

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

DONALD LEE BARNETT,)	
)	
Plaintiff,)	Cause No. 88-2-04148-2
)	
Vs.)	
)	
JACK A. HICKS, JACK H. DUBOIS, and E. SCOTT HARTLEY, individually and as the board of Directors of COMMUNITY CHAPEL AND BIBLE TRAINING CENTER and COMMUNITY CHAPEL AND BIBLE TRAINING CENTER,)	TRIAL TRANSCRIPT VOLUME 2, pp. 175-372
)	JANUARY 23rd, 1991
)	
Defendants.)	
)	

**TRIAL TRANSCRIPT, VOLUME II
PAGES 175-372**

BE IT REMEMBERED the above-named cause of action came on for arbitration on January 23rd, 1991 before the HONORABLE WALTER DEIERLEIN, JR. at Judicial Arbitration and Mediation Services, Inc. Seattle, Washington;

ROGER WILLIAM JOHNSON, RODNEY PIERCE, and CHARLES WIGGINS, Attorneys at Law, appearing on behalf of the Plaintiff;

ROBERT ROHAN and ATHONY SHAPIRO, Attorneys at Law, appearing on behalf of the Defendants;

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AND IS ONLY INCLUDED FOR ORGANIZATIONAL CLARITY AND EASE OF
USE.**

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(Examination of Pastor Barnett continued on January 23, 1991.)

1
2 THE COURT: You may inquire of the witness.
3 You should be advised this is the standard admonition
4 beginning at the beginning of every day. You're still
5 under oath.

6 THE WITNESS: Yes.

7 DIRECT EXAMINATION (continuing)

8 BY MR. JOHNSON:

9 Q Pastor Barnett, yesterday we were talking about some
10 of the spiritual movements or developments that
11 occurred in your church beginning in, I believe you
12 indicated the early 1980's.

13 I think you described a period of time when
14 you became heavily involved, your church became
15 heavily involved in retreats, and then there was a
16 period of time when that moved into a doctrine of
17 deliverance, and the deliverance ministry that
18 developed in the church.

19 I'd like to ask you, were there any other
20 developments of the theology, the spiritual direction
21 of the Community Chapel, that occurred in that time,
22 as an outgrowth of these other earlier developments?

23 A Yes. As a result, I believe, of the intense prayer
24 time for several years, there began to be a new
25 freedom in the spirit, that led to a spiritual

1 exuberance in worship, beyond what we had before,
2 which we thought was good at that time.

3 It was like people could not stand still and
4 clap anymore. The people stood and clapped. We
5 couldn't keep them sitting down, actually. They would
6 just rise automatically, and now they began to dance.
7 This was real spontaneously.

8 Q This, I take it, would be during church services?

9 A Yes, during worship services.

10 Q During the music portion of worship services?

11 A Yes.

12 Q Do you remember approximately what year it was this
13 phenomenon developed?

14 A I would think it was at the very beginning of '83, I
15 believe.

16 Q Describe, at least during the first few months of this
17 spontaneous phenomenon, how many people would be
18 involved.

19 A Well, the first, it first happened at an elders'
20 retreat I was at, and the men were all praying and the
21 elders' wives began to all dance together around the
22 elders. The presence of the Lord was so profound that
23 I felt like if they didn't, it would be out of order.

24 Then, the next time it happened my wife and I
25 were away on vacation, and we came back and it had

1 burst out in the congregation, and we found a number
2 of the people dancing, maybe, I don't know how many,
3 50 is a guess, or something. I'm not sure.

4 Q Where would they dance in the church facility?

5 A Well, there's a rather large space between, we're in a
6 half circle-shaped building. There's a rather large
7 space in front, rather large space on the sides, too,
8 and there's a middle aisle, a horizontal aisle and
9 some of the vertical even, but it was down in front
10 mainly.

11 Q That would be between the congregation and the area
12 where the pastor --

13 A Ministry platform.

14 Q Did that continue?

15 A It continued and grew in numbers more and more, as
16 they felt led of the spirit, moved into it, until
17 eventually the entire congregation was doing it, or
18 almost so.

19 Q Well, when it grew in numbers, was there still room
20 enough down in front for everyone to dance?

21 A No, it got to a place where so many people wanted to
22 worship and dance that we had to have, after a number
23 of songs, say share the front, and they would come
24 back to the pews, and others would rush out, I mean
25 run out, dancing.

1 Q Was it always limited to just the front area of the
2 church?

3 A No, they danced front aisles, middle aisles, back
4 aisles, side aisles. In fact the children got
5 involved too, in the Christian school, and the chapel
6 and the church, so we even designated a portion of the
7 side aisle for the children.

8 Q Describe the dancing; would it be just individuals
9 dancing, moving about?

10 A Yes, it was a solo dancing, exuberant, as they were
11 moved on by the spirit. It was a joy and an ecstasy,
12 a spinning, turning, clapping, hands up, praising,
13 singing, singing usually as they're dancing the songs
14 that are coming forth in music ministry. worshipping

1 King David himself did when they came into Jerusalem.
2 Miriam led the children of Israel as they crossed the
3 Red Sea in dancing. Abishag danced before King
4 Solomon, her love for him.

5 David wrote in the Psalms to sing and dance
6 before the Lord, and make a joyful noise before the
7 Lord.

8 Q Did this form of worship continue to be a solo form of
9 worship?

10 A There came a time, maybe about a year later, I'm not
11 certain of that date, when I got a call from Nicky
12 Limbo, (phonetic) pastor of a satellite church in
13 Kansas.

14 He said, Don, God is starting to do a new
15 thing in worship. He's starting to unite two or more
16 people together as they worship in praise to the Lord,
17 and they're worshipping together and he's uniting them
18 in a bond of spiritual love together, in a bond.

19 Q Did you ever experience anything like that develop at
20 the Community Chapel in Seattle?

21 A Well, when he first said it I groaned. I said, Oh,
22 no, it's hard enough to sell solo dancing without
23 mixed dancing, but I said if God is in it, then I'll
24 accept it.

25 Q Just a second. Did he indicate to you that the form

1 of this kind of shared worship was where people would
2 dance together?

3 A Yes.

4 Q Okay, so that's the form it took in Nicky Limbo's
5 church?

6 A Yes.

7 Q Proceed.

8 A It burst out in our church after a while without us
9 trying to implement it. In fact, it burst out in the

1 six or eight or ten even, or a larger number.

2 We had a time in the gymnasium when I was in
3 the center, and we must have had 60, 50 people dancing
4 around and around me in the center, all dancing.

5 The people, I mean, absolutely loved it. It
6 was something that just as the spirit moved upon them,
7 it was something that they had to do. People felt, I
8 cannot sit, I have to go out.

9 We had many cases where people, myself
10 included, put their coats on to go home, it was time
11 to go home, and the music would draw them, they'd take
12 their coats back off and back again, into it again.

13 Even though they didn't have time, or even if
14 they were tired, the drawing spirit in that music was
15 so much that they couldn't quit. We had people dance,
16 they wouldn't go home. They'd dance all night long.
17 We had to impose curfews.

18 Q Would this mixed dancing involve people continuing to
19 dance with the same person, or would they typically
20 dance briefly with this two- or three-person group,
21 and then move over to a different group, how did that
22 work?

23 A Both ways, actually. Many people continued with the
24 same one for a long period of time. Others would,
25 might dance with 15 people or so.

1 I encouraged people to keep, have as many
2 spiritual connections with as many people as possible.
3 I discouraged people from just getting locked into
4 one, because it's working, the love is there. I said
5 the Holy Spirit wants to connect the entire church
6 together.

7 Q Spiritual connections, is that the term that you
8 applied to this situation or phenomenon where people
9 came together and --

10 A Well, I initially called it spiritual unions, and from
11 the prayer of Jesus, Father, that they may be one, and
12 from a number of scriptures that talk about having
13 agape one toward another and so forth, but somebody
14 else in our congregation coined the word spiritual
15 connections, and that actually became more popular
16 after awhile, and we began calling it that. It means
17 the same thing.

18 Q This started through dance worship; is that right?

19 A Yes, although people would get spiritual connections
20 when they weren't dancing.

21 Q Okay, so it moved from the dance floor, off the dance
22 floor?

23 A Uh-huh.

24 Q What would be involved in a spiritual connection
25 relationship, other than dance, I mean how would it

1 manifest itself, what would people, individuals do,
2 who were spiritually connected?

3 A Well, you know, it's, to people who have never
4 experienced it, I know it seems really strange, but
5 all I can give you is the facts.

6 I have had the experience many times myself.

1 just happen.

2 People would sit down together, and it was
3 total agony to leave each other after maybe two or
4 three years. Maybe they wouldn't say a word. Before
5 they had known each other, been in fellowship
6 together, hugged each other, and never felt this. It
7 was a brand new phenomenon. It was very powerful.

8 We got multitudes of letters from people
9 telling them the new spiritual ecstasies they have
10 come to, how much deeper, how it has helped their
11 lives, how it brought them out of a lot of inhibitions
12 and problem areas and isolations, and so forth.

13 Q Did this same phenomenon develop in churches other
14 than yours and Nicky Limbo's?

15 A Yes, it sprang out in all the satellite churches.

16 Q Did you develop any spiritual connections yourself,
17 with any other persons?

18 A You can't develop a spiritual connection.

19 Q It happens?

20 A It just happens. If you try to get one, if you want
21 one with somebody, and you try to get it, you can't
22 get it. There's nothing you can do to get it. It
23 just happens to you, and it doesn't happen to you when
24 you necessarily would like it to happen to you.

25 Q You can't initiate it?

1 A You can't initiate it. It's a sovereign act of God's.
2 Q Did it happen to you?
3 A Many times.
4 Q Were you one of the first people in the church that it
5 happened to?
6 A No, it was probably, it was several months after it
7 started, that it happened to me.
8 Q Do you have any estimate as to how many people in your
9 church that this has happened to with you; in other
10 words, how many spiritual connections have happened to
11 you?
12 A I estimate in my own mind one time, just kind of
13 looking over names, about 150.
14 Q Did it happen to your wife?
15 A Yes.
16 Q Did it happen to her sooner or later than it happened
17 to you?
18 A She was one of the first ones that it happened to.
19 Q What was your view of this phenomenon when you first
20 witnessed it?
21 A Well, in general -- I have two things to say. One is,
22 in general, I could see it was of the Lord, I had to
23 accept it, although I remember when it first happened,
24 when I saw Jack Hicks one time dancing with a lady,
25 and the intensity of his eyes and staring, it bothered

1 me.

2 I went to him afterwards and kind of, you
3 know, I mean, Jack, the way you looked at this woman,
4 it was trouble to me. It was so much different than
5 all my background. I think I had legalism at the time
6 I didn't even know I had. Then I saw him do the same
7 with other men, and I knew it was the Lord.

8 Another elder came in from another church.
9 He had eyes like coals of fire. I mean they were so
10 intense, that love, and I knew that it was of the
11 Lord, and even though it was hard to look at it at
12 first, until this experience happened to me.

13 Q Describe, when it first happened to you, describe what
14 it was like.

15 A Well, when it first happened to me --

16 Q Where were you?

17 A I was at an elders' retreat for elders and their
18 wives, and also I think it included satellite pastors
19 and their elders and their wives, too.

20 Q Okay, what happened?

21 A Well, I went out and I began to worship. I had danced
22 a couple of times prior to this, at least once in my
23 church, well, more than once, I guess with another
24 lady, but I, and I kind of felt a slight drawing to do
25 it. Others were doing it, but at that time I couldn't

1 tell it was any different than solo dancing.

2 I was getting a tremendous amount out of solo
3 dancing. I became an absolute ardent enthusiast of
4 it. It was thrilling beyond all degree.

5 I would dance and dance and dance. When I
6 would dance with them, I thought it was about the
7 same, but when I went to this retreat, the spirit of
8 the Lord came down to me with another lady, Terri
9 Myrick, and I knew I had to make a decision. I knew I
10 had to yield to the spirit of the Lord, and make a
11 decision not to care what my elders thought of me, or
12 the wives or anybody else, just let go, or I had to
13 resist the Holy Spirit, and I decided to go ahead and
14 yield.

15 Q Yield to what?

16 A To the Holy Spirit, and I remember throwing my head
17 back, my arms were out, we were worshipping together,
18 going around, and I just felt free, free, free.

19 I felt that God set me free in the spirit
20 that night, and I didn't even know I wasn't free. I
21 always thought I was fairly free, but that night God
22 set me free in the spirit in a way I had never been
23 free before. It was absolute ecstasy.

