, all  
12      of us, the staff, myself. It's stressful to  
13      watch your patients traumatized. It's  
14      stressful to watch illegal acts and the police  
15      do nothing. It's frightening to have fifteen  
16      people standing in front of you not two feet  
17      away and not a law enforcement person around  
18      and wonder which one of them is the next Eric  
19      Rudolph.

20          Q.       Is it your testimony there were  
21      no police officers around at the time of the  
22      activities you have alleged in your lawsuit?

23          A.       It's actually absolutely my

1 statement. They were across the street.

2 There was no way anyone could have gotten to  
3 me before I was dead.

4 Q. You have alleged in your lawsuit  
5 that there is a conspiracy between the  
6 defendants, including the City of Birmingham?

7 A. Yes, sir.

8 Q. Please tell me all the evidence  
9 that you have, all the facts that you know of,  
10 that support your claim of conspiracy.

11 A. The fact that you and your  
12 clients had a meeting with the police, with  
13 the law department beforehand whereupon it was  
14 decided that you would not -- they would not  
15 make any arrests unless it was a violent type.  
16 The City was clearly acting in concert with  
17 you when you broke the law and they did  
18 nothing about it.

19 Q. How do you know what the police  
20 said at that meeting?

21 A. I'm sorry, sir?

22 Q. Pardon me?

23 A. I didn't hear what you said.

1 Q. Yeah, how do you know what the  
2 police agreed to or didn't agree to at that  
3 meeting?

4 A. I believe I was told that by a  
5 police officer.

6 Q. And who was that police officer?

7 A. I can't recall who it was. And I  
8 believe also I heard that from your clients,  
9 perhaps not your client, but --

10 Q. One of the defendants?

11 A. Correct.

12 Q. Would the police officer who told  
13 you about the meeting be the captain of the  
14 south precinct?

15 A. It could have been.

16 Q. Does that refresh your  
17 recollection that it was him?

18 A. I'm really not playing games with  
19 you. It could have been. Everything is kind  
20 of blurry about who said what.

21 Q. Okay. Based on what you've  
22 heard, you conclude that there would -- that  
23 the meeting was a part of the conspiracy? I

1       guess I'm missing something because we can all  
2       talk to cops, so tell me what exactly it was  
3       about that meeting with the police that was  
4       illegal.

5             A.       It's my contention that when a  
6       group of people sit down with a group of  
7       policemen or law enforcement or attorneys and  
8       state that they are going to break the law, a  
9       law that has been upheld for 20 years or  
10       however many years, and the police agree not  
11       to make any arrests while that takes place,  
12       that some kind of conspiracy just occurred --

13            Q.       Okay.

14            A.       -- to deprive me of rights.

15            Q.       So your allegation of conspiracy  
16       is based upon your assumption that we told the  
17       police that we were going to violate the law,  
18       and that they agreed that they would allow us  
19       to do it and would not arrest anyone; am I  
20       stating it correctly?

21            A.       You are stating the basis  
22       correctly. I'm sure there is more to it than  
23       that.

1           Q.       Well, tell me because you are the  
2       one that has made the allegation and had it  
3       all written up and -- I don't know what you  
4       are thinking. That is why I am asking the  
5       question.

6                   MR. GRAVES: Object to the form  
7       of the question. There hasn't even been any  
8       discovery taking place until today.

9           Q.       I mean, do you have more?

10          A.       Do I have more?

11          Q.       Information other than the fact  
12       that a meeting occurred?

13          A.       A meeting occurred wherein you  
14       and your contingency stated you were going to  
15       break the law, if that is what occurred.

16          Q.       Well, tell me what evidence you  
17       have that that occurred.

18          A.       I'm alleging this from  
19       information that I have.

20          Q.       It's a pretty serious charge to  
21       allege against the City of Birmingham Police  
22       Department and a bunch of preachers without  
23       anything other than this supposition.

1 MR. GRAVES: Object to counsel  
2 testifying on the record. Object to the form  
3 of his testimony, move that it be stricken.

4 Q. Isn't it?

5 A. I'm sorry, did you just ask me  
6 something?

7 Q. Yes.

8 A. Would you say that again?

9 Q. It's a pretty serious allegation  
10 to make without any evidence that something  
11 illegal occurred, and so I'm just wondering --

12 A. I have the evidence, sir.

13 Q. -- are you sure you have told me  
14 everything?

15 A. The evidence was I was told by a  
16 police officer and I watched it happen in  
17 front of me on four days where crimes occurred  
18 and no arrests were made. That is the basis  
19 of the suit.

20 MR. GRAVES: Mike, just a second.  
21 I need to go off the record for a minute,  
22 number one, because I've got to go to the  
23 bathroom, and then I have got a 4 o'clock

1 appointment and Scott is going to take over  
2 the captain's chair.

3 MR. EVANS: No problem.

4 (Off-the-record discussion.)

5 (Short break taken.)

6 (Whereupon, Defendant's Exhibit B  
7 was marked for identification.)

8 Q. (BY MR. EVANS:) Okay. Before we  
9 leave the City of Birmingham completely, let  
10 me ask you a few more questions. Who was in  
11 the meeting that you say that I went to with  
12 people at the City of Birmingham?

13 A. I don't know.

14 Q. And your conclusions are based  
15 upon one unidentified police officer's  
16 statement?

17 MR. MORRO: Object to the form.

18 Q. Correct?

19 A. No, not just on that. The  
20 activities the week in question bore out --

21 Q. In what way?

22 A. Bore out what he said.

23 Q. Explain that to me.

1           A.       The buffer zone was breached by  
2       those people as well as their attorneys.  
3       Countless violations of the law occurred  
4       during that time period and those people were  
5       not arrested.  When -- I guess that is it.

6           Q.       Okay.  Now, when you said  
7       countless violations of the law occurred, tell  
8       me what you mean.

9           A.       I'm talking about the various  
10      ordinances, talking about the noise ordinance,  
11      talking about the buffer zone, the  
12      impeachment, the --

13          Q.       Is it your belief that for any  
14      person who opposes abortion to walk within the  
15      buffer zone is a violation of the federal  
16      court --

17          A.       No.

18          Q.       -- injunction in Chadwick?

19                   MR. MORRO:  Object to the form.

20          Q.       What do you believe about a  
21      person who is a pro-life person who walks over  
22      inside the buffer zone and prays?

23          A.       Are you talking about during

1 office hours?

2 Q. Yes, during office hours.

3 A. Then they are engaging in  
4 prohibited activity within the buffer zone in  
5 front of the clinic.

6 Q. Okay. So a while ago when you  
7 used the term "illegal activity" or "illegal  
8 act" or something like that, that would  
9 include each and every person who walked over  
10 onto the sidewalk in front of your clinic  
11 which is inside the buffer zone; am I correct?

12 A. Which are you correct, that the  
13 clinic is -- say that again, Mr. Evans.

14 Q. I'm trying to make sure I  
15 understand it. When you say these people were  
16 guilty of illegal acts and the police didn't  
17 arrest them, I want to make sure I understand  
18 you include in that term "illegal acts" simply  
19 walking over in front of your clinic and  
20 standing on the sidewalk.

21 A. If you are an abortion protester,  
22 yes.

23 Q. What if you are not an abortion

1       protester, but you walk over there to see what  
2       is going on, are you violating the buffer zone  
3       or committing an illegal act?

4                   MR. MORRO: Object to the form.  
5       You can answer.

6           A.       I'm not sure -- I think I  
7       understand what you are asking me, so say it  
8       again so I answer what you want me to answer.

9           Q.       If someone who --

10          A.       Joe Blow.

11          Q.       Pardon me?

12          A.       Joe Blow, you are talking about  
13       Joe Blow walking down the street?

14          Q.       I'm talking Joe Blow who has no  
15       opinion one way or the other about it, he's  
16       walking down the street, he sees that there  
17       are people on the sidewalk in front of your  
18       clinic that are participating in prayer, and  
19       he walks over to see what is going on on your  
20       side of the street on the public sidewalk. Is  
21       it your opinion that that is a violation of  
22       the injunction in Chadwick?

23          A.       No.

1           Q.       What makes the difference between  
2       the people who are violating and that person  
3       who is not violating, in your opinion?

4           A.       First, let me make it clear that  
5       there are posted signs in front of my clinic  
6       that have been there for the past  
7       fifteen years. Those signs specifically state  
8       anyone who is engaging in anti-abortion  
9       activity, blah, blah, blah, blah, is  
10      prohibited to be on this side of the street.

11                    If people joined your group who  
12      knew they were breaking the law and, in fact,  
13      did so knowingly, wantonly, whatever -- if  
14      someone, Joe Blow walked by and decided to  
15      join up with that group, then I guess he would  
16      be in violation. If he came over to see it,  
17      no. The signs let everyone know that.

18           Q.       Was that sign there when you  
19      bought the business?

20           A.       Yes, it was.

21           Q.       Pardon me?

22           A.       Yes, it was.

23           Q.       Has it been changed at any point

1 after you bought the business?

2 A. Not that I am aware of.

3 Q. Do you know who wrote it?

4 A. I do not.

5 Q. Do you know who paid to have it  
6 put up?

7 A. I do not.

8 Q. Do you know whether it's on your  
9 private property or on public property?

10 A. I do not, but I know it can be on  
11 public property as -- if I am not mistaken,  
12 that is the terms of part of the Chadwick  
13 order.

14 Q. Okay. Is it your belief that the  
15 public sidewalk in front of your clinic is  
16 public property?

17 A. Absolutely.

18 Q. The sign, if I can recall  
19 correctly, is located between the sidewalk and  
20 the curb of the street. So would make the  
21 sign be on public property?

22 A. I believe it may be on public  
23 property.

1           Q.       We will look at pictures in a  
2 minute, but before we do, tell me how far you  
3 believe your property line extends and where  
4 public property begins in front of your  
5 business.

6           A.       Well, without looking at a  
7 survey, my property ends at the fence, my  
8 wrought iron fence, if that is what we are  
9 talking about, from the property. The public  
10 sidewalk is public property.

11          Q.       Do you have a survey?

12          A.       Probably.

13          Q.       Do you have it with you today?

14          A.       I do not.

15          Q.       Let's take a look at the  
16 photographs that you provided to us today. I  
17 had these marked as Exhibit B and then each  
18 photo is marked with its own number on the  
19 back so that they are like Defendant's Exhibit  
20 B, Page 1, Page 2, Page 3 and so forth.

21          A.       Okay.

22          Q.       Let's go through there and let  
23 you explain starting with Defendant's Exhibit

1 B, Page 1, and you explain to me where that  
2 photograph was taken from to the best of your  
3 knowledge, if you are able to tell, okay?

4 MR. GARMON: Mike, for  
5 clarification, hers do not have the numbers on  
6 the back.

7 MR. EVANS: Oh, they don't?

8 MR. GARMON: At the bottom right,  
9 it has a date and time, so if you want to  
10 reference them by that or if you want me to  
11 make copies of what has now been marked, I can  
12 do that.

13 MR. EVANS: We can do the date  
14 and time.

15 A. We can just make sure we are  
16 looking at the same one, right?

17 MR. EVANS: Yeah, we will make  
18 sure we are on the same page.

19 MR. GARMON: Date and time and  
20 you can hold it up and she can confirm.

21 MR. EVANS: All right.

22 Q. (BY MR. EVANS:) Defendant's  
23 Exhibit B, Page 1, in the bottom right-hand

1 margin says 10/20/2010 9:14. Can you tell me  
2 as best you can what that picture depicts?

3 A. I have no idea.

4 Q. Okay.

5 A. I don't know.

6 Q. Okay.

7 MR. MORRO: Can we stipulate,  
8 Mike, that they are all from 10/20 and just go  
9 with the time?

10 MR. EVANS: Yes.

11 MR. GARMON: Except for the last  
12 picture which is 10/25.

13 MR. EVANS: Until we change the  
14 date, they will all be 10/20.

15 MR. MORRO: Okay.

16 Q. (BY MR. EVANS:) Let me also just  
17 state for the record that the plaintiff  
18 produced color photographs for us on a disk  
19 and we made copies on a Xerox machine or a  
20 printer, rather, that are black and white, and  
21 so the exposure there or the darkness that  
22 makes it difficult is really --

23 A. Right.

1           Q.       -- a problem from the printing of  
2       it in the black and white.  And at some other  
3       point, we may have them in color and revisit  
4       them and you may be able to tell more about  
5       it, but I can understand why you might have  
6       some difficulty with the black and white here.

7           Okay.  The next page was taken  
8       9:14.  Can you tell us what that depicts?

9           A.       That is the vacant lot  
10       catercorner from the clinic where the old  
11       Ronald McDonald House was, and that shows a  
12       picture of undercover officers, I think, who  
13       weren't too undercover.

14          Q.       Okay.  The next page, photograph  
15       taken at 9:15?

16          A.       Those are protesters that are  
17       right in front of Al's Deli, so that would be  
18       on the opposite side of the street within  
19       the --

20          Q.       So they are outside the buffer  
21       zone?

22          A.       They are fine, right.  These  
23       people are fine.  They are protesting.

1           Q.       And I don't know if I did a good  
2       enough job at the outset to make sure that we  
3       are talking about the same thing when we say  
4       "buffer zone" or "no protest zone." What I  
5       mean when I say that, and I think you mean it,  
6       too, but let's just be clear, is the zone  
7       outlined in the injunction in Chadwick where  
8       the Court created a zone for the defendants  
9       not to come within.

10           A.       That is what I am referring to.

11           Q.       Okay. All right. And so the  
12       people in the photo taken at 9:15 are  
13       outside -- they are across the street from  
14       your business?

15           A.       That is correct.

16           Q.       And so you don't see any illegal  
17       conduct in that photo?

18           A.       I do not.

19           Q.       All right. Do you recognize the  
20       person in the photo with 9:15 stamped in the  
21       bottom right-hand corner?

22           A.       I can't tell. Is that you,  
23       Mr. Evans? I can't tell. I mean these are

1       terrible.

2                   MR. MORRO:   This is the second  
3       photo at 9:15.

4           A.       Yeah.  I can't tell who it is,  
5       but that person --

6           Q.       Well, when we get the color one,  
7       you probably are going to be able to.

8           A.       All right.  That person is within  
9       the buffer zone.

10          Q.       That person is inside your buffer  
11       zone?

12          A.       Yes, sir.  They are right on the  
13       corner of 17th Street.  The sign is probably a  
14       foot away.

15          Q.       Okay.  And so is it your opinion  
16       that that person is engaged in illegal  
17       activity?

18          A.       I'm not sure.  I can't tell that  
19       from this picture.

20          Q.       Okay.  All right.  The one timed  
21       at 9:16, what is that?

22          A.       That is Terry Gensemer, your  
23       client, standing up reading.  It appears he's

1 in the middle of the sidewalk. Patrick  
2 Mahoney is squatted. I can't see --

3 Q. He is the one kneeling with a  
4 scroll around his neck?

5 A. Yes. And they are within the  
6 designated buffer zone.

7 Q. Looking down at the bottom left  
8 side of that photograph, it looks as if there  
9 is a wrought iron or an iron fence --

10 A. Right.

11 Q. -- at the bottom?

12 A. Yes.

13 Q. Is that the fence that is on your  
14 property?

15 A. It is. And, in fact, that fence  
16 ends right there. So Terry Gensemer is  
17 actually standing in the entrance of my  
18 property and blocking that entrance in this  
19 picture -- maybe not blocking it, but he is at  
20 the entrance of my property.

21 Q. Okay. And that sidewalk there is  
22 a public sidewalk?

23 A. It is.

1 Q. All right. There is another one  
2 marked 9:16. Could you tell us --

3 A. Mahoney is on -- half of Mahoney  
4 is there. I'm not sure who this guy is nor  
5 this woman.

6 MR. GARMON: That is Paul Hughes.

7 A. Paul Hughes. He had on a brown  
8 jacket. He prayed. The woman standing, I  
9 don't know who she is, nor do I know who the  
10 guy is.

11 Q. Okay.

12 A. I should just say I don't know  
13 who anyone --

14 Q. The only person you know in that  
15 photograph is Mahoney?

16 A. Not even half of Mahoney. And  
17 these people are, again, within the designated  
18 buffer zone.

19 Q. And it would be your opinion that  
20 the acts that you see depicted in that  
21 photograph are illegal?

22 A. Yes. They are prohibited.

23 Q. By the injunction of Chadwick?

1           A.       By the Chadwick order.

2           Q.       Do they violate any other law?

3           A.       They violate the Birmingham  
4 ordinance.

5           Q.       Which one?

6           A.       The one that states that if there  
7 are more than six protesters that they have to  
8 stand ten feet apart, but I believe that law  
9 was again not held.

10          Q.       Is that the parade permit law?

11          A.       I think there are two separate  
12 laws or ordinances or whatever they are  
13 called.

14          Q.       Okay. Next up says 8:55 in the  
15 bottom right corner. Could you tell us what  
16 you see there?

17          A.       Those people are across the  
18 street on the corner of 17 Street and 10th  
19 Avenue South between Al's Deli. They are not  
20 within the buffer zone, but they are  
21 congregated.

22          Q.       Do you see any violation of law  
23 or of the ordinance or injunction?

1           A.       They are in violation of the  
2 Birmingham ordinance that requires that people  
3 to picket must have -- but, again, I think  
4 that has been restrained or enjoined or  
5 whatever.

6           Q.       Do you recognize anyone there  
7 that you haven't already identified in another  
8 photograph?

9           A.       Yeah. I think this is Jeff White  
10 on the -- I'm pretty sure, the one that has 55  
11 on his leg, I believe that is Jeff White.

12          Q.       The person on the far right side  
13 of the photo, looks like he may be talking to  
14 Father Terry Gensemer.

15          A.       Yes. Oh, yeah, you are right, I  
16 do see Terry now. Sorry. I could only see  
17 his glasses.

18          Q.       All right. The next one -- you  
19 know, I'm afraid I didn't make it clear when I  
20 started with these. These photos we are  
21 looking at are the photos that your volunteer,  
22 Carol Moore, took and provided to your  
23 attorney; is that correct?

1           A.       That is what Mr. Morro said. I  
2       have not seen them before.

3           Q.       Okay. All right. Let's look at  
4       the one marked 9:13. Tell me what you see  
5       there.

6           A.       Violation of the buffer zone,  
7       sidewalk congested and blocked.

8           Q.       Okay. So these people were  
9       standing on the sidewalk in front of your  
10      clinic on the same side of the street as your  
11      clinic; is that correct?

12          A.       That is correct.

13          Q.       And that iron fence that we see  
14      there is the fence --

15          A.       Property line.

16          Q.       -- on the property boundary?

17          A.       And as you'll see -- oh, yeah,  
18      sorry.

19          Q.       And were you going to point out  
20      something else?

21          A.       No. Sorry.

22          Q.       Do you recognize -- don't bother  
23      about identifying people that you have already

1 named in other photos, but is there anybody  
2 else in this picture that you haven't seen in  
3 any of the other photos, who you recognize?

4 A. Not that I recognize. There are  
5 other people, but I don't know who they are.

6 Q. Okay. Let's look at the next  
7 photo marked 9:13. It's Page 9 in Exhibit B.  
8 Tell me what you see there.

9 A. These people were all being  
10 prayed to by Mr. Gensemer, it appears. They  
11 are in violation -- they are in violation of  
12 the ordinance.

13 MR. GARMON: Did you say being  
14 prayed to?

15 A. It appears that, yes.

16 Q. Do you recognize anyone in this  
17 photo that you haven't already identified in a  
18 previous photo?

19 A. Let's see. Where is that guy --  
20 I believe that is Ashley beside Mr. White, but  
21 maybe we will wait and see.

