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APPEARANCES (continued)

FOR THE DEFENDANTS:

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- AND -
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Reported by:

Paula Rahn, CSR No. 11510
Court-Approved Reporter

1 SAN DIEGO, CALIFORNIA; TUESDAY, MAY 21, 2013; 8:56 A.M.

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THE COURT: Okay. We're on the record.

Mr. Broyles, you wanted to make a request?

MR. BROYLES: Yes, Your Honor. I would like to call the petitioner's and plaintiff's minor Sedlock children to testify about the number of P.E. minutes they're receiving.

THE COURT: All right. You have no objection?

MR. SLEETH: I have no objection to him calling the witnesses.

THE COURT: Mr. Peck, do you have any objection?

MR. PECK: I have no objection to the witnesses, but I will -- defense counsel and I were speaking here. This was scheduled as a short cause trial, eight hours or less, and now we're getting into additional --

THE COURT: Let me just say that we've got a problem. Mr. Sleeth, he's unavailable after Wednesday. So this was set for a two-day trial, but that's --

MR. SLEETH: Well, there is an additional problem at the bottom of this. We didn't do any discovery because we thought this was a writ of mandate that we would do on declarations and we wouldn't have witnesses, we'd put on an expert. And we're now moving into our second day of lay witnesses on issues never been deposed. It seems to me that this is not a short cause calendar. It's a real trial with no discovery.

THE COURT: Well, you make a good point.

1 Mr. Broyles, how long do you want to -- I mean,
2 this is the first -- this has been raised. We discussed
3 this pretrial, and you never indicated you were going to
4 call these children.

5 MR. BROYLES: Your Honor, because at the time
6 pretrial, we did not know until in the last week what the
7 school's position was going to be on the issue of minutes.
8 That's a brand-new issue that was raised, also.

9 THE COURT: How long is the testimony going to
10 be?

11 MR. BROYLES: Oh, the children, each of them will
12 be less than five minutes, your Honor.

13 THE COURT: All right.

14 MR. SLEETH: We'll need to cross them, and we're
15 going to be doing discovery on the stand.

16 MR. BROYLES: Your Honor, that's exactly what I
17 had to do yesterday with Mr. Baird, unfortunately. And
18 that's just the nature of how this case has evolved.

19 THE COURT: Well, that's not completely --

20 MR. SLEETH: Your Honor, I move that we continue
21 this trial to a date in the future so that we can do some
22 discovery and find out what the real issues are.

23 THE COURT: No.

24 All right. You don't want the TV cameras on the
25 children?

26 MR. BROYLES: No, your Honor. The children are
27 only identified in this case by their initials. They're
28 minors. We want to protect their privacy.

1 THE COURT: Well, they're testifying in a public
2 trial, but I'll --

3 MR. BROYLES: I understand.

4 THE COURT: -- I'll order that the TV cameras not
5 be on them when they testify. All right?

6 MR. BROYLES: Thank you, your Honor.

7 CAMERA OPERATOR: Sir, may we record the audio
8 and not photograph them?

9 THE COURT: Sure.

10 MR. BROYLES: That's fine, your Honor.

11 CAMERA OPERATOR: Thank you.

12 THE COURT: All right. Just don't put -- don't
13 put them on TV.

14 CAMERA OPERATOR: Of course. Understood.

15 THE COURT: All right. And let's -- I mean,
16 we're going to finish this trial when it was -- when it
17 was scheduled to be finished.

18 MR. BROYLES: And just for the record, what is
19 that date, your Honor?

20 THE COURT: You agreed on two days. This is a
21 two-day short cause writ of mandate.

22 MR. BROYLES: Your Honor, both yesterday and in
23 an ex parte hearing when we talked about that, it was
24 discussed that we would try to do it within two days, but
25 if we needed more time, that the Court would give us that
26 time.

27 THE COURT: It's not a question of the Court
28 giving you the time. As you know, and we discussed this,

1 Mr. Sleeth is unavailable after Wednesday, and you agreed
2 we'd be finished by then. I mean, I can -- we have to
3 finish by tomorrow.

4 MR. BROYLES: Yeah, I understand that, your
5 Honor.

6 THE COURT: And you agreed.

7 MR. BROYLES: But when you said two days, I
8 thought you meant yesterday and today.

9 THE COURT: Well, that's two days. And if it's
10 not done in two days, you've got three days.

11 MR. BROYLES: Yeah, tomorrow is the third day.
12 That's all I'm -- I'm clarifying, your Honor.

13 MR. SLEETH: This is not what we originally
14 discussed. What we discussed was we'd put on the experts
15 on the first day and we would argue on the second day.
16 Those were the words of the Court.

17 THE COURT: That's what was discussed, yes.

18 MR. SLEETH: And we're not anywhere near
19 argument. We're on our second witness.

20 THE COURT: I agree, but these witnesses are
21 going to be very short.

22 MR. BROYLES: Yes, Your Honor.

23 THE COURT: All right.

24 MR. BROYLES: Your Honor, plaintiffs call --
25 Are you ready? I'm sorry.

26 THE COURT: Is everybody else ready?

27 All right. Are you ready? All right.

28 MR. BROYLES: Your Honor, plaintiffs call F.S.

1 THE WITNESS: Yeah.

2 THE CLERK: Thank you. Would you please have a
3 seat in the witness stand.

4 Thank you.

5

6

F.S.,

7 having been called as a witness by the plaintiffs,

8 was first duly sworn and testified as follows:

9

10

DIRECT EXAMINATION

11

BY MR. BROYLES:

12

Q Good morning.

13

For the record, I'm going to call you

14

Ms. Sedlock. I'm not going to call you by your first

15

name.

16

Is that okay?

17

A Yes.

18

Q Okay. Well, good morning. How are you today?

19

A Good.

20

Q Okay. I just want to ask you a few simple

21

questions about the amount of P.E. you've been getting

22

since January of this year, okay?

23

A Okay.

24

Q All right. And the first question I want to ask

25

you is how many P.E. minutes did you get last week at

26

school?

27

MR. CARELLI: Objection; lacks foundation.

28

THE COURT: Sustained.

1 BY MR. BROYLES:

2 Q Did you go to school last week?

3 A Yes.

4 Q Did you have P.E. last week?

5 A Yes.

6 Q Okay. How many minutes of P.E. did you have at
7 school last week?

8 MR. CARELLI: Objection; lacks foundation.

9 THE WITNESS: Ten minutes, I think.

10 BY MR. BROYLES:

11 Q Okay. And the week before, I want to ask the
12 same question.

13 Did you have P.E. the week before last at school?

14 A I don't remember.

15 Q Okay. You don't remember if you had P.E. the
16 week before last?

17 A I think we did, but probably only ten minutes.

18 Q Okay. And between January and now, can you give
19 me an average of P.E. minutes you've had during the weeks
20 of school that you've been at school and had P.E. between
21 January 1st and today, approximately?

22 MR. CARELLI: Objection; lacks foundation.

23 THE COURT: Overruled.

24 THE WITNESS: Could you ask that again, please.

25 BY MR. BROYLES:

26 Q Okay. Can you give me -- I just want an average
27 or estimate of how many P.E. minutes you've had per week
28 for the weeks that you attended school since January of

1 2012.

2 THE COURT: Ms. Sedlock, do you know that without
3 just guessing?

4 THE WITNESS: No.

5 THE COURT: I'm not going to -- let's move on.

6 MR. BROYLES: One moment, your Honor.

7 BY MR. BROYLES:

8 Q Just to be clear since January of 2013 --

9 THE COURT: Mr. Broyles, you know what I'm going
10 to do. I want you to rethink this and call your expert.
11 We'll deal with this later, but I just -- I'm not going to
12 allow this at this point for a couple of reasons.

13 MR. BROYLES: Your Honor --

14 THE COURT: At this point, I want you to rethink
15 this.

16 MR. BROYLES: Your Honor, would you like to ask
17 the witness questions?

18 THE COURT: No, I would not.

19 MR. BROYLES: Your Honor, we should have the
20 ability --

21 THE COURT: I want to get your expert on and off,
22 and then we'll deal with it, but I --

23 MR. BROYLES: Your Honor, can we talk about this
24 in chambers? Because --

25 THE COURT: No, no.

26 MR. BROYLES: Okay. Thank you.

27 THE COURT: You're welcome.

28 All right. Thank you, Ms. Sedlock. It's without

1 prejudice. I just think everybody should rethink this for
2 a bit. And I want to move on because I -- we discussed
3 this schedule and how long the trial was going to be, and
4 we're not going to change that now. I don't want to
5 mistry this, and I want to move on. And we discussed this
6 yesterday, and I said, "Are we on schedule?" And you
7 indicated we were. And Mr. Sleeth reminded the Court of
8 his problem, and we agreed we're not going to finish in
9 two days, but we're sure going to be finished in three
10 days.

11 MR. BROYLES: All right. We call Ms. Candy
12 Brown, Professor Brown.

13 THE COURT: You're still under oath, Ms. Brown.

14 THE WITNESS: Correct. Understood.

15 THE COURT: You'll try to talk a little slower?

16 THE WITNESS: I will do my best.

17

18 DIRECT EXAMINATION

19 (Resumed)

20 BY MR. BROYLES:

21 Q All right. Good morning, Dr. Brown.

22 A Good morning.

23 Q Okay. When we left off yesterday, I believe we
24 had finished talking about Hinduism; is that correct? Is
25 that where we were?

26 A That is correct.

27 Q Okay. The next question I have for you is what
28 is yoga?

1 A The word "yoga" is from a Sanskrit root, which is
2 yuj, y-u-j. And it's the same root as we get the English
3 work yoke from. So yoga is like to yoke.

4 The earliest written references that we have to
5 the word "yoga" come from what we think of as Hindu texts.
6 So the Upanishad, Bhagavad Gita. Both describe yoga as
7 meditative disciplines. So really it's mostly about
8 meditation. And the purpose of meditating is that you
9 withdraw your senses from the world and you focus on the
10 divine. And so the goal is to yoke with the divine and to
11 have devotion through this benevolent, this omnipotent
12 being.

13 And the texts tell us that the divine is known as
14 Krishna, which is one of these manifestations of Brahman
15 and that it is the syllable "om." So we talked yesterday
16 about how meditating with "om" can bring you to be with
17 Brahman, is that's really what this means; is that Krishna
18 is "om." They're actually the same. And they say that if
19 you utter "om" with the intention "I shall attain
20 Brahman," that's actually going to be what happens.

21 So many yoga traditions, not just in the past,
22 but also today, share a religious goal. And that goal is
23 human salvation. Now, salvation can be defined in some
24 different ways. It includes a release from reincarnation
25 or this endless cycle of rebirths; it can include a union
26 with ultimate reality; it can include realizing the true
27 Self, with a capital S, which is divine; and it can
28 include spending eternity in relationship with divine.

1 But whichever kind of definition of salvation,
2 the purpose of this yoking is to be connected with the
3 divine and to attain the salvation. So that's the basic
4 definition of yoga.

5 Q Okay. Does yoga involve religious beliefs and
6 practices?

7 A It does, but we do need to be clear that the word
8 "yoga" embraces a lot. It embraces a lot of traditions, a
9 lot of different cultural contexts. And you can't really
10 trace just one lineage because there are a lot of
11 different gurus who developed different styles.

12 And yoga developed over several hundred years and
13 was -- the principles were laid out in Hindu texts and
14 also in Buddhist and in Jain texts. So there's a lot of
15 variety in the tradition, and so some of the key ideas
16 that go with yoga that we're going to be talking a lot
17 about.

18 So there's prana, which is a vital energy, a
19 spiritual energy. And this is the same word when we talk
20 about pranayama or breathing. It refers to channeling
21 this prana, this breath. So it's not just a physical
22 breath, but it's actually the spiritual energy that gets
23 directed through the breathing.

24 So another key term is -- well, and actually just
25 to say about prana, that specifically it's not just a
26 spiritual breath, but it's the same thing as Atman or this
27 universal spirit. And so this is how you get connection
28 between Atman and Brahman, is by this movement of the

1 prana through the pranayama or the breathing.

2 So another key word is nadis, which are energy
3 channels that the spiritual energy can travel through.
4 And another key word is chakras or these like spinning
5 circles of energy.

6 And so the idea is that there's these networks of
7 energy that go through the body that go on these nadis,
8 and then there are these little conjunctions of chakras,
9 and the prana moves through this system.

10 So sometimes people will talk about yoga anatomy,
11 and it's not a physical anatomy. It's the spiritual
12 anatomy. And when, say, the National Center for
13 Complementary and Alternative Medicine talks about this
14 force, it says, "Well, we can't actually confirm that it
15 exists through scientific methods because it's a different
16 framework of what energy is."

17 Another key word here is Kundalini. This is the
18 last key term I'll give you right now. And it's kind of a
19 force. It's a spiritual energy force again, although
20 sometimes people will say it's a nerve force. It's a
21 different definition of nerve. And it's a female serpent
22 energy. And so specifically the cobra pose or asana that
23 we'll talk about later, it's a -- it's symbolic of this
24 Kundalini female serpent energy.

25 And so Kundalini kind of flows through these
26 energy systems, and the goal of many yoga practices is to
27 move Kundalini energy. And so that's true of the asanas
28 or the postures. It's also true of the pranayama or the

1 breathing. So the purpose of these practices is to move
2 Kundalini.

3 And so the way this works is that Kundalini is
4 coiled up at the base of the spine, and then it uncoils
5 and moves up the spine through the breathing and through
6 the asanas. And when it gets all the way up to the top of
7 spine to a chakra, then it unites with Shiva, who's the
8 male counterpart of Kundalini.

9 So when Kundalini and Shiva unite, you reach
10 samadhi. Okay, one last term: Samadhi. I think she's
11 got some of the spellings here. Which is bliss. It's
12 union with the divine. It can be liberation or moksha,
13 which is when your physical body dies and you are absorbed
14 into the universal and you're liberated from the cycle of
15 births and rebirths.

16 So the goal of yoga practice fundamentally is for
17 Kundalini and for Shiva to unite and for you to reach
18 samadhi. And yeah, I think that's -- that's my basic
19 definition.

20 Q Okay. In your opinion, is there a relationship
21 between yoga and Hinduism?

22 A Yes.

23 Q Okay. And what is the relationship?

24 A Historically, yoga developed through these Hindu
25 texts as well as Buddhist and Jain texts. So there's
26 historical relationships that lay out the path for samadhi
27 or union with the divine, but also in the contemporary
28 yoga scene. So we're not just talking history or roots.

1 But today, it's very common for yoga studios to
2 start off in their introductory classes focusing on the
3 postures and the breathing. And then when you get to the
4 advanced yoga classes, that's when they start talking
5 about the yoga theory; so the kind of things I've just
6 been talking about. They're held off to the advanced
7 classes, and then they start talking about the importance
8 of chanting the Hindu scriptures in sanskrit, which is
9 viewed as a very sacred language. And I'll say a little
10 bit more about that.

11 And then because we're in a very pluralistic
12 society in American today, it's very common to mix in
13 these Hindu beliefs with say Buddhist mindfulness
14 meditation or with various metaphysical or some people say
15 New Age kinds of beliefs. So what we have in the
16 contemporary postural yoga scene is not that commercialism
17 or kind of health benefits replace religion, but they're
18 added on to the religion without the religion being
19 subtracted out. But that's usually not what they lead
20 with in the introductory classes. The first classes are
21 really focused on the benefits. And then as people like
22 the benefits, then they move deeper.

23 And so the American Academy of Religion has a
24 yoga theory and practice group, and what it says in its
25 statement of mission is that spiritual and religious
26 ideologies are, quote, "pervasive" in contemporary yoga
27 and Hinduism is a prominent religious ideology that is
28 pervasive in modern yoga.

1 Q What is Ashtanga yoga?

2 A "Ashtanga" literally means eight-limbed yoga if
3 you just kind of translate the Sanskrit. The developer is
4 K. Pattabhi Jois. And Jois claimed that the Hindu God --

5 THE COURT: Excuse me just a bit. I'm just
6 thinking about something.

7 When you talked about yoga studios, are you
8 including in that the YMCA, for example?

9 THE WITNESS: See, that's a very interesting --
10 that's a very interesting example, actually. Because the
11 instructors at YMCAs -- at the YMCA, they're not going to
12 generally offer the more advanced classes, but the
13 instructors at the YMCA are trained at the studios that do
14 offer the advanced classes.

15 So I'll give you an example here. A yoga
16 instructor by the name of Marcy. It's a pseudonym for an
17 informant who was interviewed. And what she says -- what
18 Marcy says is, "I work at a YMCA." And she says, "I
19 self-censor myself. I personally believe that I love to
20 be united with the universal. My goal is bliss. But I
21 have to make myself palatable to the students in my
22 classes at the YMCA. But what I do is I bring along
23 brochures for the yoga retreats that are hosted by my
24 studio hoping that I can whet my students' appetite so
25 that they'll go to those advanced classes. But I have to
26 earn my living at this, so I don't talk about the
27 religious theory in those YMCA classes."

28 But I think the general answer to your question

1 is that there's a spectrum, and some studios are much more
2 open and much more explicit about the theory of yoga that
3 they hold than others are.

4 So I think I was answering what is Ashtanga.

5 BY MR. BROYLES:

6 Q Yes.

7 A So what Jois said is that the Hindu God Shiva
8 first taught Ashtanga yoga and that there was a succession
9 as Hindu texts explained what yoga was. And so he says
10 that yoga is basically explained in the Bhagavad Gita, in
11 Upanishads, in the Yoga Sutras, which are these kind of
12 Hindu sacred texts.

13 And what he says is -- and actually, the Yoga
14 Sutras today, many yoga practitioners will say this is
15 classical eight-limbed yoga. It's what's laid out by the
16 sage Patanjali in the Yoga Sutras. So very important
17 text.

18 And what Jois insisted is that Ashtanga yoga has
19 to be conveyed through what he called parampara, which is
20 an uninterrupted succession from guru to student. And so
21 it begins with Shiva, and then it goes down through a
22 series of teachers from Jois's teacher to Jois and then to
23 his son and grandson Manju and Sharath.

24 And we can think of parampara roughly as
25 equivalent to Apostolic succession. And so from St. Peter
26 to the Pope, that's how he gets his authority, is because
27 of that lineage. And so it's very similar in the Ashtanga
28 theory of succession.

1 So this is actually why it's so important for
2 Jois that teachers of Ashtanga be trained and certified by
3 Jois. Because it's not just about skills or knowing how
4 to do yoga, but for Jois it's actually much more than
5 that. And in the brochure from the Jois Foundation that
6 Mr. Broyles was reading at the beginning of trial, what it
7 says in there is that students must -- the wording is
8 "surrender to the lineage of parampara." And this is
9 because Jois taught that, quote, "The guru is the
10 intermediary between the student and the divine."

11 And so in order to communicate with that divine
12 energy that goes all the way back to Shiva, you have to
13 have the training and certification come through that line
14 of succession.

15 Q Just to be clear, because I just lost my place,
16 the last question I asked you is what is Ashtanga yoga; is
17 that correct?

18 A That's what I recall.

19 Q I apologize.

20 What is the relationship between Ashtanga yoga
21 and Hinduism?

22 A The purpose of Ashtanga is to achieve the Hindu
23 goal of becoming one with Brahman.

24 THE COURT: With Brahman?

25 THE WITNESS: With Brahman.

26 BY MR. BROYLES:

27 Q Just so we're all following, what's Brahman
28 again?

1 A Brahman is the universal. It's God. And Jois
2 often does use the word "God" for Brahman.

3 Q Okay. You mentioned the eight limbs of Ashtanga
4 yoga.

5 What are the eight limbs and what do they
6 represent?

7 A Sure. First of all, there's yama, which means
8 basically moral codes or restraints; in other words,
9 things that you shouldn't do in how you take care of
10 yourself, how you take care of others. It's about
11 relationships with yourself and others. So yama.

12 Secondly is niyama, which would be more the
13 positive aspects of this. So things that you should do;
14 ethical observances, ethical living, treatment of others,
15 purifying yourself.

16 Thirdly would be asana or posture.

17 Fourth is pranayama, which is this deep
18 breathing, this very focused, attentive breathing. And
19 here if you remember what I talked about with prana, we're
20 not just talking about physical respiration or about using
21 the lungs, but it's actually about channeling this
22 spiritual energy, prana, which is the same as Atman or
23 universal spirit, which is actually the same as Brahman if
24 we go back to the nondualism.

25 Fifth is pratyahara, which is to withdraw your
26 mind from the senses. And this would be like calming your
27 mind. This is why it's so important to have a calm mind,
28 because you have to withdraw your mind from the senses.

1 Because if you're following after desires, you'll get
2 distracted.

3 Sixth is the dharana, which is concentration or
4 attention. And "attention" is a very important word.

5 And it's preparation for the next step, which is
6 dhyana or meditation.

7 Finally is eighth step, samadhi, which is bliss
8 or union with God, union with Brahman.

9 Q What is the ultimate goal of Ashtanga yoga, the
10 practice?

11 A Uh-huh. Becoming one with God or Brahman.

12 Q Okay. And does that include the physical
13 practice of yoga?

14 A Absolutely.

15 Q Okay. So by the physical practice, just to make
16 sure we're on the same page, would that be the asanas?

17 A Yes. According to Jois, there is no distinction
18 between the physical and spiritual practice of yoga. He
19 says yoga is one. Asanas are the easiest access point,
20 especially for Westerners who have trouble understanding
21 Hinduism and don't know Sanskrit. Asanas are the easiest,
22 the best, the most effective way to reach the other limbs
23 of yoga.

24 Q Okay. In the beginning of your testimony, you
25 defined religion in much more eloquent terms than I ever
26 could.

27 So the question I want to ask is in your opinion,
28 does Ashtanga yoga involve beliefs regarding ultimate

1 reality or regarding who man is, who God is and how you
2 defined religion earlier?

3 A Yes.

4 Q What does Ashtanga yoga teach or believe about
5 who God is?

6 A God is Brahman, the ultimate reality behind
7 everything, the infinite, the absolute.

8 Q What -- same question about man. What does
9 Ashtanga yoga teach or believe about who man is?

10 A The true self, capital S as well as small S, is
11 God inside. The self reaches oneness with God through the
12 eight limbs of Ashtanga yoga. The basic human dilemma,
13 like what's wrong with the world, why do you need
14 something like yoga in the Ashtanga account is that
15 there's a disruption of harmony between the individual and
16 the divine.

17 So the purpose of asanas or pranayama or
18 breathing is to restore the flow of energy between the
19 individual and divine, to restore harmony between the
20 individual and divine. So basically the asanas and the
21 pranayama are the solution to the human dilemma. They're
22 the route to salvation for humanity. They provide a path
23 to salvation by purifying the body, the mind, and the
24 spirit. And this then unblocks the flow of vital energy
25 or prana between the individual and the divine.

26 Q How does Ashtanga -- I'm sorry.

27 How does Ashtanga's view of who God and man are
28 compare to Christianity or the Judeo-Christian tradition

1 you described earlier?

2 A Sure. Well, Christians believe that the Creator,
3 God, is other than and greater than the creation rather
4 than it all being a continuum. And God created humans in
5 his own image for the purpose of relationship with him.

6 But the human dilemma, to use that same language,
7 is that humans lost the relationship with God through two
8 basic sins: The sin of wanting to become like God and the
9 sin of worshiping other gods.

10 And so salvation or the solution to the human
11 dilemma for Christians or how to get back to eternal
12 relationship with God, not union with God, but
13 relationship with God, it doesn't come through restoring
14 harmony through physical practices or by channeling
15 energy, but rather it comes through repentance from sin
16 and faith in Jesus as the one sinless son of God.

17 Christians, therefore, consider it idolatrous to
18 bow down to any created beings, such as the sun, and they
19 consider it blasphemous to think that one can become God.

20 Q In your opinion, is Ashtanga yoga religious?

21 A Yes.

22 Q What is the basis for your opinion?

23 A Ashtanga yoga fits within that practice
24 experience-oriented category of religion that I laid out
25 for you yesterday. Religious rituals more than
26 verbalizations of beliefs are central to Ashtanga.
27 Rituals are highly structured symbolic activities that can
28 focus both mental and physical energy to create a kind of

1 flow of experience.

2 The repetition of movements trains the mind, and
3 it's also believed to change spiritual realities. And
4 thus -- and this is a very important point I want to
5 make -- religious intentions may develop through the
6 performance of religious rituals rather than initial
7 intentions being determinative of whether an action is
8 religiously meaningful.

9 And I think this is often a point of confusion
10 where people will say, "What's your intention in doing an
11 action?" That determines whether or not it's religiously
12 meaningful. But the theory behind Ashtanga is that the
13 intentions are shaped by the repetition of practices
14 rather than the other way around.

15 And this is because in the whole Ashtanga Hindu
16 world view, knowledge of the divine, attainment of
17 salvation or union with the divine, it's not so much
18 intellectual as it is experiential. And so -- and it's
19 achieved through the performance of bodily practices, such
20 as postures, breathing, meditation, concentrated gaze.
21 And this is even without the chanting of Hindu texts, it's
22 without Sanskrit, and it's without sermonizing on moral
23 teachings such as the yamas and the niyamas. Those might
24 be done, but it's not essential. What's essential is
25 practices to experience God, and that's really
26 fundamental.

27 And so the religious significance isn't in what
28 you believe about what you're doing or what you say about

1 what you're doing, but it's actually in what you're doing.
2 And this is because body and spirit are aspects of each
3 other rather than be separate. So in the West, we often
4 teach of this Cartesian mind/body dualism. But for
5 Ashtanga, body and spirit are the same. So bodily
6 practice can be physical and spiritual at the same time.

7 So the ritualized postures of breathing of
8 Ashtanga directed towards these end goals of liberation
9 and salvation, if we -- they go back to those functional
10 and substantive definitions of religion that I talked
11 about yesterday.

12 And so my opinion is that Ashtanga fits both a
13 functional and a substantive definition of religion. And
14 there are a number of aspects of Ashtanga that qualify
15 even for the very narrowest definitions of religion.

16 So Ashtanga makes metaphysical assumptions about
17 the nature of reality. For instance, there's an absolute
18 God or Brahman, and the goal is to become one with
19 Brahman.

20 Ashtanga aspires toward liberations or salvation
21 from human suffering, and this is done through union with
22 the divine.

23 Ashtanga emphasizes ethical teachings, the yamas.
24 And these are specifically prescribed by sacred Hindu
25 texts and specifically the Yoga Sutras. So they're not
26 just general ethical teachings, but they're rooted in
27 sacred texts.

28 And these texts kind of lay out this path towards

1 purification and self-mastery. Self-mastery is actually
2 an important term, and this is the eight limbs. These are
3 all religious ideas and specifically ideas derived from
4 Hindu texts.

5 Now, one last point on this is that it's very
6 common, I've found, in my broader research for yoga
7 marketers to provide a very narrow Protestant-biased
8 definition of religion, and then they say, "We don't meet
9 that definition." Yet even yoga promoters -- and this is
10 something I found very interesting -- they very commonly
11 will acknowledge that yoga is something more than just
12 exercise. They might say it's sacred. They might say
13 it's spiritual. They'll certainly say that it contributes
14 to moral character development in a way that activities
15 like jogging and jump-rope simply do not.

16 Q In Ashtanga yoga, what is an asana?

17 A An asana or a posture is the third limb of
18 Ashtanga yoga, and the asanas are deeply symbolic
19 ritualized actions and movements. And the purpose, to
20 quote the Jois website, is to lead to liberation and
21 greater awareness of our spiritual potential. Although
22 asanas are, again to quote Jois, in appearance an external
23 and physical discipline, they spontaneously, even
24 unaccompanied by beliefs and sermons, lead to an
25 experience of the last four limbs of Ashtanga.
26 Ultimately, samadhi, right, union with God.

27 And this is because the asanas open and clear the
28 energy channels, these brana channels. And that that

1 provides a physical means to come and experience God
2 inside.

3 Q Have asanas always played a central role in yoga
4 practice?

5 A No, they actually haven't. Although Americans
6 will often think of yoga as just being physical postures
7 or maybe postures and breathing, asanas played a more
8 subordinate role in yoga up until recently. So until
9 about the 1920s.

10 So one might say that asanas are a relatively
11 modern means of reaching a very old yoga goal, which is
12 this kind of union with the divine, yoking with the
13 divine. So rather than the asanas being kind of a
14 discrete kind of set of practices, they're kind of this
15 subset of yoga. They're not -- they're not synonymous
16 with yoga. Even though often we think of asanas in yoga
17 as being the same thing, asanas are kind of one way at
18 getting at the yoking of yoga.

19 And so often modern yoga, postural yoga
20 practitioners will say, "Our roots are in hatha yoga,"
21 which dates back to the medieval period and is a
22 particular form of yoga in which asanas were very
23 important along with other purification practices, there
24 were purification rituals, one of which was to swallow a
25 long narrow strip of cloth, and that was supposed to
26 cleanse your stomach. It doesn't sound very pleasant to
27 me.

28 But you do that purification, you do that asanas,

1 and then breathing or pranayama is very important for
2 hatha yoga. And the purpose of pranayama in hatha yoga
3 was not just kind of union with God, but actually it was
4 to get supernatural powers so that you could like
5 telepathically take over other people's bodies. So there
6 are kind of other powers involved as well.

7 As India gets into more of the modern period, a
8 lot of zealots were afraid of the yogis who did hatha
9 yoga. And the word "yogi" actually refers to these
10 practitioners of hatha yoga. They were afraid of them,
11 and they didn't like that they used the performance of
12 asanas as basically commercialized street entertainers.

13 So there's this kind of backing away from asanas
14 in India. And actually, this is an interesting part of
15 the story, is that it's actually Westerners and the
16 theosophical society that revived interest in the hatha
17 yoga by reprinting texts that had been forgotten.

18 So theosophy, just briefly, it's a metaphysical
19 movement in the West. It draws on Hinduism, Buddhism,
20 Zoroastrianism. It's a fascination with religions coming
21 from the East. So there's this kind of revival of
22 interest. And it -- there was kind of this physical
23 culture movement. And this is a term that can get
24 misunderstood because you think physical culture, you're
25 just culturing the body. But actually what the
26 theosophists and others meant was you physically culture
27 the body and then the spiritually cultures the body as
28 well.

1 So this leads us up, then, to the context in
2 which modern postural yoga really kind of blossomed. And
3 there's this kind of global cultural exchange through
4 British colonialism in India. And so this Hindu Sri
5 Tirumalai Krishnamacharya taught asanas as physical
6 culture. In other words, you culture the body to culture
7 the spirit at the Mysore Palace in India.

8 And so it was Krishnamacharya who developed the
9 now famous sun salutation that we'll talk about a fair
10 amount. And what he did is he combined religious
11 practices that were used in worship of the solar deity
12 Surya with the hatha yoga asanas, and then he drew in some
13 other influences from the theosophists, from wrestling
14 traditions, from British military calisthenics.

15 And his idea was to be very innovative and
16 combinative by bringing together different religious
17 traditions and our cultural traditions as well to more
18 effectively yoke with the divine. And Krishnamacharya was
19 the teacher of Jois, and that's his relevance to us.

20 Q Is there any religious significance to the asanas
21 in Ashtanga yoga?

22 A Yes, there is.

23 Q What is it?

24 A Asanas are not just physical movements or
25 postures, but they're performed in a very ritually
26 significant way. They're taught to be performed in a very
27 precise manner, in a precise order repeatedly in the same
28 way every time, going deeper into the posture every time.

1 This is because Jois said so, and he's the
2 charismatic authority figure through parampara, but it's
3 also because asanas embody symbolic meanings. And they,
4 therefore, instill moods and motivations. And they're
5 believed to ultimately lead towards union with God.

6 So you might -- you might compare this to an
7 interpretative dance where the sequence of movements
8 actually communicates meaning. It tells a story about the
9 world, and it conveys a world view and an ethos in a very
10 powerful way without the use of words.

11 There's a book called the *Myths of the Asanas*.
12 In fact, it's a textbook that Jen Brown taught from at
13 Capri Elementary School in 2011 to 2012. And what *Myths*
14 *of the Asanas* says is that, "Asanas can be viewed as a
15 kind of prayer." I'm quoting from the book. "And they
16 have a significant and wholesome effect on our physical
17 body, our psyche, and our emotional health. This
18 distinguishes asana practice from other systematic forms
19 of movement. We take the shape of the tree so that we can
20 begin to understand their essential nature. Through asana
21 practice, we can feel that our body is a microcosm of the
22 universe. Asanas themselves act almost as gurus."

23 And so what *Myths of the Asanas* tells us, right,
24 is that doing the asana, that's our guru. That's our
25 teacher. It teaches us to have the right feelings because
26 we can feel, we can experience that we are one with the
27 universe. We don't have to talk about it. We just take
28 the shape, we experience the essence, and therefore we're

1 led to the other limbs.

2 According to Ashtanga.com, which is the community
3 of the Ashtanga -- Ashtanga community website, "We
4 function in an extremely physical and external world so
5 that point of entry is naturally physical. So one begins
6 with a set of asanas. But only the," quote,
7 "'misunderstanding mind' thinks that asanas are all
8 Ashtanga is. This is only the beginning of the journey.
9 As one practices, all, the elements are cultivated.
10 Someone goes deeper and starts to understand what
11 Patanjali is talking about. You understand the yoga
12 teachings by doing the asanas."

13 Q According to Pattabhi Jois, what is the purpose
14 of the asanas?

15 A They lead to the remaining limbs of Ashtanga,
16 ultimately samadhi, experiencing God inside. Jois said,
17 quote, "Yoga is not physical. Very wrong! The spiritual
18 aspect, which is beyond the physical, is the purpose of
19 yoga. The essence of yoga is to reach oneness with God.
20 As you take practice, you come to see God inside."

21 Q You mentioned it earlier, but what is the Surya
22 Namaskara?

23 A The Sanskrit can be translated as salute to the
24 sun or sun salutation. It's sometimes called Opening
25 Sequence A and B. There's a Surya Namaskara A and B. And
26 it's basely a sequence of asanas coordinated with
27 pranayama or breathing that's developed as a prayer to
28 Surya.

1 Q Who is Surya?

2 A The Sanskrit means supreme light and refers to
3 the chief solar deity of Hinduism. Surya is worshipped at
4 dawn by most Hindus, and there are many temples dedicated
5 to Surya across India.