24 Q Did you have any other spiritual connections at that
25 retreat?

1 A I had five at that retreat.

2 Q Had you ever experienced anything like that before in
3 your life?

4 A Never. I came home, and for the first time in my
5 ministry I had great big huge smile on my face the
6 entire service, service after service. I felt I could
7 give Jesus to anybody. I felt so full of Jesus and so
8 much in love with Jesus I could hardly stand it.

9 Q Did there come a time when your wife developed a
10 connection with an individual in your church named
11 Jerry Zwack?

12 A Yes.

13 Q Do you remember when that it was?

14 A That was her third connection. That was probably, at
15 least third major connection. That was probably in
16 the late fall of '86 -- let me think, '85. I would
17 say the late fall of '85.

18 Q You say that was her third major connection?

19 A Yes.

20 Q Well, who had she had a connection with just prior to
21 that?

22 A Bob Howerton.

23 Q Had that been an intense relationship or experience
24 for her?

25 A Yes, very intense.

1 Q Can you describe how long that lasted, and how it
2 manifested itself in your marriage to her?

3 A Well, it happened for a number of months, I'm not sure
4 exactly how long. Well, I remember we had established
5 a 3:00 curfew at that time, because some people were
6 dancing to five and even later, a three in the morning
7 curfew.

8 I had some arthritic problems in my knee and
9 I would wear out and come home and go to bed, and I
10 often couldn't sleep too well when she was gone. I'd
11 look at the clock, it was after three, and I knew that
12 they had to leave at three, the usher would chase
13 everybody out at three. It would take them about a
14 half hour to get everybody out, say everybody go home,
15 it's time to go home, but she'd come home, oh, about
16 3:50, something like that.

17 At first I was a little upset it took so long
18 to get home, then I got worried about her, and then I
19 was glad to see her, and she came home as we used to

1 with your wife?

2 A Yes. Well, no. She had it with me, but I didn't
3 really, it's what we call sometimes a one-sided
4 connection.

5 Q In other words, it would --

6 A Occasionally somebody had a powerful spiritual love
7 toward somebody who didn't have the same back, and
8 that only happened less than one percent of the time,
9 but it happened sometimes.

10 Q It had happened to you and your wife?

11 A Yes.

12 Q How did she react to that fact, that she had this
13 spiritual love for you, but you didn't have the same
14 intense spiritual love back?

15 A Well, I'm not sure at the time whether she knew I
16 didn't have it back or not. I had a spiritual
17 connection with a lady that was so fantastic, it was
18 so absolutely marvelous, that it just lifted me right
19 out of all the despair and the hurts I was going
20 through, and I thought this is going to make it easy,
21 until things get cleared up.

22 I was positive she was experiencing the same
23 thing back to me. I felt I knew she was, and she
24 afterwards said she wasn't, and so I'm not sure if my
25 wife knew or not, but she told me at the time that she

1 felt like I was Jesus.

2 Later she changed that story a bit, but at
3 the time she told me that, and she could just feel the
4 love of Jesus, and I saw the honor. My wife has
5 always honored me and loved me, up until the time that
6 she kind of abandoned me, but at this point it just
7 went sky high, and it was tremendous.

8 I loved the spin-off, even though I wasn't
9 getting out of it what she was, because she wasn't
10 capable of dancing that way.

11 At that time I was doing solo dancing, and I
12 was dancing in a way that was so profound, way beyond
13 my ability, and I needed that expression of movement
14 in line with the music and the spirit, and I wasn't
15 able to really receive from her that way, plus I think
16 she had gone deeper in the spirit at that time than I
17 had, and she looked at me with eyes that I couldn't
18 handle at the time, even though she's my wife, and I
19 wanted to, you'd think I could, but I mean at that
20 time I hadn't got it myself yet, and I couldn't handle
21 it.

22 Q What was it like? You say she looked at me with eyes,
23 and I couldn't handle it. What do you mean by that?

24 A Well, it was too intimate. It was so intimate and
25 strong, and I mean it sounds strange to say too

1 intimate with your own wife, but I don't know how else
2 to explain it. I don't know if, because I hadn't been
3 into that same experience yet, I guess, I couldn't
4 equate with it.

5 At any rate, I didn't worship with her
6 enough, because I worshipped with her every so often,
7 just to honor and bless her, but if you're not feeling
8 it, it's difficult to get out and dance.

9 If I don't feel the spirit, I just don't want
10 to dance. I have no interest in a solo dance at all.
11 I'm not a dance person, unless the spirit is on me, so
12 I didn't dance with her enough, and she lost the
13 connection, and she went into abject agony.

14 She felt like she lost Jesus, she said. I
15 thought, boy, how can that happen. You have always
16 had a real wonderful prayer life with the Lord, and
17 personal life.

18 Q Was it after this she developed a connection
19 relationship with Mr. Howerton?

20 A Yes, after she lost this, then I think we had the
21 spiritual retreat, and I got five more, and that even
22 made it even worse for her, and then during that,
23 probably during that retreat, I think, she got
24 connected with Bob Howerton in the spirit, and it
25 just, like it solved the problems.

1 She came to me and just said, I don't need
2 you any more, I have found what I want and I'm going
3 for it.

4 Before, she told me during our marriage,
5 Honey, I never really know who I am outside of you. I
6 feel like when you're preaching, I'm preaching. I'm
7 so one with you, I don't even know who I am, as an
8 individual, but after this hurt with me, I think she
9 relayed, I think it was the fear of her coming back to
10 me in that relationship before she'd lose it again,
11 and she just transferred everything, she just kind of
12 picked everything up in an over-reaction, and just
13 kind of handed it to Bob Howerton, and I didn't have a
14 wife anymore. That was unusual. Typically that
15 wouldn't happen.

16 Q After that, she then developed, I think you said, a
17 relationship with Jerry Zwack, or a connection
18 relationship developed?

19 A Well, she got a connection with Jerry Zwack. At first
20 Bob Howerton was the one that she had the most love
21 for, and it started to get larger and larger with
22 Jerry, until pretty soon with Howerton it got less and
23 less, and he got connected with other people.

24 She was, quite frequent in our church what
25 happened is quite frequently, first you'll get a

1 powerful spiritual relation with one person, and then
2 with another and another, but one will maybe be
3 stronger, and then maybe after a while you'll get
4 another powerful spiritual relation over here, and it
5 will be so new and powerful that you kind of move
6 there, and the person will get another spiritual
7 relationship with this person, until pretty soon you
8 get more and more and more.

9 It doesn't always last with the same
10 intensity with the same person. With my wife it did,
11 with Jerry, but oftentimes it doesn't, although you
12 never quit loving the person intensely.

13 Q What had your and Barbara's relationship been with
14 Jerry Zwack prior to this; did you know each other?

15 A No, I didn't really know Jerry before he got connected
16 with my wife. I saw him dancing with an enormous
17 smile on his face, and I thought what a darling man
18 that guy is.

19 Q This was somebody other than your wife, when you saw
20 that --

21 A No, he was dancing with my wife, yeah.

22 Q Did you develop a relationship yourself with Mr. Zwack
23 after that?

24 A I got a spiritual connection with him actually, and
25 also developed a personal friendship.

1 Q Did you and Barbara and he do things together,
2 socially?

3 A Yes, spiritually and socially. Jerry and I danced
4 together. Jerry and I and my wife danced together.
5 We went out, he took me up, he was teaching my wife
6 how to ski, and he began teaching me how to ski. We
7 did other things, went on vacation together.

8 Q As Barbara's spiritual connections with Jerry Zwack
9 became more and more intense, did this have any effect
10 on your marriage to Barbara?

11 A Well, I never had any trouble with my wife loving
12 Jerry or Jerry loving my wife. I trusted what the
13 spirit was doing in them. That was not a problem. My
14 enormous problem came -- I had two problems. The
15 problem I had was one, she quit loving me, and the
16 second problem I had --

17 Q Now, you indicated she quit loving you. This was even
18 before she met Jerry Zwack?

19 A Yes, this was with Bob Howerton, right now. The
20 second problem was, well, it escalated, the time she
21 spent with him escalated to a place where I only saw
22 her when she got up in the morning to go jogging with
23 Jerry Zwack before breakfast, and I never saw her
24 again until she came into bed after midnight and I was
25 sleeping, woke me up before and woke me up again.

1 Typically, except for vacations, with some
2 exceptions, I never really saw my wife. She didn't
3 eat any meals at home. She didn't cook. She didn't
4 fix the house. She wasn't at home. She just was
5 gone. She worked with Jerry Zwack all day long on the
6 job site besides, so in effect, I lost my wife.

7 Q When you were talking about the counseling ministry
8 that the Community Chapel had, and its development,
9 you indicated that there came a time when all of the
10 counseling services were combined into a coordinated
11 counseling center, do you remember that?

12 A Yes.

13 Q Do you remember when that was, approximately, that
14 that occurred, the counseling center was set up?

15 A Oh, let's see. '86 -- I really don't, but I'm
16 guessing it was probably, I think, I'm guessing it was
17 in '86, but I can't be positive that it wasn't in '87.

18 Q Who was made the first director of the counseling
19 center, well, who ran the counseling center?

20 A Jerry Zwack was put in charge.

21 THE COURT: In charge of what?

22 THE WITNESS: He was put in charge of the
23 counseling center.

24 Q This was when the counseling center was initially set
25 up?

1 A Yes.

2 Q Who put him in charge of that?

3 A I think the idea of the counseling center was my
4 wife's, and she may have talked it over with others
5 and then she proposed it to me, and if it wasn't her
6 idea, at least she's the one who brought it to me, but
7 I think it was.

8 I thought it was a good idea, and I think I
9 talked with others about it, and they thought it was a
10 good idea, and my wife said, Honey, let's, you know,
11 let Jerry Zwack set it up, and she'd work with him on
12 it. Let Jerry and I work together to set it up, and
13 he'll take care of, you know, the counseling center,
14 and so forth.

15 I said, Well, with reservations, I said, and
16 so I said, I don't want him counseling, because he
17 doesn't have the experience, and I don't want him to
18 be in charge of counseling philosophies, that's my
19 responsibility.

20 I'm the director of the counseling center.
21 I'll be the director of it, and so we put he will
22 report to Jack Hicks, vice-president, general manager,
23 to me, I'll be the director.

24 So it was decided that he would take incoming
25 calls, panic calls, and assign them to people in

1 charge of the secretaries, in charge of time cards for
2 the people, this type of thing.

3 Q Was this a paid position?

4 A Yes.

5 Q So he became a church employee then?

6 A Yes, a corporate.

7 Q Had he been employed before?

8 A Pardon?

9 Q Had he been employed with the church or the
10 corporation before that?

11 A No.

12 Q And you indicate that Barbara said she would work with
13 him?

14 A Yes.

15 Q Did she become employed in the counseling center, as
16 well?

17 A Yes, she became a counselor, and they worked in the
18 same office together, just the two of them in that
19 office.

20 Q Now after they became employed together, I take it
21 this increased the amount of time they were spending
22 together?

23 A Yes.

24 Q Now, during this period of time where they were
25 spending an increasing amount of their time together,

1 and you were seeing I think you indicated that she'd
2 leave maybe before breakfast and come home at midnight
3 or so, did you continue to talk to Jerry and to have
4 some sort of a relationship yourself with Jerry?

5 A Yes, I was, this was against counseling policy, I mean
6 it was against church policy. I had told people,
7 Don't spend an inordinate amount of times with your
8 connection. Your family, your wife comes first. You
9 have responsibilities with your children and your
10 mate, and God is primarily trying to do a spiritual
11 thing, not a social thing.

12 I know that there's an intense agony to be
13 with the individual when the Lord is moving and
14 there's spiritual experiences received, but don't,
15 don't get between the husband and the wife and all
16 this type of thing.

17 So I talked with him, because he was
18 violating it. In fact he was probably undoubtedly the
19 most severe case of violating this of anybody in the
20 whole church.

21 Q Did he express opinions to you, views to you about
22 your relationship with your wife?

23 A Yes, my wife and I were having, well, it was a problem
24 once she said, you know, I don't need you any more,
25 and everything was going good before that time, my

1 wife and I had a good relationship. I could not find
2 out why she abandoned me. I kept asking and asking.
3 She just turned me off.

4 Q You had had a good relationship, but you had never had
5 a spiritual connection with her?

6 A That's true.

7 Q Go ahead.

8 A So what was the question again?

9 Q Did Jerry Zwack advise, did you and Jerry Zwack talk
10 about your relationship with Barbara?

11 A Oh, yeah. So I would talk to them. I wanted my wife
12 back. I wanted her love, and I never blamed him for
13 loving her. I wasn't worried about him loving her and
14 vice versa.