22 Q. Okay. Let's look at the next  
23 one, 9:14.

1           A.       Mr. Gensemer. Again, they are  
2       within the buffer zone.

3           Q.       Okay. Let's look at the next  
4       one. 9:22?

5           A.       Same thing.

6           Q.       Okay. And the next one, 9:23?

7           A.       And I think that is you at the  
8       end of that 9:22, too, Mr. Evans. I could be  
9       wrong. My eyesight --

10          Q.       Oh, down at the corner?

11          A.       Yeah. I might need a micro -- I  
12       might need whatever those are.

13          Q.       We have got it colored and you  
14       will probably be able to tell better. Okay.

15          A.       9:23.

16          Q.       Yes. The next, 9:23?

17          A.       Jeff White and Terry Gensemer and  
18       it appears that they are walking in tandem  
19       which is blocking the sidewalk. And, again,  
20       all of these people are within the buffer  
21       zone. And that is Ashley standing up -- well,  
22       I think she is standing up. See the telephone  
23       pole?

1 Q. Yes.

2 A. That is her. She is a very angry  
3 young woman.

4 Q. Now, with regard to you stated  
5 about them blocking the sidewalk, do you have  
6 any photographs or videotapes of them actually  
7 blocking a person's ability to enter or exit  
8 your building?

9 A. I don't know whether we do or  
10 not.

11 Q. If we could, I should have asked  
12 the question -- one photo back, the 9:22  
13 photo, it's page number 11 on Exhibit B.

14 A. Mr. Gensemer's back, yeah.

15 Q. Yes. Let's see if I understand  
16 this correctly. The sign on the right is  
17 around the front yard of your clinic?

18 A. Right.

19 Q. The gap in the fence there or the  
20 gate in the fence is a front entrance?

21 A. That is our only entrance from --

22 Q. From the sidewalk?

23 A. Right.

1 Q. Now, just past the fence on the  
2 right before you get to the -- what street is  
3 this, is this 10th Avenue?

4 A. Yes.

5 Q. On the right between your  
6 building and 10th Avenue, what is located  
7 there?

8 A. My parking lot.

9 Q. How many cars can park in your  
10 parking lot?

11 A. Ten, twelve perhaps.

12 Q. Okay. Do people who park in your  
13 parking lot have to walk on to the public  
14 sidewalk up to where Father Terry Gensemer is  
15 standing here in this photo marked 9:22 and  
16 then go through this gap in your fence in  
17 order to get to your building?

18 A. No.

19 Q. How can they get in there?

20 A. There is another entrance off of  
21 the parking lot.

22 Q. So it's entirely possible for  
23 people to park in your private parking lot and

1 go in through a private entrance and never  
2 have to walk on to the public sidewalk; is  
3 that correct?

4 A. That is correct, if there is a  
5 parking place available. On Wednesday, we  
6 were very busy and everyone was not able to  
7 park in the parking lot. Can I point out to  
8 you that there is another sign right there,  
9 too, a warning sign.

10 Q. Sure. Are you talking about --

11 A. Posted on the fence.

12 Q. What does that sign say, do you  
13 recall?

14 A. Federal violation, same thing.  
15 Puts people on notice.

16 Q. Okay. I think we have 9:23 that  
17 we have already talked about. Now, the next  
18 one is marked 9:16. Tell me what you see  
19 there.

20 A. I think this is the same picture,  
21 but just up close. But that is Mr. White  
22 there and Ashley. I believe that is Ashley  
23 beside him. Mr. Gensemer is standing.

1 Q. Anybody else?

2 A. Oh, I take -- yes, I'm sorry,  
3 that is Ryan, the bongo boy.

4 Q. Pardon?

5 A. Ryan.

6 Q. Oh.

7 A. Ryan, the bongo boy, the bongo  
8 drum boy. He has Element on his shirt.

9 Q. Okay. Tell me about Ryan and the  
10 bongo drum.

11 A. Ryan brought bongo drums to play,  
12 and that was in violation of the noise  
13 ordinance as well as a violation of my  
14 injunction. And I believe two police officers  
15 apprised him of that. You were there. You  
16 would know better than I do, Mr. Evans. But  
17 that is who he is. I just know his name is  
18 Ryan.

19 Q. Okay. Who do you know of who is  
20 a witness to Ryan playing his bongo drum?

21 A. You were.

22 Q. Who else?

23 A. Mr. Gensemer was, too. Actually,

1 pretty much everyone out there was.

2 Q. Any of your employees?

3 A. I don't know.

4 Q. Okay. Let's look at the next  
5 one. Tell me about that. The one that is  
6 marked 9:17, the first one that is marked  
7 9:17.

8 A. Right. These are same pictures  
9 of them kneeling within the buffer zone.

10 Q. Any names of those people that  
11 you know?

12 A. No, unless that is Ashley there,  
13 I can't really tell on the -- cutoff on the  
14 end on the left, but I can't really tell.

15 Q. We have got two more marked 9:17.  
16 Let's look at the second one. It looks like  
17 two people and part of a third person. Do you  
18 know any of them?

19 A. Yes, I don't know those people  
20 either.

21 Q. And then the next one is marked  
22 9:17. Do you know any of those people?

23 A. They are across the street.

1 Q. Okay. Do you recognize them?

2 A. I don't.

3 Q. All right. My next one is page  
4 number 17, Exhibit B and it's marked 9:20.  
5 Could you tell me what you see there?

6 A. That is Mr. White and Mr. Mahoney  
7 and, I guess, now Mr. Hughes.

8 Q. And are they on the sidewalk on  
9 the buffer zone?

10 A. Mr. White is on the sidewalk.  
11 The others appear to be kneeling on the  
12 sidewalk, but they are all within the  
13 prohibited zone.

14 Q. Okay. The next page marked 9:20,  
15 tell me what you see there.

16 A. That, I believe, is across the  
17 street. Let's see. (Reviewing document.)

18 Q. It looks like it. Do you know  
19 who those people are?

20 A. I know this is Marianne on the  
21 right. I can't remember Marianne's last name.  
22 I know it, but I can't remember it.

23 Q. Has she been in any lawsuits with

1       you or your clinic?

2             A.       I don't remember. She has been a  
3       picketeer for many years.

4             Q.       Okay. Let's look at the next one  
5       marked 9:22, it looks like the back end of a  
6       Volvo, I don't know.

7             A.       I don't know what that is. It's  
8       a car. I don't know --

9             Q.       The next one is marked 9:22.  
10       Tell me what you see there.

11            A.       It's Mr. Gensemer preaching.

12            Q.       Anything else?

13            A.       Mr. Mahoney, Mr. Evans.

14            Q.       Okay. The next photo in that,  
15       9:31, anybody there that you recognize that we  
16       haven't already identified in the pictures?

17            A.       No.

18            Q.       Go to the next one. The next one  
19       is marked 9:31. Who is in that photo?

20            A.       Mr. Mahoney and Ryan.

21            Q.       Do you know the lady on the left?

22            A.       I'm sorry?

23            Q.       Pardon me? Do you know the lady

1 on the left?

2 A. I don't.

3 Q. Okay. All right.

4 A. Who is she?

5 Q. Pardon me?

6 A. Who is she?

7 Q. I'm not good with names.

8 A. I've got you. The next one is  
9 Lieutenant -- this is a lieutenant by the car.  
10 I don't know who the white gentleman is. The  
11 other one is a videographer. And, Mr. Evans,  
12 it looks like you are with Moody Duff.

13 MR. GARMON: I believe the  
14 videographer is Officer Green.

15 A. Patrick.

16 MR. GARMON: I'm not sure of the  
17 first name.

18 Q. (BY MR. EVANS:) These people are  
19 catercornered across the street from the  
20 clinic --

21 A. That is correct.

22 Q. -- and outside the buffer zone?

23 A. That is correct.

1 Q. And the videographer was a  
2 videographer for the City of Birmingham?

3 A. I believe so.

4 Q. Okay. Let's look further on the  
5 9:34.

6 A. This appears that you are -- I  
7 can't --

8 Q. What do you see there?

9 A. I believe that is Captain -- that  
10 is Jamal, Captain Jamal, sorry.

11 Q. On the right?

12 A. No. I think that is Moody.  
13 These are all policemen except for you. How  
14 is that?

15 Q. Okay. Do you know any of them by  
16 name?

17 A. I'm not sure if this is Moody  
18 Duff (indicating). This is Jamal, whatever  
19 Jamal's last name is. It's captain at south  
20 side precinct the -- I'm so sorry.

21 Q. McCaskey?

22 MR. MORRO: McCaskey.

23 A. McCaskey, thanks. That is all I

1 know.

2 Q. Okay. Next photo?

3 A. Same people, same.

4 Q. Okay. It's marked 9:36, it's  
5 just more of the same that we have seen?

6 A. Right.

7 Q. The next photo is marked 9:24.

8 A. More of the same.

9 Q. The next photo is marked 9:24.

10 A. The same.

11 Q. Okay. The next photo is marked  
12 9:25.

13 A. You and your client.

14 Q. Where are we?

15 A. You are within the prohibited  
16 area. You are on the corner of 10th and 17th.

17 Q. Tell me every single illegal  
18 thing we are doing right there in that photo.

19 A. I'm sorry?

20 Q. Tell me every single illegal  
21 thing that we are doing within that photo.

22 A. You are within the prohibited  
23 buffer zone. That is the only thing I see at

1 this point.

2 Q. Okay. The next photo marked  
3 9:25?

4 A. The same thing.

5 Q. Okay. That would be the same as  
6 the last photo, right? The next photo marked  
7 9:31?

8 A. That is AJ and Terry Gensemer.

9 Q. Who is AJ?

10 A. AJ, I know his last name, too,  
11 it's just my brain is tired. He's a Reverend,  
12 too.

13 Q. Pardon me?

14 A. He's a Reverend also.

15 Q. So he's a pastor. Is he from  
16 here in Birmingham?

17 A. Yes, he is.

18 Q. Okay. And where is AJ?

19 A. He's in the prohibited zone as  
20 well.

21 Q. Okay. And the next photo marked  
22 10:03, what do you see there?

23 A. One woman is praying to the sign.

1 Q. She is praying to the sign?

2 A. Yes.

3 Q. Is that the sign that gives  
4 notice of the --

5 A. That is one of them. I believe  
6 there are four posted there. This is the one  
7 on the corner.

8 Q. Okay. And you are talking one of  
9 the signs giving notice of the federal  
10 injunction?

11 A. Yes. And they are both in the  
12 prohibited zone.

13 Q. The next one is marked 10:04.  
14 Tell me what you see.

15 A. The same. They are both within  
16 the prohibited zone. They are on the corner  
17 of -- and there is a sign which you can  
18 actually read --

19 Q. Right.

20 A. -- not allowed.

21 Q. Tell me this: Do you think that  
22 the language on the sign is a fair and  
23 accurate representation of what the injunction

1 order says?

2 MR. MORRO: Object to the form.  
3 You can answer.

4 A. I'm not sure whether it is fair  
5 and accurate, but I think it's pretty simple  
6 that anyone --

7 Q. That any what?

8 A. It's pretty simple, easy to  
9 understand that any abortion protesters and  
10 pro-life activist are not allowed within  
11 twenty feet of this facility. Then it goes  
12 across and says they must stay across the  
13 street and outside of the buffer zone.

14 Q. Okay. Do you believe that what  
15 the sign says is really true and that that is  
16 what the injunction prohibits?

17 A. Yes.

18 Q. Okay. And that it prohibits all  
19 anti-abortion protesters from coming within  
20 the buffer zone, is that your testimony?

21 A. All anti-abortion protesters and  
22 pro-life activists, yes.

23 Q. Let's look at the next photo

1 marked 10:04.

2 A. Same thing. Those are actually  
3 people -- let me interject, these are people  
4 actually having their picture taken with the  
5 sign because they are so excited that they  
6 have come to Birmingham and made a mockery of  
7 this city, so each person has their indelible  
8 photograph.

9 Q. Tell me everything that they did  
10 to make a mockery of the city.

11 MR. MORRO: Object to the form.

12 A. When any people, regardless of  
13 what they stand for, regardless of what they  
14 are doing, when they willfully break the law,  
15 when they hold a legal business hostage, I  
16 think that makes a mockery of our entire  
17 system. You know, everything that I saw asked  
18 people to come out and join everyone to come  
19 break the law because the law didn't apply to  
20 them, that makes a mockery of our system, it  
21 makes a mockery of our city, it makes me the  
22 victim of people who are above the law.

23 Q. Well, if you file a lawsuit

1 against somebody and you get an injunction --  
2 let me strike that. Okay. Let's look at the  
3 one marked 10:04.

4 A. 10:04?

5 Q. 10:04.

6 A. Okay.

7 Q. What do you see there?

8 A. That is them having their  
9 pictures made for their scrapbooks at home, I  
10 guess.

11 Q. All right. And one marked 10:10?

12 A. The same thing, it's Mr. Gensemer  
13 and you. I guess he is showing you the sign.  
14 I'm not really sure. I'm not sure if you have  
15 got a camera and you are taking a picture or  
16 not. I can't really tell.

17 Q. Okay. The next one is marked  
18 10:11.

19 MR. MORRO: I would like to say  
20 that I think the record should reflect that  
21 Mr. Evans thinks this is funny and he is  
22 laughing at the responses of my client.

23 MR. EVANS: Let me say this, your

1 client was making a humorous remark about  
2 this --

3 A. It really isn't humorous though,  
4 Mr. Evans, it's --

5 Q. Well, then I misinterpreted  
6 your -- what I thought your attempt at humor.

7 A. Sometimes we laugh instead of  
8 crying. Yeah, I think that sometimes people  
9 resort to humor instead of other emotions.

10 Q. Okay. Let's look at the one  
11 marked 10:11.

12 A. That is Mr. Gensemer and you are  
13 in the background and I don't know who the  
14 woman is with the blonde hair. But, again,  
15 that is -- she's having her picture taken with  
16 the sign and her mouth -- red tape across her  
17 mouth.

18 Q. Okay. One marked 10:14?

19 A. That is Mr. Gensemer and he is  
20 actually in the driveway. And Mr. White is  
21 now posing with the sign.

22 Q. Okay. The one marked 10:15?

23 A. I guess that is you posing with

1 the sign.

2 Q. Well, I wouldn't say I am posing,  
3 but I was resting my back.

4 A. This woman may be in the  
5 driveway, I really can't tell from my -- from  
6 the picture.

7 Q. The next one marked 10:18, where  
8 was that taken?

9 A. I can't really tell, but I think  
10 it's in front of the -- on our side of the  
11 clinic right there in the myrtle, crepe  
12 myrtles, but I can't really tell, it's too  
13 dark.

14 Q. Do you know who those women are?

15 A. I do not.

16 Q. Okay. The next one is dated  
17 10/20?

18 A. I can't tell I should say. I  
19 can't tell.

20 Q. The one taken at 10:20?

21 A. One at 10:20, at one point, that  
22 is -- I think that is Ashley talking to Terry  
23 Gensemer who is standing in the driveway and

1 on the other side are two women at one point  
2 who were -- each group was on both sides of  
3 the driveway attempting to stop patients as  
4 they entered my parking lot. Whether this is  
5 at that time, I'm not sure, but it looked  
6 like --

7 Q. Do you have any photos or video  
8 of anybody trying to stop patients going in  
9 and out of the parking lot?

10 A. I'm not sure if I do or not. And  
11 that is you, too, Mr. Evans, I'm sorry, behind  
12 the pole.

13 Q. The next one marked 10:20, what  
14 do you see there?

15 A. You are beckoning to one of the  
16 protesters.

17 Q. Do you know who the other people  
18 are there?

19 A. I do not.

20 Q. Let's go to the next one marked  
21 10:21.

22 A. These are two women and a  
23 gentleman. Everyone is very happy that they

1 are breaking the law and they believe they  
2 have busted the injunction. This other woman  
3 is actually standing in the middle of my  
4 driveway.

5 Q. Well, it looks to me like --

6 A. Not in the middle.

7 Q. -- she is about a step from the  
8 curb?

9 A. Yeah, she is in the driveway  
10 though.

11 Q. But that wouldn't be the middle,  
12 would it?

13 A. No, she is not in the middle, but  
14 she is in the driveway.

15 Q. Let's look at the next one marked  
16 10:21.

17 A. These -- this is the protesters  
18 across the street up by the dentist office.

19 Q. Do you usually refer to them as  
20 protesters?

21 A. Yes.

22 Q. So if I use the word "protesters"  
23 we would be on the same page?

1 A. Yes.

2 Q. Okay. Do you use the word  
3 "protester" to include people who don't come  
4 inside your buffer zone?

5 A. Yes.

6 Q. So if they are out there because  
7 of their beliefs about abortion, whether they  
8 are inside the buffer zone or outside of it,  
9 you consider them to be protesters?

10 A. Yes.

11 Q. And in of itself the act of  
12 protesting is not illegal, correct?

13 A. That is correct.

14 Q. Okay. Look at the next one,  
15 10:21. What does that photo show?

16 A. Are we on that?

17 Q. On this one (indicating).

18 A. That is Bill. And I remembered  
19 his last name, Jessup. Earlier you asked me  
20 and I couldn't remember.

21 Q. Who?

22 A. The gentleman with his arms  
23 crossed, earlier you had asked me who was

1 across the street and I couldn't remember his  
2 last name, Jessup. That is Bill Jessup, and  
3 he's talking with the protesters.

4 Q. Has he been involved in any  
5 litigation with your clinic?

6 A. I don't know if he has or not.  
7 He is a long-time protester though.

8 Q. There is one marked 10:03. What  
9 do you see there?

10 A. This is the same woman that was  
11 praying on the sign. They are within the  
12 buffer zone.

13 Q. The one that is marked 10:04  
14 looks like to me it may be one of an earlier  
15 one that we saw.

16 A. The black gentleman.

17 MR. MORRO: It looks like the  
18 rest of them are all duplicates.

19 A. Yeah, I think you are right.

20 MR. MORRO: Except for maybe the  
21 last one, Mr. Garmon, you say?

22 MR. GARMON: Let's make sure.

23 A. Wait a minute. Now, this one is

1 not. And this is Mr. Gensemer in the driveway  
2 with Mr. White posing by the sign.

3 MR. GARMON: What is the time on  
4 that?

5 A. It says 10:14. It's got the  
6 blonde, this one (indicating). It's the one  
7 before Mr. Evans resting his back.

8 MR. GARMON: That is a duplicate.

9 A. That is a duplicate?

10 MR. GARMON: Yes. I apologize.

11 A. That is all right.

12 Q. (BY MR. EVANS:) So skipping to  
13 the last page then, tell me what you see  
14 there.

15 A. This is the 10/25 photo?

16 MR. GARMON: Uh-huh.

17 A. This is Monday when the  
18 protesters came back. After the injunction  
19 was lifted, they came back and rebroke the law  
20 or rebroke the Chadwick.

21 Q. So this was on Monday of this  
22 week?

23 A. Yes.

1 Q. And where would the person taking  
2 the picture have been standing, would they  
3 have been in the parking lot?

4 A. No, in the doorway of the  
5 clinic -- well, yeah, the doorway of the  
6 clinic.

7 Q. Oh, okay. So right down here in  
8 the bottom right-hand side, that sidewalk I  
9 see, is that coming from your front door to  
10 the sidewalk?

11 A. Correct.

12 Q. That is your walkway to the  
13 public sidewalk?

14 A. Correct.

15 Q. And that tree is in your front  
16 yard?

17 A. Yes, that is the Sandy tree.

18 Q. And the people standing there are  
19 standing on the public sidewalk in front of  
20 your clinic?

21 A. Yes.

22 Q. Inside the area that you say is  
23 the buffer zone?

1 A. Yes.

2 Q. Okay.

3 MR. EVANS: Let's take a break  
4 off the record a second.

5 (Off-the-record discussion.)