6 Q Is there any religious significance to the Surya
7 Namaskara?

8 A Yes. It's a highly symbolic religious ritual of
9 devotion to the solar deity Surya. The devotee adopts a
10 devotional praying hands position called anjali mudra.
11 We'll talk more about this. And you reach up towards the
12 sun in prayer and petition for the sun's power, you bow
13 down in humility and worship, and you rise up and remember
14 the true sun is within.

15 Q According to Pattabhi Jois, what is the
16 significance of the Surya Namaskara?

17 A Pattabhi Jois taught, quote, "There is no
18 Ashtanga yoga without Surya Namaskara, which is the
19 ultimate salutation to the sun god. In Hindu philosophy,"
20 Jois continues, "the sun is accepted as the giver of life,
21 the protector of all life forms on this earth, the health
22 minister, you might say, and the illuminator of the
23 intellect. The wise one, the knower, obtains complete
24 goodness by performing obeisances to the rising and
25 setting sun. This is why Surya Namaskara should be
26 performed once in the morning and once in the evening. If
27 it is done properly, then a state of mind will be reached
28 in which whatever you think will occur."

1 The Jois Encinitas website includes notes from a
2 recent training conference by Sharath Jois, who's the
3 grandson of Pattabhi Jois and kind of next in this
4 succession of parampara.

5 And so the notes from the conference say that,
6 "Sharath began by talking about the beginning of our asana
7 practice. Our Surya Namaskara A and B was added by
8 Pattabhi Jois for two reasons: To pray to the sun god
9 each morning would ensure good health. We, like other
10 plants and animals, need sunlight for a strong body and,
11 therefore, a strong mind. Because most of us cannot
12 correctly understand the swara or the up-and-down proper
13 pronunciation of vedic or Hindu chants, we should not
14 recite them. The Surya Namaskara A and B is an easier
15 prayer or salute to the sun god. Also, the Surya
16 Namaskara is used in our practice from the earliest
17 beginner to the most advanced practitioner to create heat
18 in the body and help us do other postures."

19 And so there's a physical purpose, but there's
20 also this spiritual purpose of praying to the sun god.

21 Carlsbad Ashtanga Yoga Center says something
22 similar, that, "The sun salutation is to liberate dormant
23 energy. Literally bowing to God refers to a kind of
24 spiritual alchemy. When we transcend ego identification
25 long enough to discover that the divine creative power of
26 the universe is present within our own being, we are
27 filled with joy and reverence. Our natural impulse when
28 this happens is to give thanks. This expression of

1 gratitude and humility becomes the doorway for divine
2 grace to enter our lives. Liberation can be gained by
3 placing our devotion at the feet of God."

4 Q Ms. Brown, in Ashtanga yoga, is there any special
5 use or order involved in the Surya Namaskara?

6 A Yes, there's actually a very prescribed sequence
7 of poses in Surya Namaskara A and B. B is a longer
8 version of A, basically. And the exact same sequence of
9 poses is supposed to be used at the beginning of every
10 Ashtanga practice.

11 Q I want you to look at Exhibit 9, which would be
12 in front of you in the binder.

13 A Yes, I see it.

14 Q Okay. Can you tell us what this document is.

15 A Yes. This is a chart, a poster, of how to do
16 Ashtanga asanas. It's actually the same chart that's used
17 by the Ashtanga Institute in Mysore, India, and it also
18 was posted in some Encinitas classrooms.

19 If you look at the first line of the chart,
20 you'll see the sequence of poses in Surya Namaskara A or
21 Opening Sequence A. If you look at the second line of the
22 chart, you'll find the poses in Opening Sequence B or
23 Surya Namaskara B. And then if you go down to the third
24 line of the chart, you'll see the primary series.

25 So we'll hear about reference to the primary
26 series of Ashtanga. That's what's listed in the next
27 section, the next three lines. Then there's an
28 intermediate series, which is more advanced, which

1 generally is skipped for beginners.

2 But then there are the finishing asanas at the
3 bottom. And if you go towards the right side of the page,
4 you'll see that if you're able to do them, you do these
5 inversions right towards the end. And then there's a
6 series of four lotus poses. And then after that, it's not
7 on this chart, but it is the final shavasana or resting or
8 corpse pose, which is the conclusion of the yoga practice.

9 And so it's a very prescribed order of postures,
10 at least for the opening and for the ending.

11 MR. BROYLES: Your Honor, I'd like to move into
12 evidence Exhibit -- Plaintiff's Trial Exhibit No. 9.

13 THE COURT: 9 will be received.

14 (Exhibit 9 received into evidence.)

15 BY MR. BROYLES:

16 Q And just to be clear for the record, it says,
17 "Sri K. Pattabhi Jois Ashtanga Yoga Institute" on top of
18 the document; right?

19 A That is correct.

20 Q And it has the name there under it R. Sharath
21 Jois?

22 A Yes, that's correct. That's the grandson.

23 Q That's the grandson of Pattabhi Jois?

24 A And he's next in line of parampara.

25 Q So if Ashtanga -- if Ashtanga practitioners are
26 going to Mysore to study, who are they studying with?

27 A They would be studying with Sharath and his team,
28 and he's got family members who are also leaders.

1 Q And if they did that, if they went to Mysore to
2 study Ashtanga yoga before 2009, who would they be
3 studying under?

4 A With Pattabhi Jois.

5 Q Thank you.

6 Now, why did Jois say -- well, I believe you said
7 earlier that the sequences and orders are very important
8 in the Surya Namaskara; right?

9 A That is correct.

10 Q And you indicated that Jois said to always do the
11 Surya Namaskara first.

12 Do you have any understanding as to why he
13 recommended doing that sequence first?

14 A Yes. He said that this is the foundation for all
15 yoga practice. It should be done first thing in the
16 morning to reverence the sun as the giver of all life and
17 to petition the sun's blessing, and it also prepares the
18 practitioner for the rest of yoga; not only the physical,
19 but also the spiritual, the comprehensive life path of
20 yoga. And the specific sequence is thought to set up a
21 kind of line of energy, a vital energy from the spine up
22 through the universe.

23 Q According to Ashtanga yoga, is an asana, merely a
24 physical practice like P.E., divorced from spirituality or
25 religion?

26 A No. I mean, Jois is very, very clear that the
27 practice may appear physical, but this is, quote, "very
28 wrong." It produces spiritual transformation.

1 Q Okay. I'm going to mispronounce this, so you can
2 correct me.

3 What is virabhadrasa?

4 A Not bad.

5 Q I try.

6 A It's a warrior pose, and it's one of the asanas
7 in the Opening Sequence B or the Surya Namaskara B. It's
8 also explained in the book *the Myths of the Asanas* and
9 specifically was taught by Jen Brown at Capri.

10 Like many asanas, the pose is taught because it
11 embodies symbolic meaning. Parallel to how taking
12 communion commemorates the Last Supper of Jesus, the
13 warrior pose commemorates and it honors a Hindu warrior
14 god.

15 And basically the story is that there was a Hindu
16 priest by the name of Daksha who was giving a ritual
17 sacrifice, but he failed to invite the husband of his
18 youngest daughter. Her name was Sati. His name was
19 Shiva, who was also the lord of the universe, so kind of a
20 bad guest to not invite.

21 So Sati's offended. She kills herself. Shiva is
22 devastated. And this warrior, Virabhadra, springs up from
23 a lock of his hair. Virabhadra decapitates Daksha with
24 his sword. Shiva feels remorseful. He replaces Daksha's
25 head with the head of a goat and brings him back to life.

26 Q Okay. Just so we're all clear, could you point
27 out in Opening Sequence B where they're doing the warrior
28 pose.

1 A Yeah. If you go through -- it's about half --
2 it's done twice, actually. It's about the sapta and
3 the -- it's hard to read on this chart, but it's where
4 you're kind of putting your arms up and your one leg's in
5 front and one's behind you. It's about one, two, three,
6 four, five.

7 Q And that's the second line of the chart, just to
8 make sure?

9 A That's correct.

10 Q All right. So is it --

11 MR. BROYLES: Okay. Does the Court see that?

12 THE COURT: Yeah.

13 MR. BROYLES: Yeah, I just wanted to point it
14 out.

15 BY MR. BROYLES:

16 Q According -- is there any real significance to
17 the warrior pose?

18 A Yes.

19 Q What is it?

20 A According to the *Myths of the Asanas* -- and this
21 is direct quoting here -- there's a moral lesson. So the
22 books says, "How can we bring the bliss and simplicity we
23 experience on our mat to the daily challenges of our
24 lives? There's a profound aphorism in the Yoga Sutra,"
25 that sacred text of Hinduism. "Even the gods seem to
26 screw up sometimes, although their apparent mistakes are
27 really made to teach us valuable lessons. We take our
28 practice off the mat and become yoga warriors out in the

1 world. Patanjali's Yoga Sutra gives us the tools of
2 happiness, compassion, delight, and indifference. Warrior
3 poses are a reminder."

4 So, in other words, the Yoga Sutra are the tool,
5 it's the source of moral teachings, the sacred text. And
6 then the pose reminds you of these moral teachings and
7 helps you to take what you learn in yoga and make it an
8 ethos or a life philosophy of how to live. The pose is
9 your teacher and your reminder.

10 Q What is the lotus position?

11 A It's a posture for sitting meditation in Hindu
12 and Buddhist meditation. There's several variations, and
13 it's actually a difficult pose if you try to do it because
14 you're supposed to put your feet up on top of your knees.
15 And so there -- the variations are you can just do the
16 half-lotus, which is to put one foot up, or you can just
17 keep your legs crossed underneath if that's too difficult.
18 But ideally, you kind of cross them.

19 So it's different from just sitting in a
20 criss-cross or criss-cross applesauce, I guess people are
21 saying, pose. That's not really what lotus is. It's a
22 different pose for meditation.

23 Q Okay. I just have to ask this question.

24 Is there a recognized asana pose anywhere in yoga
25 that's called criss-cross applesauce?

26 A I've never come across that.

27 Q Is there any religious significance to the lotus
28 position?

1 A Yes.

2 Q What is it?

3 A Well, the lotus flower is a sacred symbol of
4 purity and enlightenment. The Hindu god -- or a Hindu god
5 sat on a lotus. I'll skip some of these names that aren't
6 essential here. And iconic statues are often in this
7 position. So if you see kind of statues of Hindu deities,
8 you'll often see them sitting in a lotus.

9 And the posture is believed to help the flow of
10 prana or vital energy to get you grounded spiritually, and
11 it facilitates meditation. So even though it's hard to
12 do, once you can do it, it makes it easier to meditate.
13 That's the idea.

14 So to quote *Myths of the Asanas*, "The lotus grew
15 from the god Vishnu's naval. The lotus posture is the,"
16 quote, "quintessential seated meditation posture. It
17 engages us in the higher yoga practices of concentration,
18 meditation, and ultimately samadhi or enlightenment," end
19 quote.

20 Q Is there any religious significance to the
21 resting pose?

22 A Yeah. And I just -- to say what it is, first of
23 all, might be helpful.

24 Q Yeah.

25 A It's lying down flat on your back like a corpse
26 and then doing this progressive muscle relaxation and
27 progressive mental relaxation. You're actually supposed
28 to somehow relax your brain all the way into the back of

1 your head so that you feel like a corpse, so that you feel
2 dead, essentially.

3 Q Besides asanas, are there any other important
4 practices?

5 A Actually, I'm sorry, I don't think I answered the
6 second half of your question, which was the religious
7 significance. The *Myths of the Asanas* again explains this
8 for us. So resting pose is the language that's used in
9 the EUSD curriculum. The actual name is shavasana or
10 corpse pose.

11 And according to *Myths of the Asanas*, "It
12 symbolizes the death of the ego and a promise of awakening
13 to an enlightened state of consciousness. It would be
14 wise to think about our own impending death because it
15 gives us a sense of purpose that can inspire us to make
16 good use of the time we have on earth."

17 And so the idea of the corpse pose is you think
18 about how you're going to die, and then that helps you to
19 live ethically in the world. It reminds you that you need
20 to make good use of the time that you have.

21 Q Before I forget to cover this, going back to
22 Exhibit 9 --

23 A Sure.

24 Q -- could you point out to me where the lotus pose
25 is shown.

26 A Yes. The lotuses are the last four poses on the
27 last line towards the right.

28 Q Okay.

1 A They're after the inversions.

2 Q Okay. And do you know what -- you said there's
3 four lotus poses. What four poses are there?

4 A I couldn't tell you off the top of my head right
5 now. They're listed in the curriculum.

6 Q Okay. So what you just talked about, the
7 curriculum, when you say the "curriculum," you mean the
8 EUSD curriculum?

9 A I do. That's what I'm referring to, yes.

10 Q So it's your --

11 A In the most recent curriculum, if you look at the
12 older grades. They don't get up to all the lotuses in the
13 younger grades. But in the older grades, they do.

14 Q Just to be clear, your testimony is that the new
15 curriculum has all four lotus poses taught to the
16 children?

17 A Yes.

18 Q Now, besides asanas, are there any other
19 important practices in Ashtanga yoga?

20 A Yes, there are.

21 Q And what are those?

22 A Actually, let me just make sure I'm thinking
23 clearly for a moment here.

24 Q I can ask you a more specific question.

25 A Yeah.

26 Q Is breathing important in Ashtanga yoga?

27 A Yeah. Breathing is important, but -- so it's
28 breathing that goes with the asanas. And so to quote the

1 Carlsbad Ashtanga Center, "In order to perform the asanas
2 correctly, you must incorporate the use of vinyasa or
3 coordination of breathing with the movements."

4 And then also a third component, the tristana or
5 focused gaze, which is in the first version of the
6 curriculum. And this achieves purification, and it
7 reveals the universal self or God. So then when you ask
8 about breathing in Ashtanga, then that gets more specific.

9 According to Manju Jois, the son of Pattabhi,
10 "Ashtanga emphasizes long, slow inhalations and long slow
11 exhalation in order to," quote, "'let the prana flow.'"
12 Prana, again, is this vital breath. It's not just
13 physical breath. It's spiritual energy, and it's an
14 external manifestation of the universal spirit Atman.

15 And if you again look at the Ashtanga Yoga
16 Center, it says, "Pranayama means taking in the subtle
17 power of the vital wind. Breathing techniques unlock
18 pranic energy, and they direct it into 72,000 nadi," or
19 energy channels, "of the subtle body." So it's not the
20 physical body. It's the subtle body. It's the spiritual
21 yoga body. There are also nine drishti or gazing points,
22 and all nine of those are also listed in the first version
23 of the curriculum.

24 When these practices are performed together, the
25 resulting state of concentration paves the way for the
26 remaining branches of Ashtanga.

27 Q Dr. Brown, what is a mandala?

28 A The term "mandala" means just circle. It appears

1 in a Hindu sacred text, the Rigveda. It's a circular
2 picture which may contain geometric patterns, and it
3 represents the universe.

4 Q Is there any religious significance to the
5 mandala?

6 A Yes.

7 Q What is it?

8 A Mandalas function as revelatory symbols of cosmic
9 truth and as instructional charts for spiritual
10 development. So there are different mandalas. They have
11 different meanings. They can represent, say, a particular
12 deity. And if you meditate on that deity, you bring it
13 into presence with you. It's not just a representation,
14 but it actually kind of calls it up to be present.

15 And so mandalas are often used in meditation.
16 And the idea is to make them very visually appealing so
17 that it calms your mind. You're not kind of thinking
18 about other things. It has -- it's kind of like hypnosis.
19 It hypnotizes your mind. It focuses it.

20 And one way to meditate on a mandala is to draw
21 it or color it yourself. And the idea here is that it
22 brings out your creative mind, and that prepares your mind
23 for meditation.

24 Q Okay. What is a mudra?

25 A A mudra is an energetic seal. It's a symbolic
26 gesture that's meant to direct spiritual energy or prana.

27 Q Okay. Is there any religious significance to the
28 mudra?

1 A Yes. The mudra is a symbolic ritual gesture, and
2 it's believed to produce religious feelings. So not just
3 to express religious feelings, but actually to create and
4 produce religious feelings in the practitioner that result
5 in a spiritual transformation.

6 Q Okay. Just to be specific, can you give us some
7 examples of mudras that are employed in Ashtanga yoga.

8 A Yes. So I'll give two examples.

9 One is the anjali mudra. It's the praying hands
10 position, pressing your hands together. It can be held at
11 the heart chakra, at the third eye chakra, or at the crown
12 chakra above your head. So different positions. And it's
13 often accompanied by kind of a slight bowing of the head.

14 And the meaning is actually the same meaning as
15 the Sanskrit greeting namaste, which is, "I bow to the god
16 within you. I do obeisance to you. I bow to the light
17 within you." And what's interesting here is whether you
18 do the motion while saying "namaste" or whether you just
19 do the motion, it means the same thing. So you don't have
20 to use the word. You can just do the motion.

21 And the meaning or the significance is it's not
22 just a greeting. So it can be used to say -- to kind of
23 greet someone hello or goodbye, but it doesn't just mean
24 hello or goodbye. What it means is it means yoking. It
25 means union. It represents the union of the individual
26 with all of reality. It represents the union of the
27 divine within you with the divine within someone else.

28 And so it's -- to perform anjali mudra is to

1 honor the divine within you and the divine within someone
2 else. According to the book *Myths of the Asanas*, "When
3 one acts anjali mudra, for example, the actual feeling of
4 reverence emerges within and one is unknowingly linked
5 with respectful action that brought about the pose." So
6 by doing the pose, you start to feel reverential. It
7 makes you feel a certain way.

8 A second common mudra is the yama mudra. It's
9 this lotus position that's kind of classic. It's the
10 knowledge mudra, the wisdom mudra. And what it means is
11 the -- it's -- so you've got -- the index finger is the
12 individual spirit or the Atman, and then the thumb is the
13 universal spirit or the Brahman. So if you put the thumb
14 above the index finger, it's the subordination of the
15 individual spirit to the universal spirit, and it brings
16 about a union of the two.

17 So again, it doesn't just express union, but it's
18 believed to bring about the union by putting your hands
19 into this position. So it's one of those repeated ritual
20 gestures that creates a kind of experience.

21 Q Okay. Now, you mentioned last a yama mudra?

22 A Yes, that's correct.

23 Q And that's often depicted with people in the
24 lotus position; is that correct?

25 A That is correct.

26 Q So in movies or --

27 A Yeah, in movies --

28 Q -- popular culture --

1 A Yes, popular culture, icons, also on the Jois
2 Foundation website, also on the first version of the
3 curriculum.

4 Q Also on Exhibit 9; right?

5 A Yes.

6 Q And the praying hands that you mentioned, are
7 those also depicted on Exhibit 9?

8 A Yes. You can see several places where the
9 praying hands are depicted.

10 Q Okay. Just to be specific, in the first line,
11 Surya Namaskara A, is that -- is it the second pose that's
12 shown there with the hands above the head?

13 A Yes. That's in the crown chakra.

14 Q Okay. All right. Now, how did Ashtanga come to
15 the United States?

16 A Encinitas is actually the birth place of Ashtanga
17 yoga. A man by the name of David Williams invited
18 Pattabhi Jois and his son Manju to come here in 1975 for
19 the first time, and Jois considered Encinitas his American
20 home.

21 Q Now, I want to ask you a question about the yoga
22 program in the Encinitas School District.

23 A Okay.

24 Q But I want at least initially -- well, strike
25 that. Let me back up. Let me ask you for an overall
26 opinion, and then I'll break it down.

27 A Sure.

28 Q Dr. Brown, do you have an opinion as to whether

1 the yoga program at the Encinitas Union School District is
2 religious?

3 A Yes, it is my opinion that the program at EUSD is
4 religious.

5 Q Okay. We'll ask more about the basis for your
6 opinion, but I want to break it down a little bit.

7 A Okay.

8 Q I want to ask you questions about what we'll
9 call, for lack of a better term, Phase 1. And we'll
10 define Phase 1 as the period of the 2011 to 2012 school
11 year when there was a Jois Foundation pilot program at
12 Capri Elementary.

13 A Okay.

14 Q So focusing on that point in time or that period
15 of time, please list and describe in detail what, if any,
16 religious elements, in your opinion, you observed
17 regarding the Capri pilot program.

18 A Okay. Well, one of the first observations that I
19 made is that Capri yoga instructor Jen Brown taught the
20 primary series of Ashtanga yoga. So if we refer back to
21 Exhibit 9, that would be starting on Line 3 and going for
22 the next three lines. And so that's her statement, that
23 she taught the primary series.

24 She admits that, quote, "We talked about the
25 purpose of the sun in our world." This is for the opening
26 sequences. And she says that, "It provides heat and
27 warmth and light." The Capri study guide that she
28 distributed for a quiz on sun salutation said that a

1 purpose is to welcome the sun. And these to me sound like
2 simplifications for praying or expressing gratitude to the
3 sun.

4 And then I think I've already talked about the
5 significance of the sun salutations and other asanas in
6 Ashtanga, so I'll skip that for now. But the basic point
7 being to become one with God.

8 So the second thing that I observed is that Brown
9 says -- J. Brown said that she showed a video titled
10 "Ashtanga New York" as a teaching aide in her classes, and
11 it's a video of people doing sun salutations. And she
12 admits in her declaration that she didn't show parts of
13 the video because the people were chanting prayers in that
14 part of the video, which to me suggests a religious
15 context for doing the sun salutation in the video.

16 And the context in the classroom seems like, in
17 my opinion, is not just to say this is a cultural practice
18 that people are doing, but it's to teach people how to do
19 the sun salutation that's depicted in the video.

20 Third, I observed that J. Brown used Ashtanga
21 Institute posters, specifically Exhibit No. 9, in the
22 classroom. They're labeled in Sanskrit. And they show
23 the exact sequence of poses in the sun salutation and in
24 the primary series.

25 And the sequence, again, is important because in
26 ritual, you do the same series of poses over and over
27 again, and this repetition is what changes the mind and
28 transforms the person.

1 Jen Brown also said next, quote, "We made a big
2 tree to have limbs like the eight limbs of yoga," and
3 we've already said what these eight limbs are. The last
4 of the eight limbs is samadhi or becoming one with God.

5 Parents have testified that the Sanskrit names
6 were put on that tree and the children came home saying,
7 "I learned new names for my hands and feet," and they were
8 the names that were on this tree.

9 Jen Brown also taught Sanskrit names for the
10 poses. Now, we've talked a little -- or others have
11 talked in this court about the significance or lack of
12 significance of Sanskrit. Many Hindus believe that
13 Sanskrit is a sacred language. And here the parallel I
14 would use is that for Muslims, Arabic is a sacred
15 language. So it's important to read the Qur'an in Arabic.
16 It's important the say prayers in Arabic. The same could
17 be said for Sanskrit for Hindus.

18 According to a *Yoga Journal* article -- and the
19 *Yoga Journal* is a widely read journal for yoga -- it says
20 that, quote, "Teaching Sanskrit names for yoga poses will
21 stir up interest in yoga's deeper meanings and create a
22 spiritual connection because each Sanskrit letter has a
23 specific sound frequency. When you tap into the sound of
24 yoga, you really experience Yoga with a capital Y since in
25 Vedic belief or Hindu belief each word is encoded with
26 consciousness."

27 So the word is actually conscious, and there's a
28 sacredness to the sound of the word. So that's why you

1 can't just translate it.

2 "To put this simply," the article continues, "the
3 pose name and the effect of the pose are one."

4 So although Sanskrit is a language, I would
5 agree, and it doesn't have to be put to religious
6 purposes, in the context of Hindu yoga, it's believed to
7 have sacred significance.

8 So Jen Brown taught in Sanskrit. She also said
9 in her declaration that included in every lesson was a
10 brief five- to seven-minute talk using the yamas and
11 niyamas as a tool. And as you recall, the yamas and
12 niyamas were Branches 1 and 2 of the eight branches of
13 Ashtanga. Those are the things you don't do; the things
14 you do. And they're specifically taken from the Yoga
15 Sutras, the sacred text.

16 The way Jen Brown summarizes the, quote,
17 "morals" -- and that's her term -- taught by the yamas and
18 niyamas, it would parallel, in my opinion, say, giving --
19 she says it's a short talk. I would say you could also
20 parallel it by saying a short sermon using the Ten
21 Commandments or the Sermon on the Mount as a basis for
22 character traits, kind of in that case drawing from the
23 Bible instead of drawing from the Yoga Sutras. It seems
24 like a parallel to me.

25 Brown also says, another point, that she used the
26 book *Myths of the Asanas* that I've quoted from several
27 times now as a textbook in her classroom. So she used
28 *Myths of the Asanas* as a textbook.

1 Now, I've read this book cover to cover. This is
2 me talking now. And I would say that the word "pervasive"
3 would be very appropriate, to say that it's pervasively
4 religious; every page of the book, every line of every
5 page.

6 So Brown in her declaration, Jen Brown, says that
7 she omitted sections of the book that referred to gods and
8 goddesses. There are indeed many. Cynthia Gray's
9 daughter remembers being taught from this book
10 specifically about at least two poses that refer to Hindu
11 gods. So she remembers learning about Hindu gods.

12 One of those poses was the warrior pose that
13 we've already talked about, and we talked about how it is
14 this reminder of how we take what we learn in yoga and
15 apply it to our everyday lives or how to live out the
16 yamas and niyamas.

17 Jen Brown also taught children to say "namaste,"
18 which can be translated, "I bow to the god within you" or
19 "I bow to the light within you," "I do obeisance to you."
20 Parents, including a declaration and other written
21 statements by Eady report that children were asked to sit
22 in a, quote, "namaste circle." They were asked to place
23 their hands in anjali mudra -- or I'm sorry -- in anjali
24 mudra. Got the wrong one there for a minute. And they
25 were taught to bow to each other and say, "I see the light
26 in you." Children were then to just bow to themselves and
27 say, "I see the light in me." And then they were asked to
28 gesture all around the circle saying, "The light in all of

1 us makes us one." That was in Jen Brown's classroom.

2 Another point, Cynthia Gray's daughter learned
3 the lotus pose in Jen Brown's classes.

4 Q Candy, I'm going to interrupt you for a moment.

5 You just said that that namaste circle was in Jen
6 Brown's class?

7 A Yes.

8 Am I confusing this with Parkdale or -- oh, I am
9 confusing -- actually, I'm not sure. It was at Parkdale
10 that Eady observed -- I may have that confused.

11 Q I just wanted to clarify that for the record.

12 A I'm not sure. It was in 2011, but there were two
13 classes actually where the teaching was taking place, and
14 I may have mixed those up.

15 Q So that was a different school.

16 That was Parkdale Lane, not Capri; right?

17 A That may have been at Parkdale Lane, yes. Thank
18 you for the clarification.

19 Okay. So Cynthia Gray also reports that her
20 daughter learned the lotus pose during 2011, and her 6th
21 grade daughter remembers chanting "om" in class. And it
22 was optional to chant "om," but they were told that this
23 was something that would be a good thing to do.

24 And whether or not they chanted "om," all of the
25 children were supposed to use the yama mudra position that
26 we've already talked about as symbolizing the union of the
27 individual and the universal consciousness to make them
28 one. So chant "om," which means Brahman or do the gesture

1 which also basically means becoming one with Brahman.

2 A Capri study guide says, quote, "What we are
3 trying to get out of yoga" -- and this would be Jen
4 Brown's class -- "is a," quote, "'calm and relaxed mind.'"
5 And we'll say more about calm mind as I go through, but
6 this refers to one of those branches of Ashtanga, the
7 pratyahara, where you have to withdraw the mind from the
8 senses. You calm it down in order to prepare for
9 meditation.

10 A Capri study guide also teaches the gazing
11 points or the drishti that lead to concentration or paying
12 careful attention, which is the dharana branch.

13 The study guide says, "Breathing is," in all
14 capital letters, "THE MOST IMPORTANT PART of yoga because
15 it leads to a," quote, "'calm mind.'"

16 And so in the context of Ashtanga, having a calm
17 mind is not just a neutral goal, but it's very important
18 to calm the mind to prepare for meditation. According to
19 Pattabhi Jois, to quote him, "You calm the mind until the
20 mind assumes the form of Brahman without any effort."

21 According to Tim Miller, who was the first
22 certified instructor by Jois and the director of the
23 Carlsbad Ashtanga Center, "The reason that yoga cultivates
24 the cessation of the fluctuation of the mind or a shut-off
25 of the mind is that underneath the mind one finds the
26 essential self," the spiritual self, or you could say the
27 Atman.

28 And then finally, a parent observed a class at

1 Parkdale Lane in 2011 to 2012. And this was a weekly PTA
2 enrichment class that was held there. And before
3 beginning the sun salutation in that class, the teacher
4 asked the children to talk about everything that the sun
5 gave them and to list reasons that they were thankful to
6 the sun for giving these gifts. And then it correlated
7 the poses in the sun salutation kind of the -- kind of a
8 rising up, the bowing down, rising up to expressing
9 thankfulness and kind of bowing down with reverence and
10 then standing up and recognizing kind of the sun.

11 So it's the -- so to me, my opinion is this is
12 consistent at least with religious worship; bowing down to
13 a superhuman energy, expressing gratitude, and kind of
14 recognizing the spiritual or superhuman force, the sun.

15 THE COURT: But that's not limited to Hinduism,
16 is it?

17 THE WITNESS: No, it's not limited to Hinduism,
18 certainly.

19 THE COURT: Isn't that Egyptian?

20 THE WITNESS: Absolutely. This is one of the
21 points that I think is actually very important, that we're
22 not just -- to be religious, something doesn't need to be
23 just in one religious tradition. This is very much a
24 Judeo-Christian model of what religion is, is you have a
25 belief in a single deity. But for many religions
26 traditions, Hinduism, there's -- you've reached the
27 divine. And arguments about kind of which set of beliefs
28 really aren't that significant, the idea is to experience

1 the divine.

2 So absolutely it's not unique to Hinduism. It's
3 found in many world religions. It's the shared goal of
4 reverencing the divine. But you're right, in Egyptian sun
5 worship is very important, actually. It's not unique to
6 Hinduism.

7 BY MR. BROYLES:

8 Q The discussion of the sun salutation or talking
9 about the sun, the last story you told, just to be clear
10 for the record, was not Capri; right?

11 A It was not Capri. It was Parkdale Lane.

12 Q It was another school.

13 A In 2011.

14 Q It wasn't taught by Jen Brown?

15 A No. It was a PTA program. I don't know who was
16 teaching it. It may have actually been Jen Brown. I
17 don't know that for the record.

18 Q I want you to look briefly at Exhibit 6, please.
19 Dr. Brown, do you recognize this document?

20 A I do.

21 Q What is it?

22 A It is the Capri study guide that was used in Jen
23 Brown's class and that I've been referring to.

24 Q Just to be clear, it's the one that talks about
25 the gazing points or drishti; right?

26 A That is correct. And all nine of the drishti are
27 also listed on the first version of the curriculum used
28 the following year.

1 Q Okay. Focusing just for a moment on this
2 document, it defines asana there; right?

3 A It does.

4 Q And it defines other vocabulary like samadhi?

5 A Yes, it does.

6 THE COURT: This was this pilot program?

7 MR. BROYLES: Yes.

8 BY MR. BROYLES:

9 Q And vinyasana?

10 A Are you on vinyasa or --

11 Q Yeah, vinyasa. I pronounced it totally wrong. I
12 apologize.

13 A Okay.

14 Q And then towards the bottom, it discusses this
15 Surya Namaskara A; right?

16 A It does.

17 Q And it's your opinion that that's the Surya
18 Namaskara A we saw on the Jois yoga poster a moment ago;
19 right?

20 A Yes. And, I mean, that's what Jen Brown talks
21 about in her declaration. She says that she taught that
22 sequence.

23 Q Just to be clear as we go forward, is the Surya
24 Namaskara A and the Surya Namaskara B also referred to as
25 Opening Sequence A and Opening Sequence B?

26 A That is correct, they are the same.

27 Q Okay. Now, I -- anything else about the Capri
28 program before we move on?

1 A No.

2 Q Okay. Now, I want to move to the next phase, and
3 so I'm going to focus on the fall of 2012 to 2013, the
4 period of time roughly between August of 2012 to
5 December 31 of 2012.

6 A Okay.

7 Q So just the first roughly half of the school
8 year.

9 A Sure.

10 Q So we're moving on to discuss specifically now
11 the schools under the terms of the \$533,720 Jois grant,
12 okay?

13 A Okay.

14 Q Please describe in detail what, if any, religious
15 elements you observed, in your opinion, regarding the fall
16 of 2012.

17 A Okay. So I reviewed a number of documents for
18 formulating this opinion. So first of all, I looked at my
19 version of the Jois memorandum of understanding. I
20 received a version on January the 16th of 2013, which was
21 a single PDF file with the one title, "Jois MOU." And the
22 effective date of the MOU is listed as August 1, 2012, and
23 the next two pages of the document are a grant proposal
24 that are dated July 24 of 2012, which was one week prior
25 to the start date of the grant.

26 And I also reviewed a document which is the MOU
27 with RDG, which is the -- it is signed by the RDG
28 representative on July the 25th, which is the -- it's

1 dated and signed the day after the date of the grant
2 proposal that I have. So in my understanding, these
3 documents were all written, finalized, and used at the
4 same time.

5 And so here's my close reading of the documents.

6 What I see on Page 1 of the MOU is that it's
7 agreed upon by both parties and detailed within the
8 approved grant proposal that EUSD will provide a
9 comprehensive yoga instruction program and a curriculum
10 supporting yoga instruction focused on life skills.

11 So the first thing that I observe here is that
12 the kind of big goal of the program is comprehensive yoga
13 instruction, and then the curriculum is supporting that
14 big goal. So big goal comprehensive yoga instruction
15 means towards that goal is the supporting curriculum.

16 It's focused on life skills. And it is -- and it
17 says that, "EUSD will do this to achieve the grant
18 objectives," and then it refers to the grant, which is
19 part of the same PDF file.

20 And so the life skills -- okay, so then we move
21 on to the grant proposal which defines, because it says
22 that it's detailed within the grant what these life skills
23 are and what this program is. So a lot of the same
24 language is used in the attached grant, which is again
25 seven days before the MOU.