15 Then he would bring, I never in all the years
16 and to the present minute got any explanation from my
17 wife as to why she had done this, although I asked
18 umpteen times.

19 A lot of the conversation I would go to the
20 cross, so I would call it. I would say, All right,
21 I'm going to trust the Lord that he'll bring her back,
22 to help open her heart up again. She has a hurt
23 over-reaction of losing connection with me. She's
24 finding her own personality with someone else, finding
25 out who.

1 I would arrange a meeting to talk with my
2 wife and Jerry together. I wouldn't get more than a
3 few words out of my mouth, and she would blow up and
4 the meeting was over, and then I would have, I'd ask
5 her questions. She'd say, Talk to Jerry, and she
6 would never communicate, so I would have to go to him,
7 and he would take her side, although I never fully
8 understood her side, and he would argue, and it always
9 got into kind of an argument.

10 I told him it was against our policy to have
11 connections get between the husband and wife, but here
12 I was stuck with it, because my wife wouldn't talk to
13 me except through him, as a liaison. He became like
14 her lawyer, so we would kind of go around and around.
15 It was hurting our relationship.

16 Q Pastor Barnett, I would like you to turn to
17 Plaintiff's Exhibit 13.

18 A I have to get my glasses.

19 MR. JOHNSON: I believe, Your Honor, that
20 this is one that we have admitted; is that correct,
21 Counsel, you have not had an objection to this?

22 THE COURT: One through 12, or one through
23 13?

24 MR. JOHNSON: Number 13, I believe, has been
25 admitted. I think since we are through the other

1 ones, this might be, at some point this morning we
2 should decide whether Counsel has any objections to
3 any of the early ones. At one point Counsel indicated
4 a few reservations to one of the sets of bylaws.

5 MR. ROHAN: Right. I still have those
6 reservations.

7 THE COURT: I think that was the one of April
8 '88.

9 MR. ROHAN: That's correct.

10 THE COURT: Let's keep that aside.

11 MR. JOHNSON: Okay, we haven't gotten to
12 that.

13 THE COURT: As to all the others --

14 MR. JOHNSON: As to all the others, Counsel
15 has no objection, I don't think.

16 THE COURT: One through 10.

17 MR. ROHAN: I haven't admitted 11 or 12.

18 THE COURT: For the record, Exhibits 1
19 through 10 will be entered.

20 MR. JOHNSON: I believe Counsel has just
21 indicated that 13 is also --

22 MR. ROHAN: Thirteen, despite the fact that
23 it indicates Mr. Hicks at the bottom, it clearly is a
24 record of the church, and we don't have any objection.

25 THE COURT: Also Number 13.

1 Q (By Mr. Johnson) Pastor Barnett, I'd like you to take
2 a look at Exhibit 13, the four-page document in front
3 of you.

4 Looking at the fourth page, down at the
5 bottom, and having done so, can you indicate what this
6 document is, and give it a place in time?

7 A That is a Community Chapel and Bible Training Center
8 Disfellowship Procedures and Policy approved by the
9 vice-president on 1/30/87.

10 Q And the vice-president, approved by the vice-president
11 appears on page four?

12 A Yes.

13 Q The date, January 30, 1987, also appears at the
14 bottom-right corner of page four?

15 A Yes.

16 Q Would you please turn back, and this is a statement of
17 the Disfellowship Procedures and Policies of the
18 Community Chapel as of January 30th, 1987?

19 A Yes.

20 Q Would you please turn to page two. I'd ask you to
21 read at the top, next to the lower case "F", beginning
22 by "approval by the vice-president", read that single
23 sentence.

24 A "Approval by the vice-president, or in his absence the
25 pastor, is required before an individual is put out of

1 the church."

2 THE COURT: Where does that appear, did you
3 say?

4 MR. JOHNSON: That's on page two, Your Honor,
5 about six lines down from the top of the page, next to
6 letter "F".

7 Q Would you now turn back to Exhibit Number 10. These
8 are the 1986 bylaws. I'd like you to look at page 27,
9 if you would, please. At paragraph capital E, Arabic
10 I, lower case e, would you please read that sentence.

11 A "Notify the individual that either he is put out of
12 the church with the concurrence of the pastor or his
13 designee, or else that a recommendation is being sent
14 to the pastor or his designee to the effect that he be
15 put out of the church, and therefore that he will not
16 have fellowship with the church."

17 Q When it says "or his designee" there, did there come a
18 time where you designated some person in the church to
19 have the power of final concurrence with regard to
20 disfellowshipping?

21 A Yes, Senior Elder Jack Hicks, vice-president, general
22 manager.

23 Q Is this the person, then, that is referred to on the
24 second page of Exhibit 13, where it says "approval by
25 the vice-president"?

1 A Yes.

2 Q You said Jack Hicks was the vice-president at the
3 time?

4 A Yes.

5 Q Did he have any other positions in the church?

6 A He was vice-president, general manager, senior elder.

7 Q So he was a senior elder then, and I believe that you
8 were the chairman of the senior elder board, you
9 testified?

10 A Yes.

11 Q Were there other senior elders in 1987?

12 A Yes.

13 Q Who were they?

14 A Jack DuBois and Scott Hartley.

15 Q Now, Jack DuBois, did he have some other position in
16 the church, other than senior elder?

17 A He was dean of the bible college.

18 THE COURT: He was what?

19 THE WITNESS: Dean.

20 Q Dean of the bible college?

21 A Yes.

22 Q What about Scott Hartley?

23 A At that time he was a counselor in the counseling
24 center.

25 Q Did he have any other positions in the church

1 government?

2 A He was a senior elder and secretary to the senior
3 elder board.

4 Q Was he secretary of the corporation, as well, the
5 church corporation?

6 A The church corporation, yes.

7 Q The senior elder board, was this the same board or the
8 same, essentially the same organ of church government
9 that had been the steering committee in the early
10 years of the church?

11 A Yes.

12 Q And his function in the Community Chapel corporation
13 as the board of directors?

14 A Yes.

15 Q Did the senior elder board meet from time to time to
16 consider church business?

17 A Yes.

18 Q When they met, were minutes kept of those meetings?

19 A Yes.

20 Q I direct your attention to Exhibit Number 12, and ask
21 that you review that packet of papers and tell me if
22 you can identify that.

23 A Well, these are minutes of senior elder board
24 meetings, various dates.

25 Q Can you look at the very last one and give me, tell me

1 what the date of that set of minutes is.

2 A Well, if I'm looking at the right sheet it's July the
3 29th, 1968.

4 Q Is that the earliest set of minutes that the Community
5 Chapel has, as far as you know, at this time?

6 A Well, I don't know if there's any earlier ones or not.

7 Q Have you had a chance to look through these minutes?

8 A I did look through them last night.

9 Q From that, and from your memory over 20 years of the
10 Community Chapel and Bible Training Center, can you
11 tell me, were you typically at a meeting of the Board
12 of Senior Elders, or would you frequently be absent?

13 A In all the history of Community Chapel, I only
14 remember being gone one time when they had a board
15 meeting.

16 The board meetings were typically not
17 supposed to be held unless I was there, unless there
18 was an absolute emergency. There was one time, it was
19 not an emergency, but I had to be gone for a reason,
20 and I felt it could be handled without me, and I gave
21 them permission to have it without me.

22 I don't think they ever had another meeting
23 without me being there, except as to vote on my
24 salary.

25 Q The bylaws do provide that they can meet without you

1 for the limited purpose of discussing your salary?

2 A Yes, benefits to me.

3 Q Will you look at Exhibit 10 on page six, Exhibit 10,
4 page six. I'd like you to look at the first sentence
5 of Article 7 and tell me, -- well, would you read the
6 first sentence of Article 7?

7 A "This article applies only if the pastor of the
8 corporation church and the chairman of the Board of
9 Senior Elders are one and the same person. The Board
10 of Senior Elders shall not meet to discuss problems or
11 make decisions without the presence or permission of
12 the chairman, and a minimum of all members of the
13 Board of Senior Elders, save one, except to consider
14 the chairman's salary."

15 O Is this the bylaw provision that you were referring to

1 time of this memo, Exhibit Number 13, which is dated
2 January 30th, 1987, did there come a time where you
3 and your wife Barbara separated, and were no longer
4 living together in the same house?

5 A Well, she left me when I was on vacation.

6 Q When was that, approximately, if you can remember?

7 A I think it was in August, it was in June of '87.

8 Q Did she move out to some other place?

9 A Yes.

10 Q Since then have you and she ever lived together?

11 A No.

12 Q But you're still married?

13 A Yes.

14 (Plaintiff's Exhibit Number 14
15 was marked.)

16 THE COURT: May I ask a question here?

17 MR. JOHNSON: You certainly may.

18 THE COURT: I have a question. It occurs to
19 me, Pastor, that I have seen something indicating that
20 there was a divorce action; is that true?

21 THE WITNESS: No, there's no divorce action
22 contemplated. A separation, legal separation possibly
23 pending. I don't know if she'll sign it or not.

24 MR. JOHNSON: There is a separate maintenance
25 action that was filed several years ago, and it is
still pending. No orders have been entered in that,

1 other than just a temporary order, I think a couple of
2 years ago.

3 THE COURT: Thank you.

4 Q (By Mr. Johnson) Pastor Barnett, I'd like to hand to
5 you what has been marked as Plaintiff's Exhibit Number
6 14.

7 Your Honor, this is not in your book because
8 this is one that Counsel has objected to.

9 Can you identify what that is, without
10 stating what's stated in the document, just what is
11 that document?

12 A It's a memo to all staff counselors from Jerry Zwack,
13 concerning change in fellowship procedures.

14 THE COURT: Memo from Zwack?

15 THE WITNESS: Yes, to all staff counselors
16 from Jerry Zwack, concerning change in disfellowship
17 procedure.

18 Q Does that memo bear a date?

19 A July 30th, 1987.

20 Q Shortly after July 30th, 1987, did you receive a copy
21 of this memo?

22 A Yes.

23 Q Did you ask Jerry Zwack, prior to July 30th, 1987, to
24 take the action described in this memo?

25 A Yes, I did.

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MR. JOHNSON: Your Honor, I would offer this exhibit at this time

MR. ROHAN: May I voir dire as to the exhibit, first, Your Honor?

THE COURT: Yes.

MR. ROHAN: Did you write what is proposed as Exhibit 14?

THE WITNESS: No. Let me look at it before I say that. (Perusing) No, I didn't write it. I'm sure Jerry Zwack did.

MR. ROHAN: I'd object on that basis, Your Honor. It's clearly hearsay. I cannot cross-examine as to the truth or falsity of the statements herein. It's certainly placed in for the truth or falsity of the statements made herein, and I think it's improper to try to get it in through this witness.

THE COURT: You testified that you directed him to take this action.

THE WITNESS: Yes. I directed him to take this action, and then he wrote this in response to my directive.

THE COURT: It's addressed to whom, I mean not maybe on the paper, but who did it go out to?

THE WITNESS: All the staff counselors.

MR. JOHNSON: It's a business record of the

1 corporation, Your Honor. It comes in, I think, under
2 the same theory that Counsel agreed to the admission
3 of Exhibit Number 13.

4 MR. ROHAN: I didn't agree --

5 THE COURT: The objection is being made on
6 the grounds of hearsay?

7 MR. ROHAN: Yes, Your Honor.

8 THE COURT: I'll overrule the objection and
9 admit the exhibit.

10 MR. JOHNSON: Here's the copy to insert in
11 your binder, Your Honor.

12 THE COURT: You may continue.

13 Q (By Mr. Johnson) Pastor Barnett, would you read that
14 memo in its entirety.

15 THE COURT: Unless some there's some reason,
16 I'll read it and that may be sufficient. (Perusing)
17 Okay.

18 Q Pastor Barnett, what was your, you indicated that you
19 directed Jerry Zwack to take the action outlined in
20 Exhibit Number 14. What was your reason in directing
21 him to take that action?

22 A To provide better protection for counselees that I
23 felt were not being handled in conformance with the
24 bylaws and the counseling policies.

25 I felt that there were extenuating

1 circumstances involved that were not being taken into
2 consideration.

3 I felt like there needed to be, the heart of
4 the pastor how to, it was a God matter, not just a
5 legalistic approach.

6 I felt there needed to be an understanding of
7 the conditions a person found themselves in, where
8 they were, what was happening to them, and their
9 ability to handle things, and so forth.

10 Q Could you describe the background or the degree of
11 theological training or spiritual training that Jack
12 Hicks had?