6

7 EXAMINATION BY MR. GARMON:

8 Q. Flip for me, if you would, to  
9 pictures from 9:34.

10 A. 9:34?

11 Q. Uh-huh. There may be more than  
12 one, but 9:34.

13 A. It's not in order, is it?

14 MR. MORRO: No, they are mixed  
15 up.

16 Q. This would be in chronological  
17 order --

18 A. No, it isn't.

19 Q. -- but you may have a couple of  
20 minutes that are missing.

21 MR. MORRO: They skip back and  
22 forth, Trent.

23 A. Wait a minute. Here is 31.

1 MR. MORRO: It's right here  
2 (indicating).

3 A. Okay. Got you.

4 Q. (BY MR. GARMON:) Are we on the  
5 same one?

6 A. Yes.

7 MR. MORRO: There is only one  
8 photograph.

9 Q. Okay. So how many gentlemen do  
10 you see out there?

11 A. Seven -- well, no, eight, nine --  
12 I see eight. I can't tell if there is anyone  
13 in any of the other cars.

14 Q. Okay. The ones that are outside  
15 talking?

16 A. I see seven.

17 Q. Seven?

18 A. Well, six are talking.

19 Q. Okay. But kind of huddled there  
20 together, you would say there are six?

21 A. Right.

22 Q. And it's your understanding that  
23 five of those work for the city; is that

1 right?

2 A. I don't know. I know that this  
3 is a captain.

4 Q. Which one when you say this one  
5 is a captain?

6 A. The one whose back is to you.

7 Q. Is he in uniform?

8 A. Yes, he's in uniform.

9 Q. He's in uniform, okay.

10 A. I believe this man is an  
11 officer --

12 Q. Now, which man is this?

13 A. To the right, talking to -- oh,  
14 Mr. Evans is left.

15 Q. African-American looks like he's  
16 got a dress shirt on?

17 A. Yes. The African-American  
18 with -- I see the badge.

19 Q. Okay. Facing?

20 A. Facing Mr. Evans.

21 Q. Is that 17th Street?

22 A. No, that is 10th Avenue South.  
23 They are on the corner --

1 Q. 10th is running perpendicular and  
2 it's parallel --

3 A. Right, they are right there on  
4 10th where the old Ronald McDonald House was.  
5 It's a vacant lot.

6 Q. So at least the guy that is in  
7 uniform there and the guy that has got a  
8 badge, we know or could reasonably assume that  
9 they are city employees?

10 A. At least three.

11 Q. At least three, okay. And that  
12 is Mr. Evans talking to them?

13 A. Correct.

14 Q. Did you ever go out and talk to  
15 them?

16 A. Yes.

17 Q. When is it that you went outside  
18 to talk to them?

19 A. I can't remember. I would  
20 imagine it was on Wednesday.

21 Q. On Wednesday.

22 A. I would imagine that is what I  
23 did on Wednesday.

1 Q. Okay.

2 A. But I can't rule out that I  
3 didn't go on other days.

4 Q. Okay. And it's legal for you to  
5 go out and talk to them?

6 A. Oh, yes. The buffer zone doesn't  
7 apply to me. I'm not protesting.

8 Q. Were you still in fear after  
9 talking to the police officers?

10 A. Absolutely.

11 Q. You were still in fear, okay. Go  
12 with me to 9:31.

13 A. I've got two, which --

14 Q. The next one.

15 A. Okay.

16 Q. You had mentioned AJ. Is that  
17 his name here, African-American preacher?

18 A. Let me see the one you had, I'm  
19 sorry.

20 Q. That is okay.

21 A. Let me see yours. Yes, that is  
22 AJ.

23 Q. And he is talking here to a named

1 defendant; is that right?

2 A. That is right. He's talking to  
3 Terry Gensemer.

4 Q. When you procure each one of  
5 these people's names, do you plan on adding  
6 them as part of the fictitious defendants?  
7 Let me better describe that in layman's terms.

8 A. Please.

9 Q. Once you understand each person's  
10 name that was out there, is it your intent to  
11 name them in this lawsuit?

12 A. Yes.

13 Q. It is, okay.

14 A. They broke the law.

15 Q. Okay. So it's your position that  
16 AJ, the African-American preacher, I think  
17 he's got something in his hands -- is that a  
18 box, candy box, or what is that?

19 A. It's -- I don't know.

20 Q. I might can get it up here, let  
21 me see, on my computer. That might make it  
22 easier for you to look.

23 Okay. Here it is. Oh, no, I

1 don't guess that is a candy box. What is he  
2 holding?

3 A. I would guess it's a Bible, but I  
4 don't know.

5 Q. Okay.

6 A. Can you tell?

7 Q. Yeah, I think it is a Bible. So  
8 if AJ had not talked to the people that are  
9 specifically mentioned -- at one time I think  
10 you called it a Chadwick act?

11 A. Only because Mr. Evans asked me  
12 to save us all the hassle of repeating that  
13 huge name.

14 Q. But as far as act, do you know  
15 what an act is compared to a case?

16 MR. MORRO: Object to the form.

17 Q. Okay.

18 A. I was actually trying to be nice  
19 and agree with Mr. Evans to shorten this so he  
20 didn't have to say the injunction of Minzor  
21 Chadwick versus blah, blah, blah, blah, blah.

22 Q. Sure.

23 A. So if I referred to it, I thought

1 we called it an act.

2 Q. For efficient communication?

3 MR. EVANS: I think we called it  
4 the Chadwick order or the Chadwick injunction.

5 Q. All right. The order. As part  
6 of the Chadwick order, because it hasn't  
7 actually been passed by the legislature, has  
8 it? It was an order that was issued by --

9 A. It was a federal order.

10 Q. It was issued by a judge, right?

11 A. Correct.

12 Q. If AJ had not talked with prior  
13 to any of the named defendants, is he, in your  
14 opinion, in violation of this judge's order?

15 MR. MORRO: Object to the form.

16 Q. You can go ahead and answer.

17 A. AJ is in violation because he is  
18 a known anti-abortion protester. He's been in  
19 front of my facility on many occasions. He is  
20 aware of the law.

21 Q. Okay.

22 A. He was there to test the law just  
23 like the rest of your clients.

1 Q. So AJ standing on the public  
2 right-of-way there is testing the law?

3 A. AJ wasn't standing. AJ was  
4 protesting, and he was with the rest of the  
5 protesters or the rest of the congregation,  
6 whatever you want to term them, the rest of  
7 people that were in violation of this order.

8 Q. The order, and you reference --

9 A. The Chadwick order.

10 Q. The Chadwick order that has named  
11 defendants?

12 A. The Chadwick order along with  
13 named defendants says anyone protesting,  
14 patrolling, picketing, praying, and has a host  
15 of other illicit and illegal activities that  
16 are allowed.

17 Q. So it's illicit and illegal  
18 activities to picket, protest -- and you said  
19 pray, right, is that one of them?

20 MR. MORRO: Object to the form.

21 A. I'm paraphrasing what I recall of  
22 the Chadwick order.

23 Q. You are not looking at it, you

1 are paraphrasing what you remember?

2 A. I'm not looking at it. But that  
3 was the intent of the order is to not allow  
4 protests within a certain zone in front of  
5 this clinic.

6 Q. Okay. Let's go to picture --  
7 it's 10:04. And for clarification sake, I'll  
8 hold it up here.

9 A. Okay.

10 Q. I think he has got a hat on.  
11 What does his hat say?

12 A. It says holocaust I think.

13 Q. Holocaust?

14 A. No, it doesn't.

15 Q. No, I don't see a holocaust.

16 A. Jesus.

17 Q. Okay.

18 A. I see something about Jesus.

19 Q. Okay. And he is standing in  
20 front of, then, your sign, right?

21 A. That is correct.

22 MR. MORRO: Object to the form.

23 MR. GARMON: The form of asking

1 where he is standing?

2 MR. MORRO: She doesn't say it  
3 was her sign.

4 MR. GARMON: Okay.

5 Q. (BY MR. GARMON:) Not to use her  
6 in the possessive sense, but one that you are  
7 adopting the content of, is he standing in  
8 front of a sign that you agree with the  
9 content of?

10 MR. MORRO: Object to the form.

11 Q. You can go ahead and answer.

12 A. Yes.

13 Q. Do you know this man here  
14 (indicating)?

15 A. I do not.

16 Q. You do not? Do you see behind  
17 him there is two people that are standing over  
18 there?

19 A. Do you mean the gentleman and the  
20 woman?

21 Q. I'm not sure if that is a woman  
22 or a man.

23 A. Yeah, that is Janet -- I mean

1 that is Marianne. I'm sorry.

2 Q. How about we just talk about the  
3 guy with a -- it looks like a briefcase or a  
4 satchel.

5 A. I think he had on a green shirt.

6 Q. A green shirt, okay. Now, part  
7 of your reasoning for filing the injunction,  
8 you said that you were in fear?

9 A. I said what, I'm sorry,  
10 Mr. Garmon?

11 Q. You said you were in fear?

12 A. Yes.

13 Q. And you actually referenced at  
14 one point, and I don't want to misquote you,  
15 but we will just use the name, you referenced  
16 Eric Rudolph?

17 A. Yes, sir.

18 Q. And wondered which one of these  
19 is the next Eric Rudolph, which would be a  
20 legitimate fear, I can understand that. Is it  
21 your understanding that the buffer zone was  
22 designed to protect you from the next Eric  
23 Rudolph?

1 MR. MORRO: Object to the form.

2 A. I believe the buffer zone was  
3 designed to protect the safety of everyone  
4 involved, from the people who protest to the  
5 women and their families that enter that  
6 facility as well as the people who work there.

7 Q. And when you say safety, though,  
8 that would probably include somebody that  
9 would do something atrocious like what Eric  
10 Rudolph did, right?

11 A. Let me -- would you be a  
12 little -- give me a little -- be a little more  
13 specific.

14 Q. I'm just wanting to have you  
15 describe your fears so I can understand from  
16 you what you were thinking when you filed the  
17 injunction, and also what you believe the  
18 intent of the public property buffer zone to  
19 be.

20 A. I think when you have that, while  
21 it's a small distance, at least there is a  
22 distance between people on this volatile  
23 subject. Not only do you have women and their

1 families in crisis coming into the facility,  
2 you have people who strongly believe in what  
3 they are doing on one side of the street and  
4 people who strongly believe on the other side  
5 of the street. I believe that space gives  
6 both sides a certain amount of safety.

7 MR. MORRO: Can we go off the  
8 record for a clarification?

9 MR. GARMON: Sure.

10 (Off-the-record discussion.)

11 Q. (BY MR. GARMON:) You were  
12 talking about?

13 A. I was talking about --

14 Q. Would you prefer me to call it  
15 the TRO?

16 A. The TRO because I guess we could  
17 have been on a different page.

18 Q. We were talking about the same  
19 thing, but I think it confused them. I  
20 apologize. I wasn't trying to confuse you as  
21 compared to what was filed before you  
22 purchased the property.

23 A. Right.

1 Q. Okay. But as far as your fear  
2 goes when you, on behalf of the business,  
3 filed in Circuit Court within Jefferson  
4 County, the tenth circuit of the state of  
5 Alabama as part of a lawsuit that had named  
6 and fictitious defendants --

7 A. Right.

8 Q. -- a motion for a temporary  
9 restraining order, it was within your intent  
10 to protect yourself and to protect people that  
11 worked for you; is that right?

12 A. And the women who sought our  
13 services, yes.

14 Q. Okay. Would you consider this  
15 guy across the street a threat?

16 A. I watched that guy across the  
17 street and I'm just going to answer your  
18 question in that way. I watch everyone that  
19 behaves in a manner that is strange. Whether  
20 this is the same man, because it's not in  
21 color, there was someone in a green shirt.  
22 There was a man in a maroon shirt that I  
23 couldn't tell whose side he was on, so there

1       were a lot of people I watched that day. But  
2       the fact that he's across the street is a lot  
3       different than someone who is two feet in  
4       front of me.

5               Q.       Okay. Two feet in front of you  
6       on a public property buffer zone?

7               A.       Right. More than one of those  
8       people.

9               Q.       Okay. Go with me if you would,  
10       10:20 is the time period. You have got it,  
11       uh-huh. You got there quicker than I did.  
12       You must have known which picture I was going  
13       to refer to.

14              A.       Luck.

15              Q.       Okay. You referenced a fear.  
16       These two women that you see here, do they  
17       just looking at it right now create fear  
18       within you of this?

19              A.       No.

20              Q.       They don't create --

21              A.       Not looking at this picture, no.

22              Q.       If you were to have been standing  
23       from the observational point that this picture

1 was taken, would that have created fear within  
2 you?

3 A. I was standing there.

4 Q. You were standing there?

5 A. And I will tell you, I watched  
6 this young woman (indicating) race up and down  
7 the sidewalk chasing people. I watched this  
8 young woman break into tears and have the rest  
9 of the people put their arms around her  
10 because she was so emotional. I watched --

11 Q. And is it your position she is  
12 within the public property buffer zone?

13 A. She is within the prohibited  
14 buffer zone.

15 Q. But the prohibited buffer zone,  
16 is it owned by the City of Birmingham or owned  
17 by somebody else?

18 A. The prohibited -- it doesn't make  
19 any difference who owns a buffer zone where it  
20 is prohibited. But she was racing up and down  
21 the street. She was blocking the sidewalk.  
22 She was blocking my driveway.

23 Q. And the reason I asked is because

1       you say "buffer."

2           A.       Okay. Well, what do I need to  
3       call it, the zone of the Chadwick order?

4           Q.       Because I'm just curious. Buffer  
5       would apply that it is there to buffer  
6       someone.

7           A.       It is. It is to buffer me from  
8       them.

9           Q.       And who all is them?

10          A.       Anyone who is protesting  
11       abortion.

12          Q.       Anyone who is protesting?

13          A.       That is how I view it.

14          Q.       Okay. If someone were to walk  
15       through, and as they are walking through, they  
16       have active knowledge that there is an  
17       abortion clinic, no one else is in the area,  
18       and they pray, is that a violation of the  
19       public property buffer zone?

20                   MR. MORRO: Object to the form.

21          A.       No one else is in the area, am I  
22       in business?

23          Q.       Let's say yes, you are in

1 business.

2 A. I would ask someone who is out  
3 there praying to -- I would say I have an  
4 injunction, would you please move across the  
5 street because this law prohibits this kind of  
6 behavior, you can pray across the street.

7 Q. Prohibits them, so they could be  
8 walking to or from class, maybe a UAB student?

9 A. No, not unless they are  
10 protesting abortion.

11 Q. Unless they are protesting  
12 abortion. But if they are walking and as they  
13 walk back and forth to class, if they pray  
14 against abortion, is that --

15 A. No.

16 Q. That is not protesting?

17 A. No.

18 Q. So it's your position not that  
19 they are protesting it, but that they keep  
20 moving; is that your position now?

21 MR. MORRO: Object to the form.

22 A. You are trying to get me to  
23 define what kind of behavior is prohibited.

1 All I know is the behavior of your clients  
2 last Wednesday through Monday was prohibited  
3 behavior.

4 Q. Now, you said "your clients"?

5 A. Yes.

6 Q. Okay. You mean my clients, Jeff  
7 White and the Survivors?

8 A. And Mr. Gensemer, everyone who  
9 was a part of that group last week.

10 Q. And this is why I asked you these  
11 questions because it appears as if you have  
12 taken it upon yourself to be the legal  
13 interpreter as to who this applies to, this  
14 public property buffer zone.

15 MR. MORRO: Object to the form.

16 A. Actually, I have taken it upon  
17 myself to read the sign that was placed under  
18 court order to warn the people who were  
19 engaging in this behavior what the law was.

20 Q. And you have said before that  
21 these women here at one time, and I don't want  
22 to --

23 A. During the protest.

1 Q. Say that again.

2 A. During the protest.

3 Q. During the protest, did you say  
4 they stopped cars?

5 A. They were attempting to stop  
6 cars. As you see where they are positioned.

7 Q. Uh-huh.

8 A. Two on this side (indicating).

9 Q. Now, tell me which picture we are  
10 talking about.

11 A. I'm still on 10:20.

12 Q. 10:20.

13 A. The one you just asked me about.

14 Q. Okay. Sure. So when we get from  
15 the videographer, you are obviously giving  
16 sworn testimony today --

17 A. That they were standing right  
18 where you see them and this woman was standing  
19 to try to stop vehicles to give them  
20 literature as they entered the lot. At some  
21 point there was a car stopped here, which is  
22 17th Street.

23 Q. Uh-huh.

1           A.       I think whether -- I don't know  
2       what it was, but I will tell you they were  
3       stopped there for several minutes and people  
4       were around them.

5           Q.       They were on the street?

6           A.       Yes.

7           Q.       Okay. You also testified earlier  
8       that Wednesday was a busy day. There was a  
9       question as to ingress and egress into your  
10      place of business?

11          A.       Yes, sir.

12          Q.       You are there to make a profit,  
13      and there was a question as to whether or not  
14      people could come into your place of business  
15      without having to go through the public  
16      property access.

17          A.       Yes, sir.

18          Q.       And is it your testimony that  
19      throughout the day Wednesday the  
20      videographer's report and the videographer's  
21      actual footage will show that there was one  
22      time when your parking lot was full? Because  
23      you indicated that all ingress and egress at

1 one time, because of how busy it was, was due  
2 to these public property buffer zone  
3 protesters were inhibiting ingress and egress  
4 from your place of business. So was there one  
5 time throughout Wednesday that all of your  
6 property, your parking lot was full?

7 A. I think you have got a couple of  
8 questions in there.

9 Q. Okay. Let me ask you one then.  
10 Is it your testimony that you have a way that  
11 your patients can enter your business without  
12 having to use the public ingress and egress?

13 A. The people who park in my parking  
14 lot?

15 Q. Your patients.

16 A. Right.

17 Q. Okay.

18 A. They are able to access the  
19 entrance without going onto the sidewalk.

20 Q. Okay. And actually if they were  
21 to park in your parking lot, would it be a  
22 quicker route to go up the sidewalk or would  
23 it actually be farther around for them to go

1 into your place of business?

2 MR. MORRO: Object to the form.

3 A. If they were in the parking lot,  
4 it would be quicker for them to go up the  
5 steps that lead from the parking lot.

6 Q. Okay. So we will use the step  
7 entrance, is that okay?

8 A. That is fine.

9 Q. We will go up the step entrance  
10 as compared to the public entrance, the public  
11 ingress and egress entrance. Was there on  
12 Wednesday a time when your entire parking lot  
13 was full that you remember?

14 A. There was a time on Wednesday  
15 when patients came in, whether or not the  
16 parking lot was full, there was a time more  
17 than one occasion when patients come down the  
18 street, the public sidewalk from 11th Avenue  
19 South direction towards 10th Avenue South and  
20 took a right into the sidewalk entrance. At  
21 those points, some of your clients ran after  
22 those patients. I had two -- Carol, there  
23 were other people who escorted those patients

1 through the crowd of people on the sidewalk.

2 That happened on more than one occasion, yes.

3 Q. Okay. You reference loud noises?

4 A. Yes, sir.

5 Q. And you seem to indicate that you

6 have knowledge that there is a restriction as

7 to maybe a decibel level or some volume level

8 that the City has. Is that true?

9 A. Actually, if it can be heard

10 within the facility and disturbs the patients.

11 That is the language of the Chadwick order.

12 Q. Okay. Did you ever set up a

13 radio --

14 A. Yes.

15 Q. -- throughout the time period?

16 Okay. And what was the purpose of the radio?

17 A. The radio plays to drown out the

18 screams of the people across the street to the

19 patients.

20 Q. Okay. Which way was the radio

21 facing?

22 A. The radio faces 17th Street.

23 Q. So it is facing Al's place of

1 business?

2 A. Correct.

3 Q. Go to that last picture with --

4 A. The 25th?

5 Q. Yes, ma'am, the 25th. This may  
6 be the most accurate picture we have as it  
7 relates to being able to delineate between  
8 your property, your wrought iron fence, and  
9 then the public property buffer zone, which we  
10 allege to be only buffering those who are  
11 named as defendants in Chadwick, but that is,  
12 of course, why we are here. My question is:  
13 This strip of grass here, who maintains that?  
14 Is that grass; am I right?