26 And so we see here that it's a partnership
27 between the Jois Foundation and EUSD. The core foundation
28 of the program is providing access to Ashtanga yoga.

1 Complementing this program is the development of a
2 comprehensive curriculum of key life concepts.

3 So again, I see the same language. Big goal is
4 the core program, the Ashtanga yoga program, means towards
5 that goal the complement is this curriculum. And there's
6 several terms in this text that make that same point. So
7 it says -- "complementing, supporting, supplement" are all
8 terms to refer to the curriculum.

9 The first phase is a comprehensive yoga
10 instruction. And it says that the program will be taught
11 by certified yoga instructors trained by Jois Foundation
12 teachers, so trained and certified by Jois.

13 It then also talks about the key themes of yoga
14 and things like self-discipline, which at least one
15 interpretation of that would be that it's the yamas,
16 right, self-regulation, the restraints. But then -- so
17 it's kind of how you live, kind of the philosophy of life
18 or the ethos, is how I read that.

19 And I read the comprehensive program as the world
20 view, the comprehensive big picture. So I see in this an
21 ethos kind of system of how to live, and I see this as
22 kind of the big picture of yoga philosophy within here.
23 And then I move on, and I'm kind of treating these two
24 documents together; the MOU with Jois and the MOU with
25 RSG.

26 And I'll observe here that the version that I
27 read in January is actually a different version than I
28 read in the trial exhibits. And the primary change was

1 that the word "self-mastery" was used 11 times in the
2 first version that was signed by RDG. And then every time
3 "self-mastery" is used, it's replaced by "health and
4 wellness instructor" in the revised version. And what it
5 looks like happened --

6 THE COURT: What's the question?

7 MR. BROYLES: Your Honor, the question is what
8 she saw in the fall of 2012 as far as whether -- what
9 religious elements she saw in the program.

10 THE COURT: Okay.

11 THE WITNESS: I'm just trying to walk through a
12 foundation of my close reading observations, and then I'll
13 try and, as quickly as I can, get through religious
14 interpretation.

15 THE COURT: Okay. I think the reporter needs a
16 break, so we're going to take our morning break. Let's
17 take 15 minutes.

18 MR. BROYLES: Thank you, your Honor.

19 (Recess.)

20 THE COURT: All right. We're back on the record.
21 Mr. Broyles.

22 MR. BROYLES: Your Honor, before I proceed, I
23 just wanted to do some housekeeping and move Exhibit 6,
24 the Capri study guide, into evidence.

25 THE COURT: All right. It's in.

26 (Exhibit 6 was received into evidence.)

27 MR. BROYLES: Your Honor, we also have a
28 stipulation to move the video -- or the set of four videos

1 into evidence.

2 THE COURT: Okay. What number?

3 MR. BROYLES: Are they numbered?

4 MR. SLEETH: I don't think they were numbered.

5 THE COURT: What exhibit number?

6 MR. CARELLI: Your Honor, it's Exhibit 3 to David
7 Miyashiro's declaration.

8 THE COURT: I just want to make sure the video
9 has a number.

10 Is there a next in order?

11 THE CLERK: No. 13 (sic).

12 THE COURT: Okay. The four videos are No. 13.

13 (Exhibit 14 was received into evidence.)

14 THE COURT: And I have seen the video. I don't
15 know if I've seen the whole video, but I've seen --

16 MR. SLEETH: Did you see students doing yoga with
17 a teacher telling them how to do it?

18 THE COURT: Yeah.

19 MR. SLEETH: All right.

20 THE COURT: How long are the four videos?

21 MR. SLEETH: Each one of them is about five or
22 six minutes, and some of it is people talking about the
23 program. And I'm just focused on seeing what the teachers
24 are teaching in the video to the students.

25 THE COURT: I think I've seen the whole thing.

26 MR. SLEETH: Okay.

27 MR. BROYLES: Yeah. There's four clips, four
28 separate clips, your Honor.

1 THE COURT: Well, what I saw -- there were four
2 clips, but I think when I saw it, it was -- they were not
3 segmented. They were just four together. They didn't
4 stop and start four times. But I think I saw about 10 or
5 15 minutes, I think.

6 MR. BROYLES: Your Honor, I -- just for the
7 record, I want to state our only issue with the video is
8 that if you've seen it already, it doesn't show a whole
9 30-minute or 40-minute class.

10 THE COURT: I understand. And this is a -- as we
11 discussed, essentially a petition for writ of mandate
12 that's usually just done on declaration and other things.
13 I've read the declarations. I've read everything. I've
14 seen the video.

15 Then the understanding was that Dr. Brown would
16 be one of -- either the only or very few live witnesses
17 subject to cross-examination. So anyway, the video is in.

18 MR. BROYLES: Thank you, your Honor.

19 BY MR. BROYLES:

20 Q I believe when we took our break, I was starting
21 to ask you about the elements that you observed regarding
22 the fall of 2012.

23 Had you completed your answer or were you in the
24 middle?

25 A No. I was in the middle, and I'll try to
26 fast-forward a little, and maybe you can tell me if I need
27 to slow down and explain things to you.

28 So I'll just move on to the GLPD Gazette of 9/12.

1 THE COURT: The what?

2 THE WITNESS: The GLPD Gazette. It's -- I don't
3 know what exhibit number it is. But it was the teacher
4 gazette written by two of the yoga instructors, Nicole
5 Berger, who gave a declaration, and then another Jois
6 instructor.

7 THE COURT: Let me just say, with all due respect
8 to your obvious overwhelming expertise, I don't know that
9 I need an expert to tell me what something says. And if
10 something --

11 THE WITNESS: No. I --

12 THE COURT: And, you know, if --

13 THE WITNESS: I understand that.

14 THE COURT: And if one of the instructors
15 referred to something in Sanskrit or the eight limbs, I
16 understand the religious significance.

17 THE WITNESS: Significance of those things.

18 THE COURT: I don't need --

19 THE WITNESS: I'll try to just flag things and
20 not explain or say what it says.

21 THE COURT: Okay.

22 THE WITNESS: I'll try. Let's see if this works
23 maybe.

24 THE COURT: Sure.

25 BY MR. BROYLES:

26 Q Real quick on the gazette that you mentioned, we
27 have it marked as Plaintiff's Trial Exhibit 8. I'm not
28 sure if it's been moved --

1 THE COURT: It has.

2 THE WITNESS: So there I just want to say that
3 when they talk about mindfulness, that that refers to
4 becoming a third party to yourself. And it's a goal of
5 meditation in Hinduism as well as one of the prongs of
6 Buddhism. So the mindfulness is religious.

7 And the balance is also a religious term that's
8 in that document because it's not just physical balance,
9 but it's balancing energy.

10 That's all I want to say about the gazette.

11 BY MR. BROYLES:

12 Q Can I ask you a quick question about the gazette?

13 A Yes.

14 Q Does the gazette specifically mention the type of
15 yoga being taught will be Ashtanga yoga?

16 A Yes. It says that -- this is Jois teacher who
17 submitted the declaration saying that they will teach
18 Ashtanga using the primary series.

19 THE COURT: That's what I meant. I don't need an
20 expert to tell me that, and I can guarantee you'll mention
21 it in argument.

22 THE WITNESS: Okay.

23 MR. BROYLES: Thank you, your Honor.

24 THE WITNESS: So parents also observed the
25 eight-limbed tree in the fall and also the institute
26 posters, Exhibit 9, that we spent a lot of time on. So
27 those were still up in the fall.

28 THE COURT: And those will be mentioned in

1 argument. Again, I don't need an expert to tell me
2 that --

3 THE WITNESS: Okay.

4 THE COURT: -- I don't think.

5 MR. BROYLES: Your Honor, she's just identifying
6 what elements were up when. That's all.

7 THE WITNESS: I'll do this very quickly.

8 THE COURT: They were up when they were up.
9 That's not really the subject of expert testimony, I don't
10 think.

11 MR. BROYLES: Your Honor, it is because the claim
12 that they've made is that religion was stripped from the
13 program. So what elements were at what part of the
14 program is relevant, your Honor.

15 THE COURT: I understand. But when they were up
16 is not the subject of an expert.

17 MR. BROYLES: No, I understand.

18 THE COURT: You --

19 MR. BROYLES: She's just -- she's just talking
20 about that period of time, your Honor.

21 THE COURT: But you can point that out in
22 argument.

23 MR. BROYLES: Okay.

24 THE WITNESS: Okay.

25 THE COURT: That's not an expert opinion.

26 MR. BROYLES: Yeah.

27 THE WITNESS: Okay. So I find it religious, that
28 the children are learning Sanskrit. I find it religious

1 that they're still saying "namaste" and that they're still
2 sitting in the lotus and that they're still doing this.
3 Those are religious to me. And that they're coloring
4 mandalas in their classes and talking about reaching the
5 center of themselves. So that's all I'll say, then.
6 Those are the religious elements I see in the fall.

7 BY MR. BROYLES:

8 Q Okay. And specifically the curriculum, you said
9 in your opening that you reviewed the EUSD On the Mat
10 curriculum that was posted on the EUSD website as of
11 November 2012; correct?

12 A Yes, that's correct.

13 Q What, if any, religious elements did you see in
14 that document?

15 A Okay. So I find the religious elements of the
16 asanas and the vinyasa and the gaze. Those all seem still
17 to be religious to me. And the references to spiritual
18 goals of connecting with their inner selves or the Atman.
19 The key life concepts based on yamas and niyamas are
20 there. And they specifically made character connections,
21 which are paraphrases of the yamas and niyamas. And Jen
22 Brown confirms in her declaration teaching the niyamas.
23 Their witness Hartsel talks about those are the ethical
24 principles of all of yoga. I find it religious that the
25 students are learning actual names of the poses for
26 Opening Sequence A, being told to reach their hands up to
27 the sun in the mountain pose, being taught that the lotus
28 positions symbolize a calm and quiet mind and that the

1 resting pose or corpse allows the body to kind of gain the
2 special understanding.

3 So there's a recognition of symbolism very
4 explicitly. I find it religious that the children are
5 focusing on the breath and connecting breath with movement
6 and connecting the breath with sound. And I'm going to
7 talk about sound meditation in the videos, which is very
8 important actually in the videos.

9 I find it religious that children -- that there's
10 a picture of a child in the curriculum doing the yama
11 mudra. There are guided meditation scripts. "Let go the
12 thoughts of your mind." And the curriculum specifies that
13 beyond physical poses, it's the repetitive nature of the
14 sequences and the gaze that focuses the mind and kind of
15 calms the mind, as I've talked about.

16 Also, in the curriculum it always begins with the
17 sun salutation, always ends with the lotus and the
18 resting, and it's parallel really to a liturgical order of
19 service the way the ritual is framed for the event, and
20 that's a very kind of religious framing for the
21 curriculum.

22 I can stop there.

23 THE COURT: Wouldn't you have that with a
24 calisthenic routine?

25 THE WITNESS: No, you wouldn't have this very
26 prescribed sequence that has to be done in exactly that
27 same way. It has to be taught through the succession of
28 teachers who are specially certified and trained through

1 this parampara connection and where it's crucial that it
2 be done exactly in that order. You can't mix it up. You
3 can't do it in a different routine. It has to be that
4 framing of worshipping the sun at the start, sitting in
5 the lotus, and meditating and being in the corpse position
6 at the end. That to me moves beyond a calisthenics
7 routine.

8 And the idea is that the reason again for the
9 sequence is it lines up the spiritual energy in your spine
10 to connect with the universe. That to me is different
11 from calisthenics.

12 THE COURT: All right. Well, I'm just saying
13 that if you're going to prepare for some athletic event,
14 you're going to prepare in a sequence that eases into it,
15 and then, you know, you're not going to start sprinting
16 before you start.

17 THE WITNESS: Yeah. And I can definitely see
18 that parallel, and I think that there could be overlapping
19 functions. But what I'm saying is that, in my opinion,
20 there's something more than exercise that's going on.

21 THE COURT: I understand.

22 THE WITNESS: Okay. That's all.

23 THE COURT: Can I ask one question before I
24 forget.

25 Is karate -- does karate have religious --

26 THE WITNESS: Yeah, it does. And current as
27 well. That's not what I'm testifying to, but I think
28 karate has many of the same issues.

1 THE COURT: But karate --

2 THE WITNESS: Absolutely. It's moving around the
3 chi energy, and chi and prana are really the same.

4 THE COURT: What's the religion?

5 THE WITNESS: Well, it would be Taoism, would be
6 more. And again, these religious are kind of
7 interrelated. So there's Buddhism --

8 THE COURT: Shintoism?

9 THE WITNESS: Yeah, Shintoism, Buddhism, Taoism.
10 But concept of energy is actually very parallel across all
11 these religions.

12 THE COURT: And that's acupuncture, too, isn't
13 it?

14 THE WITNESS: Absolutely it is. I talk about --
15 and Tai Chi. All those practices, that's why the book is
16 on complementary and alternative medicine.

17 THE COURT: But karate is religious?

18 THE WITNESS: Absolutely.

19 BY MR. BROYLES:

20 Q Just to be clear for the record, when we talk
21 about the curriculum from the fall, we're referring to
22 Exhibit 7; is that correct?

23 A I believe that's the case. Yes, it is.

24 Q Just to be clear, also, Exhibit 7, the curriculum
25 from the fall, includes Surya Namaskara A and Surya
26 Namaskara B, also known as Opening Sequence A and Opening
27 Sequence B; correct?

28 A Yes, that is correct.

1 Q And then they often or always -- well, let me ask
2 you this question: Do they often close with various lotus
3 positions?

4 A Yes.

5 Q Okay. And are those similar or the same
6 positions that we saw on the Ashtanga poster --

7 A Yes.

8 Q -- Exhibit 9?

9 Okay. Just for the record, could you wait until
10 I'm finishing --

11 A Sorry.

12 Q -- the question before you answer.

13 A Sorry.

14 Q It's hard for the court reporter to keep up with
15 us.

16 A Yes, understood.

17 Q Just before we move on to the spring or after
18 January 2013, do you have any more religious elements that
19 you saw in the curriculum as of the fall?

20 A I can stop there.

21 Q Okay. Please list and describe in detail what,
22 if any, religious elements you observed, in your opinion,
23 regarding the period of January 2013 to the present.

24 A Okay. So I'll focus here primarily on teacher
25 declarations. I see they're still teaching Ashtanga.
26 This is clearest from Jen Brown's declaration. She --
27 well, not just her declaration, but her current profile on
28 the Jois Encinitas website says, quote, "Jen also teaches

1 Ashtanga yoga to children at Capri Elementary School
2 through the Jois Yoga Foundation."

3 Second point, they're still doing the sun
4 salutation, Opening Sequence A, and B for older children.
5 All they've done is changed the names. They're still
6 doing the lotus. They're still doing the rest or corpse
7 pose. They're still using actual yoga pose names like
8 downward facing dog. They haven't changed all the names.
9 They're still teaching mudras, both the yama mudra and
10 anjali mudra.

11 I'll give just a handful of quotes. Reich says,
12 "I tell them they can choose one finger to rest their
13 thumbs on or palms open, whichever they choose."

14 Wood says, "I've had students press their palms
15 together to assist with balance poses for space
16 consideration."

17 Gerber says, "Pressing the palms together in a
18 tree pose aids balance." For instance, in the tree pose,
19 which is a one-legged posture. So maybe balance. But
20 they're also doing the balance pose when they're not
21 standing on one leg. It's in a lot of poses.

22 Bergeron says, "When students press palms
23 together, it's a way to find balance in the body." So it
24 may be true that there's kind of a physical balance to
25 this. Actually, what I talked about with the purpose of
26 balance earlier is that it's a balance of energy. It's
27 not just physical balance. But it's unifying kind of your
28 energy with their energy. And this is -- this is a

1 concept in Taoism as well as in Hinduism, that you have to
2 come --

3 THE COURT: Let me make sure I understand.

4 If you're standing on one foot --

5 THE WITNESS: Then it could be useful for
6 physical balance.

7 THE COURT: -- you've got to do something with
8 your hands.

9 THE WITNESS: But my point is that they're not
10 just doing it when they're standing on one foot. It's
11 being used in many different poses when there's not a
12 physical reason for balance. But even if it is for a
13 physical reason for balance, my opinion is that it may do
14 that, but it's doing something more because of the
15 symbolism of the uniting and yoking.

16 So my parallel to this would be that if you were
17 to make the sign of the cross, it may legitimately help
18 limber up your hand for writing exercises. It's physical,
19 right? It's a good -- it actually is a very limbering
20 kind of exercise. But there's more symbolic significance
21 to it than just that physical balance.

22 So they're doing that praying hands position.
23 They're doing the yama mudra.

24 THE COURT: I know -- I'm just thinking, are
25 you -- and I don't think you are saying this, that a
26 teacher that is having children stand on one leg for
27 balance can say, "Do something with your hands, but don't
28 put them together. I don't want anybody to think you're

1 praying" or that --

2 THE WITNESS: I don't think you have to -- I can
3 balance on one foot without -- I mean, I'm not an
4 exercise -- but I don't think you need to put your hands
5 together to balance on one foot, but it's being used a lot
6 of times when you're not balancing on one foot. And you
7 can actually see that in the videos.

8 So breathing, pranayama, mindfulness, centering,
9 McClosky says, "Tune into the breath." Breathing exercise
10 center our minds.

11 Cooney says, "Students learn to pay attention to
12 our breath, move mindfully." And again, "mindfully"
13 refers to mindfulness. This is meditation. Centering is
14 meditation. These are very -- these aren't neutral terms
15 in the context in which they're being used.

16 And one thing I found --

17 THE COURT: But they can be.

18 THE WITNESS: They can be, but in the context --

19 THE COURT: I mean, pain management teaches
20 breathing.

21 THE WITNESS: Yeah. But in the context of yoga,
22 it's -- it's not just physical breathing, right? And all
23 these quotations on the breathing channels prana. And so
24 based on my reading of context clues, my interpretation of
25 the use of the language is that it's not just being
26 used -- it's not just coincidental that they're using the
27 word "mindful" or they're using the word "centering" or
28 they're using the word "balance."

1 Is that --

2 THE COURT: Yes.

3 THE WITNESS: So another thing that was very
4 interesting to me in the teacher declaration was that
5 children are making religious connections from what's
6 going on in the classrooms, which suggests to me that the
7 context of the EUSD classes isn't really all that
8 different from another context where students would think,
9 "Well, this is a different context. Religious actions
10 don't fit here. They seem" -- and let me give some
11 examples to this because I think this is actually a really
12 interesting point.

13 So Reich says that when she asks children to sit
14 in a lotus, some of them know to touch their fingers
15 together like this. They know that that fits with the
16 lotus. And Enyedi says, "On occasion, I will hear a few,"
17 more than one, "a few children chant while we are in
18 cross-cross applesauce." And it's interesting to me to
19 hear that she says criss-cross applesauce because the
20 curriculum actually says lotus and the video actually says
21 lotus. But for some reason, the declaration says,
22 "criss-cross applesauce." And Enyedi says, "I always tell
23 them when these children are doing the chanting, I tell
24 them they are not allowed to pray in class." That's
25 Enyedi's words. "They are not allowed to pray. They have
26 to wait till they get home to pray as school is not a
27 place for that."

28 And to me that sounds like an admission that

1 children are associating lotus with prayer in the language
2 of the teacher with chanting. So at least some of the
3 kids are making that connection.

4 Jen Brown says, "Some kids still tell me
5 'namaste' when they leave class, but I do not
6 reciprocate." And then she says, "I have many students
7 who come to yoga class and mimic what they see their
8 parents do, like say 'om' while they're sitting in
9 criss-cross applesauce." Again, not lotus, even though
10 that's in the curriculum and that's in the video.

11 But many students are saying "om" while they're
12 in that lotus position. And what Brown says is, "I
13 generally try to ignore that the first time knowing that
14 many times kids are doing that to gain attention. And if
15 I ignore it, they will stop. Similarly, I have students
16 who use the Sanskrit names like shavasana," the corpse
17 pose, "and I don't correct them because I don't want to
18 draw attention or encourage it."

19 So to me this is interesting because the students
20 are chanting "om" when they're in this position, and "om"
21 again is the sacred sound of the universe. And it's
22 implied that this is inappropriate to -- or Brown finds it
23 inappropriate, so she shouldn't encourage it. But instead
24 of telling them not to do it, she just ignores it.

25 So this is from January 2013 to the present.
26 This is Jen Brown's current declaration that the kids are
27 chanting "om" in the lotus position and they're saying
28 "namaste," they're using Sanskrit terms like shavasana,

1 and she's not correcting them.

2 I can stop there.

3 BY MR. BROYLES:

4 Q Is what you just described that's happening in
5 the classroom, the connections that children are making,
6 is that religious, Ms. Brown?

7 A They're making religious connections, right? I
8 mean, what they're doing in the classroom is the children,
9 to me it sounds like they're interpreting it as religious;
10 that they should pray, that they chant "om"; they should
11 put their hands in this special position that symbolizes
12 this kind of connection to the universe. Those are
13 religious connections, in my opinion.

14 Q All right.

15 THE COURT: But isn't it -- I mean, we don't know
16 what they have been told outside of school.

17 THE WITNESS: We don't know -- we don't know what
18 they've been told outside of school. We do know --

19 THE COURT: Either way. And I suspect that
20 there's been a lot of -- there's been a lot of discussion
21 outside of school.

22 THE WITNESS: Oh, these aren't just the
23 complaining children.

24 THE COURT: I understand.

25 THE WITNESS: Jen Brown says it's many children.
26 What we do know is what's happened in the EUSD, and we
27 know from the previous years that Jen Brown was teaching
28 them to do these things. She was teaching them to say,

1 "Namaste." She was teaching them to hold their hands.
2 She was teaching them to chant "om." We know that
3 happened at EUSD. So they may be hearing it other places.
4 We know that they've also learned it at EUSD and that it's
5 still going on and she's not stopping it.

6 BY MR. BROYLES:

7 Q Okay. And you've had -- now had the opportunity
8 to review the new yoga curriculum provided in the past
9 week or so by EUSD; is that correct?

10 A That is correct.

11 Q And just for the record, in the binder in front
12 of you, it's been -- it's marked, I believe, with a red
13 tab past all of our exhibits. It's marked as Exhibit 1.

14 A That is correct.

15 Q Okay.

16 MR. BROYLES: Your Honor, I'd like to move -- I'd
17 like to move it in as No. 14, next in order.

18 THE CLERK: And your Honor, earlier I misspoke.
19 And the four yoga clips should be No. 14. So anything new
20 should be 15.

21 THE COURT: Any objection?

22 MR. SLEETH: No objection.

23 THE COURT: What number?

24 MR. BROYLES: 15.

25 THE CLERK: Can we get a title for this? Because
26 my table of contents has several.

27 MR. BROYLES: It's called the "K" -- it starts
28 with "Grades K through 1, Session 1 Respect." In the

1 left-hand corner, it says, "On the Mat." And then the
2 first big block words say, "Here We Go." And it's
3 approximately --

4 THE COURT: Exhibit 15 will be received as a
5 multi-page document. The first document is entitled
6 "Exhibit 1." And I don't know how many pages of it there
7 are. So that will be received as Exhibit 15.

8 MR. CARELLI: And your Honor, for the record, if
9 I may, It's Exhibit 1 to David Miyashiro's declaration,
10 just so we have --

11 THE COURT: All right.

12 MR. BROYLES: It appears to be approximately 200
13 pages long.

14 THE COURT: And this was -- what's the date, a
15 week ago?

16 MR. CARELLI: This is the curriculum as it
17 currently stands, is my understanding.

18 THE COURT: Okay. So we'll just call it current
19 curriculum?

20 MR. CARELLI: That would be fine.

21 THE COURT: Okay. Exhibit 15.

22 MR. BROYLES: Okay. Thank you, your Honor.

23 (Exhibit 15 was received into evidence.)

24 BY MR. BROYLES:

25 Q In your opinion, does the current curriculum have
26 religious elements?

27 A Yes, it does.

28 Q Okay. And what are those elements?

1 A Well, the curriculum is -- it's a stripped-down
2 version of the first curriculum. It's just much less
3 detailed. It doesn't explain what's being done. It
4 doesn't give pictures. Substantially, it's very similar.
5 It's still opens always with Opening Sequence A and B for
6 older children. It's still ends for the older children
7 with two inversions and with the four lotuses just like on
8 the Ashtanga Yoga Institute poster. Still has the
9 shavasana corpse or resting at the end.

10 And so we still see the same ritual kind of
11 liturgy order of service that we see in Ashtanga yoga as
12 taught by Jois. Same sequences; same order.

13 There's kind of this addition of kind of more
14 secular sounding character quotes, but it's still -- I
15 still see that this is more than exercise. It's an ethos
16 of how to live ethically in the world.

17 THE COURT: A what?

18 THE WITNESS: It's an ethos, how you should live
19 ethically in the world. So there's something more than
20 exercise. I'm not going to say that that has to -- from
21 previous versions of the curriculum, it's very explicit.
22 It's yamas and niyamas and it's "How do we treat
23 ourselves? How do we treat others?"

24 They don't use that explicit language now, but
25 there's still more than exercise that's being taught in
26 the curriculum. And we'll see in the videos that it
27 actually gives a lot more detail than what's in the
28 curriculum.

1 THE COURT: So what? How is that religious?

2 THE WITNESS: Well, so ethical and moral
3 teachings are not necessarily religious. In yoga, the
4 yamas and the niyamas come from the Yoga Sutras, which is
5 a sacred text. It's "How do I treat myself? How do I
6 treat others? What restraints, what observances?"

7 So there is this yoga philosophy of Ashtanga yoga
8 that has these principles. So you can have character
9 principles apart from that. I'm not trying to make kind
10 of a claim here that just because you see character in the
11 curriculum, that necessarily means that it's yamas and
12 niyamas. Based on the past, we can see that they've been
13 talking about those. And based on Jen Brown's at least
14 current declaration, they're still talking about those.
15 And according to Hartsel, they're still talking about the
16 yamas and niyamas. So this is consistent with that. It's
17 not by itself kind of conclusive evidence of that, but
18 it's just consistent.

19 And just the other point here is that it's
20 something more than exercise. It's this "How do you live
21 in the world?" It's not overtly religious language here.
22 You'll see some more overt things in the videos.

23 BY MR. BROYLES:

24 Q Okay. Do you see prana involved in this new
25 curriculum?

26 A Yeah. I mean, it's still -- the breathing is all
27 about prana, right?

28 Q Okay. Do you see the elements of -- I don't know

1 what the word is, but what you described earlier as
2 connecting movement with breath?

3 A Yeah. I mean, you can see from the very outset,
4 right, it's breath counting, belly breathing. It's all
5 the way through the curriculum.

6 Q Before we move on from the curriculum, besides
7 the opening and closing sequences and the breath and the
8 other elements that you just went over, is there anything
9 else that you see that you would identify as religious or
10 involving religious elements in the curriculum?

11 A I think that's enough to say for now.

12 Q Okay. Now, have you observed the videos that
13 were provided recently by EUSD?

14 A Yes.

15 THE COURT: That's Exhibit 14?

16 MR. BROYLES: Yeah.

17 MR. REYNOLDS: Yeah, 14.

18 MR. BROYLES: Exhibit -- it's been marked as
19 Exhibit 14. And just for the record, it represents
20 four -- approximately four clips showing students doing
21 yoga and a few interviews.

22 BY MR. BROYLES:

23 Q Have you seen those videos?

24 A Yes.

25 Q And what, if any, religious elements did you
26 observe in the new curriculum videos?

27 A Okay. So Assistant Superintendent Dr. Miyashiro
28 calls the instructors "our yoga instructors" -- I'll just

1 observe that -- not "our health and wellness instructors."
2 And he has a very interesting quote in the video. And
3 what he says is, "In my mind, it was just going to be
4 stretching and core building. But the other things that
5 they learned from the yoga class was how to calm down and
6 be less reactive, more responsive."

7 I'm just going to skip a little.

8 "There was one school assembly where the kids
9 were getting unruly, the sound system didn't work, the
10 whole student body was in the cafeteria, started to get
11 restless. The principal said, 'Jacob' -- this is a 6th
12 grader -- 'go up there, do some yoga poses.' So the 6th
13 grader gets up there, he's on the microphone, he says,
14 'Everybody, do six yoga breaths.' Then he raises his
15 hands, they inhale, they exhale, and a silence came over
16 the room. And I, "Dr. Miyashiro," was sitting in the back
17 thinking, 'There's something more to this.'"

18 So this to me suggests that he thought at the
19 outset that this was just going to be stretching and core
20 building. What he observed was something more, that there
21 was this kind of ethos of how to take yoga into all of
22 life and how to relax and kind of calm yourself and live
23 in this much more appropriate way.

24 And it's -- everybody's doing it, right? The
25 entire school assembly is in that room. Doesn't matter if
26 you're in P.E. or not, by the way. But they're all in
27 there and they're all doing these poses.

28 So -- and, I mean, this actually gets back to

1 the -- the question you were asking me about moral
2 character. Apart from an assumed framework of the yamas
3 and niyamas, it's just not intuitively obvious to me why
4 you're teaching character in a P.E. class in particular
5 when Dr. Miyashiro also says in the video that less than
6 half of the yoga teachers have any teaching credentials
7 that you would think would be useful in preparing children
8 to teach character.

9 And so the training that I see from these teacher
10 declarations is that they have training from Ashtanga in
11 yamas and niyamas. I don't see any other training. And
12 so it would make sense to me at least that where they've
13 learned the character is from their yoga instruction.

14 McCloskey in the video says they can apply these
15 same techniques when they're encountered with something
16 outside of school. They can reflect back on what they've
17 learned in the yoga classroom and remember how to deal
18 with situations. They're able to use these tools that
19 we've taught them.

20 And here, I mean, we might recall that the *Myths*
21 *of the Asanas* talked about the Yoga Sutras providing tools
22 for how to live. And so what we see from McCloskey is
23 that they're learning these concepts in yoga, and the idea
24 is they apply them to all of life. That to me sounds like
25 a life philosophy or an ethos, which is one of the
26 features of religion.

27 You can see in the videos at several different
28 points that the kids are not just sitting in criss-cross

1 applesauce. They're actual making an intentional effort
2 to move their feet above their knees in the lotus position
3 if you happen to re-review those videos. And you can see
4 that they're putting -- some of them are putting their
5 hands in the yama mudra position in the video. You can
6 see that they're closing their eyes to meditate.

7 And in the video, the yoga teacher tells them,
8 "Go into the lotus pose" and uses the term "lotus." She
9 doesn't use the term "criss-cross applesauce." She says
10 that they can put their legs any way that's comfortable
11 because, again, it's a hard pose to do. So she says you
12 can criss-cross them or you can do half or you can do full
13 lotus. The terms "half" and "full" are often used in
14 reference to lotus.

15 So in the video, the teacher is saying, "Okay,
16 we're going to do our lotus poses." And then you can
17 watch them do the series of lotus poses in the video.

18 And here's one thing that was really interesting
19 to me. You may not catch this if you're not looking for
20 it. She plays a triangle between the lotuses. This is
21 sound meditation. You're supposed to listen to the sound
22 of the bell and pay attention to it while doing the yoga
23 breaths. And this -- and it's actually very much like the
24 mandala. So just like the colors, the sensory stimulation
25 of colors brings you into meditation, the sound
26 stimulation of the bell brings you into meditation in the
27 lotus position, and she rings it as they move from one
28 lotus to the next.

1 THE COURT: Wouldn't music do the same thing?

2 THE WITNESS: It's -- so again, in yoga
3 terminology -- actually, if you look at a lot more of the
4 yoga literature, it says when you get to a state of
5 meditation, you'll hear the bell even if you don't hear
6 it. So it's actually the bell specifically. It's not
7 just any kind of music. And it's this very -- partly
8 because it's a simple sound, right? You can focus on it.
9 It's not complicated like music would be.

10 You can see the kids with their hands in the
11 anjali mudra -- I'm sorry -- praying mantis position, and
12 they're not balancing on one foot when they're doing it in
13 the video.

14 You can see recognizable asana sequences and use
15 of standard poses. And this is actually really
16 interesting because the curriculum, the revised
17 curriculum, does not -- uses different terms for the
18 asanas than the video. The revised curriculum uses these
19 kid-friendly terms, but the videos use standard yoga terms
20 like plank, cobra, upward facing dog, downward facing dog.
21 And that's the proper order of the poses if you look at
22 the Ashtanga order.

23 There's an emphasis in the video on coordinating
24 breath with movements, the vinyasa, the movement of prana.
25 There's the guided meditation and visualization. So the
26 first version of the yoga curriculum actually gives guided
27 meditation scripts. The second version of the curriculum
28 doesn't give the scripts, but there's more going on in the

1 video than what's in the curriculum.

2 And so they have the guided meditation.
3 Visualize your body rise. Bring your attention to the
4 sound of your breath, right? Because sound is
5 something -- just like you focus on the bell, you focus on
6 the sound of your breath. These are religious meditation
7 practices.

8 Here's a fascinating quotation from Stern in the
9 video. "The position that we hold our body in affects our
10 mind. We have taken this idea and we have modeled our
11 health and wellness program on this fact." And so he's
12 saying that, "What we do with our body, it affects our
13 mind," right? "It doesn't just express what we already
14 believe with our mind, but it changes our mind. And
15 that's the basis of why we're doing this entire
16 curriculum."

17 And he uses really interesting language that --
18 you've got to unpack this a little bit. He says, "If we
19 deal with the breathing and make the nervous system
20 balanced, if we relax the mind and understand that we can
21 consciously relax ourselves, what this does is it creates
22 the condition for attention. At that point when our body,
23 our breath, our mind are all in good shape, then we're
24 attentive."

25 So let's unpack this just briefly. The program
26 is shaped around the idea the body affects the mind. The
27 postures are transformative. The breathing he mentions,
28 remember it's prana. It's vital breath. It's Atman.

1 The triad body breath and mind, often it's body,
2 spirit, and mind. This makes a lot of sense given that
3 breath is vital breath. It's prana. It's spirit. So
4 it's another way of saying body, mind, spirit instead of
5 body, breath.

