

NO. 01-04-00231-CV

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IN THE COURT OF APPEALS  
FOR THE FIRST DISTRICT OF TEXAS  
AT HOUSTON

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HARVEST HOUSE PUBLISHERS, JOHN ANKERBERG,  
and JOHN WELDON

v.

THE LOCAL CHURCH, ET AL.

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On Appeal from the 80th Judicial District Court  
Harris County, Texas

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REPLY BRIEF OF APPELLANTS

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J. SHELBY SHARPE  
State Bar No. 18123000  
SHARPE & TILLMAN  
6100 Western Place, Suite 1000  
Fort Worth, Texas 76107  
(817) 338-4900/Fax (817) 332-6818

LYNNE LIBERATO  
State Bar No. 00000075  
DONALD D. JACKSON  
State Bar No. 00787753  
HAYNES AND BOONE, LLP  
1221 McKinney, Suite 2100  
Houston, Texas 77010-2007  
(713) 547-2000/Fax (713) 547-2600

THOMAS J. WILLIAMS  
State Bar No. 21578500  
HAYNES AND BOONE, LLP  
201 Main Street, Suite 2200  
Fort Worth, Texas 76102  
(817) 347-6600/Fax (817) 347-6650

COUNSEL FOR APPELLANTS

ORAL ARGUMENT REQUESTED

**Appellants**

Harvest House Publishers  
John Ankerberg  
John Weldon

**Appellants' Trial and Appellate Counsel**

J. Shelby Sharpe  
State Bar No. 18123000  
Sharpe & Tillman  
6100 Western Place, Suite 1000  
Fort Worth, Texas 76107  
Telephone: (817) 338-4900  
Telecopier: (817) 332-6818  
Lead Counsel

Lynne Liberato  
State Bar No. 00000075  
Donald Jackson  
State Bar No. 00787753  
Haynes and Boone, LLP  
One Houston Center  
1221 McKinney, Suite 2100  
Houston, Texas 77010  
Telephone: (713) 547-2000  
Telecopier: (713) 547-2600

Thomas J. Williams  
State Bar No. 21578500  
Haynes and Boone, LLP  
201 Main Street, Suite 2200  
Fort Worth, Texas 76102  
Telephone: (817) 347-6600  
Telecopier: (817) 347-6650

## Appellees

The Local Church, an unincorporated association; Living Stream Ministry, a California non-profit corporation; The Church in Houston, a Texas non-profit corporation; The Church in Arlington, a Texas non-profit corporation; Church in Beaumont, a Texas non-profit corporation; The Church in Corpus Christi, a Texas non-profit corporation; The Church in Dallas, Inc., a Texas non-profit corporation; Church in Denton, Inc., a Texas non-profit corporation; The Local Church in El Paso, a Texas non-profit corporation; The Church in Fort Worth, Inc., a Texas non-profit corporation; The Church in Huntsville, Inc., a Texas non-profit corporation; The Church in Plano, a Texas non-profit corporation; Church in Odessa, a Texas non-profit corporation; The Church in Richardson, a Texas non-profit corporation; The Church in San Antonio, Inc., a Texas non-profit corporation; The Church in Texarkana, a Texas non-profit corporation; The Church in Tyler, a Texas non-profit corporation; The Church in Fort Stockton, a Texas non-profit corporation; Church in Laredo, a Texas non-profit corporation; Church in Albuquerque, a New Mexico non-profit corporation; The Church in Anaheim, a California non-profit corporation; The Church in Arcadia, a California non-profit corporation; The Church in Cerritos, a California non-profit corporation; The Church in Atlanta, Inc., a Georgia non-profit corporation; The Church in Baton Rouge, Inc., a Louisiana non-profit corporation; Church in Bellevue, a Washington non-profit corporation; The Church in Bellingham, a Washington non-profit corporation; The Church in Berkeley, a California non-profit corporation; The Church in Birmingham, an Alabama non-profit corporation; Church in Boca Raton, Inc., a Florida non-profit corporation; The Church in Boise, an Idaho non-profit corporation; The Church in Cambridge, Inc., a Massachusetts non-profit corporation; The Church in Cary, a North Carolina non-profit corporation; The Church in Chula Vista, a California non-profit corporation; The Church in College Park, a Maryland non-profit corporation; The Church in Cypress, a California non-profit corporation; The Church in Davis, a California non-profit corporation; The Church in Diamond Bar, a California non-profit corporation; The Church in Dunn Loring, a Virginia non-profit corporation; Church in El Monte, a California non-profit corporation; The Church in Eugene, an Oregon non-profit corporation; The Church in Fairborn, an Ohio non-profit corporation; The Church in Fresno, Inc., a California non-profit corporation; The Church in Fullerton, a California non-profit corporation; The Church in Huntington Beach, a California non-profit corporation; Church in Irvine, Inc., a California non-profit corporation; Church in Jackson, a Mississippi non-profit corporation; The Church in Jacksonville, Inc., a Florida non-profit corporation; The Church in Kansas City, Inc., a Missouri non-profit corporation; The Church in Lafayette, a Louisiana non-profit corporation; The Church in Little Rock, an Arkansas non-profit corporation; The Church in Long Beach, a California non-profit corporation; Church in Los Angeles, a California non-