15 A. That is my yard.

16 Q. That is your yard, okay.

17 A. Yes, sir.

18 Q. And this is your tree?

19 A. Yes, sir. That is the tree for  
20 the policeman who was killed by Eric Rudolph.

21 Q. I think you testified to it. You  
22 put that up for him?

23 A. That is the Sandy tree.

1 Q. That is great.

2 A. It's grown a lot.

3 Q. The world is a violent place.

4 I'm glad we have the ability to have First  
5 Amendment rights.

6 A. We are all glad to have First  
7 Amendment rights.

8 Q. So your right to plant this tree  
9 on your private property --

10 A. Yes, sir.

11 Q. -- is that equal to the right of  
12 a church to have coins representing every  
13 aborted baby on their private property?

14 MR. MORRO: Object to the form.

15 A. I'm not sure I understand your  
16 question.

17 Q. I'm just curious what your  
18 understanding of --

19 A. Private property?

20 Q. -- free speech is.

21 A. I would be the first one to go to  
22 court to protect your clients' right to  
23 make -- to have free speech.

1 Q. To go to court and protect it?

2 A. To protect your clients' right.

3 Q. Injoin it?

4 A. To protect your clients' right to  
5 free speech. They have free speech across the  
6 street without creating the problems and the  
7 nuisance in front of my business.

8 Q. Okay. Let's go back then. So  
9 you would be the first to protect their free  
10 speech rights?

11 A. You are absolutely right. This  
12 injunction does nothing to inhibit your  
13 clients' First Amendment rights or their  
14 speech rights.

15 Q. Now, we saw a picture earlier,  
16 let's go back to it, and we had a guy across  
17 the street, had AJ in it, it's from 9:31.

18 A. AJ and Gensemer?

19 Q. No, I'm sorry. Let's reference  
20 the one from 10:04. You said you would be the  
21 first to go to court to protect our clients'  
22 free speech, right?

23 MR. MORRO: Can you show us what

1       you are talking about?

2               Q.       (Indicating.)

3               A.       That is not AJ.

4               Q.       I'm sorry, that is not AJ.  Who  
5       is this, do you know?

6               A.       This is the guy from California,  
7       I think.

8               Q.       Could you describe him for us?

9               A.       He's the black gentleman.

10              Q.       Got a hat on, it looks like a  
11       long-sleeve shirt?

12              A.       Nice-looking man, thin.

13                      MR. MORRO:  That is the first  
14       10:04 photograph?

15                      MR. GARMON:  Yes.

16              Q.       If you began to become fearful  
17       and you don't like your place of business  
18       being picketed or having prayer around it,  
19       should the buffer zone ever be expanded to  
20       perhaps where he is standing (indicating)?

21                      MR. MORRO:  Object to the form.

22              Q.       The guy that is across --

23              A.       You are talking about the guy

1 across the street?

2 Q. Uh-huh, yeah.

3 A. I'm not asking for that,  
4 Mr. Garmon. That is where the buffer zone is  
5 now.

6 Q. If you in the future were to ask  
7 that this buffer zone be expanded, would that  
8 be protecting that man's free speech right?

9 A. Absolutely. The buffer zone is  
10 there right now.

11 Q. Where he is standing?

12 A. Right.

13 Q. So here is my question: Do you  
14 see where that power pole is behind him?

15 A. Yes.

16 Q. If you were to change and now  
17 your fear is heightened because this guy is  
18 standing on this corner, do you believe the  
19 Court should expand the buffer zone to go to  
20 that power pole?

21 MR. MORRO: Object to the form.

22 A. I'm not going to get into a  
23 hypothetical question, I'm just not --

1 Q. You just testified now that you  
2 would go to court to protect someone's First  
3 Amendment right.

4 A. Absolutely.

5 Q. And I'm asking you a clear  
6 question.

7 A. You are asking me would I move  
8 him back further.

9 Q. If you believed that you were --  
10 because of him being closer to us than this  
11 telephone pole placed within reasonable fear  
12 or apprehension, do you believe that is  
13 protecting his First Amendment right?

14 A. I don't think the two -- I don't  
15 understand your question. I don't understand  
16 what relevance your question is.

17 Q. I'm just asking a question for --  
18 MR. MORRO: Can we go off the  
19 record for a second?

20 MR. GARMON: Sure.

21 (Off-the-record discussion.)

22 Q. (BY MR. GARMON:) The public  
23 property buffer zone that is in place right

1 now --

2 A. Okay.

3 Q. -- do you think that it should be  
4 expanded?

5 A. Pushed back further?

6 Q. Yes.

7 A. No.

8 Q. If you were to in the future  
9 change your mind and let's say that you did  
10 believe it should be expanded, would you then  
11 want to have it expanded?

12 A. If there was a compelling  
13 reason -- I don't know what the future holds.  
14 That is a hard --

15 Q. Do you believe that you would  
16 have a right to expand the zone?

17 MR. MORRO: Object.

18 A. I think we all have rights to ask  
19 for anything to a judge. It's up to a judge  
20 to answer that question.

21 Q. Okay. This is the last line I'm  
22 going to go with you. I know you are getting  
23 tired, I'm sure.

1           A.       That is all right. My foot was  
2       hurting.

3           Q.       You said this is your strip of  
4       grass here. Do you maintain that?

5           A.       I do. I also maintain the city  
6       strip of grass.

7           Q.       The city's, okay. When do you  
8       normally cut that?

9           A.       Whenever it gets long.

10          Q.       So how often would that be?

11          A.       Depends on when I have my weed  
12       eater.

13          Q.       What kind of weed eater do you  
14       own?

15          A.       I think it's a --

16          Q.       Is it electric or gas?

17          A.       Oh, yeah, it's electric.

18          Q.       It's electric, so you plug it in?

19          A.       Oh, yeah.

20          Q.       What is your pattern of practice  
21       of weed eating, is it about every two weeks or  
22       three weeks?

23          A.       It depends on how much rain we

1       have. I have not weed eated a lot recently  
2       because we haven't had too much rain.

3           Q.       Did you weed eat between  
4       Wednesday and Saturday of this week?

5           A.       I did.

6           Q.       You did?

7           A.       (Witness nods head.)

8           Q.       Where was it that you weed eated?

9           A.       I weed eated in my front yard and  
10       I weed eated the public right-of-way that I  
11       have to weed eat.

12          Q.       You have to weed eat it?

13          A.       Oh, absolutely. The City writes  
14       me up and will find me in contempt.

15          Q.       For a public right-of-way?

16          A.       Absolutely.

17          Q.       So which day is it that you weed  
18       eated?

19          A.       Which day of this past week?

20          Q.       Uh-huh.

21          A.       Mr. Garmon, I'm not sure.

22          Q.       Okay. That is fair.

23          A.       It was one morning.

1           Q.       Did you go out there for more  
2 than one day?

3           A.       And weed eat?

4           Q.       And weed eat.

5           A.       No. I think I got everything the  
6 first day.

7           Q.       Okay. When you use your weed  
8 eater, were you intending at all to have any  
9 debris sling towards people that you may  
10 allege as protesters?

11          A.       Oh, no.

12          Q.       Okay. Do you think it's safe to  
13 use a weed eater within -- I'll stand over  
14 here. How far would you say this is?

15          A.       Seven feet.

16          Q.       Seven feet? Is that about seven,  
17 what do you think, maybe ten?

18                   MR. MORRO: Yeah.

19                   MR. GARMON: Scott, do you think  
20 it's ten?

21                   MR. MORRO: Ten.

22          Q.       We will say ten feet.

23          A.       Sorry.

1 Q. If I were to have a weed eater  
2 right now and I would, of course, be holding  
3 it away from me because I'm weed eating, are  
4 you within a safe zone if you are sitting  
5 there and you cannot move?

6 A. Well, if I weren't in a safe  
7 zone, I would move.

8 Q. You would move?

9 A. Yeah.

10 Q. As I come closer right now, are  
11 you in a safe zone?

12 A. I would probably move.

13 Q. You would move, okay.

14 A. Probably.

15 Q. What would happen if you didn't  
16 move?

17 A. Well, then I would assume that I  
18 might get nicked.

19 Q. Hit by debris?

20 A. Yeah.

21 Q. Okay. That is reasonable.

22 MR. GARMON: That is it.

23 MR. EVANS: Do you have any about

1 the photos or anything?

2 MR. MORRO: Just one question  
3 about this last photo.

4

5 EXAMINATION BY MR. MORRO:

6 Q. Diane, this one is not marked.  
7 Is it possible that this photograph was taken  
8 on 10/20 by Carol, if you know?

9 A. I guess it's possible.

10 Q. But you earlier testified that  
11 you thought it was on the Monday following the  
12 weekend of the incident. But you don't know  
13 for sure, do you?

14 A. I don't know for sure. I relied  
15 upon somebody else who said it was 10/25.

16 MR. MORRO: Okay, that is fine.

17 MR. EVANS: Does anyone want a  
18 break before I start back?

19 MR. MORRO: No. Do you?

20 THE WITNESS: I'm okay.

21 MR. EVANS: I want to make sure  
22 that I know --

23 MR. GARMON: Actually, can I get

1 on one more thing? I'm sorry.

2 MR. EVANS: Sure.

3

4 EXAMINATION BY MR. GARMON, CONTINUING:

5 Q. You had said, and I think I've  
6 got them in exact order, earlier that  
7 Mr. Garmon was praying in the buffer zone.  
8 Who were you referring to?

9 A. You.

10 Q. Me. Did you know me?

11 A. I did not, not until you walked  
12 in.

13 Q. If I did not have knowledge and I  
14 could be hooked up to a polygraph exam and it  
15 said I did not have knowledge that there was  
16 an ordinance, and where I was praying was a  
17 public property buffer zone, in your opinion,  
18 am I in violation of the Chadwick case?

19 MR. MORRO: Object to the form.

20 A. I'm reminded of that ignorance is  
21 no excuse, but there were four signs there  
22 that should have given you knowledge as well  
23 as the fact that you were hugged and I assumed

1       you were part of that group.

2               Q.       So you are saying that if I did  
3       not have knowledge and I came into the public  
4       property buffer zone, which I would not have  
5       known of, that I would have because of  
6       ignorance of this public property buffer zone  
7       is no excuse?

8               MR. MORRO:   Object to the form.

9               A.       It's got four different signs  
10       from wherever you stand that you can see.

11              Q.       So if I see the sign, I have  
12       knowledge. My question is: If I do not see  
13       the sign, so I have no knowledge, I enter into  
14       a public property buffer zone and pray, is  
15       that a violation?

16              A.       If you have no knowledge and you  
17       joined the group and prayed, is that what you  
18       are asking me?

19              Q.       We will go with the group and  
20       then we will go to just me. No knowledge, I  
21       have joined a group and I pray, is that a  
22       violation?

23              A.       It's a violation if you are told

1 and you don't move, yes.

2 Q. If I am not told, no knowledge,  
3 yes or no, is that a violation?

4 A. It's a violation, yes.

5 Q. Okay.

6 MR. GARMON: Go ahead, Mike.

7

8 EXAMINATION BY MR. EVANS, CONTINUING:

9 Q. Okay. I want to make sure, you  
10 are saying that my client, Reverend Gensemer,  
11 conspired or participated with or came up with  
12 some joint activity with the -- first of all,  
13 with the City, and I just want to make sure  
14 that I know if you can identify any individual  
15 that you say he conspired or aided or abetted  
16 or participated with with the city. Anybody  
17 else involved with him and the city that you  
18 can identify by name?

19 A. Not at this time.

20 Q. All right. With regard to other  
21 protesters, if you conspired or aided or  
22 abetted or participated with other protesters,  
23 are there any of them that you can identify by

1 name?

2 A. Well, I think clearly Pat Mahoney  
3 and Jeff White, they were the leaders of this  
4 particular endeavor. Whether you were or not,  
5 I guess, remains to be seen. Whomever else  
6 put out the alert on the Internet and wherever  
7 else it went to call for people to come join  
8 in the overturning of this --

9 Q. So somebody working for Father  
10 Terry or Jeff White or Reverend Mahoney?

11 A. Someone placed that on the  
12 Internet.

13 Q. Okay.

14 A. Call to --

15 Q. Are you talking about on FaceBook  
16 or on some other site?

17 A. I'll have to tell you, I don't  
18 know how you do FaceBook, Mr. Evans, so --

19 Q. Okay.

20 A. But it was definitely on the  
21 Internet. And pleas were made for people to  
22 come join them in breaking this injunction and  
23 victimizing this business.

1 Q. Did they use that word,  
2 "victimize"?

3 A. I don't believe they used that  
4 word, no.

5 Q. Anybody else that you can think  
6 of?

7 A. Not at this time.

8 Q. Okay. Now, with regard to any  
9 and all damages that you claim, okay. I want  
10 to be clear here because some of the documents  
11 that I requested in the deposition notice go  
12 to proof of lost profits, okay, and if you are  
13 not going to claim lost profits, then I don't  
14 need to insist on the production of those  
15 particular documents. So we can narrow this  
16 proceeding down a little bit and save people a  
17 little bit of time and your client the trouble  
18 if I am sure that there is not going to be a  
19 claim for lost profits, but if there is, then  
20 I need to do the discovery in that area.

21 So are y'all prepared at this  
22 time to say whether you are claiming lost  
23 profits? Because I'm not sure after reading

1 the complaint. I can't say that they are  
2 disclaimed. So is it your position that you  
3 expect to collect lost profits from the  
4 defendants?

5 A. That is not my expectation, no.

6 Q. Okay.

7 MR. EVANS: Do you have anything  
8 to add, Scott?

9 MR. MORRO: No.

10 Q. (BY MR. EVANS:) With regard to  
11 other types of damages, I understand that you  
12 want punitive damages. And I don't know of  
13 any -- it's not as if you have a business  
14 record that I would request for a punitive --  
15 for evidence on the issue of punitive damages.  
16 Do you have any evidence that you would  
17 anticipate putting on at trial in regards to  
18 punitive damages?

19 A. I don't know how to answer that  
20 question.

21 Q. Okay.

22 MR. MORRO: That is fine.

23 Q. That is fine.

1 MR. MORRO: That is your answer.

2 Q. With regard to evidence that you  
3 were stressed and frightened, tell me what  
4 proof or evidence that you might have of that.  
5 And let me throw out an example, okay? If a  
6 person were so stressed and frightened that  
7 they needed to go to the doctor and get a  
8 prescription for Xanax or something like that,  
9 that would be evidence that would be  
10 admissible in this case as a part of your  
11 damages to show your stress and your fright,  
12 okay. Do you have any evidence of medical  
13 treatment or medication or any other evidence  
14 of that nature that would tend to show that  
15 you were stressed and frightened by the  
16 actions of the defendants?

17 A. I may have, Mr. Evans.

18 Q. Okay. Could you elucidate on  
19 that for me, please?

20 A. David Gunn, the first doctor  
21 killed, was a friend of mine who worked for  
22 me.

23 Q. What year was that?

1           A.       That was in 1993.

2           Q.       Okay.  Where did that take place?

3           A.       Pensacola, Florida.

4           Q.       Go ahead.

5           A.       You, as well as I, are well aware  
6       that there is a war against abortion  
7       providers.  I have been doing this a long time  
8       and I know what the risks are as well as --  
9       better than anyone else.  George Tiller was a  
10      good friend of mine.

11                    What happened last week as a  
12      result of you and your clients was the opening  
13      of Pandora's Box and you know it as well as I  
14      do.  You invited any crazy person who is not a  
15      named defendant or a party to the Chadwick  
16      order to come violate that order.  And it's  
17      easy for you and your group to then disavow  
18      yourself of any liability or any harm that  
19      happened as a result of your exercise, of your  
20      First Amendment rights.

21                    So, yeah, I will tell you, was it  
22      stressful?  Right.  When I watched a  
23      15-year-old that y'all attacked, when I

1 watched that 15-year-old in tears in my  
2 clinic, when I watched her mama hold her and  
3 talk about her baby -- her baby was the  
4 15-year-old that was pregnant, yeah, I'll tell  
5 you that is stressful. Is it stressful when  
6 your staff are shaking? Is it stressful when  
7 your friend and your lawyer is standing there  
8 with a gun and he says it's just you and me,  
9 baby, between the door and these people?

10 And you know what, those people  
11 may have been the most nonviolent, kindest  
12 Christians in the world, maybe they are, but  
13 maybe they are not. And when they are  
14 standing two feet from me and from my patients  
15 and you have got two young women racing after  
16 people, you can't have that. And you know as  
17 well as I do, Mr. Evans, you can't have it.  
18 There is people jostled coming in.

19 I have got a patient who came in  
20 for a pap smear and those people were saying  
21 you need to go someplace else for a pap smear.  
22 If that is not interference with my business  
23 relationship -- this poor chick had a class

1 four pap smear, she has cancer, and they said  
2 you need to go somewhere else. You know,  
3 yeah, that is stressful. It's real stressful.

4 Q. Have you sought medication or  
5 medical help or psychiatric help?

6 A. I have made an appointment. I  
7 went through a red light Saturday on the way  
8 home and almost killed somebody and that one  
9 really got me. Because I'll tell you  
10 something, I thought it was green. Really.  
11 That is not me. But I think I'll have that  
12 for you and I'll be happy to provide my  
13 counseling notes for you as well.

14 Q. Okay. Are you saying that the  
15 15-year-old baby -- I mean, the lady who was  
16 talking about her 15-year-old baby, did that  
17 occur last week?

18 A. It did.

19 Q. What day did that occur?

20 A. I believe it was Wednesday.

21 Q. Were you outside at --

22 A. I was.

23 Q. -- the time that the girl entered

1 into the clinic?

2 A. I was. And then I went inside.

3 Q. Where did they park?

4 A. They parked in the parking lot.

5 Q. Which entrance did they use?

6 A. They used the entrance on the

7 side. They were screamed -- screamed at.

8 Q. So they were using the side  
9 private entrance and not going on the public  
10 sidewalk?

11 A. That is correct. They had to  
12 cross the parking lot.

13 Q. So your objection to the activity  
14 that occurred with regard to that girl is that  
15 she was screamed at from the sidewalk; is that  
16 correct?

17 A. My objection to that is when you  
18 have got fifteen to twenty people standing two  
19 feet from you when you enter a medical -- when  
20 you get out of your car and enter a medical  
21 facility and are hit by that barrage, yeah,  
22 that is stressful and I object to that.

23 Q. But the private entrance from the

1 parking lot is not two feet from the sidewalk,  
2 is it?

3 A. She didn't park right by the  
4 private entrance. She parked across in the  
5 only place she had to park at the time. She  
6 had to cross the lot. She was actually parked  
7 close to the sign, right beside the sign, so  
8 it would have been on the corner of 17th and  
9 10th.

10 Q. Okay. And you say there were  
11 people on the sidewalk who -- what were they  
12 saying?

13 A. The same, kill your baby, take  
14 the information, be a woman, well man up, all  
15 of that.

16 Q. Okay. When people are staying on  
17 the opposite sidewalk from your business  
18 across the street, and now I'm just talking  
19 about not just the defendants, but just  
20 pro-life protesters out there, do they try to  
21 communicate with the girls who are coming to  
22 your clinic and who park in your parking lot?

23 A. Do they try to communicate?

1           Q.       Yes, do protesters across the  
2 street?

3           A.       Yes.

4           Q.       What do they do?

5           A.       Screaming, killing your baby.

6           Q.       The same thing that they said  
7 from the sidewalk last week?

8           A.       Yes. Except for when they were  
9 on the sidewalk, they were thrusting  
10 literature and come talk to us and let us do  
11 this.

12          Q.       Okay. Please tell me all the  
13 differences that being on your sidewalk makes  
14 and their behavior -- compare the behavior of  
15 the protesters when they are outside the  
16 buffer zone with what they were able to do  
17 last week that you object to. I mean one  
18 objection you have made is proximity. Is  
19 there anything else --

20          A.       It's the proximity.

21          Q.       -- that they are able to do,  
22 anything else that changes when they come  
23 across the street and they go inside the

1 buffer zone?

2 A. Oh, yes, because then they are  
3 right there. They can get in the driveway.  
4 They can stop the cars or attempt to stop the  
5 cars. They can impede the progress for the  
6 people coming down, but mostly it's proximity.