13 A Jacks Hicks didn't have much theological training. He
14 went to bible college on a part-time basis, was a long
15 ways from graduating. He never was ordained as a
16 spiritual minister of the gospel. He was ordained as
17 an elder and not for theological purposes, but as an
18 overseer of departments, and that type of thing.

19 Q Was it your view that whoever was going to have the
20 the final word on disfellowship should have some
21 substantial background and training in theologiant
22 bible?

23 MR. ROHAN: Objection, leading.

24 MR. JOHNSON: Withdraw the question.

25 THE COURT: Well, it's leading and

1 suggestive, but you may rephrase the question.

2 Q What was your view as to whether or not the person who
3 should have the final authority with regard to
4 disfellowshipment, what was your view with regard to
5 the degree of theological training that that person
6 should have?

7 A Well, in my view it wasn't so much, it wasn't even
8 that in itself, because we had theological teacher
9 with a Master's Degree in our college that had
10 Bachelor's or Master's before our college, and I would
11 not let them make this decision.

12 I felt that things had gotten to a place
13 where only I was able to, I felt like I had a heart of
14 God for the people, I had a father's heart, a pastor's
15 heart, a love for the people beyond what anybody else
16 had, and a compassion and an understanding and a
17 wisdom that everybody in the church, not everybody,
18 but commonly it was recognized that I had a wisdom
19 beyond what the others had, and I wouldn't have given
20 it to anybody, regardless of the theological training.

21 I felt there needed to be a spiritual
22 understanding beyond just normal bible training.

23 Q You indicate "a pastor's heart". What do you mean by
24 the term "a pastor's heart"?

25 A Before I became a pastor I was a bible teacher in

1 churches for 18 years, and I never hugged one person,
2 that I knew of.

3 I had all kinds of people tell me how
4 wonderful my message was. It wasn't my flock, it was
5 the pastor's flock. I loved them in Christ. Once God
6 called me, and we began praying for them, for
7 salvation in the Holy Spirit, in that context I loved
8 them.

9 They were my flock and I began to love them
10 and the children and hug them and God made me a
11 pastor.

12 I never expected to be a pastor. I thought I
13 was a bible teacher, and even my messages changed from
14 being exogenical, theological, to a more of a
15 practical, getting down to the heart of the
16 individual.

17 Like the bible says, So God gave Saul a new
18 heart that day when he made him king, and God gave me
19 a new heart, and it was very evident in me, a pastor's
20 heart. Jesus is the upper shepherd and I'm in the

1 Q What, in your view, did this memo do in regard to your
2 designation of Jack Hicks for disfellowship purposes?

3 A I'm sorry, I need the question again.

4 Q What was the effect of this memo on your designation
5 of Jack Hicks for final authority for
6 disfellowshipment; did he remain, did he continue to
7 have that right to exercise final decision as your
8 designee?

9 A No.

10 Q Did this revoke that designation?

11 A It totally revoked it.

12 Q Did you ever grant to anyone else in the church, after
13 July 30th, 1987, the right to review or the right of
14 final concurrence with regard to anybody's
15 disfellowshipment at Community Chapel?

16 A No.

17 MR. ROHAN: Objection, leading.

18 A (Continuing) Actually, neither before or after.

19 Q Just a second, Pastor Barnett. Counsel has made an
20 objection.

21 MR. ROHAN: I objected to his prior question
22 as leading, Your Honor, but the witness has already
23 answered.

24 THE COURT: He said did you ever grant anyone
25 in any area, I'm paraphrasing, the right to approve or

1 disfellowship.

2 MR. JOHNSON: After this memo, yes.

3 THE COURT: You may answer.

4 Q Please answer the question.

5 A No, I never did.

6 Q As of March 4th, 1988, had you, on that date, waived
7 your right, or given to or designated anyone else to
8 have that final authority with regard to
9 disfellowship?

10 A No.

11 Q At some point you indicated Jerry Zwack was -- what
12 was his formal position, if you know, at the bible
13 college? What did the label on his office door say,
14 was he the administrator or --

15 A Are we talking about the counseling center or bible
16 college?

17 Q Yeah, I'm sorry, the counseling center.

18 A He was the administrator of the counseling center.

19 Q Did there come a point in time when he was going to,
20 or did have some sort of a function in the bible
21 college, as well?

22 A Yes. We had intended to have him be one of a group of
23 team teachers in a counseling class we were going to
24 offer.

25 Q When was that, that that was going to occur?

1 A Starting in the beginning of September, 1987.

2 Q So just shortly after this memo, July '87 memo?

3 A Yes.

4 Q Did he, in fact -- well, describe what happened with
5 that course that he was going to help teach at the
6 bible college.

7 A Well, my wife came to me and said, I think it would be
8 good if we offered a class on counseling to start
9 training other people for, to be potential counselors.

10 Q Let me interrupt here briefly, if I may. You say your
11 wife came to you. Were you and she separated at this
12 point in time?

13 A Well, at the time she came to me, no. She came to me
14 before June.

15 Q Okay, but it was in June that you separated?

16 A Yes, she came to me probably, I'm not sure, but
17 probably in the spring.

18 Q So proceed with your answer.

19 A She envisioned a class in which there would be team
20 teaching, each counselor giving an area that they had
21 learned, and it sounded like a good idea.

22 I said, Well, I said I would approve it with
23 some stipulations. I don't want Jerry to have a very
24 big part in it, because he's not a counselor. I know
25 he seems to be a good speaker, have good pulpit

1 etiquette, so as to speak and I know he has learned
2 the same as the others have learned. He has learned
3 quite a bit.

4 I said, I mainly want the others to be
5 involved, about six teachers, but Jerry can have a
6 part in it.

7 I said I want, because he has never taught
8 before, I want all of his papers, his notes ahead of
9 time to review, make sure I approve everything he's
10 going to say and she said, Okay.

11 Q This was a course that was going to be taught in the
12 fall term of 1987?

13 A Yes, and he had the summer to study and get on board.
14 So each of the counselors were going to have a
15 section, and he was going to have a small section.

16 So as time went on, the first notice I got,
17 Chris Matthews, who worked for Jerry, but was taking
18 care of another half, so to speak, or better of the
19 administrative duties of the counseling center, sent
20 me some papers that Jerry had given the secretary to
21 type.

22 He had two concerns. One was Jerry had no
23 authority to give things to the secretary to do, to
24 type for the college class, but his biggest concern
25 was the nature of what he was having typed. He was

1 getting things out of various philosophy books.

2 I saw them, and did not like this at all, and
3 so my relationship with Jerry at this time was bad
4 enough that I felt to call him would just manifest
5 itself in defensiveness and problems.

6 So then I called my wife instead and said,
7 Honey, I said, this is not what I asked for. I asked
8 for a class based on what we had learned as
9 counselors, and I said this is a lot of highbrow
10 stuff, it's dry, it's lengthy, it's complex, I don't
11 have confidence that Jerry knows how to, he hadn't had
12 psychological training, psychology training, he
13 doesn't have the ability to wade through and decipher,
14 you know, to collate the things that are proper. I
15 said I don't want this, and she said, okay.

16 Q Did you ask her to talk to him about that?

17 A Yes, and she said she would. Then later I began
18 asking for notes. I said the bible college is coming



1 He said our relationship is so bad, I don't
2 think I can, and Jack said he better talk to me about
3 it, and he didn't.

4 It came time for the class to start, and I
5 hadn't got even anything as to what he was going to
6 teach, in spite of my pleas, so we were kind of stuck
7 to go ahead and start. When it started --

8 Q The class started?

9 A The class started, and on the first day Jack DuBois,
10 dean, got a complaint from one of the students, and
11 Jack listened to the talk, and he was alarmed. He
12 called me and he said, Don, I think you better listen
13 to the tape.

14 Q Of the class?

15 A Of the class.

16 Q Who had taught the class?

17 A Jerry Zwack. I listened to the tape. It was a dry
18 syllabus. It was not what we wanted. It was not in
19 accordance with what we advertised the class to be,
20 and it was not what I wanted.

21 I told Jack DuBois, I said, Well, Jack, if I
22 tell Jerry Zwack that this is not what we want, and I
23 found out through the syllabus as well, that Jerry was
24 going to do all or most of the class, he had had

1 sure.

2 Q When you say "syllabus", what do you mean the
3 "syllabus"?

4 A Well, it was an outline of what was going to be
5 brought in the class for the year that semester.

6 Q This is what Mr. Zwack said on the tape?

7 A Yes, he was giving his syllabus and it was dry, dry
8 dry.

9 Q You say it was not what "we had advertised the class"
10 was going to be. What do you mean by that?

11 A Well, we advertise the class. In the bible college
12 catalog we have the title of the class, and give a
13 paragraph underneath of what the class is about, and
14 people sign up on the basis of the description of the
15 class, and it was not that at all.

16 It was not going to be a real team teaching,
17 divided, as I asked for, and so I said, Jack, I'm
18 going to have problems if I tell Jerry this. I'd like
19 you to get several bible college teachers, including
20 those that are in the counseling center, they have a
21 couple there, or at least one, and I think maybe more
22 than one, and have them listen to this tape, and have
23 them write an opinion as to whether this is what we
24 advertised and whether there's problems with it.

25 I said, then I said, If you give that to me,

1 if you give that to Jerry with my final statement, at
2 least he'll know it's not just my prejudice, it's the
3 evaluation of the other team as well, and the other
4 bible college teachers.

5 Q Did that occur?

6 A That occurred, and they all agreed it was not what we
7 advertised, and it was poor. Some thought maybe we
8 ought to go ahead with it, and some didn't, but I
9 would not let it go on, and that was my decision.

10 So I called an emergency meeting of all the
11 team that was supposed to teach, including Jerry
12 Zwack, to restructure the class back to where we had

1 A Right.

2 Q How did this incident affect your relationship with
3 Jerry?

4 A Well, he became really hurt over it, and he became
5 sure that I was trying to down him and get him out.

6 Q He was still employed at the counseling center at this
7 point?

8 A Yes.

9 Q This was September 1987?

10 A Yes.

11 Q Did there come a time subsequent to that when he
12 ceased being an employee of the counseling center?

13 A Yes, approximately a month later, I would guess. Jack
14 Hicks laid him off in a budget crunch.

15 Q This would have been what month, maybe October?

16 A About the first of October, Jack called me and said,
17 Don, there has been enough people leave the church
18 that we are going to have to make another round of
19 cuts, and I'd like your permission to let me decide
20 who to lay off.

21 I said, Well, Jack, you're closer to these
22 people than I am, you make the decision. He later
23 called me up -- do you want me to go on or not?

24 Q No. Let me just interrupt. You say there had been
25 some people leave the church. Was the church having

1 problems holding its membership?

2 A Yes.

3 Q What was the reason for that?

4 A Well, the spiritual connections, well, the spiritual
5 connections were not a problem. God's love to people
6 was not a problem.

7 Q Let me withdraw that. Without going into the reasons,
8 can you just tell me what, can you describe the
9 decline in terms of numbers, how big had you been
10 and/or how much of a drop in membership do you think
11 you experienced?

12 A Well, perhaps over that last year we had dropped from
13 maybe 3500 membership to maybe 2800, something like
14 that, I'd guess.

15 THE COURT: This was in the bible college?

16 THE WITNESS: No, in the church.

17 THE COURT: In the congregation?

18 THE WITNESS: In the congregation.

19 THE COURT: That was over how long a time?

20 THE WITNESS: I'm guessing. Every year we
21 posted the membership, and we had a chart, and if my
22 memory serves me correct, I'm not positive, I would
23 guess that we dropped from 3500 to 27, 2800, in about
24 one year.

25 Q Between 1986 and this point in time, which you said

1 was 1987?

2 A Yes.

3 Q Who told Jerry Zwack he was terminated from the
4 counseling center, if you know?

5 A Jack Hicks did.

6 Q It wasn't you?

7 A No.

8 Q Who first raised the idea of terminating Jerry Zwack
9 from the counseling center?

10 A Jack Hicks.

11 Q What effect, if any, did his loss of his job at the
12 counseling center have on your relationship with Jerry
13 Zwack?

14 A He became exceedingly bitter. He was more than

1 A Yes.

2 Q Did he blame you for that problem?

3 A Yes.

4 Q Was there anything other than the counseling center
5 and the bible college, his termination at the
6 counseling center, and his loss of his teaching
7 position at the bible college, was there anything else
8 that was one of the problems that Jerry Zwack had
9 relative to you in the fall of 1987?

10 A Yes.

11 Q What was that?

12 A Well, in spite of the fact that Jerry and my wife were
13 spending all this time together, and a lot of other
14 people were too, my wife was bothered by the fact that
15 I would spend time with people, my relationships with
16 women, and so he was kind of her advocate. He was
17 insisting that I, that I need to help her heart, and
18 all this, so he was troubled by the relationship.