profit corporation; The Church in Memphis, a Tennessee non-profit corporation; The Church in Miami, Inc., a Florida non-profit corporation; Church in Milwaukee, a Wisconsin non-profit corporation; The Church in Mission Viejo, Inc., a California non-profit corporation; The Church in Montebello, a California non-profit corporation; Church in Monterey Park, a California non-profit corporation; The Church in Moreno Valley, a California non-profit corporation; The Church in Nashville, a Tennessee non-profit corporation; The Church in Newington, Inc., a Connecticut non-profit corporation; The Church in North Providence, a Rhode Island non-profit corporation; The Church in Nutley, a New Jersey corporation; The Church in Oklahoma City, Inc., a Oklahoma non-profit corporation; The Church in Orlando, a Florida non-profit corporation; The Church in Palatine, a Illinois non-profit corporation; Church of God Which Is At Philadelphia, a Pennsylvania non-profit corporation; The Church in Pleasant Hill, a California non-profit corporation; Church in Portland, an Oregon non-profit corporation; The Church in Pullman, a Washington non-profit corporation; The Local Church in Raleigh, a North Carolina non-profit corporation; The Church in Redding, a California non-profit corporation; The Church in Riverside, a California non-profit corporation; Church in Roseville, a California non-profit corporation; The Church in Sacramento, a California non-profit corporation; The Church in Salt Lake City, a Utah non-profit corporation; Church in San Diego, a California non-profit corporation; The Church in San Francisco, Inc., a California non-profit corporation; Assembly of the San Gabriellers, a California non-profit corporation; The Church in San Jose, a California non-profit corporation; The Church in Santa Clara, a California non-profit corporation; The Church in Santa Clarita, a California non-profit corporation; The Church in Seattle, a Washington non-profit corporation; Church in Shreveport, a Louisiana non-profit corporation; The Church in Spokane, a Washington non-profit corporation; The Church in Streamwood, an Illinois non-profit corporation; The Church in Tacoma, a Washington non-profit corporation; The Church in Tampa, Inc., a Florida non-profit corporation; Church in Tempe, Inc., an Arizona non-profit corporation; The Church in Thousand Oaks, a California non-profit corporation; The Church in Torrance, a California non-profit corporation; The Church in Tucson, Inc., an Arizona non-profit corporation; Church in Tulsa, an Oklahoma non-profit corporation; The Church in Victorville, a California non-profit corporation; The Church in Vista, a California non-profit corporation; The Church in Wichita, Inc., a Kansas non-profit corporation; Church in Yorba Linda, a California non-profit corporation.

**Appellees' Trial and Appellate Counsel**

Barry B. Langberg  
California State Bar No. 45158  
Deborah Drooz  
California State Bar No. 133355  
Allan Cohen  
California State Bar No. 115532  
Matthew D. Moran  
California State Bar No. 197075  
Stroock & Stroock & Lavan LLP  
2029 Century Park East, Suite 1800  
Los Angeles, California 90067  
Telephone: (310) 556-5800  
Telecopier: (310) 556-5959

Craig T. Enoch  
Texas State Bar No. 00000026  
Winstead, Sechrest & Minick PC  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701  
Telephone: (512) 370-2883  
Telecopier: (512) 370-2850

Douglas M. Selwyn  
State Bar No. 1802250  
Davis & Selwyn  
3850 One Houston Center  
1221 McKinney Street  
Houston, Texas 77010-2020  
Telephone: (713) 650-3850  
Telecopier: (713) 650-3851

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REPLY BRIEF OF APPELLANTS

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TO THIS HONORABLE COURT OF APPEALS:

Appellant Harvest House Publishers, hereafter "the publisher," and Appellants John Ankerberg, and John Weldon, hereafter "the authors," respectfully file this reply to Brief of Appellees as authorized by Rule 38.6(c), Texas Rules of Appellate Procedure.