7 Q. Do you have any witnesses or  
8 evidence of any type whatsoever to support  
9 your claim that the defendants stopped cars  
10 going into your parking lot?

11 A. I don't know if I do or not.

12 Q. Do you have any witnesses or  
13 evidence of any type that any of the patients  
14 coming into your clinic were actually touched  
15 by any of the defendants?

16 A. I saw it myself.

17 Q. Tell me what you saw.

18 A. The patient that comes to mind  
19 was people ran after -- I don't know whether  
20 she parked on which side of the street, but  
21 she came in it from that -- from the 11th  
22 Avenue side so --

23 Q. Let me think for a minute. 11th

1 Avenue is up the hill?

2 A. Right.

3 Q. South of your clinic?

4 A. Yes. So she came --

5 Q. Down the hill?

6 A. If this is my entrance, she came  
7 down this way (indicating).

8 Q. Down the hill on the public  
9 sidewalk in front of your clinic?

10 A. Correct.

11 Q. All right.

12 A. So I have your people lined up  
13 here (indicating). It was -- it was not  
14 anything anybody did on purpose necessarily.  
15 It was -- it happened because there were too  
16 many people there, so they were jostled.  
17 There were two escorts with this patient and  
18 it was a plug (indicating). So that patient  
19 was in tears when she came in. I would have  
20 been in tears.

21 Q. Any other patients who may have  
22 been touched last week by defendants?

23 A. Not that I can think of.

1           Q.       Do you have any evidence that any  
2 witness or any type of evidence whatsoever  
3 that defendant Jeff White met with, conspired  
4 with, aided or abetted or participated with  
5 the police department of Birmingham to do  
6 anything?

7           A.       Not at this time.

8           Q.       Okay. Is the only defendant who,  
9 to your knowledge, met with a police officer  
10 defendant Terry Gensemer?

11          A.       I'm not sure even Terry Gensemer  
12 did.

13          Q.       Okay. Do you have a plan to find  
14 a witness to testify about the police  
15 department conspiracy?

16          A.       Absolutely.

17          Q.       Tell me what that plan is.

18                   MR. MORRO: I'm going to object.  
19 That is privileged.

20          Q.       Well, I'm not asking her any free  
21 communications between the two of you.

22          A.       I imagine there is subpoena  
23 power.

1 MR. MORRO: Talking to herself  
2 about it?

3 MR. EVANS: Well, I assume she is  
4 the client and makes decisions about what will  
5 be done and what won't be done. So given the  
6 fact that she is the client, she can tell us  
7 what she is going to do and what she is not  
8 going to do. She is directing the litigation.

9 MR. MORRO: You can answer.

10 A. Subpoena power.

11 Q. (BY MR. EVANS:) Okay. Who do  
12 you plan to subpoena?

13 A. Whomever, whomever needs to be  
14 subpoenaed, I mean --

15 Q. All right. I guess you plan to  
16 take deposition -- use subpoena and take  
17 depositions to see if you can obtain evidence  
18 of that?

19 A. I'm sorry, sir, tell me that  
20 again.

21 Q. I suppose what you mean is that  
22 you'll use the subpoena power to take  
23 depositions to try to find evidence about the

1 conspiracy?

2 MR. MORRO: I'm going to object.

3 A. Right.

4 Q. As long as we are in this area,  
5 when did you decide to file this action?

6 A. Almost immediately.

7 Q. On Wednesday?

8 A. When it became clear that the  
9 City was not going to enforce.

10 Q. When did you -- let me ask you  
11 this: Do you know any name of anything -- I  
12 mean, is there like a name for what occurred  
13 last week? Is there a project or a --

14 A. Travesty is what I call it.

15 Q. Okay.

16 MR. EVANS: If I laugh at your  
17 client's joke, are you going to put that on  
18 the record?

19 MR. MORRO: Well, some things are  
20 funny and some things aren't, that is all I  
21 can tell you. You laugh when you think you  
22 need to.

23 A. Do you mean do I know what the

1 name of the --

2 Q. Do you know if they had a  
3 particular name that they referred to it as,  
4 that gathering or anything?

5 A. It's possible that I saw it, but  
6 it didn't imprint itself.

7 Q. Okay. When did you first learn  
8 that the people planned to go on to the public  
9 sidewalk?

10 A. Tuesday afternoon.

11 Q. How did you learn that?

12 A. I was called to a meeting with  
13 Southside Precinct.

14 Q. And who placed the call to you?

15 A. I'm not sure.

16 Q. Who was present at the meeting?

17 A. Mr. Morro, myself and captain --

18 Q. Who was there from the police  
19 department?

20 A. Captain McCaskey.

21 Q. Okay. Who else?

22 A. Lieutenant -- a lieutenant and  
23 another -- at least one other person, I think.

1 Q. A lieutenant and one other  
2 person?

3 MR. MORRO: Lieutenant Doyle.

4 A. Doyle. Thank you.

5 MR. MORRO: Sergeant Echols and  
6 Agent Broussard with the FBI.

7 A. Oh, yeah.

8 MR. EVANS: How do you spell his  
9 name?

10 MR. MORRO: B-R-O-U-S-S-A-R-D, I  
11 believe.

12 Q. And what was said at that  
13 meeting?

14 A. That the next day began the --  
15 I'm not sure if siege was the right  
16 terminology, but protest in front of the  
17 clinic. And that there had been an agreement  
18 made that there would be no arrests unless it  
19 was a violent act and that incidents reports  
20 would be written and copies made for any  
21 violations and that warrants could be issued  
22 as well. The City would help with that.

23 Q. Who told you that? If it were

1 more than one person, just tell me that, too.

2 A. I believe it was Captain  
3 McCaskey.

4 Q. What was it about arrest  
5 warrants? Did I get that wrong or right,  
6 something about --

7 A. That warrants would then be  
8 issued, but that the police would not be  
9 making arrests unless it was violent.

10 Q. How would the arrest warrants be  
11 issued?

12 A. I would have to go get a warrant.  
13 They would issue an incident report and I  
14 would have to go get a warrant.

15 Q. How long did that meeting take  
16 place?

17 A. I'm really not sure. I left.

18 Q. Who was there when you left?

19 A. Everyone.

20 Q. Why did you leave?

21 A. I was angry.

22 Q. Pardon me?

23 A. I was angry.

1 Q. Okay. Who else did you talk to  
2 about that on that day, Tuesday?

3 A. With the City?

4 Q. Anybody, with your employees,  
5 with anybody. I am not specifically -- I'm  
6 specifically not asking you for communications  
7 directly between you and your lawyer if y'all  
8 were in private and there was no third party  
9 present. But other than those conversations,  
10 I want to know about any other conversations  
11 you had on Tuesday about this. I'm sure you  
12 probably talked with your employees when you  
13 got back.

14 A. I'm not sure I talked with them  
15 about it. I think I probably said some things  
16 in front of them. I called the Justice  
17 Department. I called NAF Security. I called  
18 people.

19 Q. Who did you call at the Justice  
20 Department?

21 A. What is her name, a beta --

22 Q. Pardon me?

23 A. I can't remember her name. I

1       talked with Bill Nolan.

2             Q.       Pardon me?

3             A.       Bill Nolan.

4                     MR. MORRO:  Bill Nolan,

5       N-O-L-A-N.

6             Q.       Who is he employed by?

7             A.       The Justice Department.

8             Q.       What is his position?

9             A.       He's an attorney.

10            Q.       Assistant U.S. attorney?

11                     MR. MORRO:  I think so.

12            Q.       How did you happen to talk with  
13       Mr. Nolan, did you know him before --

14            A.       Yes, I did.

15            Q.       -- or did somebody -- and how was  
16       it that you came to know him before last week?

17            A.       I can't recall.  Over the years  
18       we have had contact with a variety of people.

19            Q.       Was it in a business context

20       or --

21            A.       Yes.

22            Q.       -- social?

23            A.       Business.

1 Q. Had he been involved in any of  
2 the Chadwick case?

3 A. No.

4 Q. And what did you say to Mr. Nolan  
5 and what did he say to you?

6 A. Well, that would be -- is that  
7 attorney/client?

8 Q. No, it's not your attorney.

9 MR. MORRO: No, he's not your  
10 attorney.

11 A. Okay. It was simply relaying the  
12 information and what could the Justice  
13 Department do to help us.

14 Q. What did he say?

15 A. I don't know because I then  
16 handed the phone to my attorney.

17 Q. Pardon me?

18 A. I handed the phone to my  
19 attorney, so I don't know.

20 Q. Okay.

21 A. I guess he said he couldn't help.  
22 Since you were still out there, I guess he  
23 said he couldn't help me, but I don't know.

1 Q. Was the attorney you handed the  
2 phone to Scott?

3 A. Yes.

4 MR. GARMON: Is it M-O-R-R-O-W?

5 MR. MORRO: No.

6 MR. GARMON: Just O?

7 MR. MORRO: Yes.

8 Q. (BY MR. EVANS:) Who else did you  
9 talk with last Tuesday about this matter?

10 A. Reproductive Center For Law and  
11 Policy.

12 Q. Where are they located?

13 A. New York or D.C. I'm not sure.

14 Q. Did you talk with a lawyer there  
15 or someone else?

16 A. A lawyer, Michelle. I can't  
17 remember her last name.

18 Q. What were you seeking from them?

19 A. Help.

20 Q. Were they able to provide you  
21 with any help?

22 A. Not at -- no.

23 Q. Okay. Who else did you talk to

1 this last Tuesday?

2 A. National Abortion Federation,  
3 their security guy.

4 Q. What did you say to them?

5 A. We need help.

6 Q. What did they say?

7 A. Let me get on the phone.

8 Q. Pardon me?

9 A. Let me get on the phone.

10 Q. Did they provide any help?

11 A. No.

12 Q. Who is the person there that you  
13 spoke with?

14 A. Chris somebody.

15 Q. Did you ever hear anything back  
16 from them?

17 A. I think I talked to him the next  
18 day and it was his understanding the marshals  
19 were going to help us.

20 Q. Had he or his office spoken with  
21 the marshals?

22 A. I really don't know. That is  
23 what I gathered is he understood the marshals

1       were going to help.

2               Q.       Did he give you any reason why he  
3       understood that?

4               A.       No.

5               Q.       Did you or anybody else talk to  
6       the marshal service?

7               A.       I did not talk to them.

8               Q.       Do you know if anybody else did?

9               A.       My attorney may have. I don't  
10       know.

11              Q.       Did you or anybody on your behalf  
12       that you know of talk with the judge's office  
13       of the judge who has -- was the judge in the  
14       Chadwick case or who has currently been --

15              A.       No.

16              Q.       -- assigned the Chadwick case?

17              A.       No.

18              Q.       Did you send any papers to  
19       federal court?

20              A.       No.

21                      MR. MORRO:   Can we go off the  
22       record?

23                      MR. EVANS:   Yeah.

1 (Off-the-record discussion.)

2 MR. MORRO: I think from an  
3 e-mail to John, there is some cynical  
4 direction that we have gone in. And I will  
5 tell you everything that I did in an effort to  
6 try and get some clarification so we didn't  
7 have to be here today and sit here and spend  
8 all this money and fight, and I would be glad  
9 to express that to you. And if it's  
10 appropriate, I will do it on the record, I  
11 don't care.

12 MR. EVANS: Sure, go ahead.

13 MR. MORROW: Would you like it on  
14 the record?

15 MR. EVANS: I would.

16 MR. MORRO: That would be fine.

17 When we found out about the incident at 1:30  
18 on Tuesday, we were somewhat surprised and  
19 dumbfounded because it had been enforced for  
20 such a long period of time. The last large  
21 protest, there were tape put out, police  
22 presence, they enforced that particular buffer  
23 zone on that particular incident, and I think

1 that was July of '09. It was a very large  
2 protest. So it shocked us that the next day  
3 there was an attempt by somebody to  
4 purposefully violate the buffer zone. So you  
5 have heard testimony from Diane about what she  
6 tried to do.

7 In an effort to get clarification  
8 and because we felt like we needed to have  
9 some clarification by Judge Bowdre, I went  
10 over to federal court Tuesday afternoon  
11 ill-prepared with a notebook and I asked to  
12 speak to the Judge. I wanted -- or the clerk  
13 or somebody in that office, if it was  
14 appropriate for me to file something in  
15 handwritten, some motion clarification of who  
16 was going to enforce the order.

17 While I was there, Agent  
18 Broussard called me on the phone and told me  
19 to tell Diane not to jump off the cliff, that  
20 the U.S. Marshals would be enforcing the  
21 order, the Chadwick order, the buffer zone.

22 All right. It satisfied me that  
23 there was going to be some action taken by the

1 U.S. Marshal on the following day, which was  
2 Wednesday, so we took a wait and see --

3 MR. GARMON: Which marshal was  
4 this?

5 MR. MORRO: This was Agent  
6 Broussard with the FBI. He was not a marshal.  
7 He had spoken to somebody up his chain who had  
8 indicated to me that the U.S. Marshals --  
9 there must have been some discussion, you  
10 know, in the government. And so he related to  
11 me that we were going to get enforcement by  
12 the U.S. Marshals, that they decided it was  
13 their responsibility. That was related to me  
14 by Broussard. That satisfied me, I left the  
15 Court. And we said let's see what is going to  
16 occur on Wednesday morning.

17 We were prepared to allow the  
18 marshals to step in and enforce the order and  
19 we didn't know how, we didn't have it  
20 delineated, at least make whoever had come  
21 into the zone to go back across the street.  
22 That did not happen so that concerned us.

23 That is when we had to figure out

1     what are we going to do.  So that is when I  
2     got with John Graves and determined that, you  
3     know -- not that I was ill-equipped, but I  
4     needed some assistance.  He had experience  
5     there in federal court.  We talked and we  
6     decided that this -- we took the action that  
7     we took in state court as a nuisance  
8     violation.

9                   MR. GARMON:  Did you go back  
10    again to federal court or you just went  
11    straight to state?

12                   MR. MORRO:  No, we did not go to  
13    federal court, but that is something that  
14    we -- that is not discounted at this time.  
15    It's part of what we would like to accomplish  
16    because we know we need some definitions.

17                   So that action was taken in state  
18    court by John Graves while I was at the clinic  
19    really wearing two hats as security and, you  
20    know, attorney, so --

21                   MR. GARMON:  This was Thursday?

22                   MR. MORRO:  This was -- it would  
23    have been Thursday -- Wednesday, Thursday,

1 Friday, we are trying to accomplish --

2 MR. GARMON: So you are inside  
3 the clinic?

4 MR. MORRO: Well, I'm at the  
5 clinic. I'm in and out, but I'm on the  
6 property. I was there every day except for  
7 Friday, I could not be there. So I was there  
8 Wednesday, Thursday and Saturday.

9 John sought out the temporary  
10 restraining order and was able to secure that  
11 from the Judge. So that is how we got to  
12 where we are today.

13 MR. GARMON: Did y'all provide  
14 for the Judge the form order that he signed?

15 MR. MORRO: Yes, I think John --  
16 he was told to amend it. And I think what  
17 happened was the initial day that he went,  
18 which was Thursday, it was not sufficient for  
19 the Judge, to my knowledge, and it was an  
20 amended version and it took time to do that.  
21 So he went back Friday morning and I believe  
22 it's about 11:00 or something --

23 MR. EVANS: Right, 11:21.

1 MR. MORRO: The order was signed  
2 by a Judge. I wasn't privy to this because I  
3 was at family court dealing with something  
4 else. So the order was signed. And then at  
5 some point, I guess, it was given to the folks  
6 out there on Friday.

7 THE WITNESS: I did, yes, sir, I  
8 did. I did.

9 MR. MORRO: Just the TRO. There  
10 was copies made of the TRO.

11 MR. GARMON: The TRO was served?

12 THE WITNESS: I did it myself.

13 MR. MORRO: But the service of  
14 the actual packet --

15 MR. GARMON: Was Saturday.

16 MR. MORRO: Was Saturday --

17 MR. GARMON: By special --

18 MR. MORRO: -- by someone else.

19 MR. GARMON: I guess a special  
20 appointed --

21 MR. MORRO: Right. So that is  
22 the chronology of events that leads us to  
23 where we are today. And if that helps explain

1 to you what happened in that order, but that  
2 is what happened.

3 MR. EVANS: Did you ever see  
4 Judge Bowdre?

5 MR. MORRO: No. It was somebody  
6 that came down from her office and I told her  
7 what I wanted to do as far as is it  
8 appropriate to handwrite a motion or  
9 request -- but that is when I got the call.  
10 So while she was upstairs saying she had to go  
11 back up and get Judge Bowdre's clerk because  
12 she didn't really know what I was talking  
13 about. When I got the call, I told the person  
14 at the window would you please tell that  
15 particular person that she's upstairs trying  
16 to get Judge Bowdre's clerk, that I have got a  
17 call and I'm not necessarily needing to see  
18 them today, and so I left. And so that is it.

19 MR. EVANS: I'm going to throw  
20 out something that just popped into my head.  
21 I don't have authority to offer this and I'm  
22 not offering it, I'm just saying it because I  
23 have gotten to an age where if I don't say

1 things when I think of them, I may forget  
2 them. This may be a bad idea and really --  
3 based on what you just said, let me ask you  
4 this: Everybody may -- no other defendant may  
5 want to do this and I may not after 15 minutes  
6 and after talking to my client, but let me ask  
7 a question: If anybody was willing to do it,  
8 would you be willing to dismiss this state  
9 case without prejudice and submit a motion to  
10 hold our clients in contempt in federal court  
11 so that we have got a ruling from the Judge  
12 who actually issued the injunction? Because  
13 let me say why. There is -- I don't know if  
14 you have looked at the docket sheet in the  
15 federal case. I was in that case for a long  
16 time. There was a ton of work in that case,  
17 including hearings with testimony from various  
18 witnesses and it went on for years. And there  
19 is a huge institutional memory in that federal  
20 court file that informs the final wording of  
21 that order. I mean, it was written one way,  
22 it went up to the Eleventh Circuit Court of  
23 Appeals, they reversed parts of it, it went

1 back down and got put in final form. And so  
2 there is no place that we could as quickly and  
3 inexpensively get a ruling than in federal  
4 court.

5 MR. MORRO: Mike, the bottom line  
6 is this, you have two actions here, you have a  
7 federal order from a judge, an injunction that  
8 has been violated in our view that will have  
9 its day in court. But you also have a  
10 nuisance action, that if you read the history  
11 of the case, the very reason we got the  
12 injunction and Lucero got it in the first  
13 place was that the activity of the protesters  
14 was a nuisance, which is state based. So I  
15 guess we would say let's go to federal court  
16 as long as everyone agrees that they will not  
17 violate the federal injunction until such time  
18 as there is a reasonable argued case in  
19 front of Judge Bowdre for who falls under the  
20 injunction. If -- you know as well as I do  
21 the Pinto case with stipulated facts and it  
22 was stipulated that he was not acting in  
23 concert.

1 MR. EVANS: I know.

2 MR. MORRO: But the plain  
3 language of -- after reading it very closely  
4 and studying it in other cases, the plain  
5 language of it does include all protesters.  
6 So the answer to your question is no, unless  
7 everyone that is a part of these cases is  
8 going to abide by the injunction until we get  
9 a ruling from Bowdre.

10 MR. GARMON: Pending the ruling,  
11 that is all you are asking?

12 MR. MORRO: Yeah, because, you  
13 know, we got it dissolved -- it was dissolved  
14 by Ramsey Monday. And what happened,  
15 everybody ran back over to the clinic and went  
16 into the zone and really violated the -- I  
17 don't want to call it a gentleman's agreement,  
18 I wasn't there, but I think, you know, we have  
19 to know that people -- that protesters are  
20 going to abide by that buffer zone. And we  
21 don't know that as of today, so, you know --

22 MR. EVANS: But the state court  
23 action really doesn't mean that they are going

1 to abide by --

2 MR. MORRO: Well, I think Ramsey  
3 is going to decide Monday the validity of the  
4 TRO and whether he is going to give a  
5 permanent injunction based -- for your  
6 clients. Because while we have the Survivors  
7 in California, we have the other group, the  
8 holocaust folks -- I mean, the defense team,  
9 Mahoney, I don't know where they are from.