19 Q Was there a person -- you mentioned the counseling
20 center. Was there a person in the church that you
21 were counseling with regarding your spiritual and
22 private personal problems at this point in time? I'm
23 talking about the last half of 1987, say the fall of
24 1987.

25 A Well, the first --

1 Q In the fall.

2 A In the fall. Well, David Motherwell, I went to David
3 Motherwell and asked if he would counsel concerning my
4 marriage.

5 Q Do you remember when you first approached Mr.
6 Motherwell about that?

7 A I'm guessing. I don't know for sure, but I'm guessing
8 maybe July. It might have been later, July or August,
9 I would think.

10 Q Did there come a time --

11 A It could even be a little later than that, but I don't
12 think it was.

13 Q Did there come a time when Mr. Zwack, when you were
14 advised that Mr. Zwack wrote a letter to the senior
15 elders and to the elders of the church?

16 A Yes.

17 Q Do you remember what month that was?

18 A That was in December of '87.

19 Q Did you get a copy of this letter, as well?

20 A No.

21 Q He didn't send you a copy?

22 A No.

23 Q How did you learn of the letter?

24 A David Motherwell told me about it.

25 THE COURT: I didn't hear that.

1 THE WITNESS: David Motherwell told me about
2 it. Sorry.

3 Q Was David Motherwell your counselor?

4 A Yes.

5 Q How did that occur, can you tell us when, and describe
6 the circumstances when you were advised about this
7 letter from Mr. Zwack to the elders?

8 A Well, sometime in either late December and early
9 January, David Motherwell came to me and said that
10 they also had received a letter from Jerry Zwack, and
11 that he was complaining against me. Does that answer
12 your question?

13 Q Yes. Did he indicate anything that the elders wanted
14 to do in response to the letter?

15 A Well, he said that Jerry was threatening to go to the
16 congregation and the media and everything else, and
17 accuse me. They felt it would be better that I
18 handled it in-house, if we could, and if I was willing
19 to meet with Jerry and with the elders, why the
20 eldership was willing.

21 Q This would be a meeting or a series of meetings that
22 would include both you and Jerry?

23 A Yes, for the purpose of resolving his grievances
24 toward me.

25 THE COURT: I think we can take our break at

1 this time. We'll be at recess now until a quarter to
2 the hour.

3 (A break was taken.)

4 THE COURT: For the purpose of the record,
5 we're continuing.

6 Q (By Mr. Johnson) Pastor Barnett, you described Mr.
7 Motherwell coming to see you and describing to you a
8 letter that Jerry Zwack had sent. I believe you
9 placed this in time in either late December 1987 or
10 early January 1987?

11 A '88.

12 Q Or '88. Did Mr. Motherwell discuss with you the
13 elders' authority or their right, or anything about
14 their right to conduct these meetings that you have
15 indicated that he said they wanted to have?

16 A What he said was that if I was willing to have the
17 meetings, they would be willing to have the meetings.
18 Obviously they had no authority to require me to have
19 a meeting, and they indicated that by saying if I was
20 willing, they would be willing at the other end to try
21 to help.

22 Q Did you discuss at all any other authority or lack of
23 authority that the elders had or didn't have?

24 A Yes. David came from an eldership, pre-eldership
25 meeting, a meeting with the elders, as their envoy,

1 saying, Don, I think that you should go ahead and have
2 these meetings.

3 He said the elders recognize and stated that
4 they have got no teeth, that's an exact quote, he said
5 no authority in these meetings to discipline you or
6 anything else, and it's only for the purpose of trying
7 to counsel and mediate the grievance between you and
8 Jerry Zwack, and help your hurts.

9 So it was on that promise and that basis,
10 among some other things, that I agreed to the meeting
11 for mediation.

12 Q When you and Mr. Motherwell were talking about these
13 proposed meetings, before they were commenced, did he
14 indicate whether the meetings would be open to the
15 public or confidential?

16 A Well, at first when he came, I suggested that we have
17 around five men there, a couple counselors and elders,
18 and I thought that should be plenty of staff to
19 mediate Jerry Zwack's grievances.

20 He took it back to the board, not the board,
21 he took it back to the elders, and they apparently
22 conferred with Jerry Zwack, because he came back to me
23 saying Jerry Zwack insists that every elder be there,
24 or else he won't have a meeting.

25 This upset me. I said this is a waste of

1 manpower. We don't ever put that many people on
2 trying to mediate between a couple of people's
3 grievances, so we kind of went around on that a bit.

4 Eventually, and he said, Well, he's
5 threatening if we don't do it his way and have
6 everybody there so all the elders can hear it, that
7 he's going to write personal letters to everybody in
8 the church and out to the media and all this, so
9 reluctantly I agreed, but it was an unreasonable use
10 of manpower for mediation.

11 Q Did Mr. Motherwell ever use the term blackmail with
12 regard to Mr. Zwack's letter, and the things stated in
13 Mr. Zwack's letter, if you recall?

14 A I don't remember. I know that it was alleged that he
15 was trying to blackmail either me or the eldership. I
16 don't know whether at that time he was, had that word
17 to me or not.

18 Q As you discussed this with Mr. Motherwell, what was
19 the purpose of these meetings to be, what was to be
20 accomplished?

21 A Well, I asked him what Jerry Zwack's letter said, and
22 he said, well, that he had three complaints, he had a
23 complaint about me, David said he characterized it as
24 me putting him out of the bible college class, which I
25 never really did. I just restructured the class and

1 he declined to show up to have a part of it.

2 The second grievance he stated was that I had
3 set up Jack Hicks to have him removed from the
4 counseling center under maybe a, I suppose a false,
5 including him in the budget crunch, when he didn't
6 feel like he should be included in the budget crunch.

7 Thirdly he was concerned lest my
8 relationships with women at this time, I might be
9 doing things that would hurt my wife. He was kind of
10 my wife's advocate.

11 Q You indicated Mr. Zwack had lost his job, Mr. Hicks
12 had fired him or terminated his job at the counseling
13 center. I think you indicated it was in early
14 October, three months or so before this.

15 Do you know whether or not, at this point in
16 time, Jerry Zwack had become employed again, or was he
17 looking for work, or do you know?

18 A I think he had become employed as a car salesman
19 downtown in Seattle, and when Jerry was laid off for
20 budget reasons, my wife quit the counseling center at
21 the same time. In fact she had helped him sell cars.
22 She drove some cars to Portland and so forth for him
23 on some sales, I remember.

24 Q At some point in time did Mr. Motherwell discuss with
25 you, your signing some sort of written agreement?

1 A Jerry Zwack or Motherwell? Would you repeat the
2 question.

3 Q At some point, when you were discussing the

1 agree to. This is the agreement that Mr. Shapiro had
2 a blow-up of and referred to.

3 THE COURT: January 15th?

4 MR. JOHNSON: January 25th.

5 MR. ROHAN: We agreed to both that and the
6 guidelines, Your Honor.

7 THE COURT: That's number?

8 MR. JOHNSON: This is Plaintiff's Exhibit
9 Number 15, Your Honor. I must apologize. I have
10 neglected to bring other copies this morning. What I
11 would suggest is I hand the copy to the witness, and
12 perhaps you can place up here Mr. Shapiro's blow-up.

13 THE COURT: For the record Exhibit 15. Are
14 you going to also mark the guidelines?

15 MR. JOHNSON: Yes, we will mark the
16 guidelines.

17 THE COURT: Let's get those marked.

18 MR. JOHNSON: Actually, Your Honor, we're not
19 going to introduce the guidelines ourselves.

20 Q Handing you what's been marked as Exhibit Number 15,
21 can you identify that document for the Court?

22 A What is listed as --

23 Q Can you identify that document, Don?

24 A It's an agreement signed by me on 1/25/88.

25 Q Did anyone else sign this agreement, did Mr. Zwack

1 sign this agreement?

2 A No, my name is the only name on here.

3 Q Did the elders sign this agreement?

4 A Not on this piece of paper, at least, just me. I'm
5 the only one who signed it, it appears.

6 Q You indicated that you discussed some rules with Mr.
7 Motherwell and with the people of the elders, some
8 rules for the meeting.

9 Would you recognize, if you saw it, a set of
10 those rules, as being the rules that were agreed upon?

11 A Well, I don't know if I'd recognize all of it. I mean
12 I would undoubtedly recognize some part of it.

13 Q Some of the provisions in there?

14 A Some of them.

15 Q What were some of the provisions that were in the
16 rules, as you recall it?

17 A Well, I remember that the subject of the meeting was

1 would be public or confidential?

2 A It was agreed Russ McKenzie was moderator. He got up,
3 after talking to the eldership, prior to that day,
4 previous to 1/25, when I was not there, and said, Don,
5 we promise you, before God, that nothing said in this
6 room will ever leave this room, and so that was one of
7 the covenants made to me, contracts.

8 Q Returning again to the document entitled Agreements
9 that you signed, is it your testimony that you had
10 discussed that with Mr. Motherwell, your counselor,
11 before the meetings began?

12 A I'll need to read it. (Perusing)

13 Q Did he talk to you about signing this agreement and

1 be giving up the protection that prohibited you from
2 being removed as the chairman of the Board of Senior
3 Elders?

4 A He said just the opposite.

5 Q Or the protection you had from being removed from your
6 position as president of the corporation?

7 A No, that was never discussed.

8 Q Or the protection that you enjoyed with regard to
9 being notified and being present at any board
10 meetings, senior elder meetings, that might occur?

11 A This was the only grievance between Jerry and I.

12 Q Did he talk to you at all about if you signed this
13 agreement you would be giving up your protection from
14 being removed as pastor of the church?

15 A No.

16 Q Did he suggest that if you signed this agreement you
17 would be giving up the protection or the right that
18 you had for final approval of any disfellowship?

19 A No.

20 Q He didn't say that if we enter into this agreement or
21 if you sign this agreement you'll no longer have the
22 right to final disapproval or final approval of any
23 disfellowship?

24 A No.

25 Q Any of the other protections that you enjoyed under

1 the bylaws as they existed in early 1988, Exhibit
2 Number 10, protections from being removed from any of
3 those positions, did any discussion occur whatsoever
4 between you and Mr. Motherwell with regard to your
5 giving up those protections?

6 A Nothing was said about me giving, me giving up any
7 protection. He said the elders admitted they had no
8 authority to discipline or do anything, they were only
9 there to counsel and help mediate between the
10 grievances of Jerry Zwack and myself.

11 Q Did you and Mr. Motherwell discuss the possibility
12 that these hearings or meetings might proceed to some
13 direction where you would be disciplined in some way?

14 A No, he said that it would not lead to discipline.

15 Q Did Mr. Motherwell and you discuss anything at all
16 with regard to whether or not if you signed the
17 agreement you would be agreeing to allow the elders or
18 the senior elders or Mr. Motherwell to discipline you
19 in any way?

20 A No.

21 Q When you and Mr. Motherwell were discussing this, the
22 meetings and this agreement that you ultimately
23 signed, did Mr. Motherwell and you ever discuss the
24 possibility that you might be disfellowshipped?

25 A No, he assured me that they had no authority, or

1 teeth. That was not the intent. They were there,
2 only there to counsel and try to help.

3 Q Let me ask you if Mr. Motherwell and you discussed
4 these meetings and this agreement, and if he had said
5 or you believed that if you agreed to the meetings and
6 if you signed this agreement, that you might be giving
7 to the elders or the senior elders or Mr. Motherwell
8 the right to disfellowship you, would you have signed
9 the agreement?

10 MR. ROHAN: Objection. Calls for
11 speculation.

12 THE COURT: Yes, that is speculative.

13 MR. JOHNSON: Your Honor, it's Mr. Rohan's
14 position that that was what occurred, that Pastor
15 Barnett signed the agreement, and by doing so gave up
16 rights that he had, and I'm simply saying if he had
17 known he was, or asking if he had known he was going
18 to give up these rights, would he have done so. It's
19 relevant to --

20 THE COURT: All right, you may ask that.

21 A I hate to say it this way, but I'm not that stupid. I
22 would not sign anything giving up my pastoral rights
23 or any protections.

24 Q Would you have given up your right, your protection
25 from being removed from your corporate positions as

1 into, I would not stop these meetings, use my
2 authority to stop these meetings on that particular
3 subject, with those particular provisions.

4 Q Did you ever agree to give the elders the right to
5 take any action as a result of these meetings?

6 A No, only -- it depends what you mean by actions. I
7 allowed them to take actions of counseling.

8 Q Actions of counseling?

9 A Not discipline or removal or disfellowship.

10 Q If you had thought that the purport of this agreement,
11 or the effect of this agreement was to give them that
12 right, to take actions beyond actions of counseling or
13 mediation, would you have signed the agreement?