## I. INTRODUCTION

The publisher and the authors submit this reply to Brief of Appellees to bring to the Court's attention the Texas Supreme Court opinion in *New Times, Inc. v. Isaacks*, 47 Tex. Sup. Ct. J. 1140 (Sept. 3, 2004), decided eleven (11) days before Appellees, hereafter "The Local Churches," filed their brief. The brief of The Local Churches makes no mention of this opinion, even though it sets out rulings contrary to major arguments and reasoning presented by The Local Churches. In addition, this reply will point out to the Court the faulty premise upon which The Local Churches have built all their arguments, correct misstatements of the record, point out arguments that are not supported in the record, and reveal mischaracterizations of portions of the Brief of Appellants as well as the *Encyclopedia of Cults and New Religions*, hereafter either "the *Encyclopedia*" or "the book."

## II. FLAWED ANALYSIS REQUIRING A REPLY

Crucial to understanding this entire lawsuit is a recognition that all The Local Churches' arguments have the same flawed starting point. In every instance, with no exceptions, they are built upon the foundation of one very simple yet faulty premise. The Local Churches begin each argument by *assuming* that the language in the *Encyclopedia* is already defamatory in regard to them. The truth is, however, the publisher and the authors never wrote, never intended for, and have never believed that the language in question points to The Local Churches or specifically to anyone else in the *Encyclopedia*. 3<sup>rd</sup> CR 156-157.

All through their brief, The Local Churches continually rely upon their faulty premise, and thus attempt to make it *appear* as if defamation, negligence, and malice occurred. The Local Churches resort to misrepresenting the *Encyclopedia* and re-interpreting it to create new and false “statements of fact” never stated by the authors, misstating the record, presenting so-called “facts” that are not in the record, misrepresenting and omitting deposition testimony, and taking words out of context. Remove the faulty premise, and the entire argument of The Local Churches collapses.

### **III. STATEMENTS MADE IN THE LOCAL CHURCHES’ BRIEF THAT ARE INACCURATE OR WITHOUT SUPPORT IN THE RECORD AND REQUIRING A REPLY**

Many statements in The Local Churches’ brief have no accompanying record reference, and many other statements are inaccurate. Those of the most consequence will be pointed out to the Court.

For example, on page 1 in the second paragraph of The Local Churches’ brief, the Introduction to the *Encyclopedia* is said to “define cults in terms of their objective ‘characteristics.’” This is a significant inaccuracy because in the *Encyclopedia* the authors never *define* cults by their characteristics, but by offering a dictionary definition and a primarily theological definition based on a group’s deviation from the teachings of biblical Christianity (pages XX-XXII). The Local Churches then proceed to state, “[F]or example...cults engage in ‘fraud’ in ‘fundraising and financial costs,’ subject their members

to ‘physical harm,’ engage in ‘occult practices,’ ‘deny their followers blood transfusions and medical access,’ ‘engage[] in drug smuggling and other criminal activity, including murder,’ and more.” However, the true list of 12 characteristics set forth by the authors in the Introduction (listed in Appendix B of Brief of Appellants on pages XXIII and XXIV), does not mention any of these matters, except “fraud” concerning “fund-raising” and “financial costs” and “physical harm.” There is no language in this portion of the Introduction, which begins on page XXII, that attributes The Local Churches’ so-called “characteristics” to the cults or religious groups in the body of the book. The criminal acts on page XXV, which The Local Churches claim are attributed to the groups in the book, are actually attributed to individuals—i.e., certain “cult leaders or gurus,” not groups. This is the beginning of The Local Churches’ efforts, in their brief, to misrepresent the authors’ true list of characteristics and replace it with their contrived list of abhorrent characteristics. Thus, every time The Local Churches say they are referring to the authors’ “characteristics of cults,” The Local Churches are actually referring to their own contrived list, which differs significantly from the true list the authors placed in the *Encyclopedia’s* Introduction.

On page 4, in the next-to-the-last bullet point, is a statement claiming that the “authors wrote material for publication that directly contradicts” the allegedly defamatory statements in the *Encyclopedia*. What the Court is not told is that this material was written *after* publication of the book in connection with settlement negotiations between the parties to this

litigation, and was timely objected to as inadmissible under Rule 408, Texas Rules of Evidence. I CR 61.