10 MR. EVANS: I --

11 MR. MORRO: We have Gensemer and  
12 his group local.

13 MR. EVANS: I will be surprised  
14 if he rules Monday because he indicated to  
15 John that we were entitled to our expedited  
16 discovery. And I have got ten paragraphs of  
17 documents that I have requested and we still  
18 don't have them.

19 MR. MORRO: And to marshal them  
20 up, to use his term, he has been running this  
21 particular case as far as the state court, and  
22 I would have to defer to whatever he says  
23 about preparing to get to you as soon as

1 possible.

2 MR. EVANS: I understand the  
3 difficulties.

4 MR. GARMON: Scott, it sounds  
5 like you want to know whether it applies to  
6 our clients, the injunction at the federal  
7 court level.

8 MR. MORRO: Sure.

9 MR. GARMON: So I can't  
10 understand, are you agreeing or not agreeing  
11 to go ahead and take it up to the federal  
12 court level?

13 MR. MORRO: Well, we are going  
14 to, but I can't say -- you know, that is going  
15 to happen, I don't know when, as soon as  
16 possible.

17 MR. EVANS: See, here is the  
18 problem I have got with the state court thing  
19 is we are being put to a preliminary  
20 injunction hearing on Monday, which my client  
21 wants to go forward with because he doesn't  
22 like having a lawsuit hanging over his head.  
23 But at the same time -- and I understand, and

1 I'm not criticizing John or you or your client  
2 for not having documents today, I realize it  
3 takes time to gather all the discovery.

4 At the same time, I am put in the  
5 position of trying to defend my client without  
6 documents that I am clearly entitled to have.  
7 And so the state court thing is a problem and  
8 I doubt that Judge Ramsey would find that  
9 given what he has said, that he would issue an  
10 injunction until we have had full and fair  
11 discovery.

12 MR. MORRO: I can't comment. I  
13 think the injunction is necessary and I think  
14 he will give it based on what is going to be  
15 presented. And, of course, if all you have  
16 are the photos we have brought today -- but I  
17 think even based on these photos today there  
18 is enough to show there is a problem.

19 MR. EVANS: It's not a question  
20 of whether or not you have got enough, it's a  
21 question of whether you have provided me with  
22 all of the exculpatory evidence that I am  
23 entitled to have to dispute the ones -- I mean

1 for all I know -- and I'm not a cynic and I'm  
2 not suggesting this is what has happened, but  
3 it could be the case in litigation that one  
4 party holds back everything that is harmful  
5 and gives only what helps to support their  
6 case and then says Judge, we have proven our  
7 case. Well, the Judge is not going to feel  
8 that that is a fair hearing.

9 MR. MORRO: Again, I can't speak  
10 to that process to the extent that I think I  
11 am knowledgeable. I was preoccupied and I  
12 think John is going to have to make that call,  
13 so I'm not really prepared to, you know,  
14 speak --

15 MR. EVANS: Is John going to be  
16 in a position to show -- like when I sent the  
17 e-mail agreeing to move the deposition back  
18 from Friday to accommodate his request --

19 MR. MORRO: Right.

20 MR. EVANS: -- I said I would do  
21 it on the condition that we met today and  
22 tomorrow at 2.

23 MR. MORRO: I saw that.

1 MR. EVANS: Okay. Are y'all  
2 going to have all the documents tomorrow?

3 MR. MORRO: I don't know, Mike.  
4 I don't know. That is something we will try  
5 to have as much as we can.

6 MR. EVANS: Let me float this,  
7 too. I have only instructions to go forward  
8 as hard and fast as I can, okay? At the same  
9 time, I'm realistic enough to know that I  
10 don't want to put my client to a hearing where  
11 there is a lot of evidence out there that I  
12 don't even get to see before we go up there  
13 and have a hearing. You know what I am  
14 saying? So it's conceivable if you are not  
15 going to have more documents tomorrow, let's  
16 talk tomorrow and see whether we want to talk  
17 about putting that hearing off for Monday.

18 MR. GARMON: I can't be there  
19 Monday anyway, I have got a trial docket call  
20 that I need to go up for. It's possible that  
21 I can get out of it, but --

22 MR. EVANS: He's got a murder  
23 defendant.

1 MR. MORRO: Diane is going to be  
2 out of town herself.

3 MR. GARMON: Not a murder, a --

4 MR. EVANS: And I want Diane at  
5 the hearing.

6 MR. MORRO: Sure.

7 THE WITNESS: I would like to be  
8 at the hearing.

9 MR. MORRO: But we still have the  
10 question of whether people are going to show  
11 up every day and stand in front of the  
12 clinic --

13 MR. EVANS: Let me say this, I  
14 don't have any control over that. I'm not --

15 MR. GARMON: Are you asking about  
16 our clients?

17 MR. EVANS: My client is out of  
18 the state until Sunday, I'll tell you that.

19 MR. MORRO: Let's finish the  
20 deposition because I don't want to miss Tim  
21 Lincecum and the first pitch for the World  
22 Series.

23 THE WITNESS: Can I ask a

1 question?

2 MR. MORRO: Hang on a second.

3 Let's just finish this with the intention that  
4 we will continue tomorrow.

5 MR. EVANS: Can we continue it  
6 right now?

7 MR. MORRO: That will be fine.

8 MR. EVANS: Can we stop right now  
9 and continue it here tomorrow at 2?

10 MR. MORRO: Can you be here  
11 tomorrow at 2?

12 THE WITNESS: Sure, that is fine.

13 MR. GARMON: I can't come back.  
14 Can we continue it until Friday?

15 MR. MORRO: Friday, I'm not going  
16 to be here.

17 MR. GARMON: No, okay. Scott,  
18 are you implying that if we can have -- and  
19 I'm not saying this is what our clients will  
20 do -- if we can have an agreement that they  
21 won't go back pending the federal court making  
22 a decision as to whether or not this  
23 injunction applies to our folks, are you

1       implying that you will dismiss the state court  
2       action; is that what you are saying?

3                   MR. MORRO:   Well, you know, I  
4       think --

5                   MR. EVANS:   Let me say this --

6                   MR. MORRO:   It's two different  
7       answers.

8                   MR. EVANS:   I know for a fact my  
9       client can't do it.  His client is in  
10      California so it's not a problem for his  
11      client to agree to that.

12                   THE WITNESS:   Right.

13                   MR. EVANS:   Terry Gensemer is  
14      going to be just like Jim Pinto was.  Jim  
15      Pinto would never tell me he wouldn't go back  
16      out there.  The most he would ever do is he  
17      would agree not to sue the clinic or the  
18      doctor for malicious prosecution, so he would  
19      sign a release, they would dismiss the case  
20      and everybody would go about their way.  
21      Sometimes he would go back and sometimes he  
22      wouldn't, and that is how Terry is going to  
23      be.

1 MR. MORRO: Trent, it's not clear  
2 yet to the extent that, you know, the  
3 allegations in the state court action are  
4 solid and firm and I think we can prove every  
5 single count. So to say that we dismiss it,  
6 it's too early right now. We have to do more  
7 discovery, so --

8 MR. EVANS: Well, you know, the  
9 suggestion was without prejudice.

10 MR. GARMON: Let me say this, we  
11 plan on bringing a counterclaim --

12 MR. MORRO: Sure.

13 MR. GARMON: -- or a separate  
14 count, a totally separate suit, which means  
15 that we would be suing you. I don't know if  
16 he has explained this part to you. Just like  
17 you have sued our folks for monetary damage,  
18 not just the injunctive, the same would happen  
19 back to you.

20 MR. MORRO: Right, that has been  
21 made clear.

22 MR. GARMON: Okay.

23 MR. MORRO: We have had some

1 discussions of that and we understand that  
2 that is a possibility. But, you know, I think  
3 at this time we are not ready to say to  
4 dismiss anything. Let's get with John  
5 tomorrow, we will get the documents together  
6 and I will discuss it with him and --

7 MR. EVANS: That sounds good.

8 MR. GARMON: 2:00 tomorrow.

9 MR. EVANS: Are we still on?

10 MR. GARMON: Do you plan on --  
11 because you have fictitious defendants, do you  
12 plan on naming AJ, the pastor that was out  
13 there?

14 MR. MORRO: We are going to name  
15 every single person that conspired to violate  
16 and create a nuisance.

17 MR. GARMON: Not that conspired,  
18 but that were in the buffer zone.

19 MR. MORRO: Well, yeah. I can  
20 understand your points of walking through and  
21 doing nothing. But, yeah, anybody that is  
22 acting in concert, conspired, violated  
23 knowingly, they are going to be named, sure.

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(Off-the-record discussion.)

(Whereupon, the deposition was adjourned, to  
be reconvened on October 28, 2010 at 2:00 p.m.  
as agreed to by counsel for the parties.)



1 using the Liturgy For the Preborn?

2 A. Not that I'm aware of.

3 Q. Are you familiar with the term  
4 "liturgy"?

5 A. I have heard the term "liturgy."

6 Q. Okay. What do you understand  
7 that means?

8 A. I don't know what that means.

9 Q. Okay. If I were to say that it  
10 usually means like a prayer service or a  
11 religious service where different people read  
12 different parts --

13 A. Okay.

14 Q. -- that is what I would be  
15 referring to when I say Liturgy For the  
16 Preborn, and specifically they would be  
17 reading the parts from that pamphlet that has  
18 been marked as Exhibit C.

19 My client tells me that he began  
20 holding prayer services outside your clinic --  
21 he may have been outside your clinic before  
22 expressing views about pro-life, but that  
23 about eight years ago he began engaging in

1 prayer services outside your clinic on a  
2 fairly regular basis, I don't know if it's  
3 once a month or something, but do you agree  
4 with that; would that be accurate?

5 A. Yes, across the street.

6 Q. Right.

7 A. Yes.

8 Q. And does eight years sound about  
9 right, that he has been having prayer services  
10 across the street from your clinic?

11 A. I don't really know.

12 Q. Once he began holding prayer  
13 services across the street from your clinic,  
14 did he engage in any other activities that you  
15 think are illegal or objectionable in any way?

16 A. Not that I know of.

17 Q. Okay. When you answered  
18 questions yesterday you said that you had  
19 served the temporary restraining on people on  
20 Thursday or Friday?

21 A. Friday.

22 Q. On Friday. At what time?

23 A. It was lunchtime.

1 Q. Okay. Do you recall who you  
2 served?

3 A. Yes. The blonde with glasses. I  
4 don't remember her name, Mr. Evans.

5 Q. Okay.

6 A. And then Jeff White. Because she  
7 called -- she called people and Jeff White  
8 came. Those two I know for sure.

9 Q. Okay. Did my client come?

10 A. Not that I am aware of.

11 Q. Okay. When did you serve  
12 Reverend Gensemer?

13 A. I personally did not serve  
14 Reverend Gensemer.

15 Q. Who handled the service for you?

16 A. I don't know who the process  
17 server was. I can't recall his name. I met  
18 him, but I don't know what his name is.

19 Q. Was he working for you or your  
20 attorney?

21 A. I guess that is one and the same,  
22 but --

23 Q. Well, did you make contact and

1 direct him as to what needs to be done or did  
2 someone else do that?

3 A. No, I did not.

4 Q. Do you know who did?

5 A. No. I would guess Scott did, but  
6 I don't know that.

7 Q. Did you see service when it took  
8 place?

9 A. Yes.

10 Q. At what time in the morning did  
11 that take place?

12 A. If I were to hazard a guess -- I  
13 would have to hazard a guess.

14 Q. Okay. Go ahead.

15 A. 8:30, 9:00 perhaps. I think your  
16 clients came around 8 to 8:30, and it was soon  
17 after that.

18 Q. Okay. What were the people doing  
19 at the time that they were served with your  
20 complaint?

21 A. They were standing across the  
22 street.

23 Q. Were they engaged in prayer or

1 preaching or singing, religious activities?

2 A. I really don't know.

3 Q. If I were to tell you that they  
4 were engaged in the performing the Liturgy For  
5 the Preborn and a religious service at the  
6 time that they were served, would you have any  
7 reason to dispute that?

8 A. No.

9 Q. Did you have any plan to  
10 specifically use the service of the complaint  
11 to interrupt the religious service of the  
12 defendants?

13 A. No.

14 Q. Did you bring any other documents  
15 with you today that you didn't have here  
16 yesterday?

17 A. No, I didn't.

18 Q. Have you tried to gather up any  
19 of the documents that I have requested?

20 A. I have got to get someone to get  
21 you the video because the sad state of affairs  
22 is I can't figure out how to do it myself.

23 Q. Have you asked anyone yet to get

1 the video?

2 A. I just haven't reached him. Left  
3 a message.

4 Q. All right.

5 MR. EVANS: John, may I see  
6 deposition Exhibit A?

7 MR. EDENS: (Indicating.)

8 Q. (BY MR. EVANS:) (Reviewing  
9 document.) I am looking now at Exhibit A to  
10 your deposition, which is the notice of  
11 deposition with the attached document request.  
12 And paragraph one requests all documents that  
13 support any of the allegations of plaintiff's  
14 complaint, including, without limitation,  
15 documents that would tend to support or  
16 contradict any of plaintiff's factual  
17 allegations and/or claims for damages. Okay.  
18 Have you discussed these -- the document  
19 request with your attorneys?

20 A. No, I haven't.

21 Q. Okay. Have you tried to acquire  
22 and bring with you the documents requested in  
23 paragraph one?

1           A.       Those were the videotapes that I  
2 was just referring to.

3           Q.       Are there any other documents  
4 that this describes that you can think of?

5           A.       No.

6           Q.       So you have no other still  
7 photographs?

8           A.       No. Not that I am aware of, no.

9           Q.       Have you inquired to see if there  
10 are any other photographs?

11          A.       I don't know who I would inquire  
12 that of.

13          Q.       Are there any records of  
14 telephone calls to and from you or anybody in  
15 your office to maybe the police, U.S. Marshal  
16 Service, FBI, any of the outfits that you  
17 talked about yesterday that you called? Are  
18 there any telephone records of those?

19          A.       I wouldn't think so.

20          Q.       Do you have any policy at your  
21 business that requires a log of security  
22 breaches or of incidents such as slips and  
23 falls or people breaking your window or any

1 kind of thing like that?

2 A. Would you expand on that a little  
3 bit more, you mean for myself?

4 Q. No, I really mean for your  
5 business. You know how like at a Wal-Mart  
6 they have got a policy that if somebody knocks  
7 down a box and it hits somebody on the head,  
8 there is going to be a report made of that and  
9 they are going to keep it in the ordinary  
10 course of their business; do you have any kind  
11 of policy in your business that you keep any  
12 kind of incident reports?

13 A. Not beyond something like a  
14 needle stick.

15 Q. Are there any reports generated  
16 by your business that have to do with the  
17 activities of the defendants in front of your  
18 property?

19 A. Repeat that for me again.

20 Q. Are there any business records at  
21 All Women's, Inc. that have to do in any way  
22 with the activities of the defendants in front  
23 of your property?

1           A.       From this past weekend, not that  
2 I am aware of. But let me follow up with a  
3 statement to your other question. There are  
4 times when we do make incident reports if  
5 something happens with one of the protesters  
6 that needs to be addressed.

7           Q.       What form do those incident  
8 reports take?

9           A.       It's not really a form. It could  
10 be X day Minzor said I'm dying, you will be  
11 dead in the morning.

12          Q.       Oh, that you are dying?

13          A.       (Witness nods head.)

14                   (Brief interruption.)

15                 MR. EVANS: Let's take a break  
16 since Trent just got here and bring him up to  
17 date about what we were talking about about  
18 continuing the hearing.

19                   (Short break taken.)

20          Q.       (BY MR. EVANS:) Ms. Derzis,  
21 before I ask you anything more, I want to go  
22 over the language of paragraph one of my  
23 document request in this deposition just to

1 make sure that you understand everything that  
2 I am asking you for so that we are clear.

3 My goal here is to find what all  
4 the evidence is that is out there so we can  
5 gather it so that everybody can put in the  
6 evidence they think supports their case.

7 It says here all documents that  
8 support any of the allegations of plaintiff's  
9 complaint. That means any of the factual  
10 statements that you made in the complaint --

11 A. Right.

12 Q. -- those are the allegations of  
13 your complaint, so I have asked for any  
14 documents, any evidence that either supports  
15 your statements or that would tend to disprove  
16 your statements, okay. You know, you may have  
17 some evidence out there that would support  
18 your statements that you plan to introduce at  
19 trial, I would want to see that before trial.  
20 Also, you may have evidence that would  
21 undercut your statement and would support my  
22 clients' defense, and I would also want to see  
23 that before trial, okay.

1           Do you know of any evidence that  
2 either supports or tends to disprove your  
3 allegations besides the still photos you have  
4 given us and the videos that you referred to?

5           A.       I would say possibly what I  
6 downloaded from the Internet.

7           Q.       Okay. Tell me about that.

8           A.       That would have been information  
9 transmitted by your clients.

10          Q.       Do you know from what website  
11 or --

12          A.       I don't. I will have to --

13          Q.       Okay. We will want to see that.  
14 Also, in that same paragraph I have asked for  
15 any evidence that would tend to either support  
16 your claim for damages or would tend to  
17 disprove your claim for damages, okay?

18          A.       Yes.

19          Q.       And so tell me what evidence that  
20 there is that you personally or All Women's,  
21 Inc. have suffered damages because of the  
22 activities of the defendants.

23          A.       Would you repeat that, Mr. Evans?

1 Q. Yes. Tell me all evidence that  
2 there is, to your knowledge, that would either  
3 tend to support your argument that you and the  
4 clinic have been damaged by the actions of the  
5 defendants or that would tend to disprove that  
6 claim.

7 A. In addition to what I have  
8 already told you?

9 Q. Yes.

10 A. I'm not sure what that would be  
11 at this point. I can't think of anything.

12 Q. Okay. Going back for a minute  
13 right before Mr. Garmon got here, you were  
14 talking about that you sometimes file incident  
15 reports or prepare incident reports when  
16 something happens with one of the protesters.  
17 Is that done pursuant to a written policy or  
18 procedure that --

19 A. No.

20 Q. -- your business has? What  
21 prompts you -- how do you determine when you  
22 are going to file an incident report and when  
23 you are not?

1 A. How egregious the statement is.

2 Q. Okay.

3 A. For instance --

4 Q. Who makes that determination?

5 A. I do.

6 Q. And who prepares the incident  
7 report?

8 A. I do.

9 Q. Do you have a particular notebook  
10 or computer file or place that you prepare it?

11 A. No.

12 Q. Are they all stored together in a  
13 particular place?

14 A. No.

15 Q. Where do they reside?

16 A. That is a good question.

17 Q. Do you send copies of them or the  
18 originals to somebody else?

19 A. Not unless I'm accumulating them  
20 for a reason, for a court case or for Officer  
21 Morro.

22 Q. Have you accumulated --

23 MR. MORRO: Ex-Officer Morro.

1           A.       I'm so sorry, Attorney Morro. I  
2 am going to start saying Scott.

3           Q.       Can you give me a couple of  
4 examples that you recall where you prepared  
5 incident reports?

6           A.       Don't let me confuse you either.  
7 They are not an orderly listing of an incident  
8 report format. It would simply be on X date  
9 such-and-such occurred. The one that comes to  
10 mind is on X date Minzor told one of my staff  
11 people that they would be dead within the  
12 week. You know, that is the kind of thing I  
13 would write down.

14          Q.       When is the most recent incident  
15 report that you have made?

16          A.       I'm not sure. I had one several  
17 months ago of someone who was skulking on the  
18 premises.

19          Q.       Did you ever determine who it  
20 was?

21          A.       I went to them and introduced  
22 myself to see who they were because this  
23 person was wandering around and around and

1 around and it was clearly something going on.