14 A Absolutely not.

15 Q When you began the meetings did, I think you indicated
16 Russ McKenzie was acting as the moderator, and he made
17 some statements?

18 A Yes.

19 Q Was it your understanding that the meetings or
20 hearings were going to be divided into different
21 phases?

22 A Yes.

23 Q What was the first phase going to be, as you
24 understood it?

25 A Jerry Zwack was going to get an opportunity to state

1 his three grievances.

2 Q What was the second -- well, were you also going to be
3 given a right to state your grievances or state your
4 position?

5 A Yes, I had a right to explain my views.

6 Q Was that part of this first phase, as well?

7 A I suppose you could call it first phase. I don't know
8 whether that's the second phase, my rebuttal is the
9 first phase or the second phase, but I was to follow
10 what he did.

11 Q When information or evidence was presented to the
12 elders that were going to be attending these hearings,
13 were you to be present?

14 A Yes, at all times. That was part of the stipulation.

15 Q Was Jerry Zwack to be present?

16 A Yes, that also was part of the stipulation.

17 Q Was it your understanding that any evidence would be
18 given to any of the elders during a period of time
19 when you were not present?

20 A No, absolutely not.

21 Q Was it your understanding there would be any
22 information presented to the elders that you would not
23 be aware of?

24 A No, all information given had to be in the presence of
25 both Jerry and myself.

1 Q Was it your understanding that the hearings would be
2 kept confidential?

3 A Yes, nothing in that meeting was to ever leave that
4 room. That was the stipulation, one of the
5 stipulations upon which I agreed for the meeting.

6 Q Was that specifically stated to you orally by someone?

7 A Yes.

8 Q By who?

9 A Russ McKenzie. It was a covenant made before God to
10 me, and he used the word "we", meaning for the entire
11 group.

12 Q What about notes of the meetings?

A It was stated in the agreement that all notes taken

1 A Russ McKenzie said, Don, we promise you before God
2 that no accusation made against you will be accepted
3 as fact, unless you admit to it, or there are two or
4 three witnesses, which is a biblical requirement.
5 Q That has a biblical basis?
6 A It has a Old Testament and New Testament basis.
7 Q When Mr. McKenzie was speaking, did Mr. McKenzie
8 indicate at all, or did anyone else present indicate
9 at all, in any way whatsoever, that by signing the
10 agreement or by participating in the meetings or the
11 hearings, you would be subjecting or agreeing to
12 subject yourself to any sort of discipline?
13 A No one at any time said anything remotely like that,
14 or that at all.
15 Q Did anyone say anything with regard to, along the
16 lines that if you agree to participate in this
17 meeting, or if you agree to sign this agreement, you
18 will be giving up protections that you have under the
19 bylaws?
20 A No one said anything about that at all.
21 Q Were the other senior elders present at this meeting
22 where Russell McKenzie first spoke?
23 A Yes, all the senior elders were there.
24 Q Who all were the people that were present in that
25 room, can you name them?

1 A By name or by title, position, by the name?
2 Q Name them by name, if you could.
3 A Senior Elder Jack DuBois, Senior Elder Jack Hicks,
4 Senior Elder Scott Hartley, Elder Russell McKenzie,
5 Elder Gerald Slaminski, Elder George Bowker, Elder Don
6 Lockrem, Elder -- just give me a moment.
7 Q Lanny Peterson?
8 A Elder Lanny Peterson, Elder Greg Thiel. There was
9 Counselor John Bergin, counselor, counseling center
10 manager, submanager, at least, Chris Matthews and
11 Counselor David Motherwell and --
12 Q Was John Harold one of the elders?
13 A Elder John Harold.
14 Q I'm not sure. I think you have mentioned them all
15 there.
16 A All the elders were there, all the senior elders were
17 there, and three people from the counseling center
18 that were not elders.
19 Q Did any of the people that you have named -- oh, let
20 me just back up.
21 I take it Jerry Zwack was there as well?
22 A Yes, Jerry Zwack was there.
23 Q Did any of those people ever say anything about
24 disfellowshipping you at the time when the hearing
25 started?

1 A No.

2 Q Did anybody tell you that if you agreed to these
3 meetings, that if you signed this agreement, that you
4 would be subjecting yourself to the possibility of
5 being disfellowshipped?

6 A Nothing was ever said. No such mentality was
7 exhibited at all.

8 Q Any suggestion about subjecting yourself to the
9 possibility of being disciplined in any way?

10 A No.

11 Q Any discussion about the possibility of you giving up
12 any of your rights under the bylaws, any of the
13 protections you had under the bylaws?

14 A No.

15 Q Did the senior elders say anything at all about this
16 action, modifying or changing the bylaws in any way?
17 By "this action", I mean your signing this agreement.

18 A No.

19 Q Exhibit Number 15?

20 A Nothing was said like that at all.

21 Q Did you and the senior elders meet before these
22 hearings began, to discuss the hearings?

23 A No.

24 Q Did you and the senior elders ever meet and discuss
25 Exhibit Number 15 before the hearings began? That's

1 the agreement.

2 A No.

3 Q If anybody at the hearings had suggested to you that
4 you, by agreeing to the hearings, by signing this
5 agreement, were going to enter into a situation where
6 you were allowing someone the power to disfellowship
7 you from the church you had founded, would you have
8 agreed to participate in the hearings or to sign
9 Exhibit Number 15?

10 A I would not have agreed to participate or to sign an
11 agreement.

12 Q If anybody had suggested by signing agreement Number
13 15 and participating in the hearings you would be
14 modifying, in any way whatsoever, the protections that
15 you enjoyed under the bylaws, would you have
16 participated in the hearings, or signed the agreement,
17 Exhibit Number 15?

18 A Definitely not.

19 Q If you had known that the specific information that
20 you gave to the people there, or a general description
21 of the kinds of things that you were going to tell
22 them, if you were honest, was going to be made public
23 to the members of your congregation, would you have
24 participated in the hearings?

25 A Absolutely not.

1 Q Would you have signed the agreement?
2 A No.
3 Q When you were discussing with Mr. McKenzie or Mr.
4 Motherwell or the others present there, the provision
5 that everything would be kept confidential, and so
6 forth, did they say anything with regard to --
7 withdraw that.
8 Were you told that it was necessary for you
9 to be honest, and because of that everything would be
10 confidential, would be kept confidential --
11 A Yes.
12 Q -- did you feel, as a result of the promise to you
13 that everything would be kept confidential between
14 you, Mr. Zwack and the rest of the elders and those
15 present, did you feel that because of that you could
16 be more open, more candid, more forthcoming with
17 regard to facts about yourself and your background?
18 A Yes, I did.
19 Q And your relationship with your wife?
20 A Yes.
21 Q Were a great number of the elders there, also
22 ministers?
23 A Yes.
24 Q In your church?
25 A Yes.

1 Q What was your purpose in agreeing to participate in
2 these meetings?

3 A I really loved Jerry, and he was bitter, extremely
4 bitter, and I was hoping that we could prove to him
5 that I had substantial reasons to alter that bible
6 college class, and I had not put him out, in fact.

7 We had witnesses that could testify that I
8 was very reluctant to let Jack Hicks put him out. It
9 was only Jack Hicks convincing me that it was the
10 right thing to do, from a corporate standpoint, that I
11 finally allowed him to put Jerry out.

12 I thought we could also convince him that I
13 hadn't been doing sexual things and other problems
14 with women in the last number of months. He didn't
15 have anything to try to, my wife to be concerned
16 about, and so I thought it would maybe heal the rift
17 between he and I.

18 Q When the hearings began, did Mr. Zwack first address
19 those people present, after Mr. McKenzie had stated
20 his sort of preamble or introductory?

21 A I don't know what you mean by that.

22 Q Did he state his case?

23 A He made accusations against me.

24 Q How long did that go on, do you recall?

25 A It went on two afternoons, for a total of nine hours.

1 Q Following that did you also talk to the elders?
2 A I need to say, if I can, that we never did get on the
3 subject of the meeting. It was a change at the very
4 beginning.
5 Q Without going into what was discussed at the meetings,
6 did you, after he talked, did you talk to the elders?
7 A Yes.
8 Q How long, if you can recall, did you talk, do you have
9 an estimate?
10 A Well, I'm not sure. My memory is, my recall was that
11 I spent one afternoon, about four hours. Later I read
12 it was maybe three days, that I talked three
13 afternoons, which would be 12, so I'm not certain now
14 whether my recall is correct.
15 THE COURT: I didn't hear that. You're not
16 certain what?
17 THE WITNESS: Whether my recall was correct.
18 See, I only remember four hours.
19 Q But it may have been more?
20 A It may have been more.
21 Q After you spoke, did Mr. Zwack then speak again for a
22 short period of time?
23 A Yes, I think for a fairly short period of time, he
24 did.
25 Q Then did you speak in rebuttal to Mr. Zwack?

1 A Yes.

2 Q Did you complete your rebuttal with regard to Mr.
3 Zwack?

4 A Yes.

5 Q Did there come some point in time where no more
6 evidence was taken from either you or Mr. Zwack?

7 A Yes.

8 Q Was it your understanding that the evidence was closed
9 at that point in time, that that phase was completed?

10 A Well, it was my understanding that we needed then to
11 go into cross-examination and then discussion next, on
12 what was brought, because all that was brought was
13 accusations, rebuttal. There was no facts
14 established.

15 The next phase was to have cross-examination
16 and discussion and see, to come up with facts before
17 there was any deliberations.

18 Q Was it your understanding that at some point there'd
19 be an effort made by the state to ...

1 elders regarding restrictions on your daily
2 activities?

3 A Yes.

4 Q Do you remember about when that was?

5 A Well, I think it was February 15th, if my memory
6 serves me.

7 Q What were the sort of restrictions that they were
8 talking about?

9 A They wanted to restrict me from something that nobody
10 else in the church was restricted on; namely, I could
11 not be in the presence of any other woman alone, nor
12 could I be, and I'm not sure if the second thing, now,
13 was on paper or not, but I asked the question, I
14 remember, are you saying that if I'm on vacation and
15 there's other women involved, we're in a group, I
16 still can't be on vacation, and they said, yes, that's
17 right. So there were two restrictions, as I remember.

18 Q Did you agree with the restrictions that they
19 attempted to place on you?

20 A No.

21 Q Did you advise them that you did not agree?

22 A Yes.

23 Q Did they have the authority, under the bylaws, to
24 place those restrictions on you?

25 A No, absolutely not.

1 Q Had anyone ever suggested, since you started and
2 founded the Community Chapel, that the senior elders
3 at any point in your history had authority, under the
4 church documents, the church bylaws, to place
5 restrictions on your activities?
6 A They had no more authority to put restrictions on my
7 activities than the janitor did, which is none.
8 Q Did you grant the senior elders any authority, in your
9 mind, when you signed the January 25th agreement,
10 Exhibit Number 15?
11 A Let me have that question again.
12 Q When you signed Exhibit Number 15, was it your
13 understanding that you were granting to the senior
14 elders the authority to place any restrictions upon
15 you?
16 A No.
17 Q Did you let the senior elders know --
18 A Yes.
19 Q -- what your views were?
20 A Absolutely.
21 Q What did you tell them?
22 A I gave them 14 reasons why I would not abide by the
23 restrictions.
24 Q After you got this letter, did you ever meet again
25 with the elders, was there ever another hearing where

1 you and Jerry were to meet with the elders again, for
2 more evidence or cross-examination or mediation?

3 A No. Well, I should say they agreed, they agreed at
4 one point later to have another meeting, but they
5 didn't show up for the meeting. They never had the
6 meeting. There was no more meetings.

7 Q I'm talking about meetings where you and Jerry were
8 together, where there was going to be some effort to
9 mediate between the two of you.

10 A Were there any?

11 Q Were there any other meetings where you and Jerry were
12 present with the elders, where they attempted to
13 counsel or mediate between the two of you?

14 A No, there were no more meetings.

15 Q Were there any meetings between you and Jerry where
16 there was any cross-examination or any more discussion
17 of the evidence?

18 A No.

19 Q Did there come a time in late February when you were
20 required to leave Seattle and travel to Montana?

21 A Yes.

22 Q Do you remember what day that was?

23 A February 26th, 1988.

24 Q What was your purpose in traveling to Montana?

25 A To help the satellite church there, that was going

1 through some problems.