On that same page, in the last bullet point, and again on page 41, the statement is made that no one with the publisher ever “read the book.” However, none of the record references cited in The Local Churches’ brief supports this allegation. The testimony cited by The Local Churches on 2<sup>nd</sup> Sup. II CR 213 reveals the publisher’s president was only asked if *he* had “read the chapter on the Local Church,” to which he replied, “No.” Likewise, the testimony on 2<sup>nd</sup> Sup. II CR 234 is only that the publisher’s *president* had not read the book at the time of publication. The testimony on 2<sup>nd</sup> Sup. III CR 301-303 is from the deposition of the publisher’s editorial employee Betty Fletcher, who was asked if “anyone on the publisher’s committee read the part of the book that’s called how to use this book” (2<sup>nd</sup> Sup. III CR 301, lines 18-20). Ms. Fletcher was not asked whether anyone with the publisher had or had not read the entire book. 2<sup>nd</sup> Sup. III CR 301-303. The Local Churches fail to call the Court’s attention to Ms. Fletcher’s earlier deposition testimony that the “final reader” with the publisher reads the entire book. 2<sup>nd</sup> Sup. II CR 299. Similarly, the testimony on 2<sup>nd</sup> Sup. IV CR 879, 887 is from publisher’s head of the editorial department Carolyn McCready, a member of the publisher’s committee, who was only asked if the committee members themselves read certain portions of the book, not whether someone with the publisher “read the book” in its entirety before publication.

At page 25 of their brief, The Local Churches state that “their thousands of members have understood the statements in question as defamatory, as have their friends and neighbors.” There is no record reference given for this statement, and none can be provided, for nowhere in the entire record of 19 volumes is it shown that “thousands of members” of The Local Churches and “friends and neighbors” have even read the book, much less formed the opinion that the book is defamatory of them.

Finally, at page 45 of their brief, The Local Churches charge that the chapter in the *Encyclopedia* titled “The Local Church” “was written more than 25 years before the Book was published” and “[n]othing was done to update or verify that information prior to the publication of the Book.” In fact, this chapter contains quotes taken from literature published by The Local Churches dated 1996-97 and 1999. I CR 213. The *Encyclopedia* was published in 1999, which means the chapter includes material as recent as the year of publication. I CR 19; 3<sup>rd</sup> Sup. CR 166.

#### IV. ARGUMENT

##### **A. *New Times v. Isaacks* Supports the Interpretation that the Book Is Not Capable of Any Defamatory Meaning and Rejects Major Arguments and Reasoning of The Local Churches**

The Local Churches argue that a reasonable reader will find the material in the book to be defamatory of them without ever setting out, in context, the language from which the Court can evaluate their position. Although The Local Churches do not expressly argue that

the reasonable reader would not use ordinary rules of grammar and word usage in considering the material in full context, The Local Churches, in effect, make this argument on page 20 of their brief when they argue that “questions of what those rules consist of and how they apply here is a subject of expert testimony.” Significantly, The Local Churches never point out that there are any grammatical rules other than those set out in Brief of Appellants, or that these rules are not within the common knowledge of ordinary people. The Local Churches simply argue that the affidavits testifying to their various witnesses’ interpretation of the book are sufficient, although no authority is cited showing that expert testimony is needed to help establish the rules of grammar and word usage or that such rules are beyond the use or knowledge of the average person.

The Local Churches also contend on page 21 of their brief that the authors should have written a disclaimer in the Introduction that would tell readers that the general statements in the Introduction were not intended to apply to all the groups in the *Encyclopedia*. The Local Churches maintain that such a disclaimer would have prevented readers from arriving at any allegedly defamatory interpretations. These arguments and assertions are contrary to recent Texas Supreme Court authority.

Like this case, *New Times v. Isaacks* is a libel suit that came to the appellate court by way of an interlocutory appeal under Section 51.014(b)(6), Texas Civil Practice and Remedies Code, after the trial court denied two motions for summary judgment. 47 Tex.

Sup. Ct. J. at 1140, 1142. The threshold issue in *New Times* is whether the article, alleged to be a parody intended to ridicule, but not imply that outrageous conduct actually occurred, could be construed to have a defamatory meaning. *Id.* at 1145-1151.

In its opinion, the Texas Supreme Court sets out an analysis that examined whether it was appropriate for a case involving parody or satire to be decided based on ordinary common-law principles of defamation. *Id.* at 1145. After examining *Sack on Defamation*, the application of *New York Times v. Sullivan* to *Hustler Magazine, Inc. v. Falwell*, and other pertinent opinions, the Court agrees with “Judge Sack’s observation that common-law defamation principles—with some adjustments” are applicable. *Id.* at 1146.

The opinion then proceeds to consider the fundamental principle for evaluating allegedly defamatory material: “An allegedly defamatory publication should be construed as a whole in light of the surrounding circumstances based upon how a person of ordinary intelligence would perceive it.” *Id.* at 1146. “Whether a publication is capable of a defamatory meaning,” the court wrote, “is initially a question for the court.” *Id.* at 1146. In making the legal determination, the court must consider the prototypical person of “ordinary intelligence.” *Id.* at 1148-1149. This person is one “who exercises care and prudence, but not omniscience, when evaluating allegedly defamatory communications.” *Id.* at 1148. The “inquiry is objective, not subjective” and it does not matter “whether some actual readers were misled, as they inevitably will be, but whether the hypothetical reasonable reader could

be.” *Id.* at 1148. Offering the “declarations of a few people” who state they understood the communication a certain way “does not raise a question of fact as to the average reader.” *Id.* at 1148. Nor does “taking a poll of readers” obviate the necessity for examining the “entire context in which the offending material appears.” *Id.* at 1148. The opinion further acknowledges that “[i]ntelligent, well-read people act unreasonably from time to time, whereas the hypothetical reasonable reader, for purposes of defamation law, does not.” *Id.* at 1148.