2 Q. Who was that?

3 A. It was a physician who had been  
4 urged to come pray in front of the building.  
5 And, you know, he was fine, but I wanted to  
6 know who he was and --

7 Q. Sure.

8 A. And so we were fine with that.

9 Q. Was any legal action taken  
10 against him?

11 A. Oh, no. I asked him -- I made  
12 him aware of the ordinance, he thanked me, and  
13 he came for a couple of more weeks and then he  
14 disappeared.

15 Q. Okay.

16 MR. GARMON: Could you clarify?

17 You said you made him aware of what?

18 A. The ordinance.

19 MR. GARMON: Define that for me.

20 A. The Chadwick order -- I'm so  
21 sorry, the Chadwick order.

22 MR. GARMON: Okay.

23 Q. (BY MR. EVANS:) Is it a fair

1 statement to say that whenever you feel that a  
2 life or safety is threatened that you make one  
3 of those written incident reports?

4 A. Yes. That would be one of the  
5 reasons.

6 Q. Looking now at paragraph two, I  
7 have asked for all documents -- and the word  
8 "documents" is much broader than documents, it  
9 really is any tangible item of evidence. It  
10 could be a computer file, audiotape, a  
11 videotape, just anything that you could  
12 produce in court as an item of evidence, that  
13 is what I mean when I say documents.

14 Paragraph two says all documents  
15 that would be reasonably expected to assist in  
16 identifying the fictitious defendants. Do you  
17 know what the term "fictitious defendants"  
18 means?

19 A. I do.

20 Q. And it goes on then to say in  
21 identifying the fictitious defendants or any  
22 potential witnesses who might be able to  
23 testify as to any contested issue in the

1 litigation. Okay. Do you know of any  
2 evidence that would help you identify the  
3 fictitious defendants?

4 A. No, I don't.

5 Q. Do you know of any evidence that  
6 would help identify any potential witnesses?

7 A. No, I don't.

8 Q. Number three, all documents  
9 related to any of the defendants, including  
10 the fictitious defendants, including video  
11 evidence, photographs, tape recordings,  
12 statements or any other documents of any type  
13 whatsoever. Do you have any of those  
14 documents? Have you produced them?

15 A. Those would be the same  
16 videotapes.

17 Q. Okay. Do you know of anything  
18 other than the photographs you have already  
19 produced and the videotapes you plan to  
20 produce that would fall within the scope of  
21 paragraph number three?

22 A. Not that I am aware of.

23 Q. Do you have any other still shots

1 of my client, Father Terry Gensemer?

2 A. Not that I am aware of.

3 Q. Do you have videotapes, still  
4 shots, tape recordings or any other type of  
5 evidence related to Father Terry Gensemer  
6 before last week?

7 A. Not that I'm aware of.

8 Q. Okay. Is there somewhere that  
9 you might be able to go and find out -- I  
10 mean, is it possible when you say "not that  
11 I'm aware of," is it possible that such would  
12 exist, but that you just wouldn't know about  
13 it right now?

14 A. It's possible Carol has some of  
15 those photographs. I don't keep those  
16 photographs. I mean, I have other things that  
17 require my attention besides that.

18 Q. Okay. I assume -- and your  
19 lawyer can correct me if I am wrong, but I  
20 assume that we will either be reconvening with  
21 more questions or at the very least you will  
22 be providing additional documents along pretty  
23 soon in this litigation. What I would request

1 of you is that you inquire of Carol Moore and  
2 anyone else who may have any of these  
3 documents that are requested in paragraphs one  
4 through ten, the exhibit to your deposition,  
5 okay?

6 A. Absolutely.

7 MR. MORRO: I will tell you that,  
8 I mean, we will try to get what we have to you  
9 Tuesday when John gets back. I have to confer  
10 with him. But there are years and years, like  
11 I have indicated to you before, of photographs  
12 and videos. And while she doesn't have  
13 knowledge of them now, as soon as they are  
14 made known or we have our hands on them, then  
15 we will get them to you for sure as soon as we  
16 have them.

17 MR. EVANS: Okay.

18 MR. MORRO: That is an ongoing  
19 process. Due to the speed of which this  
20 deposition took place and people being out of  
21 town, we just weren't able to get those  
22 together to present. We will try to do as  
23 much as we can at least by close of business

1 on Tuesday, because I don't think John comes  
2 back until Monday, and then the rest as soon  
3 as we get our hands on them.

4 MR. EVANS: Okay.

5 Q. (BY MR. EVANS:) Okay. Number  
6 four requests all your business records, tax  
7 returns, checking accounts, and other banking  
8 records and all records of bills and/or  
9 payments for goods or services by the  
10 plaintiff. At this point, I'm not going to  
11 disclaim or waive that paragraph. I will say  
12 the same thing I said yesterday, that  
13 primarily goes to lost -- claims of lost  
14 profit. And do you stand by your statement  
15 yesterday --

16 A. I do.

17 Q. -- that you are not claiming lost  
18 profits; is that correct?

19 A. That is correct.

20 Q. Okay. Thank you. That may help  
21 simplify and shorten things considerably.

22 Number five, all records  
23 identifying and/or relating to the names,

1 addresses and dates and times of employment of  
2 all employees, agents and contractors of the  
3 plaintiff. Okay. Let's take it a step at the  
4 time here. And let me just say this, at least  
5 one reason why I want this is because all of  
6 these people are potential witnesses, okay,  
7 and I want to identify and be able to depose  
8 all potential witnesses, okay. Are you  
9 prepared to provide to me all of the names of  
10 your employees, agents and contractors?

11 A. No, sir.

12 MR. MORRO: And, Mike, they are  
13 also potential targets, and it's sensitive,  
14 and unless we can get an order from the Judge  
15 about what to present to you and in what form  
16 and how that is going to be utilized -- but  
17 while you say they are potential witnesses,  
18 they are also potential targets.

19 MR. EDENS: Targets of?

20 MR. MORRO: Targets of fanatic  
21 protesters who do harm to clinic staff.

22 MR. EDENS: You can obviously ask  
23 for a protective order from Judge Ramsey.

1 MR. MORRO: Right, and I think we  
2 breached that yesterday and --

3 MR. EVANS: Were you here when I  
4 showed whoever the Lucero opinion from the  
5 11th Circuit?

6 MR. MORRO: Yeah, I was here.

7 MR. GARMON: And just as a  
8 practical question, how do your employees come  
9 in and out? There is not some secret tunnel  
10 to their car, is it? I mean, they are walking  
11 in and out every day, aren't they?

12 MR. MORRO: I'm going to object  
13 to the form.

14 A. They certainly are.

15 MR. GARMON: I'm just curious as  
16 to the reason that their identity would  
17 somehow open the door to extremists, which, of  
18 course, our clients are not, threatening them  
19 when their very presence there at the place of  
20 employment --

21 MR. MORRO: Object.

22 MR. GARMON: -- opens up who they  
23 are, if there was potentially going to be some

1 attack by some extremist, which, again, we are  
2 not included within that group, but I'm still  
3 not sure why --

4 MR. MORRO: I object. I think  
5 he's testifying now.

6 MR. GARMON: I'm questioning why  
7 you believe if there should be a protective  
8 order. We can argue it before the Judge.

9 MR. MORRO: We stated very  
10 clearly that they are potential targets --

11 MR. EDENS: Let me suggest  
12 between now and the status conference you  
13 draft up your proposed confidential order and  
14 pass it around for everybody to look over.  
15 The judges love when everybody agrees to  
16 everything.

17 MR. EVANS: That is a good idea,  
18 John.

19 MR. EDENS: Work on that in  
20 advance. I mean you are not going to give up  
21 anybody's name today anyway --

22 MR. MORRO: Right.

23 MR. EDENS: -- even if you knew

1       them all, so work on that protection side.

2                   MR. EVANS:   Yeah, that is a good  
3       idea.

4                   MR. GARMON:   How far back are you  
5       thinking as far as employment, five years,  
6       seven years?

7                   MR. EVANS:   I'm going to maybe  
8       two or three years.

9                   MR. GARMON:   Okay.

10                  MR. MORRO:   Can we go off the  
11       record for a second?

12                  MR. EVANS:   Sure.

13                               (Off-the-record discussion.)

14                  Q.       (BY MR. EVANS:)   Let me ask you,  
15       the things that you talked about in your  
16       complaint and the things that you have talked  
17       about here at your deposition basically  
18       started last week, on Wednesday of last week,  
19       and we basically have been talking about four  
20       days of activity.  Just so that I understand  
21       the scope of the wrongdoing that you are  
22       complaining of, is it limited to those four  
23       days?

1           A.       No, I would say it began on  
2       Tuesday --

3           Q.       Okay.

4           A.       -- with notification by Captain  
5       McCaskey that the City had agreed to let you  
6       and your clients violate the Chadwick order.

7           Q.       Okay. So the first day of  
8       wrongful activity you would be complaining of  
9       against these defendants is Tuesday of last  
10      week?

11          A.       That would be correct.

12                   MR. EVANS: Which is what date,  
13      somebody?

14                   MR. MORRO: The 22nd.

15          A.       No, 19th.

16          Q.       October 19th of 2010?

17          A.       Correct.

18          Q.       Okay. Back to the --

19                   MR. EDENS: Could I ask a  
20      question right quick?

21                   MR. EVANS: Sure.

22                   MR. EDENS: What you were saying  
23      about McCaskey, you faded out on me at the

1 end, I'm sorry.

2 A. That is okay.

3 MR. EDENS: You said the City had  
4 agreed what?

5 A. The City had agreed to not  
6 enforce the Chadwick order.

7 MR. EDENS: The who?

8 A. The federal injunction. We had  
9 agreed to term it that.

10 MR. EDENS: That is fine. I've  
11 got you. Thank you.

12 Q. (BY MR. EVANS:) Okay. Back to  
13 the boring task of going through the document  
14 request. Paragraph six, all records of  
15 prescription drugs that you have taken, we  
16 talked about that yesterday and you indicated  
17 that you would provide those at a later time,  
18 am I right?

19 A. I think I told you I would  
20 provide you with the therapist that I went to  
21 see.

22 MR. MORRO: I'm going to object.  
23 If we went over all this yesterday, Mike, is

1 it really necessary to do it today?

2 MR. EVANS: Well, I didn't go  
3 over it paragraph by paragraph yesterday. We  
4 just talked about that going on to something  
5 else.

6 MR. MORRO: Okay.

7 MR. EVANS: And, you know, that  
8 is only there to deal with the stress and  
9 mental anguish and that sort of thing. So if  
10 y'all were to decide next week that you wanted  
11 to focus on the legal stuff and leave that  
12 part out, it might avoid any relevancy for  
13 these documents.

14 Q. (BY MR. EVANS:) Number seven,  
15 all records related to the property used by  
16 the plaintiffs as a clinic, including deeds,  
17 leases, surveys and pictures. You don't have  
18 those today, but I'm requesting that you get  
19 those to your lawyer so they can get them to  
20 us so that we can have all that, okay?

21 Number eight, all documents which  
22 plaintiff has collected in support of this  
23 lawsuit and all documents plaintiff may use in

1 connection with this lawsuit. Do you have any  
2 documents so far, any evidence of any type you  
3 have collected for use in the lawsuit that you  
4 didn't present to us already?

5 A. Or that we didn't talk about  
6 already, not that I'm aware of.

7 Q. Okay. Number nine, all documents  
8 related to the case of Chadwick, including any  
9 papers you may have prepared or had prepared  
10 for you to file in that lawsuit which have not  
11 yet been filed. Do you have any motions or  
12 any papers?

13 A. Not that I am aware of.

14 Q. Number ten, all documents  
15 pertaining to plaintiff or your lawyers  
16 attempting to enforce the injunction in  
17 Chadwick against any of the defendants in this  
18 case. Does that make sense?

19 MR. MORRO: I'm going to object  
20 to the form.

21 Q. What I am asking for basically is  
22 if your attorneys have provided you with any  
23 papers that they were thinking about or may in

1 the future file in Chadwick, then I am  
2 requesting those.

3 A. They don't exist as far as I'm  
4 aware.

5 MR. EVANS: What time is it?

6 MR. MORRO: It is 3:15.

7 MR. EVANS: Can we take a short  
8 break?

9 MR. MORRO: Sure.

10 (Short break taken.)

11

12 EXAMINATION BY MR. GARMON, CONTINUING:

13 Q. When you talked with your  
14 attorney to file the complaint, did you have  
15 the opportunity to read through and agree, at  
16 least as best you can understand it, with the  
17 content?

18 A. Say that again. Did I read what  
19 they filed, is that what you are asking me?

20 Q. Well, did you agree to the  
21 substance of it?

22 A. Well, yes.

23 Q. Okay. And you know who I

1 represent?

2 A. Yes.

3 Q. Who is that?

4 A. You represent the Survivors and  
5 Jeff White.

6 Q. Okay. The nuisance claim that  
7 you have brought, explain to me how it is that  
8 Jeff White, within the public property buffer  
9 zone, was a nuisance.

10 MR. MORRO: Object to the form.

11 Q. You can still answer.

12 A. Within the public property buffer  
13 zone, I don't understand that terminology.

14 Q. Well, the property that is  
15 considered to be a buffer zone is owned by the  
16 City, isn't it?

17 MR. MORRO: Object to the form.

18 Q. Is it owned by the City?

19 A. Yes.

20 Q. Is the City a public entity?

21 A. Yes.

22 Q. Will you understand if you ask  
23 you in questioning about a public property

1 buffer zone that I am referring to the  
2 Chadwick buffer zone that is specifically for  
3 certain defendants, will you understand that?

4 A. If you tell me that is what you  
5 are talking about.

6 Q. Okay. Where this public property  
7 buffer zone is located, how far is that from  
8 where you placed your radio?

9 A. I don't have any idea.

10 Q. Would you say that it was five  
11 feet?

12 A. From -- you are going to have to  
13 be more specific. Are you talking about the  
14 radio to the beginning of the buffer zone?

15 Q. Exactly. The ending of your  
16 private property to the beginning of the  
17 public property buffer zone. How many feet  
18 was that?

19 A. I don't know.

20 Q. Okay. Would it be over ten?

21 A. I believe so.

22 Q. Over ten, okay.

23 A. I believe so.

1 Q. So when we look at pictures, a  
2 reasonable evaluation would say probably  
3 seven, maybe ten or more?

4 A. I would say it's over ten.

5 MR. MORRO: Object to the form.

6 Q. Okay. Do you have any awareness  
7 as to a noise ordinance for the city of  
8 Birmingham?

9 MR. MORRO: You've got to be  
10 kidding.

11 A. I believe there is a noise  
12 ordinance, yes.

13 Q. If there were officers who said  
14 that you had breached that noise ordinance  
15 through the playing of your radio, would you  
16 deny that you had a control over the radio?

17 MR. MORRO: Object to the form.

18 A. I don't always have control of  
19 the radio.

20 Q. Is that your property?

21 A. It is, but I am not always out  
22 there.

23 Q. Did you or someone at your

1 discretion put the radio outside?

2 A. When are you referring to?

3 Q. The date that the video will  
4 indicate a radio was placed outside and was  
5 turned up either to the max level or --

6 A. Last week.

7 Q. Last week, uh-huh.

8 A. Yes.

9 Q. I think we have stipulated to  
10 this four-day period.

11 MR. MORRO: Not necessarily  
12 because there is a Monday that they violated  
13 as well, so we haven't stipulated anything  
14 yet.

15 Q. How many days did you put the  
16 radio outside?

17 A. The radio is outside virtually  
18 every day, sir.

19 Q. Every day?

20 A. Virtually.

21 Q. How loud will the radio turn up  
22 to use? Do you have any awareness of the  
23 decibels?

1 MR. MORRO: Object to the form.

2 A. No.

3 Q. Do you turn it up as loud as it  
4 will go sometimes when you put it outside?

5 A. I do.

6 Q. Which way do you face the radio?

7 A. It faces towards the street.

8 Q. Towards the street, towards the  
9 public property buffer zone?

10 A. Towards, yes.

11 Q. And is that where Jeff White and  
12 the Survivors would have been?

13 A. At some points, yes.

14 Q. In your first count, you brought  
15 a nuisance action against them. Could you  
16 explain to me why you brought it against Jeff  
17 White?

18 A. Because he was a member of the  
19 group that was in front of the clinic in  
20 violation of the federal order.

21 Q. If you were to be told that the  
22 interpreter of the federal order said it only  
23 went to named defendants, would you dismiss

1 the nuisance claim?

2 MR. MORRO: Object to the form.

3 A. Would you repeat your question,  
4 sir?

5 Q. Who interprets the federal order  
6 as to who it applies to?

7 MR. MORRO: Object to the form.

8 MR. GARMON: How?

9 MR. MORRO: You are asking her  
10 questions that have to do with law. She  
11 doesn't know the answers to questions that  
12 have to do with law.

13 MR. GARMON: She is coming in  
14 trying to be the interpreter because she has  
15 brought a suit against everybody that possibly  
16 could be a pro-lifer. That is not a question  
17 of law, it's a question of fact. It's a  
18 question of these people who are in the buffer  
19 zone, you are alleging, in fact, breached it.

20 Q. (BY MR. GARMON:) So I am just  
21 asking you: Who do you think should properly  
22 interpret the buffer zone?

23 A. I would say that would be law

1 enforcement.

2 Q. Okay.

3 A. Judges.

4 Q. Well, there is a difference  
5 there.

6 A. No, there is an apostrophe, law  
7 enforcement, judges.

8 Q. Law enforcement and/or judges?

9 A. Correct.

10 Q. Okay. Back to the nuisance  
11 claim. If you had an officer that were to  
12 testify that you, in fact, breached a city  
13 ordinance, would you agree or disagree with  
14 that?

15 MR. MORRO: Object to the form.

16 Q. Do you believe that you, through  
17 having your radio blaring towards the public  
18 property buffer zone, breached a city  
19 ordinance?

20 MR. MORRO: Object to the form.

21 A. No, I don't.

22 Q. Okay. In count two, you have  
23 alleged trespass and you have said that this

1 is against fictitious defendants and that  
2 because of it you sustained injury and  
3 damages. Would the videography specifically  
4 show us times in which Jeff White trespassed  
5 on your private property?

6 MR. MORRO: Object to the form.

7 A. I don't know if it would or not.

8 Q. Have any of the Survivors  
9 trespassed on your property?

10 MR. MORRO: Object to the form.

11 A. There were trespasses on my  
12 property when people reached across to hand  
13 off literature onto my property.

14 Q. In count three, you have brought  
15 a negligence claim and a wantonness claim as  
16 well. In your opinion, how was Jeff White  
17 negligent?

18 A. He willfully violated a federal  
19 court order. He stood and harassed my  
20 patients, my staff. He was part of the group.

21 MR. EDENS: He what?

22 A. He was part of the group.

23 Q. If you on behalf of New Women

1       were advised that they had not breached the  
2       public property buffer zone, would you be  
3       willing to drop the negligence and wantonness  
4       claim?

5                   MR. MORRO: Object to the form.

6           A.       I'm not sure I understand your  
7       question.

8           Q.       If you were advised by the city  
9       officials, because you brought up law  
10      enforcement and you brought up the judicial  
11      branch, that those two had made the  
12      determination that the buffer zone did not  
13      apply to my clients, the public property  
14      buffer zone, would you drop the negligence  
15      claim?

16          A.       No.

17                   MR. MORRO: Object.

18          A.       No. I don't know who advised you  
19      that you were not in violation of the federal  
20      court order, but that is the basis of this  
21      suit.

22          Q.       Yesterday we talked about your  
23      weed eating.

1           A.       My what, sir?

2           Q.       Weed eating.  You were outside,  
3           and naturally when you weed eat, it becomes a  
4           hazard to those who are --

5                   MR. MORRO:  Object to the form.

6           Q.       Can weed eating be a hazard to  
7           people that are within a proximity of you  
8           generally?