6 THE COURT: Isn't that the YMCA motto?

7 THE WITNESS: It is. I think it's also
8 spiritual.

9 THE COURT: Body, mind, and spirit?

10 THE WITNESS: It's pervasive, right? There's
11 something very spiritual that's very pervasive. It's not
12 just -- but this is a much more explicit version and much
13 more overt version, but I think that you can find --

14 THE COURT: It is very pervasive.

15 THE WITNESS: Oh, it's very pervasive.
16 Absolutely, it is. I think that's true. But it's being
17 taught in a very focused way here.

18 And then this idea of nervous system here, I'm
19 not going to go through all the details. But often
20 nervous system, this dates back to the 19th Century with
21 the monks popularizing yoga. They would use the term
22 "nervous system" because it was this Western scientific
23 language. And what they meant was the yoga anatomy of
24 chakras and Kundalini nerve force. And this language of
25 nervous system is very parallel at least to that.

26 The term "balance," again it's very parallel to
27 the kind of energetic balancing. That's what's done, you
28 balance the two hands because it unites the opposite

1 forces.

2 And then the relaxing of the mind, the calming of
3 the mind, I think we've talked about how that prepares the
4 mind for meditation.

5 And then, I mean, another thing Stern says I
6 didn't mention is after the attention, which is another
7 word for concentration or pratyahara, is engagement. So
8 you've got a comprehensive kind of world view and ethos.
9 You engage the world with what you've learned in yoga, and
10 you make it part of your entire life.

11 So all of those things I observed in the videos.

12 BY MR. BROYLES:

13 Q Okay. Now, the district claims to have removed
14 all cultural references to Sanskrit and changed the name
15 of the poses to kid-friendly names.

16 Have all the cultural references and Sanskrit
17 names been removed from the program, Dr. Brown?

18 A No. I mean, in my reading, the teacher
19 declarations say that the children are still using
20 Sanskrit like namaste and savashana. The teachers aren't
21 correcting it.

22 THE COURT: But that was before --

23 THE WITNESS: No. This is 2013.

24 THE COURT: We're talking about the last week
25 or --

26 THE WITNESS: The declarations that are
27 submitted.

28 THE COURT: They go back -- the question, as I

1 understood it, was from the time of the new curriculum.

2 MR. BROYLES: Yeah, I'm talking about now. I
3 don't know -- we don't have any foundation for --

4 THE COURT: But the teacher declarations go back
5 a ways, don't they?

6 MR. BROYLES: Yes.

7 THE COURT: Okay.

8 MR. BROYLES: But they're referring primarily to
9 what they've stopped doing and what they're still doing,
10 also.

11 THE COURT: I know. But the question is what are
12 they doing now? And she's referring to the teacher
13 declarations, which is an answer to another question.

14 MR. BROYLES: Well, no, the teacher declarations
15 include the time that is now, your Honor, and include the
16 time that we're operating under the new curriculum.

17 THE WITNESS: Yeah. My reading of these
18 declarations, the teachers are saying, "This is what I do
19 now." And they actually do say, "This is what I did.
20 This is what I do." And what they're saying is, "Now the
21 students still do this. I don't teach it anymore, but
22 they still do it, and I don't stop them from doing it." I
23 see that in several of the teacher declarations referring
24 to right now.

25 So they're still using Sanskrit. They're still
26 using both the anjali mudra and the yama mudra. They're
27 still --

28 THE COURT: The teachers are?

1 THE WITNESS: The children are, and the teachers
2 are also, yeah. They're talking about how, "I still press
3 my hands together." Yeah. "And I say that they can do
4 this." So yes, the declarations say that the teachers are
5 still doing both of those poses.

6 And if you look at the video, you still see the
7 same names of poses, the same sequences. And even in the
8 curriculum which says less than what the videos do, you
9 still see the same Opening Sequence A and B. You still
10 see some of the same standard names, not all of them.
11 They changed some. And you still see the ending with the
12 inversions and the four lotuses in the curriculum. Yeah.

13 BY MR. BROYLES:

14 Q What is the -- I can't talk. What is the
15 religious significance, if any, of EUSD's changes in the
16 yoga curriculum?

17 A Well, I mean, it suggests to me that the EUSD
18 realized that there were overt religious references that
19 had to be removed, and so there's less detail in the
20 second curriculum. And as a religious ethicist, I'm
21 actually more concerned if children didn't recognize the
22 religious significance of these deeply symbolic actions
23 that the teachers believed would produce spiritual
24 transformation.

25 We do see -- I do see evidence that at least
26 many, according to Jen Brown, of the children do make the
27 religious connections. But even if they don't, the belief
28 is that the children's beliefs are going to change through

1 these practices and that it would be really difficult to
2 make an informed decision about whether you want to engage
3 in the practices without understanding that, and
4 especially for children who just don't have the foundation
5 and experience to recognize what's religious and what's
6 not. And so as an ethicist, I would think they would
7 actually need more guidance in that than adults would.

8 Q Just to be clear, do you mean -- as an ethicist,
9 do you mean that you believe that somebody promoting a
10 religion has an ethical duty to tell people they're
11 promoting religion? Is that what you're saying?

12 A Yes, I do.

13 Q Now, what's the basis for your opinion?

14 A I've compared the old and new curriculum. I've
15 looked closely at the teacher declarations and Dr. Baird's
16 declaration. And I'm also drawing on my larger research
17 on yoga, meditation, and religious ethics.

18 Q Do you have an opinion as to whether the EUSD
19 yoga program still has religious elements?

20 A Yes.

21 Q What is your opinion?

22 A My opinion is that religion is pervasive in the
23 EUSD yoga curriculum. It's infused throughout, not just
24 in one or two places, but I see it all over the place.

25 Q To be the clear, I'm asking -- I'm limiting my
26 question to the current curriculum and current practices.

27 A Yes, that's what I'm referring to.

28 Q Okay. What is the basis for your opinion?

1 A So you still see Ashtanga yoga in particular, and
2 there are explicit references to Ashtanga being done.

3 We still see, even without that language, the
4 same poses and structure and ritual sequence and order
5 that's done in Ashtanga; the same order, the same opening,
6 same closing.

7 There's still the same emphasis on vital breath.
8 Breath is still very important. And again, it's this
9 vital breath, not just breathing. It's coordinated.

10 The declarations and the videos still show the
11 mudras, the mindfulness, the balance, the sound
12 meditation.

13 Many children are still chanting and praying and
14 saying "om" and doing mudras, suggesting that they
15 perceive that this is more than exercise.

16 And it's still yoga, it's still yoking that
17 frames this as something more than exercise. But it's to
18 infuse all of life. It's how to live. And you see that
19 all over the place in the videos and in the teacher
20 declarations.

21 Q Earlier in your testimony, you defined what
22 Ashtanga yoga is and you talked about how they viewed the
23 asanas.

24 My question is what is it about the asanas or the
25 positions, as we call them in English, that has intrinsic
26 religious meaning in Ashtanga yoga?

27 A Yeah. So it's the coordination of the asanas and
28 the breathing that changes the flow of vital energy, and

1 it purifies and transforms the mind. To quote Pattabhi
2 Jois, "The reason we do yoga is to become one with God and
3 realize that in our hearts you can lecture, you can talk
4 about God, but when you practice correctly, you come to
5 experience God inside."

6 Some people start yoga. They don't even know
7 him. Don't even want to know him. But for anyone who
8 practices yoga correctly, the love of God will develop.
9 And after some time, a greater love for God will be theirs
10 whether they want it or not.

11 Q Okay. Any other quotes from people who aren't
12 dead?

13 A Sure. I was trying to be brief. Manju Jois, the
14 son of Pattabhi, is still alive. He explains why his
15 father and why he doesn't talk about the spiritual aspect
16 of yoga. It's because in the West, Hinduism is very, very
17 hard to understand. That is why the yoga asanas are
18 important. You just do. Don't talk about the philosophy.
19 99 percent practice and 1 percent philosophy. That's what
20 he meant, meaning Pattabhi. You just keep doing it, keep
21 doing it, keep doing it. Then slowly it will start
22 opening up inside of you to automatically draw you into
23 the spiritual path.

24 Manju Jois affirms, "We as teachers of Ashtanga
25 yoga will definitely approach yoga through the asana and
26 prana and dhyana and chanting. Then internal changes will
27 come about. Now it will be easier to practice the yama
28 and niyama. You won't even know you're doing it." Every

1 asana is a meditation, actually.

2 Now, those are Jois' interpretations about what's
3 intrinsically religiously meaningful. I don't think you
4 need to make ontological kind of -- or metaphysical
5 assumptions about what's going on, but a more sociological
6 or ritual theory kind of interpretation of what's going on
7 is that you've got a repetition of ritualized gestures
8 that can be highly symbolic and transformative.

9 In rituals, people are seized by this compelling
10 sense of what reality is like. You get these moods, these
11 motivations, these feelings and desires to act in
12 particular ways by repeating the rituals.

13 And so the rituals instill the world view of the
14 individual yoking with the divine and pursuing a
15 comprehensive path of ethical living not only on the yoga
16 mat, but out in the world. And we see that language.
17 What's on the yoga mat, we need to take that out in the
18 world. It's in videos. It's in declarations. It's in
19 the *Myths of the Asanas*. And that's why you talk about
20 character.

21 From the Ashtanga world view, the reason you talk
22 about character and you have little workshops on
23 responsibility and the video it's like -- in the video, it
24 says -- there's a teaching on responsibility. And it
25 says, "How can you" -- the teacher says, "How can you be
26 responsible in yoga class, in the classroom, your family,
27 and at home?" And that makes perfect sense in the yoga
28 framework, that you want to take what goes on on the yoga

1 mat out into the rest of the world because it's a way of
2 looking at the world and then living ethically within that
3 world. That's world view. That's ethos.

4 Q You used a very expensive and fancy term, as I
5 tell my kids, "ontological."

6 A Sorry. It's just an idea of what's really real.

7 Q And I know what that means from my religious
8 studies background, but could you --

9 THE COURT: What's the word?

10 MR. BROYLES: Ontological.

11 THE COURT: I don't know what it means.

12 THE WITNESS: Yeah. He's saying I need to use a
13 real word.

14 THE COURT: He knows what it means.

15 BY MR. BROYLES:

16 Q Let me ask the question.

17 When you used "ontological" in that phrase --

18 A I'll just explain what I meant by that.

19 So Jois is making these very metaphysical kind of
20 claims that if you do a practice, it will transform you
21 spiritually. All I'm trying to say is that you don't have
22 to assume that. You don't have to assume anything
23 metaphysical or not metaphysical. But just if you look at
24 how ritual affects the mind, rituals change the mind, they
25 change outlook on life, they change behavior. That's my
26 whole point.

27 Q Thank you.

28 Do you have an opinion as to whether -- you may

1 have already answered this. If you have, I apologize.
2 But do you have an opinion as to whether there's any
3 validity in the belief -- their belief, as you quoted
4 them, that the physical practices themselves without other
5 elements like yoga philosophy are transformed?

6 THE COURT: Just -- but that's not necessarily
7 religious, is it, rituals? Isn't that like saying the
8 Pledge of Allegiance before --

9 THE WITNESS: I'm making a -- I'm -- there can be
10 some overlap in nonreligious and religious rituals. I'm
11 specifically talking about ritual theory in the context of
12 the study of religion and the way that religious rituals
13 work to transform the mind and cultivate culture.

14 THE COURT: I understand, but I'm just saying if
15 you want to instill love of country, some would say a good
16 ritual is to begin a session with the Pledge of
17 Allegiance.

18 THE WITNESS: Sure. And actually this has been
19 referred to as civil religion.

20 THE COURT: Or a moment of silence or something
21 that --

22 THE WITNESS: Sure.

23 THE COURT: -- gets you to start --

24 THE WITNESS: And I think there are religious
25 elements in that, right? That's civil religion. It's not
26 kind of --

27 THE COURT: It's what?

28 THE WITNESS: "Civil religion" is often the term

1 that's used by scholars for that.

2 THE COURT: Civil religion.

3 THE WITNESS: Civil religion. It's kind of a
4 sense that country and state is this kind of great value.
5 So there's something religious in that. I don't think
6 it's religious in the same way as what you find in these
7 very detailed, structured, organized rituals with very
8 specific --

9 THE COURT: I mean you can --

10 THE WITNESS: But I think you're right, there's
11 some overlap.

12 THE COURT: But you can carry that to an absurd
13 degree, can't you?

14 THE WITNESS: Right.

15 THE COURT: The guy that died and wanted his --
16 wanted to be buried in the Dallas Cowboys jersey. He
17 was --

18 THE WITNESS: Yeah. And I mean I think here
19 we're getting into some of the kind of fuzzy lines.

20 THE COURT: And I don't want to get --

21 THE WITNESS: And I think there's a center and
22 there are edges.

23 THE COURT: I don't want to get off track. Go
24 ahead.

25 BY MR. BROYLES:

26 Q Okay. Do you have an opinion as to whether
27 there's any validity to Jois' belief about the impact of
28 physical practices themselves?

1 A So here I'll use my ontological. I don't have an
2 opinion about the ontological like is Jois right that
3 there's something spiritually going on. I don't have an
4 opinion about that.

5 What I do have an opinion about based on my
6 long-term research is that there's a lot of empirical
7 evidence that when people engage in religious practices,
8 not just yoga, but yoga in particular, there's evidence of
9 people's world view changing through that yoga practice in
10 often very dramatic ways as they practice it over time.
11 Not right away, but over months and years.

12 Q When you're talking about world view changing,
13 does that include spiritual or religious world views?

14 A Oh, explicitly. I can give examples of people
15 saying, "I was a Christian who went to a conservative --
16 kind of theologically conservative church, I started doing
17 yoga, and now I believe every religion is the same" or
18 "Now I embrace kind of this different religion." And I
19 can multiply examples of that.

20 So there's anecdotes, but there also are
21 systematic studies that have been done by sociologists
22 other than myself who say for whatever reason people begin
23 practicing yoga, we can see that at the end they make this
24 spiritual transformation. So I've seen it anecdotally.
25 There are sociologists who have done systematic studies.

26 And what's interesting, actually, is if you look
27 at yoga promoters, for instance, those publishing in the
28 *Yoga Journal*, author after author says the same thing;

1 that most people when they start doing yoga, they start
2 doing it for health benefits. But if you look at a
3 dedicated yoga practitioner who's been doing it for a year
4 or two, most of them will have embraced the entire yoga
5 life philosophy and the entire life world view. And
6 they'll use the words "life philosophy" and "world view."

7 I could cite example after example of this from
8 people promoting yoga who says, "Well, of course people
9 start doing it for physical reasons, but then that changes
10 over time." And that gets back to the point I made
11 earlier where we tend to think that what you intend by
12 doing an action is what determines whether it's
13 religiously meaningful.

14 But empirically what seems to be the case is that
15 intentions in doing the action change. A way that I put
16 this often is that practices change beliefs. So it's not
17 just that your beliefs make your practices religious or
18 not religious, but actually doing the practices can change
19 what you believe, how you view the world, and what your
20 religious belief system is.

21 Q And you elucidate on that point and the evidence
22 for that point in detail in your --

23 A In my declaration.

24 Q Declaration.

25 A That's correct. I have many examples there.

26 Q Dr. Brown, we're moving toward a conclusion here.
27 I have a few more questions.

28 In your written expert opinion testimony, you

1 also discussed how some religious organizations
2 historically have attempted to describe their religious
3 beliefs or practices as scientific; is that correct?

4 A Yes.

5 Q In your opinion, has this been done in the case
6 of the EUSD yoga program?

7 A Yes, that is my opinion.

8 Q What is the basis for your opinion?

9 A This is based on my close readings of these trial
10 declarations, briefs, videos, et cetera. And in one
11 document after another, I see that the author is denying
12 teaching anything religious despite admitting to beliefs
13 and practices that fit even very narrow definitions of
14 religion.

15 The documents vaguely assert that there is
16 scientific support for health benefits from yoga. They
17 vaguely reference physiological mechanisms like the
18 nervous system. And the language parallels disavowals of
19 religion and claims of scientific evidence that I see all
20 the time in my larger research, and yet there's a
21 substantial gap between the scientific-sounding language
22 and what the scientific research shows, and this is
23 something that I've done a lot of comparing of research
24 studies with the use of language.

25 And if you look at the systematic reviews of
26 scientific studies of yoga, there is a lack of scientific
27 evidence that yoga or meditation are better than or even
28 as good as physical evidence -- or I'm sorry -- as

1 nonreligious exercise for physical health.

2 There is scientific evidence that yoga can be
3 unsafe. And especially for children, it can cause
4 injuries, death from stroke, psychotic episodes. Not only
5 is there Mayo Clinic recommendation, but others have
6 talked about it. The American Yoga Association says that
7 yoga is unsafe for children under the age of 16.

8 MR. PECK: I'm sorry, your Honor. I have to
9 object here because this witness --

10 THE COURT: Sustained. It's beyond the scope of
11 her expertise as designated in this case.

12 BY MR. BROYLES:

13 Q Now, in your written expert opinion testimony,
14 you discussed a very interesting phenomenon common to the
15 spread of yoga and sometimes other religions in public
16 schools. I believe you called -- or the term you used was
17 "camouflaging."

18 A That's correct.

19 Q Please describe to the Court what you mean by
20 "camouflaging."

21 A Very briefly, it's concealment followed by
22 gradual exposure. And I can't take credit for the term,
23 but sociologists use this all the time to refer to what
24 happens specifically with the promotion of yoga and
25 meditation and other complementary and alternative
26 medicine. You conceal from the outset. As people start
27 to experience benefits, then you introduce the meanings
28 later on. It's related to self-censorship. So you

1 explain one reason for doing something, like you do the
2 sun salutation to warm up the muscles, but you leave out
3 the part of the explanation that it's worship of a sun
4 god.

5 And just a third aspect of this, which I find
6 very interesting, is that there's intentional use of
7 language so that you use a word that's somewhat ambiguous
8 in meaning, and you know that people are going to read the
9 word in a certain way. But you mean something else, but
10 you don't clarify the confusion.

11 So, for instance, science. It can mean a
12 randomized control trial or it can mean an empirical
13 experience of the divine or it can mean kind of just this
14 vague sense, "Well, science says that it's true."

15 The term "balance" can mean the vestibular system
16 or it can mean kind of a yoking of spiritual energy.

17 "Nervous system" can mean the brain and the
18 spinal cord or it can mean Kundalini and chakras.

19 The "breath" can mean the lungs and the
20 respiratory system or it can mean vital breath or Atman.

21 "Attention and mindfulness" can mean just a focus
22 or it can mean a preparation for enlightenment.

23 And often in my broader research, what I find is
24 that these terms, the authors will know that readers are
25 going to hear it in this way, and they want them to hear
26 it in that way. But that's not what they mean.

27 Q Would the term "criss-cross applesauce," when
28 used to describe the lotus position, be an example of

1 camouflaging?

2 A I think that would fit.

3 Q In your opinion, has the Jois Foundation engaged
4 in camouflaging regarding the EUSD yoga program?

5 A Yes, I think statements that emphasize the health
6 benefits and deny that it's religious fit with the pattern
7 of camouflaging.

8 Q Are you talking about public statements --

9 A Public statements.

10 Q Just let me finish the question.

11 Public statements that Jois has made in the
12 press?

13 A Yes, which is actually different from what you
14 see in their web presence. And so they can be very --
15 they're actually very explicit about their religious views
16 on their websites. But in the press statements, you don't
17 see that same religious language.

18 Q And so what's the basis for your opinion?

19 A That -- that there's kind of -- there's an
20 inconsistency between the Jois Foundation public
21 statements and what I see in statements by Pattabhi,
22 Manju, Sharath Jois on the Jois Encinitas website that
23 indicate that the physical practice of asanas alone,
24 especially coordinated with breathing, as we see in the
25 EUSD curriculum, serves religious purposes; namely,
26 becoming one with God. There's a disconnect between that
27 language that it's for health and research benefits and
28 what I see in the broader terms.

1 Q In your opinion, have EUSD officials engaged in
2 camouflaging regarding the yoga program?

3 A Yes.

4 Q Could you -- well, let me ask a different
5 question, and I'll ask the basis for your opinion.

6 In your opinion, have EUSD officials told the
7 truth about the religious nature of the yoga program at
8 EUSD?

9 MR. PECK: Objection.

10 THE COURT: Sustained.

11 BY MR. BROYLES:

12 Q What's the basis for your opinion that EUSD
13 officials have engaged in camouflaging?

14 A Well, if you look at statements like those in the
15 trial brief, that it's a program built from scratch,
16 there's no religious instruction, it's inconsistent with
17 other evidence that I've looked at that indicates that
18 there is an Ashtanga yoga program going on currently.

19 As well as from the very foundations of the Jois
20 grant, teacher declarations stating that they're training
21 is in Ashtanga and that they currently are teaching
22 Ashtanga at EUSD schools through the Jois Foundation. And
23 they even say they're only changing the terminology and
24 modifying some of the asanas, but this is still -- the
25 basic framework is the same.

26 If you look at the videos, the terminology really
27 hasn't changed all that much. The curriculum changes it,
28 but the videos don't do that so much. And you see -- so,

1 I mean, the way I read this is that there's kind of a
2 pattern of saying, "Well, what I teach is not religious
3 because I say it's not religious and because I say that
4 there are scientific studies of benefits and because I use
5 a narrow definition of religion that would fit
6 Christianity but that just wouldn't fit these other
7 religions." And that to me is consistent with this larger
8 pattern of camouflage that I've been talking about.

9 I also find a notable consistency across the
10 trial briefs and the instructor declarations. There's a
11 denial across the board that anything being taught, ever
12 has been taught, even anything that has been taught to the
13 teachers is religious, and yet there's this inconsistency
14 with the overtly religious language that's used not only
15 by the Joises, but by other EUSD -- or other programs that
16 Jois teachers were trained in.

17 And I'm not going to take the time to go through
18 these, but I actually looked up the websites for different
19 training programs that were listed in the teacher
20 declarations that weren't Jois training programs, and I
21 looked at the language of what happened in those training
22 programs.

23 And they are -- "pervasive" is the right term
24 Hindu and religious in what content of the training. And
25 I'll just make one really quick reference there. There's
26 one reference to specifically a kids training program that
27 one teacher went through at Radiantly Alive, and here's
28 the content of that kids training program.

1 It was yoga anatomy, and it's defined as esoteric
2 anatomy including chakras, nadis, prana, and bandha,
3 chanting Vedas and kirtan, which is devotional call and
4 response chanting of mantras and hymns. The Yoga Sutra of
5 Patanjali, Bhagavad Gita, hatha yoga -- I'll skip that one
6 for your sake -- Advaita-Vedanta, nondualism, and
7 enlightenment.

8 So the specific content of the training course in
9 how you teach kids yoga is teaching a chanting of Hindu
10 texts.

11 MR. SLEETH: What is that from?

12 THE WITNESS: That is from the Radiantly Alive
13 website. And Radiantly Alive was referenced as where one
14 of your teachers -- I'm not remembering at the moment
15 which one -- said she was trained in how to teach kids
16 yoga.

17 BY MR. BROYLES:

18 Q As we wrap up here, you were talking about
19 camouflaging. And earlier we -- in this case, we've
20 discussed the EUSD program frequently asked questions.

21 And have you looked at that?

22 A I have.

23 Q And you've expressed opinions on that; correct?

24 A Yes.

25 Q Okay.

26 A Not in detail, but yes.

27 Q In your expert opinion, is religious camouflaging
28 included in the frequently asked questions in this case?

1 A Yes.

2 Q Okay. Do you have any specific examples of this?

3 A Could you -- which exhibit are we on?

4 Q 5.

5 Let me ask a specific question.

6 A Yes, that would help me.

7 Q There may have been other examples that you may
8 have seen in there.

9 Is the failure to mention Ashtanga in the
10 frequently asked questions an example of camouflaging?

11 A Well, yes. I mean, Ashtanga yoga is talked about
12 in many places in the rest of the materials, and it's very
13 interesting that it's not talked about in here.

14 Q And specifically, this document is called the
15 "Encinitas Union School District Yoga Program"; correct?

16 A Yes, it is.

17 Q As we heard testimony about yesterday, it was
18 personally written by Timothy Baird; right?

19 A That's my understanding from his testimony.

20 Q Any other examples of camouflaging in the
21 document, Dr. Brown?

22 THE COURT: Mr. Broyles, I think we're getting
23 into almost argument rather than expert opinion.

24 MR. BROYLES: I'm about to wrap up, your Honor.

25 THE COURT: Okay.

26 THE WITNESS: Well, I mean, so, for instance, we
27 see kind of why -- the question why does each yoga session
28 end with a quiet period? I think that's a good example of

1 this. And it says -- this is like question or answer --
2 well, it's about halfway through the second page. "One of
3 the many benefits of yoga is its research proven ability
4 to reduce stress. Our classes end with a quiet reflective
5 time to help students relax and focus before going back to
6 demanding and stressful rigors of their instructional day.
7 Yoga has been shown in study after study to not only
8 improve physical conditioning, but also assist people of
9 all ages in reducing stress and anxiety. The quiet period
10 helps to promote this."

11 THE COURT: Can I just -- I'm not a teacher, but
12 it would seem logical to end a class with a quiet period,
13 I mean a quiet time.

14 THE WITNESS: Yes, it would. It would. But
15 specifically -- and you can see in the videos -- they're
16 not ending it just with a quiet period. They're ending in
17 shavasana corpse pose, which they've termed the resting
18 pose. And the purpose of the resting pose is to reflect
19 on your mortality, to feel like you're dead because that
20 will motivate you to live ethically in the remaining time
21 that you have in life.

22 So that fits camouflage perfectly. You say it's
23 for health benefits. You say it's scientifically
24 demonstrated even though the larger reason for doing it is
25 metaphysical. It's religious.

26 BY MR. BROYLES:

27 Q Are there any other opinions you'd like to render
28 regarding the yoga program at EUSD?

1 A I think that's enough.

2 MR. PECK: Objection, your Honor. That's
3 overbroad.

4 THE COURT: She indicated no, so...

5 MR. BROYLES: Thank you for your testimony today,
6 Dr. Brown.

7 THE WITNESS: You're welcome.

8 THE COURT: I assume, Mr. Sleeth, you might have
9 a question or two.

10 MR. SLEETH: I have a question or two, and it
11 might take more than five minutes.

12 THE COURT: Well, we've got six minutes till
13 noon. What's your pleasure? Mr. Peck, are you going
14 to --

15 MR. PECK: I intend to examine the witness.

16 THE COURT: All right.

17 MR. SLEETH: Do you want me to start now?

18 THE COURT: I'll leave it up to you.

19 MR. CARELLI: Your Honor, can we do some
20 housekeeping on the record before we head out to lunch
21 just so that we have a pretty good understanding of what's
22 going to happen over the next couple of days.

23 One of the issues I think that we have is I think
24 that the witness is going to go pretty long this afternoon
25 in terms of cross-examination.

26 THE COURT: I don't know. We'll see.

27 MR. CARELLI: We will see. I know that tomorrow
28 is the last day that we have at least in this time period

1 to get our evidence on. We have an expert who has flown
2 out from Winnipeg, and she has --

3 THE COURT: Let me just indicate we had a fairly
4 extensive discussion a while ago about this. It was
5 agreed by everyone this would be a short cause writ of
6 mandate, which normally is done by declarations. And
7 matter of fact, it's usually done in an afternoon with a
8 review of declarations and trial briefs and then argument.

9 So my understanding was that we would have a
10 witness or two, primarily the petitioner's expert, and it
11 looks like we've gone beyond that. And we have to end for
12 a couple of reasons by tomorrow.

13 And we had originally agreed this would be two
14 days. I think it will be three days. And if we don't
15 finish by tomorrow, then we've got an option, which is not
16 the best option, but I think it's the only option. And
17 that is to have a hiatus and resume again at the next
18 available date.

19 My objective is to be fair to both sides and make
20 what I consider the right call. And I'm not going to rush
21 anybody, and I'm not going to essentially put -- you know,
22 take away the two or three days of productive time we've
23 had.

24 So that's where we are, as we discussed off the
25 record.

26 MR. CARELLI: Yes, Your Honor.

27 MR. BROYLES: Just for the record, we've exceeded
28 our acceleration, and we finished with her before lunch.

1 THE COURT: No, no. I'm just -- you know, I'm
2 not the stage manager. You're the stage managers here.
3 And we planned on two days. Everybody agreed. And it
4 looks likes it's going to go more than that. So...

5 MR. BROYLES: Your Honor, if --

6 THE COURT: Look, we're --

7 MR. BROYLES: Let me just mention one thing. If
8 your witness is here and you need to call him out of
9 order, I have no problem with that.

10 THE COURT: You can talk. We don't need to
11 discuss this. I want to give both sides a full and fair
12 hearing, and that means that we don't finish in three
13 days, as unfortunate as that is. So be it. But if we
14 finish, that's wonderful. But I think argument is going
15 to be very important. I think everybody agrees with that.
16 I sure do.

17 So let's take our luncheon recess. We'll see you
18 at 1:30. And hopefully, things will go quicker. And if
19 not, we'll work through it.

20 Anything else on the record?

21 MR. CARELLI: No, your Honor. Thank you.

22 - - -

23 (The lunch recess was taken at 11:58 p.m.)

24 - - -

25

26

27

28

1 SAN DIEGO, CALIFORNIA, TUESDAY, MAY 21, 2013; 1:29 P.M.

2

3

THE COURT: All right. We're back on the record.

4

Mr. Sleeth.

5

MR. SLEETH: Thank you, your Honor.

6

7

CROSS-EXAMINATION

8

BY MR. SLEETH:

9

Q Dr. Brown, you said that you got a grant from The Templeton Foundation; is that right?

10

11

A That's one of a number of grants that I've gotten, yes.

12

13

Q Is it true that the focus of that grant was on determining the efficacy of Christian prayer and belief?

14

15

A One study that I did for the grant looked at empirical effects of prayer practices.

16

17

Q Did you make a determination about the efficacy of prayer?

18

19

A No, not on a global scale. There was a specific study that I did, and I referenced it yesterday; a study -- it was titled "Study of the Effects of Proximal Intercessory Prayer on Auditory and Visual Impairments in Rural Mozambique," and we did find statistically significant effects in that study.

20

21

22

23

24

25

Q What is The Templeton Foundation?

26

A It is a foundation that studies the relationship between science and religion.

27

28

Q And did you have involvement in a project called

1 Flame of Love?

2 A Yes.

3 Q What was the purpose of the Flame of Love
4 project?

5 A The study -- there was a larger project that I
6 got money through which looked at the perceived effects of
7 what they referred to as a godly love, which is the
8 perception that there's a divine and what relationships
9 would look like in that perception, and so specifically
10 with the Pentecostal world view.

11 What I looked at and what the larger project --
12 well, the larger project was different from my project.
13 The larger project was to look at what are the empirical
14 effects of having a perception of relationship with both
15 people and with the divine. My specific project was
16 focused on Pentacostal prayer practices and the
17 sociological empirical effects of those practices.

18 Q And did you have a bias in one direction or
19 another?

20 A No.

21 Q Were you hoping to prove that prayer is
22 efficacious?

23 A No.

24 Q All right. Do you believe that prayer is -- has
25 an effect in helping people get better if they're ill?

26 A There are so -- I do not think that science or
27 sociological studies are equipped to answer the question
28 of whether there's kind of a spiritual dimension to

1 prayer. But what my interest is in is looking at the
2 social empirical effects of prayer practices. So it's
3 not -- it's not -- to use that "ontological" word that we
4 were using earlier, it -- the Pentecostals have their own
5 world views and their reasons for why they would think
6 prayer works.

7 I'm not -- I don't think science really is
8 relevant to that question. But what scientific studies
9 can look at are sociologically what are the empirical
10 effects of prayer practices bracketing the question of why
11 are those practices efficacious.

12 Q And do you know why these projects were directed
13 to you?

14 A I submitted a grant proposal, and I received
15 funding for my project based on the merits of that
16 proposal.

17 Q Did you -- I'm not sure that I understood your
18 answer there where you were talking about the efficacy of
19 science in determining the effect of prayer. Did you say
20 that science isn't effective at determining the
21 spirituality of prayer?

22 A What I mean is that science is equipped to answer
23 empir- -- it's equipped to ask and answer empirical
24 questions, not to prove or disprove whether there is a
25 divine or superhuman or whether to prove or disprove
26 whether God answers prayer.

27 What you can look at is what are people's
28 perceptions, what are their practices, and what are the

1 empirical effects of those practices.

2 Q Was part of the purpose of the Flame of Love
3 project to establish a new field of interdisciplinary
4 scientific study?

5 A That is a quotation from people who are part of
6 directing the Flame of Love project, yes.

7 Q Has a new interdisciplinary scientific study been
8 created?

9 A I don't think that would be an accurate
10 statement, no.

11 Q Okay. Can you tell me what your discipline is.

12 A I'm an interdisciplinary scholar of religion and
13 culture.

14 Q All right. Usually, I ask an expert questions
15 about the general perceptions within their discipline.

16 Is there a general field of study that has other
17 members of the science that you are a part of?

18 A I'm a part of multiple scholarly communities
19 within the field of religious studies. Those include
20 sociology, social scientific methods, the larger field of
21 religion and science, ethnographic and anthropological
22 methods. As I say, I'm very interdisciplinary. So my
23 expertise crosses those boundary lines, and I'd fit
24 comfortably in several areas.

25 Q Is there a disagreement among the experts in your
26 discipline on the issues that we're here addressing today?

27 A On the issues -- that's -- I don't think I can
28 answer that question because it seems very broad to me.

1 So maybe -- would you be able to make that more specific,
2 please.

3 Q Okay. Are there people who believe that yoga is
4 not spiritual?

5 A That's an interesting question the way that it's
6 phrased. The scholarly consensus -- see, scholars don't
7 really -- scholars disagree over many fine points. Even
8 when I read your expert statements -- and I'm familiar
9 with your scholars, and we know each other -- they -- I
10 think we actually agree on the big picture, which is that
11 historically and culturally there is a connection between
12 yoga and religion. I don't see anything different from
13 that being stated in the statements. To me I read those
14 statements as very carefully constructed to be pretty
15 general. They actually didn't take me on point by point
16 because I think we agree.

17 THE COURT: But you're assuming that his
18 definition of spiritual is religious, and I don't know if
19 that's what the question was, because I don't know what
20 "spiritual" means in the context of your question.