Moreover, “a court cannot impose civil liability based on the subjective interpretation of a reader who has formed an opinion” about the material at issue “after reading a sentence or two out of context” because “that person is not an objectively reasonable reader.” *Id.* at 1149. Or, as the opinion quotes from a California opinion, “[t]he reasonable person has some feel for the nuances of law and language” and “would not consider...clues [in the writing] in isolation, but would consider each signal as part of the larger determination.” *Id.* at 1149.

The foregoing principles and analysis from *New Times* defeat the arguments and reasoning of The Local Churches. The prototypical reasonable reader of ordinary intelligence will not combine isolated words and phrases, as well as sentences separated from one another by considerable content, into a synthesized message that is inconsistent with the remainder. This prototypical person will use grammar and word usage properly in reading the challenged material in context, as set out in the Brief of Appellants and as graphically

seen in Appendices B and C to that brief. Of great importance is the fact The Local Churches have never made an attempt to demonstrate how the publication as a whole supports their interpretation of the book, which takes short, isolated and select portions of the language in the *Encyclopedia* out of context, and is supported by the subjective interpretations of this language by a few biased lay persons and expert individuals. These arguments cannot stand in the face of the *New Times* opinion. Consequently, The Local Churches cannot rely on *Allied Marketing Group, Inc. v. Paramount Pictures Corp.*, 111 S.W.3d 168 (Tex.App.– Eastland 2003, pet. denied), and similar lower-court opinions for the admissibility of their lay and expert witness testimonies, which the trial court below erroneously refused to strike, because these testimonies comprise nothing more than a subjective “poll,” which *New Times* says cannot be considered.

Also, the *New Times* opinion states that a reasonable reader will observe “clues” in the material while interpreting it in context. 47 Tex. Sup. Ct. J. at 1149. The language within the *Encyclopedia* has many grammatical “clues” that prevent readers from interpreting the allegedly defamatory portions as pointing to The Local Churches, and these clues are explained extensively in the Brief of Appellants. Among these clues are the authors’ list of 12 characteristics, which they numbered in the book, which they used to portray the hypothetical “perfect cult,” and which did not contain many of the criminal behaviors found in the list manufactured by The Local Churches. These criminal behaviors were actually

attributed to “those cult leaders or gurus” who have engaged in such conduct. Other clues include words such as “ancient Israel,” “the modern Western world,” and “fallen angels,” all of which point away from The Local Churches, not toward them.

The Local Churches’ argument that the authors should have placed a disclaimer in the Introduction (or at some other place in the book) to make clear the intended meaning is defeated by the *New Times* opinion. As the Texas Supreme Court explains, while “a disclaimer would have aided the reasonable reader,” it “is not necessarily dispositive.” *Id.* at 1150. The rules of interpretation recited in the opinion are the basis for determining how the prototypical reasonable reader will interpret a communication, whether it be written or oral.

In the same manner, then, that the court of appeals in *New Times* “underestimated the ‘reasonable reader,’” so have The Local Churches given the reasonable reader less credit than deserved.

#### **B. Public-Figure Status of All Plaintiffs Was Established**

The Local Churches concede on page 30 in their brief, as they did before the trial court, that The Local Church and Living Stream Ministry are limited-purpose public figures. They also do not dispute the judicial admissions of the individual Local Churches—made in response to a motion for partial summary judgment filed in this suit—that “each constituent church in the lawsuit is **known in its community** as simply The Local Church,” that they “have been referred to in various writings as The Local Church,” and “even the media

consistently referred to these individual churches as The Local Church.” 1<sup>st</sup> Sup. CR 10, 11, 16 (emphasis added). They also do not deny that the individual Local Church in Houston, in a complaint filed with the World Intellectual Property Organization and Mediation Center, admitted that it is a “member church of a group of Christian Churches **known to the public** as The Local Church or the Local Churches...[comprising] over 2000 Local Churches worldwide.” I CR 2; 3<sup>rd</sup> Sup. CR 166, 213 (emphasis added). Notwithstanding these facts, The Local Churches argue in a footnote on page 30 of their brief that this does not prove they are “all purpose” public figures. They also maintain that the authors’ and publisher’s evidence does not establish that these individual churches satisfy the criteria for at least limited-purpose public figures.