9                   MR. MORRO:  Object to the form.

10          A.       Are you asking me if it can?

11          Q.       Uh-huh.

12          A.       I don't know.

13          Q.       I'm asking you if Scott were to  
14          take you outside and we have got a little  
15          patch of grass and he were to start weed  
16          eating and we would require you to stand three  
17          feet in front of where he is weed eating, is  
18          that an unsafe distance for you?

19                   MR. MORRO:  Object to the form.

20          A.       If you made me stand there?

21          Q.       Or if he went with the intent to  
22          make you move?

23                   MR. MORRO:  Object to the form.

1 A. I would probably move.

2 Q. Okay. Could that at all be  
3 considered a negligent act?

4 MR. MORRO: Object to the form.

5 A. I don't know.

6 Q. It probably would be a wanton  
7 act, wouldn't it?

8 MR. MORRO: Object to the form.

9 A. I don't know.

10 Q. Did you, in fact, take your weed  
11 eater out with the intent to sling debris  
12 towards the protesters who were in the public  
13 property buffer zone?

14 MR. MORRO: Object to the form.

15 A. Absolutely not.

16 Q. You did not?

17 A. No.

18 Q. In count four, you have brought a  
19 civil conspiracy claim. Are you alleging that  
20 there is proof that Jeff White or any agent  
21 for the Survivors met with any representatives  
22 from the City of Birmingham?

23 A. Jeff White or any agent, is that

1 what you said?

2 Q. Let's just go with Jeff White so  
3 we can keep it simple. Are you alleging that  
4 Jeff White met with any representatives for  
5 the City of Birmingham?

6 A. I don't know whether that  
7 happened or not.

8 Q. Will you then exclude him from  
9 this count, if you don't know whether that  
10 happened?

11 A. No. He was part of the whole  
12 group of people.

13 Q. Okay. What about the Survivors  
14 as a group, you are also including them in  
15 the, quote, people that you are mentioning as  
16 having met with the City of Birmingham agents?

17 A. You said "agents" again. Do you  
18 mean --

19 Q. Well, agents is a legal term to  
20 mean an employee or someone who would be able  
21 to act on behalf of an entity. Generally if  
22 you are an individual, you act on your own  
23 behalf, but you could be vested with

1 authority. So are you alleging that members  
2 of the Survivors, because I represent the  
3 Survivors and I represent Jeff White, that  
4 members of the Survivors met with and  
5 conspired with agents, law enforcement agents,  
6 attorneys with the City of Birmingham, yes or  
7 no?

8 A. I don't know if the members of  
9 the Survivors did or not.

10 Q. Okay. How many days in a  
11 two-week period is it that you go out and weed  
12 eat your grass?

13 A. That depends on how much rain is  
14 there. You know, during the summertime,  
15 sometimes I did it every week.

16 Q. Prior to weed eating during this  
17 four-day incident, how long had it been since  
18 you had been out there?

19 MR. MORRO: I'm going to object.  
20 I believe we went over this yesterday.

21 MR. GARMON: She didn't tell me  
22 when she had been out there last.

23 A. I'm sorry, say that again to me.

1           Q.       In your mind, was it necessary to  
2 go out during the time periods that the  
3 protesters chose to be within the public  
4 property buffer zone and weed eat?

5           A.       Yes, it was.

6           Q.       It didn't create a negligent  
7 situation?

8           A.       It had to be done because I saw  
9 it on the news and I saw the scraggly grass.  
10 I have a duty to keep that trimmed, a duty  
11 from the City.

12          Q.       Okay. Did you warn those who are  
13 outside that you were about to weed eat?

14          A.       I began by weed eating my own  
15 front yard.

16          Q.       Yes or no, did you warn those  
17 verbally who were outside that you were about  
18 to start weed eating --

19          A.       I didn't --

20          Q.       -- because there were children  
21 present?

22          A.       -- make a verbal warning, no.

23          Q.       Would you deny, if we had people

1       testify that they were hit by rocks when you  
2       took this weed eater outside without warning  
3       them and started to weed eat pointing it at  
4       the protesters?

5                   MR. MORRO: Object to the form.

6           A.       I'm not aware of anyone being hit  
7       by rocks.

8           Q.       Okay. If we presented witnesses  
9       that said they were hit by rocks, is it  
10      possible that they were caused by your weed  
11      eating?

12          A.       I didn't hear what you just said.  
13      Was that the whole question?

14          Q.       The whole question, it's a yes or  
15      no.

16          A.       Say it again.

17          Q.       If we presented to you witnesses  
18      and they acknowledge that they, in fact, had  
19      been hit by debris because you were outside  
20      weed eating without notice and pointing it in  
21      their direction, would you deny that?

22          A.       I wouldn't deny that, no.

23          Q.       Okay.

1 MR. GARMON: Scott, we would like  
2 to know, too --

3 Q. You testified Wednesday and  
4 Saturday, is that the abort days?

5 MR. MORRO: I object to the form  
6 of that question.

7 Q. Okay. Wednesday and Saturday, is  
8 that the days that the doctors visit to remove  
9 the fetus from the womb of your patients?

10 MR. MORRO: Object to the form.

11 A. That is the day last week when we  
12 did abortions.

13 Q. You performed -- or your doctors  
14 at your direction removed fetuses on Wednesday  
15 and Saturday?

16 A. I just answered your question.

17 Q. So you are affirming your last  
18 answer that that is, in fact, the days that  
19 the doctors came at your direction, yes?

20 A. No, I didn't say that at all. I  
21 didn't say at my direction the doctors came.  
22 I said on those two days we did abortions.

23 Q. Is there another agent within

1 your office that schedules doctors to come in  
2 and out? Who schedules the medical personnel  
3 that performs the abortions of the fetuses?

4 A. The physicians schedule it, sir.

5 Q. They schedule themselves?

6 A. Correct.

7 Q. Do you allow them or are you able  
8 to, if they schedule a time to come in,  
9 prohibit them from coming in? Can you change  
10 the days?

11 A. Can I change the days?

12 Q. Days and time periods?

13 A. It depends on the physician's  
14 schedule.

15 Q. Okay. Because you have alleged  
16 that we have interfered with your ingress and  
17 egress. Now, as part of that, you are going  
18 to need to prove to us a patient flow in and  
19 out. And I would like to know how many  
20 patients per day on average for the past three  
21 to five years would you say have come in and  
22 out of your clinic?

23 A. (Witness shakes head.)

1 Q. Is it ten, is it twenty?

2 A. There is not an answer to that  
3 question.

4 Q. There is not a way that you can  
5 document how many people have come in and out  
6 of your clinic?

7 A. I'm not sure what you are asking  
8 me.

9 Q. We have requested from you  
10 documentation for your intake form and on that  
11 intake form, you gave us a first initial and a  
12 last initial for the past two years of all the  
13 people that have come in your clinic during  
14 business operations.

15 A. No. First of all, you have not  
16 requested that.

17 Q. No, could we request it?

18 MR. EVANS: Excuse me, I believe  
19 we have.

20 Q. Okay. So you can produce that?  
21 Because you said there is no way to know how  
22 many people have come in and out. But, in  
23 fact, there is, is there not?

1 THE WITNESS: Can I ask you a  
2 question?

3 MR. MORRO: Sure. You want to  
4 take a break?

5 MR. GARMON: If you want to take  
6 a break, we have got a back room back there.

7 (Short break taken.)

8 Q. (BY MR. GARMON:) Where are you  
9 from originally?

10 A. Virginia.

11 Q. What part?

12 A. Shenandoah Valley around  
13 Harrisonburg.

14 Q. I'm not sure where that is.

15 A. Forty-five minutes from  
16 Charlottesville.

17 Q. Okay, yeah. Have you ever been a  
18 part of a protest?

19 A. Have I been a part of a protest?

20 Q. Protest, parade for a specific  
21 viewpoint, anything like that?

22 A. Yes.

23 Q. What did that involve?

1 A. Marching in a parade.

2 Q. What was the stance, was it  
3 for --

4 A. Abortion rights.

5 Q. Abortion rights.

6 A. Gay rights.

7 Q. Okay.

8 A. I think those were the only two.

9 Q. Okay. Where was the abortion  
10 rights parade?

11 A. Washington, D.C.

12 Q. In D.C., okay. Where did you  
13 march?

14 A. Around the capital, I think, to  
15 the White House from the monument. Probably  
16 the normal parade route in Washington.

17 Q. Were you aware of public property  
18 buffer zones?

19 A. Was I aware of it, no.

20 Q. Did you check before you went  
21 through your route if there were any public  
22 property buffer zones?

23 A. No. I was with a group of

1 people.

2 Q. Did you check to see if any of  
3 the agents or leaders had inquired as to  
4 public property buffer zones?

5 A. No, I didn't.

6 Q. So you just marched with a group?

7 A. I did.

8 Q. Did you ever step foot on a  
9 business that you didn't patron?

10 A. No.

11 Q. So if you are walking down the  
12 sidewalk, you never stepped foot on the  
13 entranceway of something, congregated and  
14 talked to somebody and moved on, did you?

15 A. We weren't marching on the  
16 sidewalk.

17 Q. Marching on the street?

18 A. Correct.

19 Q. When you were marching, were you  
20 chanting anything?

21 A. Probably so.

22 Q. Do you remember what it was?

23 MR. MORRO: Can we go off the

1 record?

2 (Off-the-record discussion.)

3 Q. (BY MR. GARMON:) What was the  
4 second viewpoint that you said that you  
5 have --

6 A. Gay rights.

7 Q. -- demonstrated? Gay rights,  
8 okay. Do you have friends that are  
9 homosexuals?

10 A. I do.

11 Q. Are you a homosexual?

12 A. I'm not.

13 MR. MORRO: Object to the form.

14 Q. But you strongly believe that  
15 it's constitutionally provided that people can  
16 stand for their particular viewpoints on  
17 public property?

18 MR. MORRO: Object to the form.

19 A. I do.

20 Q. If someone inhibited that, would  
21 you consider that a nuisance?

22 A. I don't know.

23 Q. If someone sued you for doing it,

1 would you consider that malicious prosecution?

2 MR. MORRO: Object to the form.

3 A. If someone sued me for what?

4 Q. For demonstrating on public  
5 property, one of your First Amendment rights?

6 MR. MORRO: Object to the form.

7 A. I don't know.

8 Q. You don't know?

9 A. I don't know what context that  
10 would happen in, so I don't know.

11 Q. Well, if you got sued for being  
12 up in D.C. because you had walked across a  
13 sidewalk in front of a merchant and they sued  
14 you, would you believe that that was an  
15 infringement on your rights?

16 MR. MORRO: Object to the form.

17 A. If I went to Washington, D.C.  
18 specifically to break an injunction, then I  
19 would know that would be a possibility.

20 Q. That, of course, assumes that you  
21 had an injunction against you, right?

22 MR. MORRO: Object to the form.

23 Q. What are your normal business

1 hours?

2 A. 8 to 5.

3 Q. After 5:00, are there patrons  
4 from other businesses that park in your lot?

5 A. After 5:00?

6 Q. Yeah.

7 A. Al's, yes.

8 Q. Al's parks in your lot?

9 A. Yes.

10 Q. Does anybody that patrons Al's  
11 park in your lot before 5:00?

12 A. They might.

13 Q. Have you ever brought a trespass  
14 action for anybody that has parked in your  
15 parking lot before 5:00?

16 A. They are asked to leave or their  
17 car might be towed.

18 Q. Have you brought a trespass  
19 action for anybody that has parked in your  
20 parking lot before 5:00?

21 A. No.

22 MR. GARMON: Let's take a break,  
23 Mike, is that cool?

1 MR. EVANS: Sure.

2 (Short break taken.)

3 Q. (BY MR. GARMON:) Paragraph ten  
4 of your complaint, you allege that these said  
5 actions have been carefully planned and  
6 calculated and done with the intent to harm  
7 the business operations of the plaintiff. The  
8 actions you are referring to, are those the  
9 protesters being within the public property  
10 buffer zone?

11 A. Correct.

12 Q. When you say carefully calculated  
13 and planned, you include that to cover your  
14 negligence claim, do you not?

15 A. I don't know.

16 Q. Did they plan and calculate to  
17 wantonly and/or negligently enter into the  
18 buffer zone?

19 A. That is our contention, yes.

20 Q. Did you plan or calculate to  
21 intentionally sling debris towards protesters  
22 with your weed eater?

23 A. No, I did not.

1 Q. So if we brought a counterclaim  
2 under negligence for damages to children and  
3 individuals, you don't think it would be  
4 considered carefully planned and calculated?

5 A. I don't know.

6 MR. MORRO: Object to the form.

7 Q. When you were weed eating outside  
8 and slinging debris, how many individuals do  
9 you think were present that had to move?

10 A. How many individuals had to move?

11 Q. Uh-huh.

12 A. Are you asking me how many were  
13 out there?

14 Q. If that will make it easier for  
15 you, how many were out there?

16 A. I would have to look and see.

17 Q. Was it over ten?

18 A. I was thinking eleven maybe.

19 Q. Eleven?

20 A. Fifteen.

21 Q. Congregated in different areas?

22 A. On the sidewalk and on the --  
23 yes.

1 Q. Of those, we will say fifteen, is  
2 that fair, or do you want to go with eleven?

3 A. Somewhere in that vicinity.

4 Q. Of the eleven to fifteen people,  
5 how many of them had to move because you were  
6 weed eating?

7 A. I don't know.

8 Q. How many of them do you believe  
9 were struck by debris from your weed eating?

10 A. I don't think anyone was struck.

11 Q. How many children do you think  
12 were out there among that eleven to fifteen?

13 A. I don't think I saw any children  
14 out there.

15 Q. Do you have an agreement with  
16 Al's that he would not consider the playing of  
17 your radio to be a nuisance if it breaches the  
18 City statute?

19 MR. MORRO: Object to the form.

20 A. No.

21 Q. Do you have an agreement with the  
22 bookstore that is behind you that your radio  
23 can be played above the noise ordinance?

1 MR. MORRO: Object to the form.

2 A. No.

3 Q. Have you learned or been told by  
4 a police officer that during this four-day  
5 period that your radio was breaching the noise  
6 ordinance?

7 A. No.

8 MR. MORRO: Object to the form.  
9 Can we go off the record?

10 MR. GARMON: Uh-huh.

11 (Off-the-record discussion.)

12 Q. (BY MR. GARMON:) Let me rephrase  
13 my question for you. Instead of using the  
14 City ordinance, because it's not normal for  
15 someone to check the ordinance itself --

16 MR. MORRO: I'm going to object  
17 to the form of that.

18 Q. Okay. Do you believe that the  
19 playing of your radio and turning it towards  
20 the protesters could be considered a nuisance?

21 A. No, I don't.

22 Q. Did you intend to annoy them?

23 A. To what?

1 Q. Did you intend to annoy them with  
2 your radio?

3 A. To annoy them?

4 Q. Uh-huh.

5 A. Not necessarily.

6 Q. Did you intend to deter them?

7 A. I intended to listen to music  
8 instead of your clients. That is why I had  
9 the radio on.

10 Q. The radio was facing away from  
11 the clinic. If the videography report  
12 indicates the radio was facing away from the  
13 clinic --

14 A. I understand that.

15 Q. -- are you telling me it's normal  
16 for you to blare a radio away from where you  
17 are?

18 A. That is how it always sits.

19 Q. Is facing the street?

20 A. Well, I wouldn't want to face a  
21 rock wall.

22 Q. So your testimony today is that  
23 on your private property, you normally place a

1 radio outside that faces the street?

2 A. Yes, sir.

3 Q. Do you normally turn that radio  
4 up as loud as it will go?

5 A. Yes, sir.

6 Q. It was turned up on that day?  
7 Was it turned up on that day?

8 A. It had varying volumes on that  
9 day so I don't know whether it was turned up  
10 as loud as it goes.

11 Q. As we get into the video, will we  
12 find any times that you are yelling at  
13 protesters?

14 A. Possibly -- probably.

15 Q. Now, part of your claim is for  
16 nuisance because they are exercising what they  
17 believe is a First Amendment right; is that  
18 correct?

19 MR. MORRO: Object to the form.

20 MR. GARMON: Scott, you are going  
21 to object to every form I have.

22 MR. MORRO: Well --

23 MR. GARMON: Have we not

1 stipulated?

2 MR. MORRO: We have, but --

3 MR. GARMON: There is no reason  
4 to object then.

5 MR. MORRO: Well, to the form  
6 there is.

7 MR. EDENS: Just ask it another  
8 way.

9 A. Would you ask me the question  
10 again?

11 Q. (BY MR. GARMON:) In your  
12 complaint, the praying and the public exercise  
13 of free speech to you is considered a  
14 nuisance; is that correct?

15 MR. MORRO: Object to the form.

16 A. Where your clients were standing  
17 within the buffer zone.

18 Q. That is the nuisance?

19 A. Is the nuisance. The harassment  
20 of patients, the harassment of staff.

21 Q. Okay. Can I ask you on that?

22 A. Yes.

23 Q. So what do you think the video

1 will reveal as far as harassment to the staff?

2 A. Yelling at the staff.

3 Q. They were yelling at the staff?

4 A. Is that what you are asking me?

5 Q. Uh-huh. Yes.

6 A. Yes.

7 Q. Who yelled at the staff?

8 A. I don't know.

9 Q. What about the patients, were  
10 they yelling at the patients?

11 A. Yes, they were.

12 Q. Okay. What were they yelling?

13 A. Numerous things ranging from your  
14 client, Jeff White, haranguing a Hispanic man  
15 sitting in his car on the lot for a good ten  
16 minutes, haranguing him "be a man," "man up,"  
17 those types of things.

18 Q. What did you yell at them?

19 A. I did. I tried to drown that  
20 out. That poor man was in his car with a baby  
21 and the car was running.

22 Q. You said with a baby?

23 A. With a baby.

1 Q. Okay. Was this an aborted baby  
2 or he had a live baby?

3 MR. MORRO: Object to the form.

4 Q. Describe what you consider to be  
5 a baby.

6 A. I consider a child in his car a  
7 baby.

8 Q. Okay.

9 A. Was in the car with him.

10 Q. It wasn't an employee that would  
11 be carrying out fetuses --

12 MR. MORRO: I'm going to have to  
13 at this point go on record and say that we are  
14 about to terminate this deposition.

15 MR. GARMON: If you need to  
16 terminate it, we can, I'm just asking her --

17 MR. MORRO: I'm going to put on  
18 the record that we are not going to be  
19 argumentative, we are not going to be  
20 ridiculous in the questioning by Mr. Garmon --

21 MR. GARMON: That is what --

22 MR. MORRO: -- to insinuate in  
23 any way that there would be an aborted fetus

1 in the parking lot of an abortion clinic  
2 inside of a vehicle.

3 MR. GARMON: She has just  
4 testified that her employees were harassed.  
5 It's reasonable to assume that someone, even a  
6 Hispanic man, possibly could be a driver for a  
7 medical entity that carries off aborted  
8 fetuses. I'm asking her what situation this  
9 context --

10 MR. MORRO: And I think it's  
11 deteriorated into being argumentative and  
12 ridiculous and we will just terminate it now.

13 MR. GARMON: Okay.

14 MR. MORRO: And maybe continue it  
15 on another day. Thank you. Let's go.

16

17 (Whereupon, the deposition was terminated.)

18

19

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23

1 C E R T I F I C A T E

2

3 STATE OF ALABAMA)

4 JEFFERSON COUNTY)

5

6 I hereby certify that the above  
7 and foregoing deposition was taken down by me  
8 in stenotypy, and the questions and answers  
9 thereto were reduced to typewriting under my  
10 supervision, and that the foregoing represents  
11 a true and correct transcript of the  
12 deposition given by said witness upon said  
13 hearing.

14 I further certify that I am  
15 neither of counsel nor of kin to the parties  
16 to the action, nor am I in anywise interested  
17 in the result of said cause.

18

19 /s/ Teresa Turquitt Davis  
20 TERESA TURQUITT DAVIS, CCR, RPR  
21 CCR #162, Expires 09/30/11  
22 Commissioner for the  
23 State of Alabama at Large  
My Commission Expires: 12/03/12

22

23