21 MR. SLEETH: Well, I don't either.

22 THE COURT: Oh.

23 MR. SLEETH: I'm not sure what "spiritual" means.

24 THE COURT: Right.

25 MR. SLEETH: So let me ask the expert.

26 THE COURT: But I'm thinking that you might be --
27 the question might be asking apples and her answer might
28 be answering oranges. I don't think his question is -- I

1 don't think he means "spiritual" in the same way you do,
2 but maybe I'm wrong.

3 BY MR. SLEETH:

4 Q As much as I'm able to do it, I'd like it to mean
5 spiritual the way you mean it. And I'll find out if
6 there's a dispute.

7 A My understanding of spiritual is that it is a
8 subset of religion, and it is often a euphemism for
9 religion for the two reasons that I explained yesterday:
10 That it -- that there are negative associations with
11 Christian religion and that particularly monotheists such
12 as Christians would not be comfortable engaging in
13 practices from another religion, but they would feel
14 comfortable possibly -- this is where Christians can often
15 debate over these issues.

16 They might feel comfortable saying, "Well, it's
17 spiritual, but not religious" or "It's universally
18 spiritual. So therefore, I can engage in this practice."
19 That's actually one of the questions I'm fascinated by in
20 this *Healing Gods Book*.

21 THE COURT: With all due respect, we're getting
22 so esoteric now, it's almost meaningless. We could be
23 here the rest of the day talking about "spiritual,"
24 whatever that is.

25 MR. SLEETH: Well, I would at least like to find
26 out if everybody in the community of scholars in this
27 discipline agree or if there's a dispute.

28 THE COURT: About what, though?

1 MR. SLEETH: About the spiritual nature of yoga.

2 THE WITNESS: I can answer that question. And
3 that is according to the Yoga in Theory and Practice Group
4 of the America Academy of Religion, contemporary yoga is,
5 quote, "pervasively spiritual and religious." I think
6 that's a consensus.

7 BY MR. SLEETH:

8 Q Have you read a book by Anton Drake called
9 *Atheist Yoga*?

10 A I read the interviews with him, and I thought
11 that was a really interesting book. I'd be happy to
12 comment on that. I found this really interesting. I'd be
13 happy to talk about it.

14 Q Is it possible to do yoga -- his book is
15 essentially that Atheists can do yoga without it being
16 spiritual, isn't it?

17 A Yes and no.

18 Q All right. Why don't you tell us what the
19 essence of his book, as you understand it, is.

20 A My understanding -- I haven't read the entire
21 book, but I've read the interviews with him -- is he had
22 been doing yoga for 20 years. And I can't give you an
23 verbatim quote on this, but he said, "There was so much
24 metaphysical language of gods and goddesses, and I was so
25 confused going into meditation when I was doing all of
26 these yoga practices that I was trying to figure out how I
27 could rationally say that an Atheist could do yoga."

28 Because he identifies himself as a dogmatic

1 Atheist. That's approximately his language. And so he's
2 trying to come up with a way to fit these together. His
3 ultimate answer is dogmatic Atheists assume that
4 everything is materialistic. Therefore, yoga must be
5 materialistic, because my first assumption is that
6 everything is materialist, which is an interesting
7 circular kind of argument.

8 And so the way I read the book is he's trying to
9 justify and rationalize how he could do yoga as an
10 Atheist, and his point of writing the book is his
11 perception is that yoga is pervasively spiritual and
12 religious. And he needs to make a case for how Atheists
13 could do yoga. And he's saying something along the lines
14 that, "We should be able to -- we should change how yoga
15 is usually being done so that we can have a fuller
16 understanding of it as dogmatic Atheists."

17 And so I actually see Drake as supporting the
18 very claim of the Yoga in Theory and Practice Group, that
19 yoga is pervasively spiritual and religious and is very
20 much confirming the kind of information that I've been
21 providing over the last couple of days.

22 Q Is there any way to strip -- if you take away the
23 history and take away the Sanskrit, is there any way that
24 you can take away whatever remains, in your mind, of a
25 spiritual nature in yoga so that it's cleaned of that?

26 MR. BROYLES: Objection; lacks foundation, is an
27 incomplete hypothetical.

28 THE COURT: Overruled. I mean, unless I

1 misunderstand the question, I think that's why we're here.

2 MR. SLEETH: I thought so, too.

3 THE WITNESS: Okay. Well, the wording of -- it's
4 a very complex question.

5 THE COURT: Well --

6 THE WITNESS: So can I take it piece by piece, in
7 a sense?

8 THE COURT: I think the question is, if I might,
9 can yoga be taught in the public schools? And when I say
10 yoga, I mean just yoga, just stripped-down yoga.

11 THE WITNESS: Okay.

12 THE COURT: Isn't that your -- essentially your
13 question?

14 MR. SLEETH: I'm a little nervous about the way
15 you stated, your Honor, because it jumps over to the legal
16 question. It takes us into the Constitution.

17 THE COURT: I'm just saying I think that her
18 direct exam could be heard to say that everything that's
19 said that would purport to secularize and sanitize yoga
20 can't be believed, so it's just --

21 MR. SLEETH: It's all camouflage.

22 THE COURT: It's all camouflage and it can't be
23 done under any circumstances; no way, no how.

24 MR. SLEETH: So I think the first question on --

25 THE COURT: So go ahead. I'm just saying that --

26 MR. SLEETH: -- getting into that task is to
27 determine if, in her opinion, the spirituality can be
28 removed and yet have the physical activity.

1 THE COURT: Okay.

2 MR. SLEETH: Then we move to the next question,
3 whether that will -- the historical relationship will
4 intrude onto the Lemon test.

5 THE COURT: Okay.

6 THE WITNESS: Okay. Let me try to answer that as
7 well as I can.

8 So, first of all, the way he's asking the
9 question and the way you're asking the question are --

10 THE COURT: He's the --

11 THE WITNESS: Okay. I want to make sure that
12 I'm -- so he -- you're asking about the spirituality of
13 yoga, and I'm talking about spiritual ideologies that are
14 believed in and that are part of the theory of yoga. I'm
15 not making a claim of whether yoga is spiritual or not.

16 THE COURT: Understanding I've got to make a
17 decision. It's the real world.

18 THE WITNESS: It's real world.

19 THE COURT: It's not a classroom decision.

20 THE WITNESS: No, I understand that.

21 THE COURT: And it's going to be "Yes" or "No."

22 THE WITNESS: Okay.

23 THE COURT: And it's --

24 THE WITNESS: Okay. So I will try to answer
25 what's useful to you. That's my goal, is to try and be
26 useful.

27 THE COURT: That's why we're here.

28 THE WITNESS: So I don't want to make a statement

1 about whether yoga is intrinsically spiritual. That's not
2 what my belief is.

3 THE COURT: But the way we do it is you ask a
4 question, and you answer it.

5 THE WITNESS: Okay.

6 BY MR. SLEETH:

7 Q I heard in your direct examination -- I thought I
8 heard you say that yoga is intrinsically and essentially
9 spiritual.

10 A No.

11 Q What did you say?

12 A The way that yoga is theorized and practiced is
13 pervaded by spiritual and religious ideologies. That is a
14 different statement from what you're saying.

15 Q How is that different?

16 A You are making an ontological or metaphysical
17 statement, and I'm making a descriptive or an empirical
18 statement.

19 Q We need a smarter lawyer up here.

20 (Laughter.)

21 If you strip away all the history and all the
22 Sanskrit and you don't have a conversation with the
23 students about the origins of the meaning behind the word
24 "lotus," but you still refer to the position as a flower
25 called a lotus, is there anything left in the yoga
26 practice that is religious?

27 A Okay. My concern is not just with origins or
28 with Sanskrit. I'm more concerned with contemporary

1 practice and how the history is still and the symbolism is
2 still very much a part of the contemporary practice.

3 And so this is -- I'm not just talking about
4 history. I'm talking about how Hindu and other religious
5 meanings are a part of the yoga scene. But I'll answer
6 the question, which I think is really more your question,
7 what -- which is can you teach -- I won't make a
8 constitutional argument here, but is there a way to teach
9 some form of yoga that isn't religious, right? I mean, I
10 think that's what you're both asking in some way.

11 THE COURT: But what you say -- and again, I
12 mean, I -- you've said quite a bit that is -- at least for
13 me takes a while to process because it's very
14 comprehensive. Anything that is ritualistic and
15 sequential is religious. And I'm trying to think of
16 then -- if that's the case, then there is a constitutional
17 infirmity in anything that's ritualistic and sequential.
18 There's just something that --

19 MR. SLEETH: Including Marine Corps calisthenics.

20 THE COURT: I mean, I'm just saying there's just
21 a lot --

22 THE WITNESS: Yeah.

23 THE COURT: So I get what you said, and you said
24 so that would mean that yoga is -- you might -- you've got
25 to do something else, and I don't know what that would be
26 that doesn't involve ritualistic sequential exercises that
27 end with a quiet time. I mean, it would eliminate -- you
28 might as well just have every child home-schooled because

1 you're going to have ritualistic sequential flavor to
2 anything where there's a course of instruction that has
3 got to be uniform. Otherwise, it's just going to be
4 anarchy. And we'll be here -- as I said, we can talk
5 about this --

6 THE WITNESS: I'll try to be brief with this. I
7 think I can answer that.

8 THE COURT: But my question is -- I mean, the
9 central issue in this case is pretty straightforward.

10 THE WITNESS: Uh-huh.

11 THE COURT: It is.

12 THE WITNESS: Yeah. I mean, I think that -- I
13 don't think it's the case that if you decide that yoga is
14 religious, then you can't have any kind of ritualistic
15 sequential activity. Because there's some very specific
16 sacred symbolism and religious texts that are being drawn
17 on currently. It's very symbolic.

18 So here would be -- I'm trying to think what
19 could you do for a program, right? And I think that if
20 you're talking about kind of these deep breathing
21 exercises where the language is of vital breath, I think
22 that's going to be religious.

23 I think if you're talking getting into postures
24 that are so associated, not just historically, but today,
25 with the -- the ideology that's involved in the practice
26 is so -- that if you get into the pose of the tree, you'll
27 essentially understand the tree and you'll feel this --
28 there's just so much symbolism and sacred meaning involved

1 in that that if you're doing those poses with those names
2 or even without those names, but those poses that are
3 recognizable in this cultural context, then I think you're
4 going to be connecting with this religious -- these
5 religious meanings.

6 BY MR. SLEETH:

7 Q Let me ask this question, then: If there's
8 symbolism behind the lotus or the resting position or that
9 last position where you're laying down on the floor, if
10 there's symbolism behind it, I want you to explain the
11 symbolism in any of those to me and a 6th grade student,
12 but don't use words.

13 A I'm not dressed appropriately to be able to do
14 that. I'd have to get into these positions.

15 Q But if you went through the motions, you could
16 explain the motions to me, but you can't explain the
17 symbolism behind them, can you?

18 A I think I can actually through the repetitive
19 performance of those motions. But, see, in our culture
20 today yoga is like a trademark, and even the word "yoga"
21 is like a trademark. It's recognized. And because
22 culturally there's so much pervasive religious ideology --
23 I mean, this is what the teachers are saying, is that the
24 kids are making the connections to this being religious
25 because it's --

26 THE COURT: That --

27 THE WITNESS: -- trademarked.

28 THE COURT: Here's the other difficulty that I

1 see: With something where there's a lot of dialog going
2 on in the community and even in the media, these are young
3 children who are going to be told things by their parents,
4 by other people, some of whom I think probably practice
5 yoga outside of the school.

6 So is it -- does it mean that the school is
7 promoting something because children hear things outside
8 of school that might or might not give them ideas. And
9 that is -- adds another dimension. You know what I'm
10 saying?

11 THE WITNESS: I think I do.

12 THE COURT: I mean, if you've got a child that is
13 doing something at school that is completely antiseptic, I
14 mean, it's just -- there's no religion, there's no --
15 "This is what we do," it's like -- it's like calisthenic,
16 it's like quiet time, it's like just something you do, and
17 then someone tells them, you know, "That's religious and
18 that is" -- and then they start opening up whatever you're
19 testifying to, then perhaps that child might be -- might
20 be giving another dimension.

21 Or if the child is taken to a yoga studio by his
22 or her parents who believes, yeah, this is a religious
23 practice, it's just like a child who comes to school after
24 going to Sunday school or church or whatever. They're
25 going to have another dimension to what they're learning
26 in school, and they're going to talk to each other.
27 They're kids.

28 So to say, "Ah, it has its genesis in this -- in

1 this" -- whatever it is, whether it's yoga or karate or
2 who knows what, that's all I'm saying.

3 THE WITNESS: Well, and I think this is -- this
4 is important, right? And I think it -- the place that
5 yoga has really --

6 THE COURT: And I don't think -- excuse me. With
7 all due respect, I don't think any of these kids are going
8 to go online and order any of your books, you know, or
9 order --

10 THE WITNESS: Well, but they are going -- they --
11 according to teachers' declarations, they're asking for
12 videos to do more yoga outside of class. They're
13 thinking, "I like yoga. I want to do more yoga." There
14 are the religious yoga studios out there.

15 I mean, see, we're at a cultural moment today
16 where you see a Bible in the classroom, and there are
17 religious associations with that Bible. And I think yoga
18 is getting that way, too, right?

19 THE COURT: They can say, "I want to know more
20 about Halloween." I mean, anything -- I guess that's part
21 of the process of education, but --

22 THE WITNESS: Well, and this is --

23 THE COURT: The issue that's here is very
24 straightforward, and that is: Is the school district
25 promoting religion? And that is looked at by the -- by
26 the objective 5th and 6th grader. I mean, it's a little
27 more complicated than that, but isn't that what we're
28 about here?

1 MR. BROYLES: Your Honor, on the legal standard,
2 there's a split, I believe, between the Ninth Circuit and
3 U.S. Supreme Court about whether the reasonable observer
4 is an adult or a child.

5 THE COURT: Okay. Fine. Anyway, we'll be
6 here the rest of time in an interesting dialog, but I'm
7 not sure how productive it really is.

8 MR. SLEETH: Well, I'm not sure either. But some
9 of the things that she's said have led to the possible
10 conclusion that yoga is religious, and it starts with a
11 subset of religion being spiritual. So we have to talk
12 about spirituality.

13 THE COURT: Okay.

14 BY MR. SLEETH:

15 Q So let me move on to the next question, then.

16 If a thing is spiritual, is it necessarily
17 religious?

18 A Yes. According to my definition, spirituality is
19 a subset of religion.

20 THE COURT: Is spiritual music religious? In
21 other words, sometimes you hear soothing music or
22 uplifting music or --

23 THE WITNESS: I wouldn't call that spiritual.

24 THE COURT: You wouldn't?

25 THE WITNESS: No. I mean, if it's -- I guess I
26 don't quite understand what you would categorize as --
27 something that's uplifting --

28 THE COURT: It lifts your spirit.

1 THE WITNESS: It may emotionally or mentally make
2 you feel better, but it's not making claims that, "I am
3 God, you are God."

4 THE COURT: But if it makes you feel better,
5 isn't it spiritual?

6 THE WITNESS: I wouldn't say necessarily that it
7 is spiritual just because it makes you feel better.

8 THE COURT: When you use words like
9 "necessarily" --

10 THE WITNESS: Well, no, I mean I don't have to
11 use the word "necessarily." Just because it makes you
12 feel better doesn't mean that it's spiritual.

13 THE COURT: Okay.

14 BY MR. SLEETH:

15 Q You said some things about posture or physical
16 position affecting the mind.

17 A Uh-huh. Actually, your promotional video makes
18 that point, and I think it's a really important point.

19 Q And I understand the concept. I have that idea.
20 The next step after that is whether any physical posture
21 that affects the mind then becomes religious or spiritual,
22 as a first step.

23 A If there are sacred associations with that
24 posture the way that we see with these very common
25 repeated yoga poses, then I think you're going to get into
26 religious meanings.

27 If it's -- if it legitimately is a neutral
28 posture without the symbolism and the associations

1 connected with it -- and that's where I'd say like the
2 calisthenic routine, I wouldn't see that -- and you repeat
3 the calisthenic routine. There's not kind of the
4 symbolism and the sacred attachments, not just
5 historically, but contemporary.

6 So you can do jumping jacks. You can do jump
7 rope. That's not going to work in the same way. And this
8 is language -- I quoted this -- I think it was from the
9 Myths of the Asanas book where it said that there's a
10 distinction between the kinds of repeated ritualized
11 activities that you see with the asanas and other kinds of
12 movement. So even the promoters of yoga are saying,
13 "There's something different about this kind of movement."

14 THE COURT: How many yoga poses are there
15 universally? And I mean all different kinds of yoga as --

16 THE WITNESS: There are many.

17 THE COURT: I mean, there are hundreds, aren't
18 there?

19 THE WITNESS: Or even thousands.

20 THE COURT: Thousands.

21 So any one of those thousand poses, in your mind,
22 is religious?

23 THE WITNESS: I don't know that I would -- the
24 really common ones in our American culture like downward
25 facing dog and cobra --

26 THE COURT: I'm just talking about virtually any
27 pose or anything you do sitting, standing is going to be a
28 yoga pose because there are thousands of them.

1 THE WITNESS: They don't all have the same
2 cultural valance attached to them. They don't have all --
3 they don't all have that same -- so the *Myths of the*
4 *Asanas* book, it just picks 30 of the asanas.

5 THE COURT: But sitting Indian style is, in your
6 mind, religious even though --

7 THE WITNESS: No.

8 THE COURT: No?

9 THE WITNESS: No. If you're doing -- if you're
10 doing criss-cross applesauce and you're doing lotus, I
11 wouldn't see that as a religious pose.

12 THE COURT: All right.

13 THE WITNESS: And I think here this -- this
14 actually gets to a really important point, though, that we
15 tend to identify the postures and the breathing and say
16 this is yoga whereas the postures and the breathing are a
17 couple of methods toward the yoking. And it's the yoking
18 goal, it's the connecting with the divine, that's what
19 yoga is. The asanas are a means towards that. They're
20 not equivalent to yoga.

21 BY MR. SLEETH:

22 Q But the only way you can teach that to somebody
23 is if you use words to explain the yoking and explain the
24 relationship and explain the higher being; isn't that
25 true?

26 A No. The entire premise of Ashtanga yoga in
27 particular is that you do not have to use words. I mean,
28 this is Pattabhi Jois's 99 percent practice, 1 percent

1 words. And the premise of Ashtanga yoga is you don't have
2 to use words. You don't have to teach chants. You don't
3 have to teach Sanskrit. That's too difficult. Hinduism
4 is a difficult language, and it's too hard for Westerners
5 to get.

6 What Westerners can get is the movements of the
7 body. And specifically the sense of Jois is these are
8 sacred movements. These are sacred sequences. They're
9 not just like any kind of set of calisthenic routines.

10 So the Ashtanga philosophy is that these very
11 particular sequences are what are going to produce the
12 spiritual transformation even if you never say anything
13 about it. They will automatically, they will
14 spontaneously lead to the last four limbs of Ashtanga,
15 including samadhi, whether you want it or not.

16 Q Is there any scientific evidence to support that
17 man's belief?

18 A Not the ontology of it, but the empirical
19 effects, yes. And that's what I've referred to numerous
20 times; that there is -- there's a lot of both kind of
21 anecdotal, but also more systematic study which indicates
22 story after story of people changing their religious
23 beliefs as a result of engaging in long-term yoga
24 practice, and that's held even by the promoters of yoga.

25 I mean, your expert Hartsel, who's one of these
26 high-ups, he's a very prominent figure in the yoga world,
27 he -- he really makes a related point to this that -- that
28 you're going to -- that people start off with these

1 physical reasons for doing postures, but then the -- the
2 reason you do these postures changes over time. And all
3 these *Yoga Journal* articles make this point.

4 So yes, I think there is research that supports
5 that if you just do -- regardless of why. There may not
6 be any spiritual reason that this happens, and that's why
7 I object to him characterizing me as saying that there's
8 something spiritual. I don't have a position on that
9 professionally.

10 But empirically, even if you are starting for the
11 health benefits, over time there is this progression that
12 takes place. And as -- and here's the pervasive part of
13 the religion in American culture -- or the pervasiveness
14 of the religion in yoga in the context of American
15 culture, is that the advanced yoga classes do introduce
16 the beliefs.

17 So you get the kids in, and they -- and Jois
18 Foundation specifically targets children because it takes
19 a process of time. And so you learn the yoga poses, and
20 then you get into the advanced classes, and then you start
21 introducing the theory, and then you start explaining.

22 So we're -- I feel like you're asking a snapshot
23 picture or question, whereas I think you can't have a
24 snapshot. You have to have a video. So it's not just a
25 question of at this moment in time, are there things being
26 taught that are explicitly religious? And I think that
27 there is evidence that there are things being said and
28 taught right now, today, in the video, in the teachers'

1 declarations, in the curriculum that people -- they're not
2 just doing poses. They are talking about that, right?

3 But even if that weren't the case, there's this
4 progression that takes place where you introduce
5 beginner -- beginning yoga practitioners first six months
6 to a year, and then they graduate to the advanced level
7 courses, and then you start providing the instruction in
8 the theory and in the sacred texts of Hinduism.

9 THE COURT: So it's like a threshold drug?

10 THE WITNESS: Sure. I mean, this is camouflage,
11 right? You get people to -- actually, this applies not
12 just to yoga, but my prayer research, right?

13 I mean, why is that Pentacostalism is the
14 fastest-growing form of Christianity globally and
15 Christianity is growing so rapidly? It's because people
16 who aren't Christians perceive a benefit from prayer. And
17 then they think, "Oh, I'm getting a benefit from this."
18 And then they decide, "Oh, I want to hear more about the
19 philosophy that goes with this." And then they convert to
20 Christianity as they experience benefits through prayer.

21 The same thing happens with yoga. So it's both a
22 demand and supply that there -- that practitioners are
23 thinking, "I want something more than exercise," right? I
24 don't want to just do jogging. I don't want to just jump
25 rope. I want -- there's something -- there's this
26 perception that, "Yoga gives me something more than that.
27 And it's something I'm not getting at church or synagogue
28 or mosque. I'm not getting it from my medical doctor or

1 my exercise routine. There's something more."

2 And so that's the demand side of this. And then
3 there's the supply side of this with the camouflage. And
4 you say, "Well, it's not religious. It's scientific.
5 It's physical. It will give you health benefits. It will
6 give you something spiritual that's universal," and this
7 very intentional marketing and saying, "Well, here, we're
8 going to lead with the physical benefits, and then we'll
9 introduce the spiritual later."

10 And, I mean, I could give you quotations where
11 people admit to this who are yoga marketers and marketers
12 of meditation. They'll say, "I go in gradually. I don't
13 say anything about the spiritual things at first. But
14 then I let them see some benefits, and then I will
15 introduce the spiritual components later."

16 So it's sometimes actually very deceptive and
17 intentional the way that teaching about the philosophy
18 comes later. And is -- oh, this is actually where I meant
19 to go with Hartsel. I'm sorry. Which is their --
20 their -- one of their --

21 THE COURT: Go there slowly.

22 (Laughter.)

23 THE WITNESS: I get excited.

24 THE COURT: Well, no, you can't. She's --

25 THE WITNESS: I understand. I'm very sorry.

26 Hartsel refers to Yoga Ed and the program there,
27 which is in The Accelerated School in L.A. And I think
28 this is a very relevant example, actually. Because there

1 was a big school board dispute, and what the promoter of
2 Yoga Ed said, Tara Guber, was that, "We'll change the
3 terminology. We won't change the word 'yoga,' because
4 yoga means yoking, and we've got to have that word 'yoga.'
5 But we'll change all the words. We won't say,
6 'pranayama.' We'll say 'bunny breathing.' We won't say,
7 'samadhi.' We'll say, 'oneness.'" And they substituted
8 language.

9 And as they were having these school board
10 disputes, what one of the promoters said was, "It's just
11 semantics. We'll just change the words and we'll get it
12 in."

13 Well, they got it in, and then -- here's the
14 camouflage at play -- Tara Guber admitted in an interview
15 with *Hinduism Today* -- and the article is subtitled, "A
16 Vedic Victory" or "A Hindu Victory." What she said was,
17 "I was disingenuous when I said yoga was not religious and
18 I got it into the public schools. I just changed the
19 language, but the yoga practices will go within."

20 And in that instance, they weren't even specially
21 trained and certified instructors. They just provided
22 training to the public school teachers. But they said,
23 "They've been through our training. They're going to have
24 been transformed. And through example, they don't even
25 have to tell the children why they're doing the poses.
26 But through example, they will lead the children into the
27 deeper meanings of yoga."

28 And that was considered a, quote, "Vedic

1 victory." Tara Guber, her interviewers at *Hinduism Today*
2 said, "Look, we won. We got yoga into public schools, and
3 this will advance Hinduism." This is the article. I can
4 get the article for you.

5 And she said, "All I did was change the words,
6 and we got it in. And now they're going to learn
7 Hinduism."

8 BY MR. SLEETH:

9 Q Who's the expert that you were talking about a
10 moment ago?

11 A That was your Hartsel.

12 Q I don't know who this is.

13 A I think it was a YES brief perhaps. I don't
14 remember who it was. It's the Yoga Alliance, I believe.
15 And he's like the CEO of this alliance. It's a very big
16 organization. He's a very important figure.

17 And his purpose for mentioning Yoga Ed was to say
18 that there was a scientific study saying that Yoga Ed was
19 great. It's actually a really poor-quality scientific
20 study. All they did was ask the kids and the teachers
21 before and after if they thought yoga helped them, and
22 they said, "Yes."

23 MR. SLEETH: Motion to strike; nonresponsive.

24 THE COURT: Denied.

25 MR. SLEETH: The question was --

26 THE COURT: I know. Let's move on.

27 BY MR. SLEETH:

28 Q You've given us a very erudite excursion through

1 religion and spirituality here. I want to ask you a
2 question, whether a layman looking at this program as it
3 exists today in Encinitas would see anything in it that
4 seemed to be religious.

5 MR. BROYLES: Objection to the extent that that
6 calls for a legal conclusion, your Honor.

7 THE COURT: All right. To that extent, but I
8 don't think you're asking for a --

9 MR. SLEETH: I'm not asking for a legal
10 conclusion.

11 THE COURT: All right.

12 BY MR. SLEETH:

13 Q In your experience as an expert in this area,
14 would you think that a layperson looking at EUSD's program
15 would see something in it that was religious?

16 A A layperson who had sufficient knowledge of the
17 situation --

18 THE COURT: That changes the question.

19 What do you mean by a layperson?

20 MR. SLEETH: I mean a person who's not got three
21 degrees from Harvard.

22 THE COURT: That what?

23 MR. SLEETH: Who's not got three degrees from
24 Harvard.

25 THE WITNESS: Yes. And I think that the parents
26 in the EUSD school district who have opted their children
27 out of the program perceived that there was something
28 religious. And the children of those parents who came

1 home and said, "I'm not going to do that posture. It
2 feels religious to me," they perceived it as religious.
3 They -- I don't think they had three Harvard degrees.

4 BY MR. SLEETH:

5 Q If -- do I understand correctly that it is a bad
6 idea, in your point of view, to have any kind of activity
7 that involves motion that is designed to change the state
8 of mind?

9 A No.

10 Q So children could do repeated exercises that were
11 designed to calm the mind, and it would not be religious?

12 A If you're using the words "calm the mind" in the
13 way that the declarations are using "calm the mind," then
14 that would be religious. But if you were doing
15 calisthenics and running and kickball and volleyball and
16 it kind of moves the brain circuitry in the same way that
17 eating a good meal does, then I don't think that would be
18 religious. I mean, this is what P.E. does, right?

19 Q I'm talking about the 3rd grade teacher that's
20 got an unruly classroom and she says, "Please put your
21 head down on your desk and be silent for a moment," and it
22 calms everybody down.

23 A I think that's fundamentally different from what
24 we're seeing in the EUSD curriculum.

25 Q How is it different?

26 A It doesn't have all the religious associations
27 that I've been detailing for the last day and a half.

28 Q But the only reason that those religious

1 associations are relevant is if they come into the
2 classroom; isn't that true?

3 A No. Because the both the premise of Ashtanga
4 yoga and the empirical research indicate that --
5 specifically that yoga rituals are different from other
6 sequences of movement, and they produce a kind of
7 transformation that changes world view. It changes ethos.
8 It changes how you look at the world and how you behave in
9 the world. That's different from putting your head down
10 on your desk or sitting in criss-cross applesauce.

11 Q So a sequence of calisthenics that are the same
12 every time, same positions would not be religious?

13 A Generally, calisthenics doesn't insist on that.
14 There's a reason for insisting on the repetition. If you
15 happen to accidentally do or even intentionally -- right,
16 I mean, I don't think -- I think calisthenics is a
17 different category, right? I mean, that's what all this
18 Ashtanga literature is saying, and that's what all of
19 these studies of -- and even yoga promoter assessments,
20 that there's something distinctively different about the
21 yoga that's different from doing some jumping jacks or
22 going out running. And that's actually the appeal of
23 yoga, right? I mean, this is the point I've made before.

24 People are doing yoga because they want something
25 more than exercise. And that's what Dr. Miyashiro is
26 saying in the video, is, "There's something more here. I
27 thought this was just going to be exercises. I thought
28 this was just going to be core building, but there's

1 something much more profound, much more life-changing
2 about yoga than I even expected to see."

3 MR. SLEETH: Nothing further, your Honor.

4 THE COURT: Peck.

5 MR. PECK: Thank you, your Honor.

6

7

CROSS-EXAMINATION

8 BY MR. PECK:

9 Q Good afternoon, Dr. Brown.

10 A Good afternoon.

11 Q I'm reminded of the quote I heard about someone
12 engaging in a yoga practice for two years saying that they
13 pursued religious enlightenment through yoga, and all they
14 got was clarity of mind and a fit body.

15 It seems as if you're of the mind that all yoga
16 practice, regardless of sequence, regardless of poses, so
17 long as these are yoga poses, is inherently religious; is
18 that true?

19 A I've never used, to my recollection, the word
20 "inherently" religious, and I think that that's a very
21 loaded term that I would not choose to use.

22 Q Why not?

23 A Because that's making a global statement. That's
24 ignoring all the specificity that we've been talking about
25 in the last day and a half here.

26 Q Well, are there types of yoga -- in our brief
27 that we filed with the Court, we referenced a variety of
28 yoga from --

1 A Sure. I read your brief.

2 Q -- Broga, men's yoga, to surfer yoga --

3 A Uh-huh.

4 Q -- to holy yoga to yoga performed by the United
5 States Marine Corps in assisting with post-traumatic
6 stress disorder.

7 Are all forms of those yogas religious?

8 A I think there is -- I would go back to the Yoga
9 in Theory and Practice Group of the American Academy of
10 Religion and their statement that in American culture,
11 there's this pervasiveness.

12 So again, you can't have a snapshot. You need to
13 look at the video, at the big picture. And so very often
14 and progressively, the longer you're doing it, the more
15 you're doing, you get into these religious meanings.

16 And, I mean, if you just do a basic Internet
17 search, this stuff is just everywhere. But I think
18 there's a spectrum, right? There are forms of yoga that
19 are much more religious than other forms. And if I were
20 to give you my pick for what's the most religious form of
21 yoga, I would pick Ashtanga.

22 Q Dr. Brown, I'm not sure you've answered my
23 question.

24 THE COURT: The question can be answered "yes" or
25 "no."

26 BY MR. SLEETH:

27 Q Are all forms of yoga religious?

28 A I will say no to that question as phrased.

1 Q Please describe or identify some forms of yoga
2 which are not religious for us.

3 A The -- the -- see, I mean -- so the -- the hatha
4 yoga of the medieval period, it was more -- this is why I
5 say there's a spectrum, right? I mean, it was more
6 concerned with supernatural power than -- like telepathy,
7 like the mind control, which I think could fit a
8 definition of religion, but it's not as concerned with
9 becoming one with God the way that Ashtanga yoga is.

10 But yoga -- see, this is where the definition of
11 yoga matters, right? And if yoga means yoking with the
12 divine, then my answer to your question would change and I
13 would say that all yoga is pervasive. If yoga means
14 yoking with the divine, yoga is religious.

15 Q What if yoga simply means to me stretching and
16 exercise?

17 A I think that there can -- something can be
18 objectively religious whether you recognize it as
19 religious or not subjectively, whether you decide you want
20 to call it something other than religious.

21 And this is where especially I'm concerned as a
22 religious ethicist about not telling children in
23 particular that it's religious when it will -- when your
24 goal, like Tara Guber at Yoga Ed, her goal was to
25 introduce children to Hinduism, and she didn't tell them.
26 In fact, she intentionally hid that and changed all the
27 language. And so that --

28 MR. PECK: Your Honor, I'm sorry. We're way

1 beyond the call of the question at this point.

2 THE COURT: I'm not sure.

3 THE WITNESS: So, I mean, I think in that -- that
4 if you're just saying, "It's not religious" or you're
5 saying, "I prefer to say it's spiritual to me," it can
6 still be objectively religious in the substantive and the
7 functional definitions of religion I've been providing and
8 in the effect of changing world view and changing ethos,
9 whether or not you just say, "Well, it's stretching to
10 me." That's a snapshot picture.

11 It may be stretching for you today, but if you do
12 yoga for a year or two, all these articles, even from *Yoga*
13 *Journal*, are saying it's going to become religious for
14 many, if not all, of practitioners.

15 So today you may say it's stretching. I'm not so
16 sure that's going to be the case if you're doing yoga
17 every day for five years based on the empirical evidence.

18 BY MR. PECK:

19 Q Well, so that we're clear, Dr. Brown, if I engage
20 in let's say a month of yoga, I may not be crossing that
21 line into religion.

22 Is that what you're saying?

23 A I'm saying that you may engage -- I'm saying that
24 you're still engaging in the kind -- and we have to be
25 culturally specific. I think you're right in your briefs
26 where you say context matters. I think context does
27 matter, right?

28 And so in the context of what we're talking about

1 with EUSD and Ashtanga, not these other things, then
2 you're still engaging in these very religiously meaningful
3 activities whether you've yet recognized them as that or
4 not. And this is where, as a religious ethicist, I'm very
5 concerned about -- I would use the language of "informed
6 consent." More lay friendly language would be "truth in
7 advertising."