However, the proof presented by the authors and publisher to the trial court to establish the public-figure status of all The Local Churches is comparable to the evidence in *Gospel Spreading Church v. Johnson Publishing Co.*, 454 F.2d 1050, 1051 (D.C. Cir. 1971), and *Church of Scientology of California v. Siegelman*, 475 F. Supp. 950, 952 (S.D.N.Y. 1979). Both the Gospel Spreading Church and Church of Scientology were found by those courts to be general-purpose public figures. Significantly, The Local Churches, in their brief, make no effort to challenge or distinguish the authors’ and publisher’s application of these opinions to The Local Churches. Moreover, the proof cited in the authors’ and

publisher's brief demonstrated that The Local Churches both meet *and* exceed the general public-figure criteria established in *Gospel Spreading Church* and *Church of Scientology*.

Accordingly, the individual Local Churches can be found to be public figures because of their association and close connection with The Local Church and Living Stream Ministry, as was found in an analogous fact situation in *Brewer v. Memphis Publishing Company*, 626 F.2d 1238 (5<sup>th</sup> Cir. 1980). The Fifth Circuit found in *Brewer* that a woman once known as the number-one girlfriend of Elvis Presley was a public figure. *Id.* at 1257. Her husband was also found to be a public figure to the extent he was mentioned in the article in connection with his wife. *Id.* at 1257. The opinion reasoned that to hold otherwise "would . . . strip the required protection from the press to write the story about [the wife]." *Id.* at 1257. To the extent one writes about The Local Church, an admitted public figure, *Brewer* stands as authority that the individual Local Churches should be considered public figures, too, because of their voluntary and close association with a public figure.

The authors' and publisher's proof of the public-figure status of the individual Local Churches is overwhelming. An exhaustive summary of the proof is found on pages 3 and 4 of the Brief of Appellants, followed by the judicial admission set out in great detail on pages 38 and 39 of the Appellants' brief. The affidavit of Mary Cooper contains additional proof that, when added to the judicial admissions, proves conclusively that The Local Churches

satisfy the criteria not only for a limited-purpose public figure, but a general-purpose public figure as well. 3<sup>rd</sup> Sup. CR 1623.

Also, contrary to the footnote on page 25 of The Local Churches' brief claiming that only one lawsuit was identified by the authors and publisher as involving The Local Churches, Exhibit K of the Cooper affidavit lists at least 14 legal proceedings, lawsuits, or threats of lawsuits initiated by The Local Churches since 1973 against those who question their teachings. 3<sup>rd</sup> Sup. CR 206.

Either the individual Local Churches should be considered a part of the known religious organization The Local Church, or there was no defamatory meaning as to them because they are not considered synonymous with and part of The Local Church. In this lawsuit, The Local Churches have tried to have it both ways. The individual Local Churches have claimed association with The Local Church in order to take part in this suit, even though they are not named in the *Encyclopedia*, yet at the same time the individual Local Churches deny that very association when the authors and publishers show proof of their public-figure status. Because the individual churches took the position that they are *well known to the public* in response to the authors' and publisher's motion for partial summary judgment, they are judicially estopped to take a different position now. *Huckin v. Connor*, 928 S.W.2d 180, 182 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1996, writ denied). Accordingly, the individual Local Churches are as much public figures as The Local Church and Living Stream Ministry.

**C. *New Times v. Isaacks* Reinforces that There Is No Evidence of Actual Malice As a Matter of Law**

The Local Churches' argument that the publisher and the authors have not proved absence of actual malice begins with a complaint about the brevity of the no-malice argument in the Brief of Appellants (page 32). The Local Churches assert that the authors never had any proof that The Local Churches were guilty of the criminal conduct mentioned in the Introduction—conduct which The Local Churches included on their contrived list of characteristics (page 34); that the authors and publisher failed to investigate whether The Local Churches were guilty of this conduct (page 35); and that the authors and the publisher were predisposed to publish hurtful materials about them and other religious groups with whose teachings they disagreed (page 36).

This argument is built on the same flawed premise that has served as the foundation for all the other accusations in this brief: that the *Encyclopedia* has defamed The Local Churches. And from this premise, The Local Churches make their claim that the authors and publisher intended to accuse The Local Churches of the alleged bad conduct. But, the undisputed proof is that the authors did not at the time of publication, and do not now believe, that the reasonable reader of the *Encyclopedia* can interpret the language at issue as The Local Churches have. 3<sup>rd</sup> Sup. CR 64, 157; Appendix A.<sup>1</sup> The authors and the publisher

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<sup>1</sup> Attached as Appendix B is the affidavit of John Ankerberg, which was filed with the trial court on October 15, 2003 along with Defendants' Second Motion for Summary Judgment. Ankerberg's affidavit was designated to be included in the Clerk's Record (see Index to Third Supplemental Transcript [listing Ankerberg's affidavit]), but the Clerk apparently inadvertently failed to add it. Appellants will request that the Clerk supplement the record to

have consistently testified that they never intended for this to be the interpretation. 3<sup>rd</sup> Sup. CR 64, 159, 160; Appendix A.

