

1 IN THE CIRCUIT COURT OF THE TENTH JUDICIAL
2 CIRCUIT, IN AND FOR JEFFERSON COUNTY, ALABAMA

3

4 CIVIL ACTION NO. CV201002730

5

6 ALL WOMENS, INC.,

7 Plaintiff,

8 vs.

9 TERRY GENSEMER, et al.,

10 Defendants.

11

12

13

14

DEPOSITION

15

OF

16

DIANE DERZIS

17

October 27 & 28, 2010

18

19

20 REPORTED BY: Teresa Turquitt Davis

21

Certified Court Reporter,

22

Registered Professional

23

Reporter and Notary Public

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.

22

23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Scott Thomas Morro
Attorney at Law
Morro Law Center, LLC
1501 Decatur Highway
Gardendale, Alabama 35071

-and-

Mr. John P. Graves
Attorney at Law
205 20th Street North, Suite 210
Birmingham, Alabama 35203

FOR THE DEFENDANT, TERRY GENSEMER:

Mr. Michael J. Evans
Attorney at Law
2263 North Sherrlyn Drive
Birmingham, Alabama 35226

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

2

3 FOR THE DEFENDANTS, JEFF WHITE AND TURN THE
4 HEARTS D/B/A SURVIVORS OF THE ABORTION
5 HOLOCAUST:

6 Mr. Trent Garmon

7 Attorney at Law

8 Garmon Law Firm

9 2127 14th Avenue South

10 Birmingham, Alabama 35209

11

12 FOR THE CITY OF BIRMINGHAM:

13 Mr. John M. Edens

14 Assistant City Attorney

15 Birmingham City Hall

16 710 20th Street North, 6th Floor

17 Birmingham, Alabama 35203

18

19

20

21

22

23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

I N D E X

INDEX OF EXAMINATION

Page:

EXAMINATION BY MR. EVANS	6
EXAMINATION BY MR. GARMON	97
EXAMINATION BY MR. MORRO	133
EXAMINATION BY MR. GARMON,	134
CONTINUING	
EXAMINATION BY MR. EVANS, CONTINUING	136
EXAMINATION BY MR. EVANS, CONTINUING	182
EXAMINATION BY MR. GARMON,	211
CONTINUING	

INDEX OF EXHIBITS

Page:

Defendant's Exhibit A depo notice	11
Defendant's Exhibit B copies of photos	55
Defendant's Exhibit C Liturgy for the Preborn	182

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.

1 (Off-the-record discussion.)

2

3 (Whereupon, the deposition was adjourned, to
4 be reconvened on October 28, 2010 at 2:00 p.m.
5 as agreed to by counsel for the parties.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

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

20

21

22

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