8 I'm concerned about encouraging children to
9 engage in a practice that you expect and even hope will
10 change their religious views without telling them that
11 that's what you're asking them to do.

12 MR. PECK: Your Honor, I'm sorry. My questions
13 are not intended to be launching pads for dissertations
14 here. I'm trying to ask specific questions. So I don't
15 want to step on the Court's toes, but I'd like the witness
16 to respond to my questions.

17 BY MR. PECK:

18 Q Dr. Brown, you've repeatedly gone back to this
19 idea that the definition of the word "yoga" means yoking
20 the spirit to the divine.

21 Did I get that right?

22 A That is the definition that I've seen repeatedly
23 in the yoga literature. Not just historically, but today.

24 Q But, in fact, Dr. Brown, there is a number of
25 definitions or a number of theories behind the definition
26 of the word "yoga," including it being a yoking of the
27 body to the spirit; correct?

28 A And my interpretation of that is it's semantic,

1 right? That when you say that, "I'm just yoking my body
2 to my spirit," that's often used as a euphemism, and it's
3 also used to assuage concerns that it's religious.

4 THE COURT: Can I ask a question?

5 MR. PECK: Sure.

6 THE COURT: This is a little troublesome.

7 Do you believe that there is a -- I guess you'd
8 call it almost a conspiracy of personnel in the district
9 to establish a religiously oriented yoga program and that
10 that's the objective?

11 THE WITNESS: I think that --

12 THE COURT: I mean, that's what you've said. And
13 that is --

14 THE WITNESS: Uh-huh.

15 THE COURT: -- and that is -- that would add a
16 whole new dimension to this understanding, I think, that
17 if there is an individual in a hypothetical school
18 district that's prosthelytizing religion, that person
19 would be removed.

20 THE WITNESS: Uh-huh.

21 THE COURT: But what your'e saying is not in this
22 district. In this district, on the contrary, we're
23 looking for people to essentially hoodwink these children;
24 start them off, you know, with exercise, but the grand
25 plan is they're going to be yoked by the time they're, you
26 know, in their more -- you know, less formative years.
27 That's what you're saying.

28 THE WITNESS: That's not quite -- that's not --

1 THE COURT: Do you really believe that?

2 THE WITNESS: That's not quite what I'm saying.
3 I would say that of the Jois Foundation. And there are
4 many statements where they're basically saying that. I
5 mean, they're saying, "We want to export the" -- and
6 they're trained and certified yoga teachers who are within
7 the district teaching the yoga, that's what they've
8 learned.

9 THE COURT: So you're saying that the Jois
10 Foundation has this grand design to start in the schools
11 and that will develop into --

12 THE WITNESS: Yeah, there's extensive evidence of
13 that --

14 THE COURT: Okay.

15 THE WITNESS: -- in all the materials that I've
16 read. Yes, I feel very comfortable saying that that's
17 true of the Jois Foundation.

18 THE COURT: Okay.

19 THE WITNESS: I don't want to make a statement of
20 leaders of EUSD.

21 THE COURT: And these Jois-trained instructors
22 are just like the foot soldiers.

23 THE WITNESS: Well, it's parampara.

24 THE COURT: Huh?

25 THE WITNESS: It's parampara. It's that
26 submitting yourself to this apostolic succession.

27 THE COURT: They've been planted in the district
28 to --

1 THE WITNESS: Yeah. I think that is the case,
2 right? It's \$500,000 that's gone in. They're being given
3 full-time jobs to do this. The whole philosophy of Jois
4 yoga and Ashtanga yoga is you just teach the practices,
5 and that will lead people to all eight limbs of Ashtanga.

6 So I do feel comfortable saying that about the
7 Jois Foundation and their trained and certified teachers.

8 BY MR. PECK:

9 Q Dr. Brown, let's be clear on the definition of
10 the word "yoga."

11 It's also been reported and accepted that the
12 word "yoga" means the yoking or connecting of the mind and
13 body; true?

14 A Again, that -- when people say that, just like
15 they say it's mind and spirit, my reading -- and I'd want
16 to see specific examples of this rather than just making
17 global statements.

18 Q It was a "Yes" or "No."

19 A My reading is it's a euphemism. So I would say
20 when people say that -- what I've seen when people say
21 it's yoking mind and body is that they're talking about
22 more than mind. They're talking about union with the
23 divine.

24 Q Dr. Brown, I'm trying to ask a "Yes" or "No" --

25 A And I'm trying to answer as best as I can.

26 Q Well, if you can't answer with a "Yes" or "No,"
27 be so kind to let me know why you can't, and I'll try to
28 rephrase it. But I can't match brain power with you up

1 here, so I'm trying to make it as simple as possible.

2 A I will try to answer.

3 Q One of the accepted definitions of the word
4 "yoga" is a yoking, meaning a connecting of the mind and
5 body; true?

6 A No.

7 Q That's not been published anywhere, as far as you
8 know?

9 A I'm sure people have said that, but I won't say
10 that that's a generally accepted definition. That's where
11 I'm disputing the phrasing of the question.

12 Q You'll accept that it's a definition of the word
13 "yoga"?

14 A I will accept that someone has possibly said that
15 just like they've said that it's -- in fact, I've probably
16 seen that, right? "Oh, it's just a yoking of the mind and
17 body," "It's just a yoking of the mind and my spirit," but
18 it means something more than that. That's camouflage,
19 right?

20 Q Well, no, I disagree if you're asking me a
21 question.

22 A I'm not.

23 Q But let me ask you a question.

24 You've seen that; right?

25 A I've seen people make all sorts of claims. That
26 doesn't make them true.

27 Q Absolutely. So stipulated.

28 Now, you've testified at length about the Jois

1 Foundation, and you seem to have studied Jois's beliefs.

2 To be clear, it's your opinion that to fully
3 understand the influences at work in the Encinitas
4 District, we need to consider the religious bias of the
5 programs benefactor, the Jois Foundation; true?

6 A If I understand the question, I will say yes.

7 Q And I normally wouldn't have asked this of a
8 witness, but so that we can fully understand the bias
9 behind your opinions, what's your religion, Doctor?

10 MR. BROYLES: I'm going to object to that, your
11 Honor. That's not relevant.

12 THE COURT: Sustained.

13 BY MR. PECK:

14 Q Dr. Brown, Mr. Sleeth asked you about your
15 funding by this organization that advances -- or is
16 intended to study a connection between Christian prayer
17 and healing?

18 A No. The Templeton Foundation studies the
19 relationship between all religions and science.

20 Q You're familiar with the mission statement and
21 the stated goals of The Templeton Foundation?

22 A Yes, I am. People love receiving money from The
23 Templeton Foundation, and people love to say things about
24 The Templeton Foundation.

25 Q I'm sure people love to receive money from
26 anywhere.

27 A Sure, they do.

28 Q In fact, you understand that the stated mission

1 statement of The Templeton Foundation is, "To serve as the
2 principal vehicle through which the Wilfred S. Templeton
3 Family supports 501(c)(3) or nonprofit organizations
4 focusing on a Judeo-Christian faith-based ministry and
5 institutions involved in furthering God's kingdom."

6 That's where you've received money from?

7 A That is a very partial quotation of Templeton
8 Foundation, so I do not think that's an accurate kind of
9 representation of The Templeton Foundation.

10 Q Doctor, that's verbatim from The Templeton
11 Foundation's website.

12 A You are quoting a partial sentence there. You're
13 not quoting the context.

14 Q Is there another context regarding, "supporting
15 organizations focused on Judeo-Christian faith-based
16 ministries and institutions involved in furthering God's
17 kingdom" that I'm somehow missing here?

18 A Could I please see the full quotation.

19 Q I have it right here. I'd be happy to show you.

20 MR. PECK: If I may approach, your Honor.

21 THE COURT: Sure.

22 THE WITNESS: Okay. That's very different from
23 what you just said.

24 BY MR. PECK:

25 Q How so?

26 A It says that it's a principal vehicle which it
27 supports organizations that focus on this tradition, not
28 on promoting this tradition. That's a crucial

1 distinction. It doesn't say anything about promoting it.
2 It just says that it's focused on it. So focused on
3 studying it.

4 The Templeton Foundation is funding people who
5 study something, which is different from funding people
6 who promote something. Entirely different.

7 Q Just so we're clear, Dr. Brown, I don't want to
8 get into a semantics game, but it talks about the
9 foundation -- "Wilfred S. Templeton Family supports
10 qualifying nonprofit organizations focusing on
11 Judeo-Christian faith-based ministries and institutions in
12 furthering God's kingdom."

13 Is that something other than what it says?

14 A I'm not reading it the same way that you're
15 reading it. I'm sorry. Yeah. And that's a very short
16 quotation from -- I'd really like to see that in context.
17 I'm not able to engage in that answer with just that
18 little quote.

19 Q I've been handed --

20 MR. PECK: Actually, if I may approach.

21 THE COURT: Wait. Why don't you just read it, I
22 mean, rather than --

23 MR. PECK: I'd be happy to.

24 THE COURT: Is that okay?

25 THE WITNESS: It's fine with me. I'd like to
26 have more time with it, though, because it would be
27 helpful for me to read it.

28 MR. PECK: I would have loved to have more time

1 to prepare for what this witness has testified. This is
2 verbatim.

3 THE COURT: What are you reading? Why don't you
4 show her so that we don't --

5 MR. PECK: I'd be happy to --

6 THE COURT: -- get into a contest about whether
7 you're reading it correctly.

8 How long is it, by the way?

9 MR. PECK: It's very short.

10 For the Court's benefit, this is from the website
11 www.TheTempletonFoundation.com under "Mission and Vision."

12 BY MR. PECK:

13 Q And you tell me if I misstate it.

14 A I'm having trouble reading your screen.

15 Q I'll make it as big as possible.

16 "Our mission is to share God's resources
17 according to Biblical principles to impact communities for
18 change and growth in areas of body, soul, and spirit.
19 This will primarily be accomplished through established
20 not-for-profit organizations or faith-based ministries of
21 like heart and purpose. Our vision is to glorify God's
22 kingdom through the spirit of giving with the ultimate
23 goal that many come to a saving knowledge of Jesus Christ
24 as the Lord of their lives."

25 Did I misread that?

26 A No, you read that correctly. Again, this is --
27 this is not a part of The Templeton Foundation website
28 that I'm referring to that I've looked at. So I would

1 have to do a close reading of that in larger context to be
2 able to give you a "Yes" or "No" on its context.

3 I don't work for The Templeton Foundation. I
4 don't get money from them to support that. I got money
5 through a subgrant from The Templeton Foundation for a
6 project to do a specific research project that -- and
7 specifically a requirement of my grant is to say that
8 there's a difference between the purposes of the funding
9 organization and my purposes. There's not a connection
10 between them and what I do as a researcher. So it's
11 really -- to me, it's not really relevant to my research.

12 Q You've read all of the declarations which have
13 been submitted to the Court in this case?

14 A I have.

15 Q And you understood by reading those declarations
16 that each one that came from the plaintiffs or their
17 supporting witnesses commented on the fact that they
18 themselves practiced a Christian faith; true?

19 A I read that in a number of declarations. And
20 that was why they felt that their -- that they were being
21 taught a religion that was contrary to what they believed,
22 and that was why it was -- they felt what they were
23 getting in the practices in the classroom was conflicting
24 with their beliefs. And that's why they felt that this
25 was a problem.

26 Q This book you published known as *Testing Prayer*,
27 I know that Mr. Sleeth asked you about it, but it's
28 described on the Harvard University website as -- your

1 process in your authoring that book was, "dissecting
2 medical records from before and after prayer, surveys of
3 prayer recipients, prospective clinical trials, and
4 multi-year follow-up observations and interviews."

5 You, Dr. Brown, show that, "the widespread
6 perception of prayer's healing power has demonstrable
7 social effects and that in some cases those effects
8 produced improvements in health that can be scientifically
9 verified."

10 Do you disagree with that characterization?

11 A No, I don't.

12 Q Okay. So, in other words, the result of your
13 study in authoring this book was that there is evidence
14 that prayer works in terms of improving health?

15 A Well, not -- the "perception of benefits" is a
16 key term in there and the sociological effects. But the
17 distinction I was making earlier is I say explicitly and
18 directly in the introduction of the book that science
19 can't prove whether God exists. Science can't prove
20 whether prayers are answered because God is somehow
21 answering them. All we can look at are what happens
22 socially when prayer practices happen.

23 There could be a lot of naturalistic explanations
24 for why that takes place. What I'm concerned with is
25 empirical effects, just like in the case what I'm
26 concerned with is empirical effects. And if an empirical
27 effect of practicing Ashtanga yoga at EUSD is that there's
28 this religious change that Jois Foundation thinks is going

1 to happen and that happens, then that's an empirical
2 effect just like prayer practices can have an empirical
3 effect.

4 MR. PECK: Your Honor, again, I have a few
5 questions here. And if I get a reversion to the whole
6 theme of the case here in every response to every
7 question, we're going to be here all day.

8 BY MR. PECK:

9 Q Please, Dr. Brown.

10 A I will try.

11 Q Based on the results of your studies, regardless
12 of why, regardless of whether it's God actually healing
13 somebody or the power of positive thinking, you've
14 concluded that this meditative process referred to as
15 prayer produces observable improvements in health?

16 A Yes. And there's a large scientific literature
17 actually that says that going to worship services produces
18 improvement in health --

19 THE COURT: The answer is yes.

20 THE WITNESS: Yeah, there's literature that says
21 prayer is very effective for health.

22 BY MR. PECK:

23 Q And that notion that prayer or meditation or
24 focused thinking is beneficial to health is not limited to
25 Hinduism, is it?

26 A No. Christian prayer for health, Christian
27 religious practices, there's lots of studies actually that
28 show health benefits.

1 Q And it exists outside of religion as well; true?

2 A There are health benefits from other things
3 outside religion? Is that what you're asking?

4 Q Would you agree that the power of positive
5 thinking produces health benefits outside of the religious
6 context?

7 A Sure, I'll agree with that.

8 Q Okay. So repetitive ritualized thought processes
9 can improve health, they can improve athletic performance,
10 they can produce calm in persons? You would agree with
11 that; right?

12 A If I understand the question, yes.

13 Q The field of sports psychology, as we know it, is
14 focused on helping improve one's performance on the
15 athletic field or the court through this visualization and
16 power of positive thinking.

17 You would agree?

18 A Yeah. I mean, that can get into the realm of
19 religion.

20 Q Okay. You've talked a lot about this concept of
21 mindfulness.

22 Is mindfulness necessarily religious?

23 A According to John Cabot Zinn, the foremost
24 promoter of mindfulness meditation in America --

25 THE COURT: What is that? What is mindfulness?

26 MR. PECK: Why don't we start --

27 THE WITNESS: I won't -- I mean, so his
28 definition is it is the heart of Buddhist meditation, yes.

1 Mindfulness is religion.

2 BY MR. PECK:

3 Q But mindfulness, isn't that something that sports
4 psychology is all about; in other words, living in the
5 moment?

6 A No.

7 Q That's not what sports psychology is all about?

8 A That is not what mindfulness is about. It's a
9 very specific term. It's the seventh limb in the eighth
10 whole path of Buddhism. It leads towards enlightenment.

11 Q So when we tell our kids to be mindful of their
12 conduct, aren't we telling them to be aware and focused in
13 their conduct?

14 A This is an example of where words that can be
15 used in multiple directions are used expecting and hoping
16 that people will interpret it like what you said, but what
17 they mean is actually Buddhism in the case.

18 Q Well, in what case?

19 A The case of mindfulness meditation.

20 Q I'm not talking about meditation. I'm not
21 connected those words. This concept of mindfulness, you
22 commented on seeing that word in some publication coming
23 from the district and suggested that that was evidence of
24 Hinduism. And my specific question is mindfulness --

25 MR. BROYLES: Objection; lacks foundation,
26 misstates her testimony.

27 THE COURT: I'm not sure where we're going. I'm
28 a little lost, frankly.

1 BY MR. PECK:

2 Q My question is mindfulness, this concept of
3 mindfulness, or living in the moment.

4 THE COURT: What's the question?

5 BY MR. PECK:

6 Q Well, isn't living in the moment, being aware of
7 oneself in the moment, another definition for the term
8 "mindfulness"?

9 A No, not in the context of how it's being used in
10 EUSD curriculum. It's referring to Buddhist mindfulness
11 meditation.

12 Q According to who?

13 A According to if you look at any of the websites
14 from the Jois Foundation, from the institutes that train
15 the yoga teachers, if you look at how it's being used in
16 the literature, it's not being used neutrally, is my
17 opinion.

18 Q Dr. Baird wrote the curriculum.

19 A Oh, Dr. Baird wrote the curriculum? I thought he
20 had a curriculum specialist, and I thought that the yoga
21 teachers helped write the curriculum.

22 Q Fair enough. So stipulated.

23 The fact that Dr. Baird and the other yoga
24 teachers helped write the curriculum, is it your testimony
25 and your belief that they had used this word "mindfulness"
26 with some hidden meaning?

27 A Yes, I do think that the overall team that wrote
28 the curriculum, when they said "mindfulness," they meant

1 mindfulness in a metaphysical way.

2 Q Isn't part of meditating the elimination of
3 distractions?

4 A Yes. And this goal of attention in the language
5 of the video or concentration, absolutely, it leads
6 towards enlightenment.

7 Q It does.

8 Is that your testimony?

9 A No. That's the belief. That's why it's done.

10 Q Regardless of whether it's done in the EUSD
11 program or elsewhere, isn't one of the tenets of
12 meditation clearing the mind of distractions?

13 A Yes.

14 Q And focusing on a task at hand?

15 A Yes, or focusing on the sound of a bell or
16 focusing on a mandala and its colors, yes.

17 Q Would you not agree as a scientist that teaching
18 students to focus on a task at hand and being aware of the
19 moment is beneficial?

20 A Well, as we've just been discussing, prayer and
21 Bible reading are beneficial, but I don't think that means
22 they should be in the public school.

23 Q Well, but it -- it doesn't mean that they're
24 necessarily religious just because the school district is
25 teaching kids to focus on the moment, be it through a
26 meditative practice or otherwise; true?

27 A If they're doing it through a meditative practice
28 linked with Buddhist and Hindu meditation, I think that

1 would be the same issues with prayer and Bible reading,
2 honestly.

3 Q In simple terms, you would agree that the ability
4 to free one's mind of distractions and focus on a task at
5 hand is beneficial not just in a religious sense, but in
6 an everyday sense?

7 A I do -- there is not scientific evidence that
8 would be sufficient for me to give a definitive or even
9 for me to agree with that statement, so no.

10 Q Well, hold on. Setting aside all your
11 credentials, Doctor, the fact that a student taking a test
12 might be distracted by thoughts of what they're going to
13 do that weekend or the pizza they're going to have at
14 lunch --

15 A Sure.

16 Q -- you would agree that the ability to focus by
17 students is beneficial?

18 A I would go that far in agreeing with you. But
19 then I would say that that's exactly the -- that's exactly
20 the argument used for why mindfulness meditation should be
21 taught in the public schools, but it's an instance of
22 camouflage. We're going to emphasize some health
23 benefits, and we're just not going to tell you that it's
24 about Buddhism.

25 Q Dr. Brown, how else are the public schools
26 teaching living in the moment, freeing one's mind from
27 distractions? How are the schools, that you're aware of,
28 teaching those concepts, arming our students with those

1 abilities?

2 A Oh, there's lots of ways to teach them. I mean,
3 that can be done through regular curriculum without
4 bringing in religion.

5 Q Well, give me an example. We're talking about
6 how do you teach a student to calm oneself or not be
7 distracted or to focus?

8 A Some good running around the track will do that
9 for you, and there is actually scientific evidence to
10 support that.

11 Q So a repetitive motion, in other words?

12 A Well, it's not repetitive. You're moving. I
13 mean, it's not like this ritualized sequence of movements
14 like you see in Surya namaskara A and B and the lotus.

15 Q Setting that aside, what we're talking about,
16 when you said running around the track, you're talking
17 about some type of physical activity that's intended to
18 promote a focus or a freeing one's mind of distraction?

19 THE COURT: But doesn't that assume that all the
20 kids are going to be in the same physical shape and same
21 mental ability? Wouldn't that also create problems of
22 self-esteem and -- I mean, some kids are overweight; some
23 kids are not coordinated. I mean, we're off on a tangent,
24 but we're now talking about education. And that is not --

25 THE WITNESS: Well, I mean, I think this would be
26 the job of the teachers, to find ways to teach that. That
27 would be encouraging and affirming of children of
28 different -- I mean, that's their job.

1 THE COURT: That is exactly correct.

2 MR. PECK: I will agree with that.

3 BY MR. PECK:

4 Q Dr. Brown, with respect to running, what you're
5 saying is engaging in physical activity can produce mental
6 and psychological benefits; right?

7 A Sure, I'll say that.

8 Q All right. And with respect to running, there's
9 this phenomenon known as a runner's high, the sense of
10 euphoria when one pushes their body to a certain extent.

11 A Sure.

12 Q Is that runner's high -- do you consider that to
13 be spiritual?

14 A No.

15 Q Why not?

16 A Because it's not linked with these meanings of
17 yoking with the divine that you see in religions and yoga.
18 It's different.

19 Q But it's a sensation that's not produced directly
20 from the physicality; right? It's -- you hear marathon
21 runners, endurance triathletes talk about these
22 out-of-body experiences they encounter when they engage in
23 these events.

24 You've heard of that?

25 A Yeah. I think you can give a very naturalistic
26 scientific explanation of how the brain chemistry works,
27 but I don't think we're here to debate health benefits of
28 one activity versus another.

1 Q We're not.

2 But isn't there, in fact, a spiritualism
3 associated with exercise, the mountain climber who
4 achieves a peak, the surfer who conquers a giant wave, the
5 marathon runner who completes the marathon? There's this
6 spiritualism that's been documented, that's been widely
7 reported? Would you agree?

8 A No, I wouldn't.

9 Q How is that different than the runner's high?

10 A Well, what I'm saying is you can have mental and
11 emotional benefits. You can have like endorphins flowing
12 and stuff. But that doesn't -- that's not going into all
13 of these very metaphysical, very religious, very Hindu
14 beliefs that we're talking about.

15 THE COURT: Mr. Peck, she was designated as a
16 religious studies expert, and we're way far afield now.

17 MR. PECK: I'm trying to focus on that, your
18 Honor. But what I'm hearing is that there's a distinction
19 between mind/body.

20 BY MR. PECK:

21 Q And the point is wouldn't you agree, Doctor, that
22 a mind/body connection, even a spiritual mind/body
23 connection with respect to some of these events,
24 marathons, et cetera, is produced -- results from athletic
25 activity aside from yoga?

26 A I will agree with you up until the point when you
27 add the word "spiritual," and then I disagree.

28 Q Well, the Court mentioned this mind/body spirit

1 slogan of the YMCA.

2 What's your understanding of that?

3 A Could you give me a more focused question.

4 Q What does mind, body, spirit mean in the context
5 of the YMCA slogan?

6 A I think there could be a lot of answers to that
7 question. But I think that in American culture, that
8 there is a lot of moving into the realm of spiritual and
9 the religious. I mean, we don't have separation of
10 religion from all of life. Just separation of religion
11 from places like public schools. So yeah, I mean, I think
12 there is spiritual and religious dimension that you'll
13 find in the YMCA and, in fact, in yoga programs that you
14 find in the YMCA.

15 Q You would agree, Dr. Brown, that the students in
16 the district are not, as part of the curriculum, to be
17 instructed on the Jois Foundation?

18 MR. BROYLES: Objection; vague, lacks foundation.

19 THE WITNESS: I can answer it.

20 BY MR. PECK:

21 Q Are the students told about the Jois Foundation
22 as part of the curriculum?

23 A They're told about it in the promotional
24 materials like that GLPD gazette. So yes, they are told
25 about the Jois Foundation.

26 Q To the extent that you're aware, during the
27 classroom experience, does the Jois Foundation come up?
28 Is that mentioned?

1 A It might well have. I don't know.

2 Q Well, you don't know.

3 A No, I don't. But I do know from my reading of
4 the materials that they're Jois Foundation trained and
5 certified teachers.

6 Q So stipulated.

7 The curriculum that you're aware in the district
8 and what is actually taking place in the classroom this
9 year, the current program that we're here to talk about,
10 there's no discussion about the origins of yoga, is there?

11 A There are references to the Sanskrit still going
12 on. There are references to like the yana mudra and the
13 anjali mudra that are going on. I think that would fit
14 into the category of cultural origins. That's still
15 happening.

16 Q I'm not talking about body movements.

17 Are the kids being instructed about the origins
18 of yoga as part of the curriculum or what's taking place
19 in the classroom today?

20 A I don't -- I don't think that that -- that's not
21 really the question, right? The --

22 Q That is the question.

23 A I mean -- okay, it's your question. That may not
24 be happening. They may not be talking about history.

25 Q And according to the current curriculum, there's
26 no reference to any chanting that's to take place in the
27 classrooms; correct?

28 A But it is happening in the classrooms, and we've

1 seen that from the teacher declarations. They're chanting
2 "om." Even many of the students are chanting "om" in the
3 current classrooms. It's not in the curriculum. There's
4 a big disconnect between the video that shows what's
5 actually happening and the stripped-down version of the
6 curriculum.

7 Q The teachers aren't instructing the students to
8 chant; correct?

9 A They're also saying that they don't stop them
10 when they do.

11 Q And there's no swallowing of a cloth in the EUSD
12 classroom, yoga classroom?

13 A Not that I'm aware of.

14 Q And there's no reference to Brahman or a greater
15 reality in the EUSD yoga classroom?

16 A I don't know whether there is or not. It's a
17 very short video that was shown to us.

18 Q To the best of your knowledge, there's no
19 reference to any mantras in the Encinitas yoga classrooms,
20 is there?

21 A "Om" is a mantra, so yes. And it's being
22 chanted. Other kids are hearing it. The teachers aren't
23 stopping it. So yes, there are mantras in the current
24 EUSD classroom.

25 Q How many kids are chanting that, "om"?

26 A According to Jen Brown, many.

27 Q In how many different schools?

28 A And there was another teacher who said on

1 occasions a few students do that. I gave you three or
2 four, maybe more quotations from teachers who made
3 references. So it sounds -- and if each of those teachers
4 has a full slate of students, if I gave you four or five
5 teachers, that's probably half the district.

6 Q Would you be surprised to learn that several of
7 the current EUSD teachers consider themselves to be devout
8 practicing Christians?

9 A No, I wouldn't be surprised. That's actually one
10 of the really interesting things that I explored in the
11 *Healing Gods* book, is how and why Christians practice
12 yoga. I'd love to talk about that with you.

13 Q Well, Christians the world over practice yoga;
14 right?

15 A Yes. And Christians the world over dispute yoga.
16 And this is -- this is fascinating. I can -- I can
17 explain to you why that is, I think.

18 Q Because they're being fooled?

19 A If you look at -- if you look at the Roman
20 Catholic church's statement on yoga, it describes it as
21 New Age and warns Christians to avoid it.

22 If you look at Muslim authorities, they -- for
23 multiple countries, they say that yoga can destroy the
24 faith of a Muslim and they shouldn't practice it.

25 Protestant Christians don't have an overall
26 governing body, and they've got this word-oriented
27 definition of religion. And so it's the Protestants who
28 are actually the least likely to recognize the religious

1 rituals as religious. And then there's this
2 demand-and-supply dimension.

3 So Christians, like other people, they may not be
4 getting their needs met from their churches or their
5 medical doctors or their jogging around the track, and
6 they want the something more, the something spiritual or
7 religious from yoga. So they want the yoga. They want to
8 rationalize it as something that fits with their faith.
9 And then there's the camouflage dimension or the marketing
10 that we've already discussed.

11 Q Now, what you just said, it sounds like some of
12 your writings on chiropractic.

13 You would consider chiropractic to be a religion;
14 true?

15 A It is linked with Western metaphysical
16 spirituality and often incorporates yoga, and Christians
17 practice chiropractic. That doesn't mean that it is a
18 consistent position theologically for Christians to
19 practice.

20 Q I'm not -- that was a long answer, but let me ask
21 it simply.

22 You consider chiropractic to be a religious
23 practice; true?

24 A Yes.

25 Q You consider acupuncture to be a religious
26 practice; true?

27 A Yes.

28 Q You consider karate to be a religious practice;

1 true?

2 A Yes.

3 Q You consider Taekwondo to be a religious
4 practice; true?

5 A Yes.

6 Q This is a religious practice that's in the
7 Olympics; is that --

8 A Yes.

9 Q You're aware of USA Yoga, this organization which
10 is -- sponsors competitive yoga throughout the U.S.?

11 A Sure.

12 Q And you're aware of USA Yoga's push to have yoga
13 admitted as an Olympic sport; true?

14 A Sure. Just because yoga is pervasive doesn't
15 mean that it's not religious.

16 Q So the modern Olympics now include competitions
17 and award gold medals for religious champions; is that
18 right?

19 A Sure, but it's marketed as health. It's marketed
20 as scientifically demonstrated. It's marketed as
21 spiritual. And so it's just recategorized as something
22 other than religion, which explains the mainstream.

23 THE COURT: And that's all camouflaging?

24 THE WITNESS: It's not all camouflaging, but
25 camouflaging is one dimension of the story that takes
26 place. It's not the full story.

27 BY MR. PECK:

28 Q In other words, this advancing of this yoga

1 agenda, it's very stealthy; correct?

2 A Sometimes; not always.

3 Q Well, in the EUSD district, it's been stealthy
4 through the use of camouflage; right?

5 A At least through the part of the Jois Foundation,
6 yes, I think so, and through the stripping down of the
7 curriculum.

8 Q Are you personally aware of any parents from the
9 EUSD district who don't identify themselves as devout
10 Christians who are objecting to this program?

11 A I'm not personally aware of them, no.

12 Q Christians believe that God created the sun;
13 correct?

14 A That is correct.

15 Q And you testified earlier about this notion of
16 adopting a sun pose in a yoga class being sun worship.

17 Is that your belief?

18 A That is the belief taught by Pattabhi Jois and by
19 the other sources that I gave, yes.

20 Q Now, is there anything about the EUSD curriculum
21 which instructs the students that they are to -- when
22 adopting a pose pointing at the sun to praise the sun?

23 A That has happened in many EUSD classrooms. It's
24 not written in the curriculum that you should do it
25 because they're not going to say that in the curriculum,
26 but it's certainly happened in the EUSD classrooms.

27 Q Give us an example.

28 A Well, I have. It's in my declaration.

1 Q And it is, and you talk about a student being
2 told to thank the sun for providing life on Earth.

3 I mean, as the scholar, you would agree that
4 regardless of how the sun got to be there, it provides
5 life on earth; true?

6 A But thanking it and bowing down to it is
7 different from saying that the sun is there and you get
8 life from it. Those are different. There's a difference
9 between description and prescription of religious
10 activities.

11 Q There's nothing in the EUSD curriculum which
12 prevents a Christian student when adopting this pose to
13 thank God for the sun, thank God for giving us this sun,
14 is there?

15 A Christians who were -- well, the Christians who
16 are objecting are objecting because it feels like worship
17 to them.

18 Q Okay. Fair enough.

19 A And they don't feel like -- they would interpret
20 that as idolatry, and that's why they're objecting to it.

21 Q But Christians, as we've testified, believe that
22 God created the sun, and there's nothing in the district
23 curriculum which prevents a student, when adopting this
24 physical pose, from thinking that we're so fortunate that
25 God gave us the sun, is there?

26 THE COURT: Mr. Peck, I'm not sure that's really
27 the point.

28 MR. PECK: Well, your Honor, the point is that

1 this -- there's been a suggestion --

2 THE COURT: The district has to be neutral.

3 MR. PECK: Correct.

4 THE COURT: Negative. No religion.

5 MR. PECK: Absolutely.

6 THE COURT: So worshipping anything is a no-no.

7 I think everybody agrees with that.

8 MR. PECK: But appreciating something whether God
9 gave it to us or you believe in the Big Bang Theory or
10 whatever is different than worshipping.

11 THE COURT: Now we're splitting hairs here.

12 THE WITNESS: But bowing down and rising up --

13 THE COURT: There's no question.

14 BY MR. PECK:

15 Q Dr. Brown, you testified that yoga -- the
16 practice of yoga would be considered blasphemous by
17 Christians; is that true?

18 A What I testified is thinking that you can become
19 one with God is blasphemous for Christians.

20 Q Isn't it also blasphemous to a Christian to be
21 taught about evolution, the Big Bang Theory?

22 A I don't think we're here to talk about evolution.

23 THE COURT: How much more do you have?

24 MR. PECK: Very few questions, your Honor.

25 MR. BROYLES: Irrelevant.

26 THE COURT: Sustained. I want to give the poor
27 reporter a break.

28 MR. PECK: Sure.

1 THE COURT: Let's take our break now. 15
2 minutes.

3 (Recess.)

4 THE COURT: All right. Mr. Peck.

5 MR. PECK: Thank you, your Honor.

6 BY MR. PECK:

7 Q Dr. Brown, in reading the trial briefs, you saw
8 YES' brief in reference to this article entitled "The
9 Trouble with Yoga" from *Catholic Answers* magazine?

10 A Yes.

11 Q The quoted portion of that -- I'll read slow.
12 It's not long. And referring to yoga, it says, "This
13 assertion shades into superstition describing magical
14 effects to a physical action based solely upon its
15 external performance. But let's be clear, the body
16 postures of yoga are in themselves neutral. Moving the
17 body into a certain position does not necessarily engage
18 the person in any particular spiritual activity."

19 That was an author by -- excuse me -- an article
20 in *Catholic Answers* magazine.

21 Is it your testimony that this article from May
22 of last year is inconsistent with the teachings of the
23 Catholic church?

24 A Yes. I read the article, actually. And the --
25 this is someone who works for the Catholic church. Well,
26 she's a Catholic, right, and she does have apologetic
27 questions. It is a different position than is taught by
28 the Vatican documents that I've looked at. And it's

1 also -- I've made a very specific point -- well, I won't
2 say anymore, but I do have more I could say.

3 Q You talked about bells and the role that bells
4 play and that that's some evidence that this EUSD yoga
5 program is religious because it uses bells.