*New Times* is very clear that “actual malice” must focus on the “defendant’s state of mind in relation to the truth or falsity of the published information,” not the defendant’s attitude “toward the plaintiff.” 47 Tex. Sup. Ct. J. at 1154. The affidavits of the publisher’s president and the authors are unequivocal that they believed what was published in the *Encyclopedia* does not charge The Local Churches with criminal conduct.

Further, *New Times* points out that finding actual malice based solely on a failure to investigate is “misguided.” *Id.* at 1155. A failure to investigate whether someone is guilty of bad acts when you do not believe you have charged that person with wrongful conduct is “no evidence of malice.” *Id.* at 1156. When an author does not believe at the “time of publication” a writing “would be misinterpreted,” this is not evidence of actual malice, even if after publication the author might subsequently see that misinterpretation was possible. *Id.* at 1156.

In addition, on page 44 of their brief, The Local Churches claim both authors wrote material for “a new edition of the Book” that “utterly contradicts the Book’s statements about The Local Church.” Yet The Local Churches fail to inform the Court that this supposedly contradictory text was written for settlement purposes only. According to *New Times*, a

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include this affidavit.

response to confusion over the intended meaning of a publication after it is published—in order to clarify its intent—is evidence of no actual malice.” *Id.* at 1154.

Finally, as stated in the authors’ and publisher’s opening brief, a picture is worth a thousand words. The chart in Appendix “A” illustrates how The Local Churches’ misrepresentations of the *Encyclopedia* and deposition testimony have been used to build their allegations of malice and negligence.

## V. CONCLUSION

The Texas Supreme Court ruled in *New Times* that a satirical article that *did* contain false statements written by individuals who *did* intend to lampoon public individuals could *not* be read to be defamatory by an intelligent reasonable reader. This Court should follow *New Times* and rule that the *Encyclopedia*, containing *true* statements of fact and *no* knowingly false statements referring to The Local Churches, can only be understood by an intelligent reasonable reader as *not* being defamatory.

In addition, the evidence The Local Churches rely on to show actual malice is fundamentally opposite to such a legal conclusion. As the *New Times* opinion teaches, this purported evidence does not show knowledge that the authors’ words would convey a defamatory message or reckless disregard for the truth. Failure to investigate an unintended

meaning is consistent with a *lack* of malice, as is a post-publication willingness to resolve a dispute about a publication.

Consequently, this Honorable Court should follow the Texas Supreme Court opinion in *New Times*, and reverse the trial court's denial of summary judgment and render judgment for the publisher and the authors.

## VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellants Harvest House Publishers, John Ankerberg, and John Weldon pray that the trial court's order denying their motion for summary judgment be reversed, that judgment be rendered that all relief sought against them be denied, that they be awarded their attorneys' fees and costs, and that they be granted such other and further relief to which they are entitled.

Respectfully submitted,

*J. Shelby Sharpe* with permission by  
*B. Stuart Jones*  
J. Shelby Sharpe  
State Bar No. 18123000  
SHARPE & TILLMAN  
6100 Western Place, Suite 1000  
Fort Worth, Texas 76107  
(817) 338-4900/Fax (817) 332-6818  
State Bar #2451265

Lynne Liberato  
State Bar No. 00000075  
HAYNES AND BOONE, LLP  
Donald D. Jackson  
State Bar No. 00787753  
1221 McKinney, Suite 2100  
Houston, Texas 77010-2007  
(713) 547-2000/Fax (713) 547-2600

Thomas J. Williams  
State Bar No. 21578500  
HAYNES AND BOONE, LLP  
201 Main Street, Suite 2200  
Fort Worth, Texas 76102  
(817) 347-6600/Fax (817) 347-6650

ATTORNEYS FOR APPELLANTS

**CERTIFICATE OF SERVICE**

In accordance with the Texas Rules of Appellate Procedure, the undersigned hereby certifies that a copy of the foregoing brief was served on the following counsel of record on this 4th day of October, 2004:

*Counsel for Appellees:*

Douglas M. Selwyn  
DAVIS & SELWYN  
1600 Smith Street, Suite 4050  
Houston, Texas 77002

*Via Hand Delivery*

Deborah Drooz  
STROOCK & STROOCK & LAVAN, LLP  
2029 Century Park East  
Los Angeles, California 90067-3086