2 Q How did you travel, by car or by plane?

3 A By plane.

4 Q What day of the week was this on the 26th?

5 A That was on Friday. I left Friday morning and came
6 back Saturday night.

7 Q When you came back Saturday night did you discover
8 that anything had happened while you were gone, at the
9 Community Chapel?

10 A I found out that the eldership had got up, broken
11 their covenant and smeared me in front of my
12 congregation.

13 Q Did these things that you were told about the elders
14 doing, breach, in your mind, the promises that had
15 than made to you by Russell McKenzie, when the
16 hearings began?

17 A Definitely.

18 Q When the hearings began I believe you indicated that

1 Q Did you respond in some way to what the elders had
2 done?

3 A Yes, I got up the next Sunday morning, on February the
4 28th, and rebutted the mischaracterizations, lies.

5 Q I believe Mr. Shapiro referred to your sermon that
6 morning as a blistering sort of sermon. Is that a
7 fair characterization?

8 A No, totally false characterization.

9 Q What did you say?

10 A Well, I opened by saying that, something to the
11 effect, I believe, if my memory serves me correctly,
12 that I wanted to be honest, and that I hated exposing
13 the eldership's hypocrisy, and what they did, and so
14 forth. I talked with an even voice.

15 There may have been a little bit of
16 invectiveness, as I am wont to do, to use an old
17 English term, in my messages, but it was certainly
18 nothing harsh, blistering, nothing of that sort.
19 That's not my style. I didn't do that.

20 Q Did you discuss with the members of the congregation
21 some of the allegations and some of the things that
22 you had said in the hearings?

23 A I don't think I mentioned anything I said in the
24 hearings.

25 Q Did you mention some of the allegations from the

1 hearings?

2 A My memory isn't real good on this, but what I did was
3 I took statements that they made in mischaracterizing
4 or lying against me.

5 Q When you say "statements" they made, are you referring
6 to statements that they had made the previous Friday
7 night, the 26th?

8 A Yes.

9 Q Let me ask you, as an interjection here, how did you
10 find out what had been said in the Friday, February
11 26th service, when the elders made these revelations
12 to the church?

13 A Well, all the services are taped, and somebody gave me
14 the tape of what they got.

15 Q So you listened, in fact, to what they had said?

16 A Yes. I listened to it late Saturday night, and I took
17 notes, and come Sunday morning, with a heavy heart, I
18 rebutted those statements.

19 Q Did you attempt, during your address to your
20 congregation, your flock that morning, to get some
21 gauge for what the degree of support was among your
22 congregation, and if so, how did you do that?

23 A Yes. Well, first of all, I mean I felt the support as
24 I walked in.

25 Q What happened when you walked in?

1 A Well, when I mounted the, when I came into the door to
2 mount the platform, there was a standing ovation. We
3 had a full house. Everybody stood and clapped and
4 clapped and clapped and clapped.

5 I was very touched and a little bit amazed,
6 because after they smeared me so badly, that everybody
7 stood and clapped and clapped and clapped. I thanked
8 them for that.

1 I said, They might be trying to find a way to
2 put me out, and on the basis of the bylaws, conflict,
3 if there is such a thing, with the articles.

4 I said, I want to know how many of you would
5 sign a petition stating that, if it comes to this,
6 that you would vote to remove all the senior elders
7 from their position, still keep them in the church,
8 but take them out of the senior eldership position, in
9 order to retain your pastor, and it looked like every
10 hand went up, you know estimated a couple thousand
11 there.

12 Then, I said how many would not sign such a
13 paper, and it looked like maybe somewhere in the
14 neighborhood of around 15 or so raised their hand, and
15 I said thank you, so I got that response.

16 I also got clapping two or three times during
17 responses near the end, and at the very end when I
18 talked about not giving any information to reporters
19 outside.

20 Q Was it your understanding that somebody in the church
21 had, in fact, told the press about the elders' address
22 to the congregation the previous Friday, when you were
23 gone?

24 A Yeah, somebody came out and told me that the press was
25 all outside waiting for us, when we came out the door,

1 to ask questions, and suggested I make a statement to
2 the congregation not to give them any information,
3 which I did.

4 Q After this, after this Sunday service did the elders
5 ever hold another meeting that following week where
6 you and Jerry Zwack were present, and they attempted
7 to do any mediating or healing of your relationship?

8 A No.

9 Q Did you make some attempt to talk to the senior
10 elders?

11 A Yes.

12 Q What did you do?

13 A I called Bonnie Martin in, who was the secretary to
14 Jack Hicks and myself, and I said Bonnie, I would like
15 to talk to Jack Hicks Thursday morning. I think it
16 was Thursday. I can't remember the exact day. It was
17 on March the 4th. I'd like to meet with Jack Hicks at
18 nine in the morning, Jack DuBois at 10 and Scott
19 Hartley at 11.

20 Q What date was it that you called Bonnie Martin, if you
21 recall?

22 A Probably on the third. It could have been the second.
23 I'm not sure.

24 Q This was to occur on March 4th?

25 A Yes.

1 Q If the 28th was a Sunday, and if this was a leap year,
2 can you tell me what date March 4th would have been,
3 would it have been a Thursday or Friday?
4 A The 28th was Sunday. The 29th --
5 MR. ROHAN: We'll stipulate that it was a
6 Friday.
7 MR. JOHNSON: Thank you.
8 Counsel has stipulated that March 4th was a
9 Friday.
10 A Yes; I do remember it was a Friday. I remember the
11 reason. It was definitely a Friday.
12 Q You asked Bonnie Martin to set up meetings with you
13 and Mr. Hartley and you and Mr. Hicks and you and Mr.
14 DuBois individually, on March 4th?
15 A Yes.
16 Q And you made that request of her possibly on the
17 second or third of March?
18 A Well, a day or two before.
19 Q Well, what, in fact, happened on Friday morning, March
20 4th?
21 A All three senior elders showed up at the same time at
22 my door.
23 Q You say at your "door". Was this at the parsonage?
24 A At the parsonage. I said, What are you doing all here
25 at the same time. I asked to speak to each one of you

1 separately.

2 Q Were you surprised to see them all together, then?

3 A Yes.

4 Q What happened?

5 A Well, --

6 Q Did you let them in?

7 A They said, Well, we want to talk to you together, and
8 so, semi-reluctantly, I let them in.

9 Q Where, in the parsonage did you go, did you stay in
10 the living room or --

11 A My living room, yes.

12 Q What happened then?

13 A Well, I announced that the reason I wanted to talk to
14 each one of them individually was I wanted to, if
15 possible, talk about the growing tension that was, I
16 could see between us, and I was hoping to be able to
17 heal their hearts.

18 I felt it was important at this point that we
19 not let things get worse and worse. If we're going to
20 remain in the same church, we had to love each other
21 and work together, and they were working under me,
22 that we needed to try to talk things over, and get
23 back on track.

24 Q You told them that was the reason you wanted to have a
25 meeting with them, individually?

1 A Yes.

2 Q Did someone of the three of them respond to that?

3 A No, nobody said a word.

4 Q So what happened?

5 A Well, I started in talking about the purpose of the
6 meeting and healing their hearts, and, I first of all,
7 I began to ask some questions after awhile, and I
8 said, I think maybe we were there for maybe, I don't
9 remember if it was an hour and a half or what, but I
10 talked for a healing, about the importance of healing
11 a heart, and scriptures, and so forth.

12 Nobody said anything but me during this time,
13 and then I said, Jack, have you been holding illegal
14 meetings, because I had ordered all of the staff, I
15 had learned that they had been having covert meetings,
16 and --

17 Q Who is "they" that you're referring to, you learned
18 who was having covert meetings?

19 A The eldership, all of the eldership. The senior
20 elders and all of the elders and the counselors, too,
21 were holding covert meetings, without my knowledge.

22 What they were doing is, see, each elder,
23 this isn't like a lot of churches. A lot of churches
24 an elder works at The Boeing Company, and he's just an
25 elder, but these are departmental elders. Each one is

1 over a particular department. He's over the music
2 ministry, he's over publications, he's an overseer
3 over this ministry and that ministry and this
4 ministry. Then also they have got departments under
5 them, typists and various people doing work.

6 Then others are ministerial elders. They
7 have bible classes to teach and prepare for, and all
8 of a sudden I learn that they're taking an ordinant
9 amount of time off their jobs, without any
10 authorization, getting paid for it, all having these
11 meetings, working covertly against the pastor.

12 I publicly announced and forbid any more
13 meetings on the job. I didn't forbid meetings off the
14 job.

15 Q Did you ask Jack Hicks about these meetings?

16 A I said, Jack, have you been holding illegal meetings,
17 and I didn't mean illegal in a legal-court sense, I
18 mean illegal to our bylaws, that's what I would call
19 them.

20 He said, I'm not going to answer that, and I
21 said, Well, why aren't you going to answer that, and
22 he said, Because I don't want to answer that.

23 I said, Well, Jack, if we're not going to
24 cooperate and try to get our hearts healed, I said, we
25 can't do any business here today. I said, you might

1 as well go home right now, if we can't work together
2 on this problem.

3 Q Now, when the three of them came in, did anybody bring
4 any papers with them?

5 A I didn't see any papers.

6 Q You say you sat in the living room. Does the living
7 room have chairs or a sofa or something like that?

1 A No.

2 Q Were you shown any documents by any person there?

3 MR. ROHAN: Objection, asked and answered.

4 THE COURT: He may answer that.

5 A I was shown no documents whatsoever.

6 Q Did the words "articles of incorporation" ever get

7 used by any person there?

8 A No.

9 Q Did the word "amendment" get stated by any person

10 there?

11 A No.

12 Q Was there a piece of blank paper placed on the coffee

13 table?

14 A No.

15 Q Did somebody attempt to call for some sort of a vote?

16 A No.

17 Q Did any of the people there say the words "do you"?

18 A Yes.

19 Q Who said that?

20 A Well, as soon as I said, Well, you know, you might as

21 well leave right now, if you're not going to cooperate

22 and get our hearts together, Jack Hicks grabbed a

23 piece of paper, stuck it out, and without saying what

24 it is, a single piece of paper said, "sign this".

25 Q Who did he say that to?

1 A To me, and he handed it to me, and I took it like
2 this, turned it over without looking at it, laid it on
3 my coffee table and I said, Jack, I'm in the middle --
4 oh, I take it back.

5 It wasn't, when he handed me that paper, I
6 misspoke, I have to correct something. When he handed
7 me that paper it was not at the end, when I said you
8 might as well leave, it was before that. It was about
9 maybe 10, 15 minutes before that.

10 He handed me this paper. All of a sudden he
11 interrupted my talk and said "sign this". I took it,
12 laid it on the coffee table, and I said, Jack, I'm in
13 the middle of talking to you. I said, You can't
14 introduce something in the middle of what I have
15 introduced.

16 I said I'm the chairman. I didn't say I was
17 the chairman, I said I'm the pastor, and I have called
18 you here to discuss healing your hearts, and nothing
19 else is going to be introduced in the middle until I'm
20 done.

21 He didn't say anything, and I continued, and
22 then when I asked him if he had been holding any
23 covert meetings and he refused to answer, and I said,
24 Well, Jack if you're not going to cooperate, you might
25 as well leave the house right now. We're not going to

1 get anyplace, if you're not going to cooperate.

2 He then turned to Scott Hartley and said "do
3 you", he didn't say do you what, and Scott said "yes",
4 and he turned to Jack DuBois and he said, "do you",
5 and he said "yes" and, he might have said, I don't
6 remember, I do, too, and he got up.

7 I saw him look at his watch just before he
8 did that, like he was concerned about time, and they
9 all got up and walked out the door.

10 Then I took the piece of paper off the coffee
11 table and looked at it after they left. It didn't say
12 what it was, but there were four signature lines, and
13 typed underneath them were the names Scott Hartley,
14 Jack DuBois, Jack Hicks and Don Barnett. The three
15 senior elders had all signed their blanks, and there
16 was a blank for me to sign, but it didn't say what it
17 was for or anything.

18 Q Did Mr. Hicks say anything to you before they left, or
19 at any time while they were there, about the
20 possibility that they might meet again, later that
21 day?

22 A No.

23 Q Did either of the other two, Mr. Hartley and Mr.
24 DuBois, say anything to you about meeting possibly
25 later that day?

1 A No.

2 Q Did you give them permission, while they were there,
3 or at any other time subsequent to that, give them
4 permission to hold another meeting?

5 A No.

6 Q Did you specifically, or by anything you did, by
7 implication in your mind, give them permission to do
8 whatever they were attempting to do when Mr. Hicks
9 said "do you", "do you", as part of the morning
10 meeting?