6 A Sound meditation just like mandala meditation,
7 yes.

8 Q The start of the school day starts with a bell;
9 right?

10 A That's different from ringing a bell between
11 lotus poses for meditation purposes.

12 Q It's a simple calming sound.

13 Isn't that what the purpose of the bell is?

14 A No. In the context that I saw it in the video,
15 that you're supposed to bring your attention to the bell
16 and meditate.

17 Q Would you consider it to be less religious if a
18 different type of an instrument was used?

19 A The bell has specific religious significance for
20 Hindu yoga, but there are other instruments that also have
21 religious significance. But yeah, the bell -- it matters
22 that it's a bell.

23 Q Bells are commonly found in Christian churches,
24 Catholic churches; true?

25 A Right. That's not what we're talking about,
26 though.

27 Q We're talking about a bell.

28 And the use of a bell isn't any more indicative

1 of Hinduism then it would be indicative of Christianity;
2 true?

3 A The understanding of Hindu yoga practitioners is
4 if you focus your attention on the bell, you will be
5 helped to meditate.

6 Q You testified about the fact that this P.E.
7 program has a life skills, a character development program
8 as being evidence that it is something more than physical
9 education.

10 Am I characterizing that right?

11 A It is consistent with that interpretation.

12 Q But you would agree, Dr. Brown, that physical
13 education often includes life skills teaching in terms of
14 teamwork and not cheating and sharing and trying hard and
15 encouraging, all of those things?

16 A Sure.

17 Q So the mere fact that life skills might be taught
18 or character development might be taught as part of the
19 program doesn't suggest it's any more religious than
20 encouraging your players on the kickball team to show good
21 sportsmanship, isn't it?

22 A Well, this is where it's not intuitively obvious
23 why you're having the students talk about how they show
24 responsibility in the classroom, at home, and in the
25 community in their P.E. class when the teachers haven't --
26 half the teachers haven't been trained to do that kind of
27 instruction. They've been trained to do yoga. Or they
28 have been trained to do that kind of instruction, but it's

1 come from the yama and niyamas from Hindu text.

2 Q Dr. Brown, isn't it common sense that adults
3 teaching kids might be familiar with the concepts of
4 teamwork, sharing, good sportsmanship, and encouragement
5 regardless of whether they were trained on those concepts?

6 A Might be, but teaching it to kids is different.

7 Q Isn't that who we want to teach things to, kids?

8 A Right. But generally, there's a process of
9 training to be an elementary school teacher.

10 Q Is it your testimony, Doctor, that yoga is
11 religious because it has transformative effects?

12 A That is a part of my answer.

13 Q But isn't it true that part of the everyday
14 educational experience has transformative effects;
15 reading, exercising?

16 A How are we defining "transformative"?

17 Q Changing one's perspective of the world.

18 A See, I'm defining "transformative" much more
19 specifically as transforming you so that you become one
20 with the divine. That's a different definition.

21 Q Well, nobody's suggesting that that actually
22 takes place.

23 You yourself aren't saying that if you do these
24 poses, you will become one with the divine, are you?

25 A No, I'm not saying that.

26 Q And you would agree that the process of reading,
27 opening one's mind so that perhaps they'd be more inclined
28 to explore the world?

1 A Sure.

2 Q And traveling to various countries opens one's
3 mind such that they might be more accepting of different
4 beliefs and world views?

5 A Sure. I mean, this is a distinction we make in
6 religious studies all the time; that you teach about
7 religions, but you don't teach people to practice
8 religions. You don't indoctrinate. You inform and you --

9 Q All right. So teaching about religion, you're
10 not concerned about? It's actually indoctrinating one in
11 a religion that's concerning?

12 A I wouldn't see why a P.E. teacher would be
13 teaching about religion. I think that would be the job of
14 someone that's trained in religion to teach about
15 religion.

16 Q If a P.E. teacher asked students to get on their
17 knees, would you consider that to be teaching religion?

18 A I think some people would object to that.

19 Q Yeah, it would be perceived as perhaps
20 instructing students to pray?

21 A Yes. And just like the kneeling position we so
22 associate in America now with praying, that's come to be
23 the case with yoga positions. When you see downward
24 facing dog and you call it downward facing dog, that has
25 just as much religious valance as seeing a Bible in the
26 classroom kneeling down to pray.

27 Q I mean, putting my hands together, my palms
28 together in front of my neck here and bowing my head, can

1 you interpret what I'm doing?

2 A Yes. That looks like a prayer posture to me.

3 Q A Hindu prayer posture or a Christian prayer
4 posture?

5 A That looks like a Hindu prayer posture. The
6 Christian prayer posture would be more like this
7 (indicating). It's different.

8 Q But the context is everything, is what you're
9 saying, in terms of the position of the hands?

10 A I'm not saying context is everything, but context
11 matters. I'll agree with you on that.

12 Q So if I fold my hands and bow my head, it's
13 indicative to you of a Christian prayer posture, and if I
14 put my palms together and bow my head, that's indicative
15 to you of a Hindu prayer posture?

16 A I mean, sometimes this position can be in
17 Christian prayer. But one way or another, it's prayer,
18 right? Everyone recognizes this --

19 THE COURT: Is bowing a prayer posture.

20 THE WITNESS: When it's done with the hands like
21 this (indicating) it is.

22 BY MR. PECK:

23 Q Dr. Brown, you've testified about yoga consisting
24 of thousands of different movements of the body. Just so
25 we're clear here, is it your testimony that students in
26 public schools should be prohibited from being instructed
27 in any of those movements or positions?

28 A No. I'm actually being very specific to the

1 poses in the sun salutation, the primary series, the lotus
2 positions, things like downward facing dog. That's what
3 my testimony is referring to. These are very associated
4 with symbolic meaning in the context of Ashtanga and in
5 the context of our broader culture. Everyone recognizes a
6 downward facing dog in America almost. I mean, a lot of
7 people do. It's very much like the praying hands posture
8 now.

9 Q Let me give you a hypothetical. You're an
10 expert. I can do that.

11 A Sure.

12 Q If I were to go to one of these lost tribes deep
13 in the Amazon Jungle and were to give them a book, no
14 words in the book, I don't speak their language, they
15 don't speak mine, all it has is a series of poses, and
16 they start doing those --

17 A Uh-huh.

18 Q -- is it your testimony that according to Hindu
19 philosophy, if I come back a year later and they've been
20 doing these poses every day, that they will be somehow
21 opened up to the divine, they will be connecting with the
22 divine?

23 A Yes. According to Ashtanga philosophy, that is.
24 And actually, there's -- that's not so hypothetical.
25 There's actually great anthropological research, and
26 there's even popular movies that have been done about this
27 where tribes will develop these very elaborate religions
28 based upon some like Coke bottle.

1 Q Sure.

2 A So yeah, they'll develop religions based on
3 these.

4 Q *The Gods Must be Crazy?*

5 A Sure.

6 Q But the fact that -- and *The Gods Must Be Crazy*,
7 that popular movie from the '80s, that these bushmen of
8 the Kalahari found a Coke bottle and turned it into --

9 THE COURT: That was before the '80s.

10 (Laughter.)

11 MR. PECK: I don't think so.

12 BY MR. PECK:

13 Q -- turned it into this object of religious
14 significance.

15 That wasn't because it was intended to be
16 religiously significant, that wasn't because the object
17 was objectively religiously significant, that was because
18 the recipients of that started ascribing their own meaning
19 to it; true?

20 A Uh-huh. Yeah, sure.

21 Q Okay. So if students -- using my example, my
22 hypothetical of this lost tribe in the Amazon receiving
23 this book of yoga, yoga postures without words, and they
24 start doing these postures and they unilaterally decide
25 that it's indicative of some god or religion or multiple
26 gods or divinity, that's not inherent because of the
27 poses, that's because they've applied their own
28 interpretation to it much like the bushmen with the Coke

1 bottle; true?

2 A That could be one reason. According to Ashtanga
3 philosophy, they would think that it's a different reason,
4 right?

5 Q The poses don't have supernatural powers, do
6 they?

7 A I'm not saying that they do or that they don't.
8 I'm not taking a position on that.

9 Q You've gone on at length about this concept of
10 camouflage, how the district has engaged or encouraged or
11 facilitated the yoga program by camouflaging it, and part
12 of that has been by stripping Sanskrit and calling the
13 poses different names.

14 And you've testified that, in your opinion, that
15 is part of the district's program -- part of district's
16 intent to allow yoga into the schools by fooling the
17 parents; is that true?

18 A I've said that of the Jois Foundation. I haven't
19 said that of EUSD, that that's their intention.

20 Q What about EUSD? Is that true? Isn't another
21 interpretation of that the fact that Dr. Baird and the
22 board of trustees would be responsive to parent complaints
23 and remove some of these objectionable elements from the
24 program? Instead of calling that camouflage, isn't
25 another interpretation simply a responsive and receptive
26 school board?

27 A I thought that Dr. Baird testified that they
28 wouldn't have responded to those complaints to opt out of

1 math or history class. So I -- I don't think it's that --
2 I mean, I think another interpretation is \$500,000 and you
3 don't want to lose the money.

4 Q Dr. Brown, have you heard of any students, any
5 parents objecting to math or history class in the
6 Encinitas district?

7 A They're not objecting to it because it's not
8 religious.

9 Q But you've heard parents objecting to this
10 program.

11 And what I'm asking you is is it necessarily
12 camouflage or is it indicative of a response from a
13 concerned board wanting to mollify parents?

14 A Well, I mean, my reading of the documents, right,
15 is if they really didn't think that there was anything to
16 the complaints, then why would you change everything?

17 Q But isn't it a Catch-22? In other words, if they
18 leave it all in, then it sounds like religion if you have
19 that perspective; but if they remove it and they strip
20 those elements that are specifically objected to, the
21 specific examples that you've cited from the parents'
22 declarations, the coloring of mandalas, the chanting of
23 "om," if they remove all that, then they're engaging in
24 camouflage? Is that your testimony?

25 A No, I don't think that you have to conclude that
26 it's camouflage because you remove things. I'm -- that --
27 there's more to it.

28 Q It's your testimony that there's no way the

1 district can remove religion from yoga practice because
2 necessarily engaging in these series of poses constitutes
3 the practice of religion; true?

4 A If you're talking Ashtanga yoga in particular,
5 which we are, then I don't think that there's any way that
6 you can teach Ashtanga yoga and remove the --

7 Q We're not talking about Ashtanga yoga, at least
8 what we've heard from the district. Assume we're talking
9 about a form of yoga known as EUSD yoga.

10 Is it your testimony that the removal of all
11 these objectionable phrases, terminology, imagery, et
12 cetera, that that necessarily doesn't matter at the end of
13 the day because it's still engaging in religious practice?

14 MR. BROYLES: Objection; lacks foundation,
15 misstates her testimony.

16 THE COURT: Overruled.

17 THE WITNESS: Let me make sure I understand.
18 That was a very complicated question. Could you rephrase
19 it, please.

20 BY MR. PECK:

21 Q Let me ask it again so we're clear.

22 We've heard testimony about the district trying
23 to be responsive. Changing the program. It continues to
24 be changed. In response to parent complaints, certain
25 elements were removed. Whether that was camouflage or the
26 response by a conscientious district is not what I'm
27 asking you now.

28 My question is is it possible, in your opinion,

1 for the district to teach this form of yoga, this brand of
2 EUSD yoga, involving postures without it being religion?

3 MR. BROYLES: Same objection.

4 THE COURT: Well, we're kind of dancing around
5 the issue here.

6 MR. BROYLES: My objection, your Honor --

7 THE COURT: I know, but I think -- I think the
8 question was -- a couple of questions ago was a good one,
9 and I'd kind of like an answer to that question.

10 And what this witness said was, if I understand
11 it, there's no way the district can maintain an Ashtanga
12 yoga program without it being religious?

13 MR. PECK: That's --

14 THE COURT: End of story. So I guess what that
15 means is you could call it the Encinitas District Yoga
16 Program, you can change all the names, you cannot have any
17 chanting, you cannot have anything else that she's
18 indicated are earmarks of Hinduism, and it still is going
19 to be religious. That's what she said, I think.

20 BY MR. PECK:

21 Q Is that your testimony, Doctor?

22 A Yes. If you're teaching Ashtanga yoga, it's
23 religious.

24 THE COURT: Well, no, you're going to call it
25 something else.

26 THE WITNESS: You call it EUSD yoga, but it still
27 in substance is Ashtanga yoga. I don't think you can -- I
28 don't think you could do that in a nonreligious way.

1 THE COURT: I mean, there's nothing that can be
2 done. You can call it something else, you can remove --
3 you could change all the names, you can have the
4 instructors told that, "Not only can you not teach, but
5 you cannot tolerate anything that would be perceived to be
6 religious such as chanting, doing this. And if you see it
7 and tolerate it, we're going to replace you with somebody
8 else."

9 In other words, the district could theoretically
10 be very vigilant and make sure that it is not Ashtanga
11 yoga, but you're saying it's still is going to be
12 religious because -- and this is where it gets kind of
13 interesting -- you know that the objective is to become
14 one with the divine, maybe not today, maybe not tomorrow,
15 maybe not next month, but in the future, that's what the
16 objective is even though it isn't known now.

17 And that's kind of sinister, isn't it?

18 THE WITNESS: Yeah. So -- yes, if the substance
19 is Ashtanga with all the names changed, but the purpose is
20 Ashtanga, then I don't think you can teach it.

21 THE COURT: That's where you get subjective.

22 Whose purpose?

23 THE WITNESS: Well, the goal -- see, the
24 distinction --

25 THE COURT: See, you're saying that the district
26 is the innocent agent of this Jois Foundation, the
27 objective of which is to take over the world.

28 And, I mean, what you're saying is kind of scary,

1 isn't it?

2 THE WITNESS: Yeah, I think so. I'm not
3 objecting to just any kind of yoga, right? But I am
4 saying this type of yoga in particular with these goals of
5 Jois Foundation, I don't think that you could change it
6 by --

7 THE COURT: But the district might have a
8 completely different goal. The district -- I mean, if you
9 assume that the district's goal is not religious, it's to
10 put in a non-mainstream program that will teach kids
11 determination, hard work, sticktoitiveness, proper
12 posture, et cetera, et cetera, relaxation, stress release,
13 focus, and that's all the objective is and to get into a
14 program that doesn't involve bullying or the big kids are
15 going to be the leaders, the wimpy kids are going to be
16 left out, the overweight kids are going to be made fun of,
17 and that is one of the criticisms of what we'll call
18 mainstream P.E., et cetera, and the district is saying,
19 "Well, we want to do something a little different," and
20 they're not -- you've got -- assume the district is not in
21 any way religious.

22 THE WITNESS: Uh-huh.

23 THE COURT: You're still saying that once they
24 got the grant and they accepted the money from Jois,
25 that's their doing. The only way that this could be done
26 is to tell Jois, "We don't want your money. We're going
27 to have a program. We're going to call it stretch and
28 tone and -- stretch, tone, wellness. We're going to do

1 the same thing. We're going to have stretching. And
2 instead of having an Ashtanga instructor, we're going to
3 have somebody from," I don't know, some other -- from the
4 Chargers maybe. I don't know. But they're going to have
5 a different thing. It's going to do the same thing, and
6 that would be okay.

7 THE WITNESS: It does matter to me that the
8 teachers are Jois trained and certified. I think that
9 does make a difference.

10 THE COURT: Okay.

11 THE WITNESS: And I think it makes a
12 difference -- I mean, a -- you can achieve those health
13 and wellness goals with a nonreligious program.

14 THE COURT: Well, okay. All right. But you're
15 not going to have a half a million dollar grant.

16 THE WITNESS: No, you probably won't.

17 MR. PECK: Nothing further, your Honor.

18 THE COURT: Okay.

19 MR. BROYLES: No questions, your Honor.

20 THE COURT: Huh?

21 MR. BROYLES: No questions.

22 THE COURT: Okay. So once the district accepts
23 the money from Jois, it's religious, end of story?

24 THE WITNESS: I think it's really difficult to
25 get away from the Jois Foundation agenda, especially when
26 the stipulation -- I mean, there are just so many other
27 stipulations, that they have to be Jois trained and
28 certified, that the instruction has to be consistent with

1 the goals of the grant, that the curriculum has to be
2 consistent with the goals of the grant. I mean, this is
3 where I stopped walking through all the RDG --

4 THE COURT: What are the goals of the grant?

5 THE WITNESS: The goals of the grant are to
6 promote Ashtanga yoga very directly and explicitly in what
7 I read in January.

8 THE COURT: And the goal of Jois is to establish
9 a program that is religious --

10 THE WITNESS: Yes.

11 THE COURT: -- in that the ultimate goal is the
12 become -- is the union of spirit -- of body and spirit?

13 THE WITNESS: Yeah. And I mean -- and this is
14 where those three documents are really helpful, I think.

15 THE COURT: What?

16 THE WITNESS: Really, it's two documents, the two
17 MOUs, and the grant proposal is attached to the one MOU.
18 I found those very helpful in my understanding of what was
19 going on because it's not just saying the money comes from
20 Jois. It's saying that it's -- that the big goal is the
21 Ashtanga program because it's this comprehensive world --
22 and it uses that word, "comprehensive" world view. And
23 the curriculum is a support or a complement to that goal.

24 And RDG -- EUSD promises and RDG enforces that
25 the instruction that goes on in the classroom is
26 consistent with that grant of supporting Ashtanga. And
27 it's -- and EUSD stipulates that the curriculum will be
28 consistent with that grant.

1 Also, the stipulation that Jois Foundation can
2 supply teachers into the pool, that they must be trained
3 and certified by Jois, and that the Jois Foundation has a
4 role in the ongoing revision of the curriculum.

5 THE COURT: And there's no other -- there's no
6 anecdotal or empirical studies that you're aware of that
7 you can draw in to say, "Well, if you look at this
8 location and that location, it happened here. It didn't
9 happen there." This is all kind of cutting edge; right?

10 THE WITNESS: Oh, this is the first time that
11 there's been a districtwide program like that? Is that
12 what you mean?

13 THE COURT: Yeah. I mean there's nothing you've
14 studied that would indicate --

15 THE WITNESS: Well, the closest analogy is
16 actually the Yoga Ed program.

17 THE COURT: The what?

18 THE WITNESS: The Yoga Ed program that their
19 expert -- that YES Foundation's expert Hartsel made
20 reference to, which is in the one school. And they did a,
21 quote, "study" in that school.

22 THE COURT: Where?

23 THE WITNESS: At The Accelerated School in Los
24 Angeles. But the program is actually in hundreds of
25 schools. But that's where the *Hinduism Today* article that
26 I discussed at length in the declaration explains --

27 THE COURT: Okay. I guess we'll hear from
28 another expert.

1 THE WITNESS: -- the religious motivation that
2 it's to promote Hinduism.

3 MR. SLEETH: Could we at least ask the expert --

4 THE COURT: I don't have anything. If you have
5 anything further.

6 MR. SLEETH: It seems to me that there's a
7 question that comes out of the question the Court just
8 asked.

9 THE COURT: Sure.

10

11

RECROSS-EXAMINATION

12 BY MR. SLEETH:

13 Q And that is if the district agreed to cut those
14 links with Jois, that is, we get the teachers certified as
15 yoga proficient with some other organization and Jois
16 agrees to leave us the money as long as we do that and we
17 say that Jois has no oversight of the curriculum and no
18 right to intrude into anything that we do with the
19 curriculum, even if Jois leaves us the money, would that
20 still be religious?

21 A If it's substantively the same program like as
22 what we have in the curriculum now, then I think it's
23 still religious, because I see religion all over the place
24 in what's being taught now, whether -- I mean, it's
25 everywhere.

26 THE COURT: This is now a moving target, I think.

27 MR. SLEETH: I think so, too.

28 THE COURT: You understand -- I mean, so if

1 you -- if you assume hypothetically that there's a new
2 program that is disassociated from Jois and Jois says,
3 "We'll give you the money. You establish a yoga program
4 as you wish" --

5 THE WITNESS: I think there's still a problem.

6 THE COURT: -- "as educators" and the district
7 maintains a program that is -- that has some of the yoga
8 positions which, as you testified, are in the thousands --

9 THE WITNESS: Uh-huh.

10 THE COURT: -- and the wellness component or the
11 mind component is benign, I mean, what you would teach any
12 child, I think, as far as focusing on the task at hand and
13 clearing your mind of clutter and being determined, having
14 a goal, et cetera, et cetera, getting a lot of sleep,
15 eating right, that type of thing, it still would be
16 religious?

17 THE WITNESS: I would still be concerned about
18 the Jois Foundation being promoted and this being
19 advertised with a religious foundation.

20 THE COURT: So you're changing the hypothetical
21 and saying that notwithstanding -- you're really saying
22 that there's a credibility problem, that you just don't
23 believe -- what you're saying is Jois isn't going to give
24 money to a district without strings?

25 THE WITNESS: I think that's true, but I'm saying
26 something somewhat different, which is that it's still
27 going to -- I don't want to cross the line on what I'm
28 supposed to say as an expert, but my opinion is it still

1 is advertising for the Jois Foundation --

2 THE COURT: Well --

3 THE WITNESS: -- and everything they stand for.
4 And that's what we've seen in this GLPD gazette and the
5 promo videos that Dr. Baird has done for Jois, that this
6 serves to promote Ashtanga yoga and it serves to promote
7 the Jois Foundation. The money is given as funding for
8 advertising for them.

9 MR. PECK: Your Honor, may I ask a follow-up on
10 that?

11 THE COURT: Well, sure. But that -- I mean,
12 that's like -- well, go ahead.

13 MR. PECK: I'll be brief.

14

15 RECROSS-EXAMINATION

16 BY MR. PECK:

17 Q Dr. Brown, I'll represent to you that the
18 Encinitas District receives grants from the Young Man's
19 Christian Association, the YMCA, the Leichtag Foundation,
20 which gave a very generous seven-figure grant to install
21 an international baccalaureate program at my son's school.
22 The Leichtag Foundation, as part of its mission statement,
23 is the promotion of Jewish heritage.

24 Knowing that these Christian organizations and
25 these Jewish organizations are giving money to the
26 district, do you share the same concerns about the
27 influence of religion over the curriculum?

28 A I haven't seen the same promotional campaigns

1 that I've seen with the Jois Foundation where there's
2 these videos, there's this website, there's this goal of,
3 "Let's export this gospel to the whole world." I don't
4 see that with those. So I don't see it functioning in the
5 same way.

6 Q But isn't part of Christianity to be fishers of
7 men, to bring men to Christ? I mean, knowing that a
8 Christian organization is giving money to a school, how do
9 you differentiate that from --

10 THE COURT: We're getting far afield.

11 MR. PECK: I appreciate that, but --

12 THE COURT: Save it for argument.

13 MR. PECK: Fair enough.

14 THE COURT: Anything further?

15 MR. BROYLES: No, your Honor.

16 THE COURT: All right. Okay.

17 THE WITNESS: All right.

18 THE COURT: Can Dr. Brown go back to the UK?

19 MR. BROYLES: I think she can, your Honor.

20 MR. SLEETH: I have no objection.

21 THE COURT: Can she be excused?

22 MR. SLEETH: Yes.

23 THE COURT: All right.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you, Dr. Brown.

26 THE WITNESS: Thank you.

27 THE COURT: All right. Mr. Broyles.

28 MR. BROYLES: Your Honor, our next witness is

1 Jennifer Brown.

2 THE COURT: All right. Otherwise known as Jen
3 Brown?

4 MR. BROYLES: Yes, Your Honor.

5 THE COURT: Is this a 776 witness?

6 MR. BROYLES: You mean -- she's a district
7 employee, your Honor.

8 THE COURT: So I assume that's under 776. Okay.

9 MR. BROYLES: Yes.

10 THE CLERK: State your full name and spell your
11 last name, please.

12 THE WITNESS: My name is Jennifer Nicole Brown.
13 Last name is spelled B-r-o-w-n.

14 THE CLERK: Thank you.

15

16

JENNIFER NICOLE BROWN,

17 having been called as a witness by the Plaintiffs,

18 was first duly sworn and testified as follows:

19

20

DIRECT EXAMINATION

21 BY MR. BROYLES:

22 Q Good afternoon, Ms. Brown.

23 A Good afternoon.

24 Q Please -- you've already stated and spelled your
25 name for the record, but I'm going to ask some questions
26 about your background first.

27 You started practicing yoga approximately ten
28 years ago or more, in 2002; is that correct?

1 A That's correct, sir.

2 Q Where did you start practicing yoga?

3 A At Gold's Gym in Santa Barbara.

4 Q Okay. And I believe you started practicing
5 specifically Ashtanga yoga in 2005; is that correct?

6 A That sounds about right, yes.

7 Q Where was that?

8 A That was at Pacific Ashtanga Yoga Shala in Dana
9 Point, California.

10 Q And you studied under a lady up there.

11 What was her name?

12 A Diana Christensen.

13 Q Okay. And in 2007, you started traveling to
14 Mysore, India to undertake studies with Sri K. Pattabhi
15 Jois; isn't that correct?

16 A My teacher is actually Sharath Jois. I've never
17 studied with Pattabhi Jois. I study at his center that is
18 named after him.

19 Q Oh, okay.

20 But you studied the Ashtanga yoga there; correct?

21 A Yes, sir.

22 Q And the Ashtanga yoga that you studied was the
23 same Ashtanga yoga taught by Pattabhi Jois; correct?

24 A Yes.

25 Q And it was passed down through succession to his
26 grandson Sharath; right?

27 A Sharath (pronouncing), yes.

28 Q Now, I believe you also studied Ashtanga yoga in

1 India under Jois's daughter.

2 Could you pronounce her name for me?

3 A Saraswati.

4 Q Okay. Thank you.

5 And I believe the name of the institute you
6 studied in there was called the Ashtanga Yoga Research
7 Institute?

8 A That's correct. It's now undergone a new name.
9 The Cape Krishna Pattabhi Jois Yoga Institute, but they're
10 the same school, just a new name now.

11 Q Okay. And so how -- approximately how many times
12 have you studied to Mysore -- I'm sorry -- traveled to
13 Mysore since 2007?

14 A I've been to India on three separate occasions.

15 Q And have those all been to go to Mysore?

16 A I've been to Mysore three times, yes.

17 Q And the three times that you were there, was the
18 purpose to study specifically Ashtanga yoga?

19 A Yes, sir.

20 Q And did you study Ashtanga yoga only under
21 Sharath and Jois's daughter?

22 A In Mysore, yes. I've also studied in Goa, India
23 under a teacher named Rolf Naujokat, who is from Germany.

24 Q Okay. Does Rolf teach Ashtanga yoga?

25 A He does, yes.

26 Q Okay. And you also studied at the Ayurveda --
27 I'm sorry -- California College of Ayurveda; correct?

28 A That's correct, sir.

1 Q Is that in Mysore?

2 A No. The California College of Ayurveda is in
3 California.

4 Q Okay. I apologize for that.

5 What is Ayurveda?

6 A Ayurveda basically -- the easiest way to describe
7 it is it's like the natural medicine of India.

8 Q Okay. Is it like homeopathic medicine?

9 MR. CARELLI: Objection; lacks foundation.

10 THE COURT: Overruled.

11 THE WITNESS: So I answer that, yes?

12 BY MR. BROYLES:

13 Q Yes, please.

14 A Close enough, you can say. I mean, to be honest,
15 I don't really know homeopathy to be able to say that
16 that's the same, but...

17 Q Could you just give us a brief description of
18 what you studied there.

19 A When I studied Ayurveda?

20 Q Yes.

21 A I studied things like dosha types, which is
22 basically like when you're born, you have a certain
23 components that make up your body. And so then you learn
24 how to eat in order to stay the most healthy. So like
25 some people are naturally really thin. They might need to
26 eat more grounding foods so that they can keep their frame
27 nice and strong. Other people might be born on the
28 heavier side. Maybe they eat a little bit lighter to keep

1 their body healthy. These types of things is what I
2 studied.

3 Q Is Ayurveda based in part at least in spiritual
4 religious beliefs from India?

5 A Not to my knowledge, no.

6 Q And in 2- -- and I'm just trying to figure out
7 why you listed it as a qualification on your website
8 posting.

9 Why would you list that in conjunction with
10 Ashtanga yoga and other things?

11 A I'm not sure what you're referring to. I'm
12 sorry.

13 Q In 2011 after several extended trips to India,
14 you received authorization to teach Ashtanga yoga; right?

15 A Yes.

16 Q And who did you receive that from?

17 A From the Pattabhi Jois Institute in Mysore,
18 India, which is the school of Sharath and Saraswati Jois.

19 Q Who made the decision to give you that
20 distinction?

21 A Sharath Jois.

22 Q And when that happens, what certifies that -- do
23 you have a document that you receive that certifies you're
24 able to teach Ashtanga yoga?

25 A It's just a little certificate. And usually the
26 way the authorization process works is it's just based on
27 your personal asana practice, which again is -- it's about
28 the physical practice. So when you demonstrate

1 proficiency of, "I know how to do these poses correctly,"
2 once you get to a certain point, Sharath says, "Okay, so I
3 can see you can do these yoga postures proficiently. You
4 may go now and teach these particular yoga postures."

5 Q But Sharath and the other Jois family members
6 don't give that distinction to everyone; right?

7 A No, they do not.

8 Q So it's kind of a selective group; right?

9 A I think the idea would be like as an ongoing
10 student, you can one day attain that. Not all students
11 continue to go to Mysore. If you go one time, you're
12 probably not going to learn enough. It's the same thing
13 of like if you go to college and you only complete the
14 first year of college, you're not going to earn a degree.
15 You have to attend all of the classes and get all the
16 credits before you can earn the piece of paper that says
17 you finished.

18 Q Are you aware of how many people in the United
19 States are certified to teach Ashtanga yoga by the
20 organization in Mysore?

21 A No, I'm not.

22 Q Okay. Are you aware that your name is listed on
23 the website of individuals who are able to teach Ashtanga
24 yoga?

25 A I'm aware that there's a website -- or that there
26 is a teachers' list through the school, and I am on that
27 list, yes.

28 THE COURT: What organization are you referring

1 to?

2 MR. BROYLES: The Jois organization that she
3 mentioned earlier, your Honor.

4 THE COURT: Okay.

5 MR. BROYLES: It's -- I believe the name is the
6 Pattabhi Jois Ashtanga Yoga Institute; is that correct?

7 THE WITNESS: Yes, sir.

8 THE COURT: Well, how many institutes are there?
9 There's a Jois Foundation, but then there's something
10 else.

11 THE WITNESS: Well, there's actually, I think,
12 three different organizations that are being discussed:
13 There's the Jois Foundation; there's the Jois Yoga Shala,
14 which there's been a lot of discussions of different
15 paperwork and pamphlets and websites that have been
16 referenced that have to do with this Jois Yoga Shala,
17 which is a totally separate entity --

18 THE COURT: What's a shala?

19 THE WITNESS: It just means school. It's an
20 Indian word for school.

21 And then third that he's referencing is the yoga
22 institute that's in Mysore, India that has nothing to do
23 with the Jois Yoga Foundation, to my understanding.

24 THE COURT: I just want to make sure I understand
25 something pretty basic, I guess.

26 MR. BROYLES: Sure.

27 THE COURT: Jois died in 2009; right?

28 MR. BROYLES: Yes.

1 THE COURT: And he's the main --

2 MR. BROYLES: He's also -- he's known as Guruji.

3 THE COURT: And he's Guruji.

4 And he died, and his daughter and grandson are
5 maintaining.

6 But what is the organization? Is that the Jois
7 Institute?

8 MR. BROYLES: The organization that cert- -- gave
9 her the certificate?

10 THE COURT: Well, that apparently is a part of
11 it.

12 MR. BROYLES: Yeah. The Jois Foundation was
13 started by --

14 THE COURT: No. I'm not -- I think I understand
15 the foundation, but the foundation is just an arm of
16 something.

17 Is this in India?

18 THE WITNESS: Where I have my teaching
19 certificate is from India, yes.

20 THE COURT: But you're on a website.

21 And what is that website?

22 THE WITNESS: The school in India that offers the
23 certification, they --

24 THE COURT: Is there just one school in India?

25 THE WITNESS: This one particular school that
26 he's referring to, it is a specific school in Mysore,
27 India. And there is a teachers' list that you can click
28 on, and then it has a list of all of the teachers

1 worldwide that have received a teaching certification
2 through them.

3 MR. BROYLES: Your Honor --

4 THE COURT: I'm just thinking I -- is this
5 like -- I mean, there's an organization, and then there
6 are franchises or is this like Gold's Gym?

7 MR. BROYLES: Your Honor, I can explain it to the
8 best of my understanding.

9 Pattabhi Jois taught mostly from Mysore, but he
10 came to the U.S. This Ashtanga Institute was started
11 there when he was still alive, and it's continued by his
12 family.

13 THE COURT: Is Jois the originator of Ashtanga
14 yoga?

15 MR. BROYLES: He brought it to the United States,
16 your Honor.

17 THE COURT: Okay. And then he started something.

18 MR. BROYLES: After he died, others in his name
19 started Jois yoga studios or shalas. And then later on,
20 the Jois Foundation was started more recently.

21 THE COURT: And how many shalas are there or
22 schools?

23 MR. BROYLES: Three worldwide that I'm aware of:
24 One in Sydney, one in Encinitas, and one in Greenwich,
25 Connecticut, I believe.

26 Is that --

27 THE WITNESS: That's correct.

28 MR. BROYLES: Okay. Thank you.

1 THE COURT: Okay.

2 BY MR. BROYLES:

3 Q Any other Jois entities that we haven't talked
4 about yet that you're aware of?

5 A Not that I'm aware of.

6 THE COURT: You can go to one of these three
7 schools and get certified?

8 THE WITNESS: No, you cannot.

9 THE COURT: You can't?

10 THE WITNESS: No.

11 MR. BROYLES: No. You have to go -- my
12 understanding --

13 BY MR. BROYLES:

14 Q And I'll ask you the question.

15 Do you have to go to Mysore to become certified?

16 A If I want to achieve an authorization or a
17 certification through the Pattabhi Jois Yoga Institute,
18 yes, you do need to travel the Mysore, India.