*Via Certified Mail*

Craig T. Enoch  
Winstead, Sechrest & Minick, PC  
401 Congress Avenue, Suit 2100  
Austin, Texas 78701

*Via Certified Mail*

Donald D. Jackson  
Donald D. Jackson with permission by  
B. David Jones  
State Bar # 24012654

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## Comparison Chart of Arguments and Responses

<p style="text-align: center;"><b>The Local Churches' Arguments</b> Local Churches' "Direct Evidence" of Constitutional Malice and Negligence</p>	<p style="text-align: center;"><b>Authors' and Publisher's Response</b> Malice and Negligence Defeated by Affidavit/Deposition Testimony of Authors and Publisher</p>
<p>"All appellants admitted that they never had reason to believe that the challenged statements [i.e. murder, rape, and child sacrifice] were true of any Appellee" (page 34), "Appellants purposely avoided the truth" (page 35), and "no one bothered to verify [the <i>Encyclopedia's</i>] statements of fact" (page 42).</p>	<p>The authors had no reason to believe, cause to investigate, or material to fact check concerning whether The Local Churches murdered, raped, or sacrificed children because the authors never intended mention of such conduct to refer directly or indirectly to The Local Churches 3<sup>rd</sup> CR 156-57.</p>
<p>The Local Churches insist that the "state of mind" at publication was to publish falsities [referring to The Local Churches' challenged statement list] about the Local Church (pages 34-35).</p>	<p><b>Deposition Testimony of author John Weldon</b> Q. What did you think the Local Church members would get out of reading the introduction to the book? A. "Well, now that I think about it, I didn't have a Local Church in mind, or any specific groups, individual group in mind when I wrote the Introduction." II CR 286.</p>
<p>The Local Churches state "the authors not only knew but intended that at least some of the <u>reprehensible conduct</u> imputed to 'cults' would be understood to apply to the Local Church" (page 35, <i>emphasis added</i>).</p>	<p><b>Deposition Testimony of author John Weldon</b> Q. When the book was first published...how did you think the reading of the Introduction would benefit them [The Local Churches]? A. "<u>Theologically speaking</u>, in providing an overview of some of the characteristics of cults [from the authors' true list, <i>not The Local Churches' altered list</i>], that they [The Local Churches] would be able to see that some of those – one or more of those characteristics would apply to themselves." 2<sup>nd</sup> Sup. II CR 180 (<i>emphasis added</i>).</p>
<p>The Local Churches state: "No one there [at Harvest House] ever read the Book" (page 41), "[Harvest House] consistently denied that it followed any standard editorial practices" (page 43), "[the authors] failed to include references, footnotes..." (page 45), "...the Book's chapter was written more than 25 years before the Book was published. Nothing was done to update or verify that information prior to publication of the Book" (page 45).</p>	<p>Deposition testimony supports the fact that Harvest House employees and contracted employees did read the book or portions of the book 2<sup>nd</sup> Sup. III CR 299, that Harvest House uses the <i>Chicago Manual of Style</i> as its editorial standard II CR 318-19, the <i>Encyclopedia</i> has over 1300 footnotes, and the Book's chapter on The Local Church was updated and includes a quote from 1999, the same year the book was published. I CR 213; 1 CR 19; 3<sup>rd</sup> Sup. CR 166.</p>

APPENDIX  
A

NO. 2001-65993

THE LOCAL CHURCH, ET AL,

Plaintiffs

VS.

HARVEST HOUSE PUBLISHERS,  
JOHN ANKERBERG and JOHN WELDON,

Defendants.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

80<sup>th</sup> JUDICIAL DISTRICT

AFFIDAVIT OF JOHN ANKERBERG

STATE OF TENNESSEE

COUNTY OF HAMILTON

§  
§  
§

On this day personally appeared before me John Ankerberg, who, after being placed under oath, stated the following:

- (1) My name is John Ankerberg. I am over the age of eighteen (18) and am competent to testify. My business address is 6928 Lee Highway, Chattanooga, Tennessee 37421.
- (2) I am one of the Defendants in 2001-65993, The Local Church, et al. v. Harvest House Publishers, et al., now pending in the 80th District Court of Harris County, Texas.
- (3) I am one of the co-authors of the Encyclopedia of Cults and New Religions, hereafter "the Encyclopedia," published by Harvest House Publishers.
- (4) The Encyclopedia is a theological book measuring the beliefs and practices of certain groups against the beliefs and practices of orthodox Christianity.
- (5) I did not write any portion of the Encyclopedia concerning Plaintiffs or what Plaintiffs allege is defamatory of them because I had responsibilities for writing other

APPENDIX  
B