19 Q Okay.

20 THE COURT: You have to go to India?

21 THE WITNESS: Yes.

22 BY MR. BROYLES:

23 Q Now, you didn't describe it as such, but another
24 teacher that you teach with in the Encinitas School
25 District that we'll get to in a moment described trips to
26 Mysore to study Ashtanga yoga as pilgrimages.

27 Is that how you would describe your trips to
28 Mysore, India?

1 MR. CARELLI: I'll object. That part of his
2 question has hearsay within it. And I would move to
3 strike that part of the question.

4 THE COURT: I'm --

5 MR. BROYLES: It's not for the truth of the
6 matter asserted, your Honor.

7 THE COURT: I just want to make sure I understand
8 this, because this is something I didn't understand
9 before.

10 Is it true that the teachers in the district who
11 are certified have all gone to India?

12 MR. CARELLI: No.

13 THE COURT: I didn't think so.

14 MR. BROYLES: No. It's true that many of them
15 have, your Honor, but not all of them.

16 THE COURT: On a pilgrimage?

17 MR. BROYLES: I'm asking her that question right
18 now. That's a separate question.

19 BY MR. BROYLES:

20 Q Others who practice Ashtanga and are certified by
21 the Jois organization in India have described their trips
22 to India to Mysore to study Ashtanga and be certificated
23 there and continue to go there as pilgrimages.

24 THE COURT: How do you spell that?

25 MR. BROYLES: Pilgrimage?

26 THE COURT: No. Mysore.

27 THE WITNESS: M-y-s-o-r-e.

28 THE COURT: Okay. And that's a school?

1 THE WITNESS: It's the name of a city in Southern
2 India.

3 THE COURT: Okay.

4 BY MR. BROYLES:

5 Q Would you describe your trips to Mysore as a
6 pilgrimage?

7 A No, I would not.

8 Q Okay. Have you heard other Ashtanga
9 practitioners describe their trips to India as a
10 pilgrimage?

11 A No.

12 Q Do you even know what a pilgrimage is?

13 A No.

14 Q Now, you learned the primary and intermediate
15 series of Ashtanga yoga at the institute in Mysore; isn't
16 that true?

17 A Yes, it is.

18 Q Okay. And that's ultimately led to your
19 certification; right?

20 A Yes. But just to clarify, I don't have a
21 certification. That's a much higher level. I have a
22 Level 1 authorization teaching certificate.

23 Q Could you explain the difference, please.

24 A A Level 1 teaching authorization from the school
25 says that I can teach the primary series. So although
26 I've studied past primary series, I can only teach the
27 poses in primary series.

28 A Level 2 authorization says that you have

1 studied way past the intermediate series and you can teach
2 everything in primary and intermediate.

3 A certified teacher can teach everything that
4 they've learned. And they've generally learned somewhere
5 in the Advanced A. Because in Ashtanga yoga, there's five
6 different series, and they get sequentially more
7 difficult.

8 Q Okay. There's been a lot of testimony about the
9 different series that are taught by Jois.

10 Let me just ask you specifically, are you
11 certificated to teach Surya namaskara A or the Opening
12 Sequence A?

13 A Yes, I am. Surya namaskara A is part of all of
14 the different series.

15 Q It's how you always start; is that correct?

16 A Yes, sir.

17 Q Okay. Second question.

18 Are you also certified to teach Surya namaskara B
19 or Opening Sequence B?

20 A Yes, I am.

21 Q And then beyond that, you're also -- the next
22 line down on the chart, you're able to teach the primary
23 series; right?

24 A Yes, I am.

25 Q And the secondary series; right?

26 A No, I'm not.

27 Q So only primary?

28 A Yes.

1 The COURT: But these different series get more
2 difficult?

3 MR. BROYLES: Yes. Well, I'll --

4 THE COURT: I mean --

5 MR. BROYLES: Yeah. Ask her, your Honor.

6 THE COURT: The poses are more physically
7 demanding?

8 THE WITNESS: Yes. The idea is that you learn
9 where it's somewhat easy or achievable. And as you gain
10 proficiency, then you learn additional yoga postures.

11 THE COURT: But they're more -- they require more
12 strength and balance and coordination --

13 THE WITNESS: Yes.

14 THE COURT: -- and a lot of practice?

15 THE WITNESS: Yes.

16 BY MR. BROYLES:

17 Q All right. So --

18 THE COURT: But you're -- but, I mean, it is
19 physically demanding -- the more -- the higher you go, the
20 more physically demanding it becomes?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 BY MR. BROYLES:

24 Q Okay. So you've studied the primary and
25 intermediate series, but you can only teach the primary
26 series?

27 A Yes.

28 Q Okay. Thank you.

1 Now, please describe in detail for the Court what
2 the primary inter- -- I'm sorry -- what the primary series
3 is.

4 A The primary series is --

5 THE COURT: Just a minute.

6 What exhibit are we talking about? This is the
7 chart?

8 MR. BROYLES: Yeah. Your Honor, we can look at
9 Exhibit 9.

10 THE COURT: Wouldn't that be helpful?

11 BY MR. BROYLES:

12 Q Yeah. If you could look at Exhibit 9 in front of
13 you.

14 Okay, you see it?

15 A Yes.

16 Q Okay. It looks like the primary series starts on
17 the third line.

18 It's the third line of poses; is that correct?

19 A Yes.

20 THE COURT: What's the top line?

21 THE WITNESS: If I may, the top line is Sun
22 Salutation A or Surya namaskara A. The second line is
23 Surya namaskara B. And the reason why that's separated
24 out is because there's five series in Ashtanga yoga. They
25 all begin with the top two lines.

26 What differentiates it is if you're doing primary
27 series, the first pose you would do after you warm your
28 body up would padangusthasana, which is the first standing

1 pose, which is the beginning of the third line.

2 BY MR. BROYLES:

3 Q And so the beginning of the third line and then
4 the next two lines, is that all the primary series?
5 That's a total of three lines there.

6 A That's correct.

7 Q Okay. And then the next level up, I guess, is
8 intermediate series; is that correct?

9 A That's correct.

10 Q Are there any series not depicted on this poster?

11 A Yes, there's -- depending on where you see it,
12 I've heard it referred to as Advanced A and as Advanced B.
13 And also as 3rd, 4th, and 5th series. But since I haven't
14 studied anything past intermediate, I'm not able to speak
15 on any of those.

16 Q Okay. A moment ago you said when you start the
17 yoga practice, when you're starting the postures of the
18 yoga practice, you always start with Surya namaskara A and
19 B; is that correct?

20 A That's correct.

21 Q Now, do you have an understanding of what the
22 Ashtanga tradition of Sri K. Pattabhi Jois is?

23 A I don't understand your question. Could you be
24 more specific.

25 Q Well, I believe you said in your --

26 THE COURT: Just a minute.

27 You're certified to do what; A, B, and what else?

28 THE WITNESS: Surya namaskara A, B, and primary

1 series.

2 THE COURT: And not intermediate?

3 THE WITNESS: Correct.

4 THE COURT: You are or you're not?

5 THE WITNESS: I do not have an authorization
6 certificate to teach intermediate series.

7 THE COURT: It looks like -- some of these poses
8 look like pretzels.

9 (Laughter.)

10 That's kind of -- that looks kind of hard.

11 MR. BROYLES: So stipulated, your Honor.

12 THE COURT: No. I mean, it's --

13 MR. BROYLES: Okay.

14 THE COURT: I mean, it almost looks like -- well,
15 like pretzels. I mean, not everybody can do that. Maybe
16 Cirque du Soleil or something.

17 (Laughter.)

18 Where -- I'm just curious, where does the
19 district's program stop?

20 MR. BROYLES: Well --

21 THE WITNESS: Is that question to me?

22 THE COURT: No. I'm just curious. I just --

23 MR. BROYLES: Your Honor, there's been a lot of
24 testimony, and it's been shown --

25 THE COURT: Just in general.

26 MR. BROYLES: They do Surya namaskara A, Opening
27 Sequence A, they do Surya namaskara B, Opening Sequence B,
28 and they do other poses, and then end with the lotus

1 typically.

2 BY MR. BROYLES:

3 Q Is that true, Ms. Brown?

4 THE COURT: It's essentially the primary series,
5 the first -- the top, second, and third down, and then
6 that's --

7 MR. SLEETH: The district respectfully requests
8 we ask the witness.

9 THE COURT: Okay. All right.

10 THE WITNESS: May I answer that question?

11 THE COURT: Sure, if that --

12 Is that okay?

13 MR. BROYLES: Yeah.

14 THE WITNESS: Okay. In our curriculum, there are
15 a number --

16 THE COURT: We're not jumping ahead. I just --
17 there are a whole bunch of poses here, and some of them
18 look --

19 THE WITNESS: We don't use all of the poses in
20 the primary series. There's a handful of them used, but
21 we also have a handful that are not seen anywhere in
22 Ashtanga yoga.

23 BY MR. BROYLES:

24 Q Okay. But you do use Surya namaskara A and Surya
25 namaskara B; correct?

26 A Yes, we do.

27 Q And that's how you start your classes; right?

28 A Yes.

1 Q And typically, you'll end with some form of --
2 either one or more lotus positions, is that not correct,
3 and the corpse pose?

4 A We -- generally, we end with some form of sitting
5 cross-legged at the front of our mats depending on the
6 physical capabilities of the students. Probably 90
7 percent of them are sitting criss-cross applesauce. And
8 then after that, yes, we lie down. And the kids either
9 lay on their back or they lay on their stomach or they lay
10 on their side depending on where they're most comfortable.

11 Q So are you denying that the kids do the lotus
12 position, Ms. Brown?

13 A Some of the children do, yes.

14 Q If they're capable?

15 A If they have the capability to do it, but most do
16 not.

17 Q That's what you're trying to teach them; right?

18 A I'm trying to teach them to come to the front of
19 their mat and sit comfortably so that we take a few
20 breaths before we lie down and rest.

21 THE COURT: There's been some confusion or at
22 least some differing testimony about 2011 and present.
23 And present is up to a week ago. So it would be helpful
24 to find out what we're talking about. And I know the last
25 witness was kind of all over the -- all over the place as
26 far as when things occurred, and I think I have an idea of
27 the sequence.

28 But when you're asking these questions, are you

1 referring to presently?

2 MR. BROYLES: Yeah, I'm referring to presently,
3 your Honor.

4 THE COURT: You understand that?

5 THE WITNESS: Yes. I'm answering --

6 THE COURT: What's happening now.

7 THE WITNESS: That's how I'm answering the
8 questioning.

9 THE COURT: Not what happened in 2011.

10 THE WITNESS: Yes, sir.

11 BY MR. BROYLES:

12 Q And I'll get to those different times in a
13 moment. I'm just asking you still about your background.

14 Please describe in detail for the Court the
15 Ashtanga tradition of Sri K. Pattabhi Jois.

16 A I think that's where we left off where I was
17 saying I don't understand exactly what you're asking.

18 Q I believe that you referred to that in some of
19 your statements.

20 Do you know -- how were you taught Ashtanga yoga?

21 A I am still learning Ashtanga yoga, and I learn it
22 in a traditional setting called Mysore style. In a Mysore
23 class, the student is taught individually by the teacher
24 pose by pose. So like, for example, if you were to
25 learn -- in that method, you would show up for your first
26 day of class. The teacher would bring you to the front of
27 your mat and give you some basic guidelines on how to do
28 free breathing.

1 Once you had a basic idea of how to breathe
2 freely, they would teach you the steps of Surya namaskara
3 A. And usually for your first day, that would be enough.
4 You'd have to learn all the steps and memorize it to be
5 able to do it on your own.

6 Once you could do that proficiently, then they
7 would teach you Surya namskara B. Like that, it's added
8 on pose by pose until you get to a part where you either
9 can't remember what comes or that you can't do that pose
10 proficiently. Then you stay on that pose until you can do
11 it, and then they give you the next one. So that's the
12 tradition of how I've learned and I still continue to
13 learn.

14 THE COURT: Excuse me. I should have mentioned
15 this before, but I'm going to mention it now before I
16 forget.

17 I would like counsel to give the court reporter a
18 glossary because there very well could be a transcript of
19 this, and it's going to be difficult, if not impossible,
20 for her to try to retrieve these names and things.

21 So if I could ask you to prepare a glossary of
22 these words so that she won't have to spend the next six
23 months tracking down these elusive names.

24 MR. BROYLES: Yes, your Honor.

25 THE COURT: Okay. I mean a joint glossary to
26 give to the court reporter.

27 MR. REYNOLDS: Just a suggestion, we could
28 probably sort the briefs and declarations and get most of

1 the words.

2 THE COURT: No, but I want counsel to do it. I
3 don't want her to have to --

4 MR. REYNOLDS: Yeah, we'll do that.

5 THE COURT: She's had a hard enough time.

6 BY MR. BROYLES:

7 Q So Sri K. Pattabhi Jois taught Ashtanga yoga in a
8 specific way; is that correct?

9 A Yes.

10 Q And that was passed on to Sharath?

11 A Sharath (pronouncing), yes.

12 Q And that's what you were taught; is that correct?

13 A That's what I was taught, yes.

14 Q Now -- and being authorized to teach Ashtanga
15 yoga means you will teach Ashtanga yoga the same way that
16 it was taught to you; is that correct?

17 MR. CARELLI: Objection; lacks foundation. It's
18 argumentative.

19 THE COURT: Overruled, if I understand the
20 question.

21 THE WITNESS: It means --

22 THE COURT: Do you understand the question?

23 THE WITNESS: I'm not sure, but I'm going to do
24 my best to answer.

25 THE COURT: If you don't understand it, don't
26 answer it. He'll rephrase it.

27 THE WITNESS: If you could rephrase, that would
28 be great.

1 BY MR. BROYLES:

2 Q And you were taught to teach Ashtanga yoga the
3 way it was taught to you; correct?

4 A I was taught this series a certain way. When I
5 teach in a yoga school for adults, it is a, quote/unquote,
6 "traditional Ashtanga school," I do teach in that
7 traditional method.

8 What we do in the school district is completely
9 different to the way that I would teach adults in the
10 traditional Ashtanga school.

11 Q Okay.

12 A Does that answer your question?

13 Q It partially answers my question.

14 A Okay.

15 Q I'll get back to that in a moment.

16 You consider it an honor to be authorized -- an
17 authorized Ashtanga yoga teacher; is that correct?

18 A Yes, I do.

19 Q And there's a specific system of yoga beliefs and
20 practices that was passed on by the family of Sri K.
21 Pattabhi Jois to you; is that correct?

22 MR. CARELLI: Objection; lacks foundation.

23 THE COURT: Overruled.

24 THE WITNESS: What I've learned from the family
25 are the yoga postures, the asanas.

26 BY MR. BROYLES:

27 Q And you haven't learned anything about a Hindu
28 world view from them?

1 A No, I have not.

2 Q Now, as an authorized teacher, you're committed
3 to teach Ashtanga yoga the same way Jois did; is that
4 correct?

5 A I believe I answered that question previously,
6 sir.

7 Q Now, in addition to being an authorized Ashtanga
8 yoga teacher, you also work at the Jois Foundation; right?

9 A I work for Steve Regur as a contracted employee
10 for the Encinitas School District to work in their health
11 and wellness program.

12 Q Okay. Let me ask the question a different way.
13 I may have misstated that.

14 Are you certified at the Jois shala in Encinitas
15 the teach there?

16 A I am an authorized teacher from Mysore, India,
17 which gives me the ability to teach at the Jois yoga shala
18 in Encinitas.

19 Q Do you teach at the Jois yoga shala in Encinitas?

20 A I teach one class a week there, yes.

21 Q In fact, you're authorized to teach Level 1
22 Ashtanga yoga there; right?

23 A Yes, sir.

24 Q Now, Ms. Brown, you've also studied Sanskrit; is
25 that correct?

26 A I have taken a small amount of Sanskrit. I don't
27 know that I would say I've necessarily studied it.

28 Q Why did you study Sanskrit?

1 A I think it's fun.

2 Q Okay. Why is it fun?

3 MR. PECK: Objection, your Honor; relevance.

4 THE COURT: Huh?

5 MR. PECK: Relevance as to why she thinks it's
6 fun.

7 THE COURT: Well, I don't know. I'd like to hear
8 the answer.

9 (Laughter.)

10 MR. PECK: I'll withdraw the objection.

11 THE WITNESS: I've also studied Spanish because I
12 think it's fun. I like the way that other languages
13 sound.

14 THE COURT: Which is more fun?

15 THE WITNESS: Honestly, I think Spanish is a
16 little bit more fun because I have the opportunity to use
17 it more frequently. I work at a dual language school, so
18 I can use that on a daily basis there.

19 THE COURT: Cinco de Mayo.

20 BY MR. BROYLES:

21 Q Have you ever chanted in Sanskrit?

22 A Yes, I have, sir.

23 Q You have chanted in Sanskrit?

24 A Yes, I have.

25 Q Did you learn to chant in Sanskrit from Laksmish
26 Bhat in Mysore, India?

27 A Yes, I did.

28 THE COURT: Did you get that?

1 (Laughter.)

2 THE WITNESS: Laksmish Bhat. The last name is
3 B-h-a-t-t (sic).

4 THE COURT: That's why I want it.

5 MR. BROYLES: I agree, your Honor.

6 MR. SLEETH: And, your Honor, I have no idea how
7 to do that. I'll try to help, but --

8 THE COURT: What's the poor court reporter going
9 to do? Come on. She's going to go to India and take
10 Sanskrit.

11 (Laughter.)

12 BY MR. BROYLES:

13 Q What --

14 MR. SLEETH: The problem is we're not doing that.
15 They're bringing in the Sanskrit.

16 THE COURT: I don't care. Just --

17 BY MR. BROYLES:

18 Q What Dr. Laksmish Bhat teach you about chanting?

19 MR. PECK: Objection, your Honor. There's no
20 relevance to what's going on.

21 THE COURT: Who is that? Is that a name?

22 (Laughter.)

23 MR. BROYLES: That's a name, your Honor, yes.

24 BY MR. BROYLES:

25 Q What were you taught about chanting in India?

26 A We just practice it. We practice making the
27 sounds, and we try to make the sounds sound like what he
28 sounds like. And then we try not to be too embarrassed

1 when he gives us that really bad look that like, "Okay,
2 that's not what the sound is like."

3 Q How long did you study -- I'm not even going to
4 say the name -- with this gentleman to learn how to chant?

5 A Maybe six or eight weeks. It was on my last trip
6 to India, but not for the entire time I was there.

7 Q Okay.

8 THE COURT: How many trips have you made?

9 THE WITNESS: Three.

10 BY MR. BROYLES:

11 Q When you go to Mysore to study Ashtanga yoga, how
12 long do you typically stay there?

13 A It varies. My first trip I stayed one month. My
14 second trip I was in India for six months, but only four
15 months of that was in Mysore. And my last trip I was
16 there two and a half months.

17 Q A moment ago, I asked you whether you chant in
18 Sanskrit, and you answered yes; correct?

19 A Yes.

20 Q What is your understanding of the purpose of
21 chanting in Sanskrit?

22 A I've never been explained that there's any
23 purpose to it. I do it again because I think it's fun.

24 Q Okay. Is there any particular reason why you
25 reference that you've learned to chant in Sanskrit from a
26 gentleman in Mysore, India in conjunction with your
27 Ashtanga yoga practice?

28 A It's part of my background.

1 Q Is it -- and it's part of the background that you
2 received by your travels to India; right?

3 A Yes.

4 Q Okay. Now, your Sanskrit chanting includes
5 specific expertise, does it not?

6 A I don't know that I would say specific expertise.
7 I mean, six or eight weeks I don't think gives me any type
8 of expertise. It's simply like taking a class. Like,
9 okay, I also took an aggregated cooking class. Would I
10 say I'm an aggregated chef? No.

11 Q But you learned to chant Hindu religious text in
12 India; isn't that true?

13 MR. CARELLI: Objection; argumentative and it
14 lacks foundation.

15 THE COURT: Overruled.

16 BY MR. BROYLES:

17 Q Did you learn to chant Hindu religious text in
18 India?

19 A I've learned some things that they call shanti
20 mantras. I don't know if those are Hindu texts or not.

21 Q Well, I'm reading from information that's on the
22 Internet that's posted related to Jois, and it says you
23 learned to chant. Your expertise -- I'm sorry. Let me
24 back up.

25 And your Sanskrit chanting expertise includes
26 chanting Hindu religious text like the Bhagavad Gita and
27 the Upanishads.

28 A I've never learned anything from the Upanishads.

1 Q Okay. How about the Bhagavad Gita?

2 A I have like on two or three occasions.

3 Q Okay. That's a Hindu religious text, is it not?

4 A My understanding is that it's not religious.

5 Q Okay. What would you call it?

6 A It's a poem, actually. It's the most famous poem
7 in India.

8 Q It has nothing to do with religion or
9 spirituality, to your knowledge?

10 A To my knowledge, no. I wasn't -- it wasn't given
11 to me in that framework, no.

12 Q Now, you claim in your declaration that you
13 submitted to this Court under penalty of perjury that you
14 submitted -- I'm sorry -- that there is, quote, "no
15 religious content in any of the yoga classes I have
16 taken"?

17 A This is true.

18 Q Okay. So it's your testimony to this Court that
19 what you were taught by Sharath Jois in Mysore, India was
20 not religious?

21 A That's correct.

22 MR. CARELLI: Objection.

23 That's fine. Irrelevant.

24 BY MR. BROYLES:

25 Q Would you describe what you were taught by
26 Sharath Jois in Mysore, India or his sister, I believe --
27 Right?

28 A It's his mother, Saraswati.

1 Q I'm sorry. His mother.

2 Would you call that spiritual?

3 A No.

4 MR. CARELLI: Objection; vague and ambiguous as
5 to what he means by "spiritual."

6 THE COURT: Overruled.

7 BY MR. BROYLES:

8 Q Now, you also say you have taught Ashtanga yoga
9 to people in various places around the world; is that
10 correct?

11 A Yes.

12 Q And you also say in your declaration that you
13 have never taught anything religious in your teaching of
14 Ashtanga yoga.

15 Is that your testimony?

16 A Yes.

17 Q And does that testimony include what you've been
18 teaching the children in the Encinitas Union School
19 District?

20 A Yes.

21 Q Do you understand that there is a connection
22 between Ashtanga yoga and Hinduism?

23 MR. PECK: Assumes facts, your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: I don't see that connection, no.
26 I've never received that connection in any of the things
27 I've learned.

28 ///

1 BY MR. BROYLES:

2 Q Well, do you have a religious background besides
3 Hinduism?

4 MR. CARELLI: Objection; relevance.

5 THE COURT: Overruled.

6 THE WITNESS: No.

7 THE COURT: Wait, wait.

8 MR. PECK: Well, she's answered the question.

9 THE COURT: Well, that assumes something.

10 MR. BROYLES: Okay. I'll ask the question
11 differently, your Honor. I apologize.

12 BY MR. BROYLES:

13 Q Do you have a religious tradition that you
14 ascribe to?

15 MR. CARELLI: Objection; relevance.

16 THE COURT: Well, under these circumstances --
17 you don't have to answer if you don't want to, but...

18 MR. PECK: Hold on, your Honor. I couldn't ask
19 that question of the expert.

20 THE COURT: I understand.

21 MR. BROYLES: But she's not teaching the kids in
22 the district, your Honor.

23 MR. PECK: She's testifying --

24 THE COURT: No, no. I think it might be relevant
25 if she has a tradition in Hinduism.

26 THE WITNESS: So is that the question?

27 THE COURT: Huh?

28 THE WITNESS: Is the question whether I am Hindu?

1 THE COURT: I guess -- I think so.

2 BY MR. BROYLES:

3 Q Not necessarily whether you're Hindu, but do you
4 ascribe to any Hindu religious beliefs or practices?

5 A No.

6 Q Now, you've also studied Ashtanga yoga under Tim
7 Miller; right?

8 A Yes.

9 Q Who is Tim Miller?

10 A Tim Miller is a senior certified Ashtanga yoga
11 teacher in Encinitas, California, and he's been teaching
12 since I think 1978 maybe. So he's considered one of the,
13 I guess you would say, most experienced Ashtanga teachers.

14 Q So does senior refer to his age or his
15 experience?

16 A Tim might say both, but...

17 Q Okay. And where -- does he have an organization
18 over there he teaches at?

19 A He has a school called the Ashtanga Yoga Center.

20 Q Okay. And so the level -- you ascribed the level
21 of attainment to him, and what was that level again?

22 A He's a certified teacher. So going back, that
23 means that Tim is allowed to teach all of the yoga
24 postures that he has learned himself.

25 Q Okay. Do you know how high he goes on this
26 poster?

27 A He's --

28 Q Exhibit 9.

1 A -- past this poster. So...

2 THE COURT: How old is he?

3 THE WITNESS: Gosh, in his fifties. So...

4 MR. PECK: That old.

5 THE COURT: He's off the chart.

6 (Laughter.)

7 BY MR. BROYLES:

8 Q Now, the Jois website also mentions that you
9 teach Ashtanga yoga to children at Capri Elementary School
10 through the Jois Foundation; is that true?

11 A My profile does say that. But just to clarify,
12 that profile was put on the website more than a year and a
13 half ago, and it's just an oversight that it hasn't been
14 updated to reflect the changes. Because the program is
15 not what I would call an Ashtanga yoga program at Capri.

16 THE COURT: Isn't that the pilot program or not?

17 MR. BROYLES: That's what I was going to get to
18 next.

19 THE COURT: That's two years ago, isn't it?

20 MR. BROYLES: Yeah.

21 BY MR. BROYLES:

22 Q So when you say two years ago, was that posted
23 during the 2011-2012 school year?

24 A Yes, it was. I began teaching at the Jois yoga
25 shala during that school year. So at that time, the
26 person who builds their website put that profile up about
27 me, and then it just never really -- I mean, I teach such
28 a small amount there, it never really occurred to anybody

1 to change it when the program at Capri changed.

2 Q Okay. At the time this was posted, that
3 statement was true, was it not?

4 A I guess. That's why it was -- yeah.

5 Q Well, you didn't protest or ask that it be taken
6 down a couple years ago, did you?

7 A No.

8 Q So at the time, you taught Ashtanga yoga to
9 children at Capri Elementary School in the Encinitas Union
10 School District; correct?

11 A Yes.

12 Q Through the Jois Foundation; correct?

13 A It was through a grant provided to pay for the
14 program, yes.

15 Q Okay. Now, you started -- we already got that.
16 One second.

17 What is your background in education or childhood
18 development?

19 A Very little. So I -- previous to my experience
20 teaching yoga in the schools, I did not previously teach
21 children.

22 Q Okay. Have you received any special training in
23 how to educate young children or childhood development
24 since you started at Capri?

25 A Through two separate training programs last
26 summer, the Jois Foundation paid for a week-long training.
27 In that week-long training, we had a 30-something-year
28 experience principal who came and did daily three- or

1 four-hour sessions with us about bringing yoga into a
2 public school setting and the types of things that we
3 should expect in a public school setting and the things
4 that we needed to do to make that transition.

5 There was also a yoga trainer by the name of
6 Kathryn Priori from a group called Headstand out of
7 San Francisco. And she also talked about specifically
8 teaching yoga to children. She was a long-time public
9 school teacher before she started her group Headstand. So
10 we also received that training.

11 There was a third gentleman by the name of
12 Michael Isen who's done a lot of nonprofit work with kids
13 in terms of bettering self-esteem and confidence and these
14 types of issues. So that was a training that was last
15 summer. So in between the 2011-12 school year and the
16 2012-13 school year.

17 Recently, we had another training that was five
18 days that again Kathryn Priori came back for a second
19 vision. She's the gal from Headstand. We had another
20 woman named Barbara Verochi (sic), who's from New York,
21 who has been working with a nonprofit group on teaching
22 yoga to school children in New York for ten plus years.
23 She gave us some additional training.

24 Q Okay. Well, all the training you just mentioned
25 had to do with teaching yoga in the public schools; right?

26 A No, that's not true. Michael Isen does not have
27 a yoga background. And Jan McGhee, the principal that
28 works with us, also does not have a yoga background. They

1 were specific to teach us about children in a public
2 school setting and children of that age.

3 Q You don't have your California teaching
4 credential, do you?

5 A No, I do not.

6 Q Are you seeking a California elementary school
7 teacher credential?

8 A Not at this time, no.

9 Q The training that you just mentioned from those
10 two individuals that was not yoga-specific training, how
11 long did that training last?

12 A Six days for each one, so a total of 12 days.

13 Q And that's the totality of the nonyoga-specific
14 educational training that you've received at any time; is
15 that correct?

16 A I believe so.

17 Q Okay. Now, the funding for your position,
18 focusing on the 2011-2012 school year, came from a grant
19 from the Jois Foundation; isn't that correct?

20 A Yes.

21 Q And it just so happens that Nancy Jois teaches at
22 Capri Elementary, doesn't she?

23 A Yes.

24 Q Who is Nancy Jois?

25 A Nancy Jois is the wife of Manju Jois.

26 Q Who is Manju Jois?

27 A Manju Jois is the son of Pattabhi Jois.

28 Q Does he practice Ashtanga yoga?

1 A Manju Jois?

2 Q Yes.

3 A Yes, he does.

4 Q Does he teach Ashtanga yoga?

5 A Yes, he does.

6 Q Now, is it your understanding that based on the
7 pilot project at Capri in the 2011 to 2012 school year,
8 that the program was ultimately expanded the following
9 year districtwide?

10 A It's my understanding that they saw some success
11 with that program. So yes, they decided to see if they
12 could expand that on a bigger scale.

13 Q And it's also my understanding that in the fall,
14 especially of 2012, this school year, beginning of this
15 school year, that there were teacher training sessions
16 with -- primarily with assistant superintendent and the
17 curriculum development specialist and sometimes with the
18 superintendent Mr. Baird; is that correct?

19 A Are you referring to our Friday curriculum
20 meetings?

21 Q Yes.

22 A Okay. Yes, we have a weekly meeting every Friday
23 from 1:00 to 3:00 p.m.

24 Q Did that start in the fall of 2012?

25 A Yes, it did.

26 Q Okay. And did you personally help develop the
27 curriculum?

28 A It's a group effort amongst all teachers, so I

1 wouldn't say that I have any more influence than anybody.
2 Everybody has an equal voice in it. It's been a
3 collaborative project.

4 Q Now, there's been some testimony that in July of
5 2012, just to back up for a few minutes there, that there
6 was specific Ashtanga yoga training that was sponsored on
7 behalf of these teachers who were going to teach the
8 following year by the Jois Foundation; is that true?

9 A The training that happened in July was the
10 training that I talked about previously where there was
11 the principal Jan McGhee and Kathryn Priori, the yoga
12 teacher who does not have an Ashtanga yoga background, and
13 Michael Isen, who came from Canada, who was the gentleman
14 on the character training, I guess you would say.

15 Q Were all these individuals people that worked to
16 bring yoga programs into public schools in their areas?

17 MR. CARELLI: Objection; lacks foundation.

18 BY MR. BROYLES:

19 Q To your understanding.

20 THE COURT: Overruled. If you know.

21 THE WITNESS: Kathryn Priori is a yoga teacher.

22 So I guess you would say she's the yoga-specific person in
23 that --

24 Am I answering the question correctly?

25 BY MR. BROYLES:

26 Q I'm asking what qualifications -- if these people
27 weren't teaching you Ashtanga yoga, what were they
28 teaching you?

1 A Okay. I understand your question.

2 Kathryn Priori was teaching how to teach children
3 yoga in a public school setting. And because of her
4 extensive background as a public school teacher and then
5 somebody who had then implemented yoga in a school system
6 very successfully, she brought the unique background of,
7 you know, how do we do this for multiple classes a day?
8 Because some of the teachers have taught yoga to kids or
9 have taught public school, but doing both was something
10 new for most of us.

11 Q Did any of these individuals training you warn
12 you that there might be some resistance to the yoga
13 program?

14 A Interestingly enough, there were a couple of
15 teachers from Florida who came out who are teaching a
16 program in Florida, and we thought that most of the -- if
17 there were concerns at all, would come from Florida. We
18 didn't -- honestly didn't think there would be any
19 questions here in Encinitas.

20 Q Because Encinitas is considered the birthplace of
21 yoga in American; is that not correct?

22 A Not because of that, but because there's just a
23 lot of yoga in Encinitas.

24 Q Okay. There's a lot of yoga in Encinitas today;
25 right?

26 A Yes.

27 Q And do you understand -- have any understanding
28 as to how yoga came to Encinitas?

1 A My understanding is that there's been several
2 people who brought yoga to Encinitas.

3 Q It's kind of been a focal point for people from
4 the East coming to the West bringing yoga to America; is
5 that not true?

6 A It's my understanding that there's been several
7 people who have come to Encinitas.

8 Q Yeah.

9 And there's a lot of people who live in Encinitas
10 and around Encinitas who practice yoga in Encinitas;
11 correct?

12 A That's correct.

13 THE COURT: Mr. Broyles, how much more do you
14 have? I'm just looking at the clock.

15 MR. BROYLES: Oh, your Honor, boy --

16 THE COURT: You're not going to finish?

17 MR. BROYLES: No. Probably ten more minutes.

18 THE COURT: Okay. This would be a good time to
19 break, though, I think.

20 MR. BROYLES: Yes.

21 MR. CARELLI: And your Honor, we have a
22 stipulation in place that because our expert has to leave
23 after tomorrow, that we're going to start with our expert
24 witness in the morning, and then we'll bring Ms. Brown
25 back after.

26 MR. SLEETH: We don't have to start. We just
27 need to get her on tomorrow.

28 THE COURT: Whatever you agree on is fine.

1 MR. BROYLES: That's fine, your Honor.

2 THE COURT: Okay.

3 MR. SLEETH: We could finish this witness and
4 then let her go as long as we put on our expert.

5 MR. REYNOLDS: I just want to let the Court know,
6 I've got an ex parte tomorrow morning. So I'll be coming
7 in late. Nobody wait for me. Counsel, don't worry if I'm
8 not here. But when I come in late, it's not because I
9 slept in.

10 THE COURT: We won't send the bailiff out looking
11 for you.

12 MR. PECK: I have a little league game to get to.
13 Thank you.

14 THE COURT: Just a minute. Can you give me two
15 minutes. I just want --

16 All right. We're off the record.

17 - - -

18 (The proceedings were adjourned at 4:27 p.m.)

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