11 A I didn't give them, if I understand question, I didn't
12 give them any authorization to do anything. I could
13 see it was some code thing they had worked up ahead of
14 time for something, but they didn't say what it was.

15 Q What did you do when they left the parsonage?

16 A I can't remember until, I remember later I got a piece
17 of paper I think from David Motherwell. I believe,

1 came to me and said, Don, I learned that the senior
2 elders, or the elders as the case may be, senior
3 elders, I guess, are going to try to prevent you from
4 entering the sanctuary this evening.

5 I also remember that, my impression, I
6 remember that that afternoon, later sometime, I think,
7 I got a piece of paper saying that I was
8 disfellowshipped.

9 Q On that day, March 4th, which you said was a Friday --
10 first, what time of day was it when they came to your
11 house, in the morning or the afternoon?

12 A Who's "they"?

13 Q The three senior elders.

14 A They came in the morning at, I think, 9:00.

15 Q Was it before noon when they left?

16 A I think maybe it was 11 something.

17 Q When they left, after they left, sometime that day,
18 did you make an effort to contact an attorney?

19 A Yes. When I learned that they were going to try to
20 bar me from my own church, I went through the phone
21 book, and I looked for a block that said corporate
22 attorney, and found Rod Pierce's name.

23 I gave him a call, and he had time for me,
24 and I rushed down to his office with my bylaws in my
25 hand, told him what had happened, and attempted to go

1 up before the magistrate with a restraining order to
2 prevent them from stopping me from entering my
3 congregation that night.

4 Q Did you meet with Mr. Pierce in his office?
5 A Yes.

6 Q While you were there did Mr. Pierce phone the church
7 attorney, Jim Leach?
8 A Yes, but I disagree with the characterization that it
9 was the church attorney, legally.

10 Q Well, an attorney who had done some work for the
11 senior elders or the church.
12 A Well, for the senior elders, not the church.

13 Q What was the result of that phone conversation with
14 Mr. Leach?
15 MR. ROHAN: Your Honor, I'm going to object
16 if he's asking for anything that --
17 THE COURT: I don't understand the question.
18 You may ask him what happened, but not what he knows
19 or saw.

20 Q Did you hear Mr. Pierce talk to Mr. Leach?
21 A Yes.

22 Q You heard Mr. Pierce's side of the phone conversation?
23 A Yes.

24 Q Did he ask Mr. Leach to meet him over at court?
25 A Yes.

1 MR. ROHAN: Objection, hearsay.

2 THE COURT: He can answer.

3 MR. ROHAN: Your Honor, this may make Mr.
4 Pierce a witness in this case, if they choose to go
5 down this route, which may prove to be very difficult.

6 THE COURT: Really, I think we're getting
7 kind of to a point where it isn't strictly your case
8 in chief, is it?

9 MR. JOHNSON: Well, you know, I can proceed
10 on, without going through what Mr. Pierce said.

11 THE COURT: Well, or what was done, for that
12 matter.

13 MR. JOHNSON: Well, I think it is part of our
14 case, in terms of explaining --

15 THE COURT: In what fashion? I'm not trying
16 to rebut it. I'm just trying to put it in focus for
17 me, because the issue, as I see it, is whether or not
18 they had a right to do what they did, and what
19 happened later is --

20 MR. JOHNSON: Well, if there's nothing that
21 happened after lunch time on March 4th, 1988, and if
22 Counsel will stipulate to that, I'll restrict and stop
23 questioning this witness.

24 THE COURT: You will have a chance, if that
25 becomes relevant in some fashion, to pursue it.

1 MR. JOHNSON: Well, I think, Your Honor, when
2 Counsel, I think Counsel's position is that things
3 that happened later that day were of significance.

4 THE COURT: I think your counsel feels that
5 way, but I'm not sure that Mr. Rohan does.

6 MR. JOHNSON: Well, maybe you're right.
7 Perhaps I have mischaracterized Mr. Rohan's case. If
8 nothing that happened after --

9 THE COURT: I'm not sure that that's the
10 situation.

11 MR. JOHNSON: Maybe Mr. Rohan can help us
12 out.

13 THE COURT: What Mr. Pierce did, what Judge
14 Bates did, all these other things, sort of answered
15 some questions, as far as I was concerned, but they
16 weren't questions that related to the issues before
17 me.

18 MR. JOHNSON: Well, Your Honor, later that
19 evening, okay, that evening, papers were delivered to
20 Mr., to Pastor Barnett, papers that I believe they
21 will say were executed that afternoon.

22 I'm just attempting to sort of set the scene
23 or the events of the day, so the pastor can testify as
24 to what happened that afternoon or that evening.

25 THE COURT: Let me explain where we are. Not

1

only has the Supreme Court said, but I have also

1 THE COURT: To that extent you can, because I
2 think they do claim they disfellowshipped him, and
3 here again, I'm referring back to the opening
4 statement.

5 Q (By Mr. Johnson) That evening, later that day, did
6 you return to the parsonage?

7 A From Pierce's office and the magistrate's office, yes.

8 Q At some point after you returned did you learn that
9 the senior elders were taking the position that you
10 were disfellowshipped?

11 A Yes.

12 Q How did you learn that, did somebody call you, speak
13 to you or write you a note?

14 A When I was gone down to court, when I came back I
15 found papers on my desk, somebody had entered my
16 house, come into my house, laid them on my desk,
17 unlocked my door and come in locked it again, and
18 left, and the papers said that they had
19 disfellowshipped me.

20 MR. JOHNSON: This might be a convenient time
21 to break. My watch says exactly 12 o'clock.

22 THE COURT: Now, I have expressed myself
23 about the matters that occurred subsequent to March
24 4th.

25 I don't know whether Counsel both feel that

1 they are relevant, and that they should be gone into
2 or not. If they do, I would like you to consider it
3 over the noon hour, and if you do come forward with a
4 reason why on the basis of this case it is relevant,
5 then I'll hear you, both of you.

6 MR. JOHNSON: Thank you, Your Honor.

7 MR. ROHAN: Thank you.

8 THE COURT: We'll be at recess until 1:15
9 p.m..

10 (A lunch break was taken.)

11 THE COURT: Has anybody patched up our order
12 of reference yet?

13 MR. WIGGINS: Your Honor, we signed it. I
14 gave it to one of the attorneys in our office and he
15 was to enter it today, and when that's done I will
16 give you conformed copies.

17 THE COURT: Had either of you an exception to
18 my ruling with respect to post-March 4th matters,
19 specifically dealing with legal chronology?

20 MR. JOHNSON: Well, I don't guess I have,
21 Your Honor, any strong exception to take, if it's
22 limited to what happened in the legal proceedings in
23 court. I mean the record of the court proceedings is
24 what it is. I do think there are facts that occurred
25 post --

1 THE COURT: If they relate to intentions or
2 meanings or significances of items that occurred
3 prior, I can imagine that they might, but just
4 generally speaking, I don't see where they're
5 relevant.

6 Moreover, if they become relevant in some
7 fashion, we can go back and take testimony or do
8 whatever has to be done to protect the rights of
9 people.

10 MR. JOHNSON: Well, Your Honor, let me first
11 say that there is a version of the bylaws of this
12 church that was executed a month after the lawsuit was
13 signed. It was executed by the parties to this
14 lawsuit, and that, I believe, is part of our case.

15 THE COURT: It could be.

16 MR. JOHNSON: It's part of our affirmative
17 defense, among other things, and part of our case.

18 THE COURT: That might be affected or it
19 might be relevant to determine how that came about,
20 and that may draw into the sphere of relevancy, things
21 that happened in court.

22 MR. JOHNSON: There's one other thing, Your
23 Honor, that I think is relevant, things that happened
24 after March 4th, and I'll explain what I mean.

25 The bylaws in effect on March 4th, that the

1 defendants attempted to modify and which the Supreme
2 Court says that attempt was ineffectual. Those same
3 bylaws said the original, well, said that future
4 pastors, in referring to an effort to remove them,
5 that they could be, you know, a vote had to be put to
6 the congregation.

7 In other words, a future pastor, not the
8 original pastor, with all the protections, but a
9 future pastor, if they wanted to remove him for one
10 reason or another, could do so, if there were two-
11 thirds of the senior elders that voted in that
12 fashion, and if a majority of the congregation voted
13 to --

14 THE COURT: And he's given some time.

15 MR. JOHNSON: And he's given some time ahead
16 of time to talk to the congregation.

17 THE COURT: Well, what does that mean?

18 MR. JOHNSON: Well, there was no vote, other
19 than the informal vote that the witness has already
20 referred to, that occurred on the 28th, where he says,
21 you know, if it comes to it, me or the senior elders,
22 who's with me and who's with them, and it was his
23 testimony that the majority of people there, the vast
24 majority voted to support him, but there was no
25 official vote, at least not in the testimony so far.

1 I would ask the witness, among other things,
2 whether or not subsequent to this there was ever a
3 vote taken at a general meeting of the church.

4 I would also like to ask the witness some
5 things with regard to the people that continue to
6 follow him, to show the degree of support he had, so
7 that it is demonstrated, to our way of thinking, or at
8 least we would like to try to demonstrate that the
9 outcome of the vote may well have been that there was
10 a continued broad spectrum of support for him in the
11 church, and I think that's what we have a right to
12 prove, relative to that provision. You have the
13 bylaws that were in effect on March 4th.

14 MR. ROHAN: Your Honor, I think that first of
15 all the bylaws state, and the pastor is fond of
16 quoting the bylaws, the bylaws state that a subsequent
17 pastor, you take a vote. Pastor Barnett admitted he's
18 not a subsequent pastor, he's the original pastor.

19 Secondly, Mr. Johnson just admitted that it
20 was an informal vote, it wasn't a formal vote. I
21 don't think anybody counted exactly how many votes
22 there were. He said 15, he said 13, before he said
23 other numbers.

24 Thirdly, whether people were attending the

1 side, I think is totally irrelevant.

2 What is relevant is what happened when he was
3 disfellowshipped, and there are certain things,
4 possibly statements by the parties that happened
5 afterwards, that are, admissions against interest is
6 one thing, but the fact that all these people or no
7 people were in one service or another, I don't think
8 is relevant to any of this.

9 I think it's going to drag in a lot of
10 extraneous issues, and then we're going to be bringing
11 in people from the congregation talking about this and
12 that.

13 THE COURT: I can see at this point a
14 relevancy on the question, and I'm not saying that
15 there is a standing question, but if there is a
16 standing question, I think he's entitled to make a
17 showing on it, standing in this lawsuit.

18 MR. ROHAN: Oh, you mean for the April
19 provisions?

20 THE COURT: Yes.

21 MR. JOHNSON: Am I entitled to inquire into
22 the fact of support from the church subsequent, and
23 the fact that there was no vote taken; in other words,
24 that --

25 THE COURT: The fact there was no vote taken

1 you can ask him that question if there was, if he's
2 aware of any vote taken.

3 MR. JOHNSON: Okay. I guess where I'm going,
4 Your Honor, and I won't belabor this point, but it
5 seems to me that I can hear Mr. Rohan at some point
6 arguing that he has waived the full panoply of
7 protections the bylaws gave him, and that he's now no
8 better than any other pastor.

9 My point is, even if he was no better than
10 any other pastor, had no more protections than any
11 subsequent pastor, that I could envision, and I'm not
12 suggesting for a second we agree that there has been a
13 nickel's worth of anything waived by the pastor with
14 reference to the protections in the '86 bylaws, but
15 were the Court to say that, well, perhaps that
16 agreement he signed might have had that effect, to
17 some degree or another, and then reach the conclusion,
18 and therefore, at least in some ways he's similar to a
19 subsequent pastor, he doesn't have the special
20 provision that he had before, then it would seem to me
21 that the issue of the degree of support that he had --

22 THE COURT: I think he has already shown
23 that. I don't know what further you're going to ask
24 him, just except to repeat what he has already said.

25 MR. JOHNSON: My co-counsel and I were

1 talking about this. We spent some time going through
2 with our client ahead of time his testimony, and we're
3 trying to remember now when did we go through that,
4 and I don't remember.

5 THE COURT: You said when you asked him how
6 many would vote to oust the present board of elders.

7 MR. JOHNSON: What we would offer to
8 demonstrate, also, Your Honor, is not only did some
9 people take the easy step of then putting up their
10 hand, but that a large number of people have followed
11 him and have committed to him, even in the difficult
12 circumstances that ultimately he was required to go
13 through, that his church is laboring under now, and
14 that those people are people that were members of the
15 congregation there on that day, on the 4th of --

16 THE COURT: I don't see that. You're right.
17 I have just injected this to try to shorten the
18 process, but it seems like we have gotten into --

19 MR. JOHNSON: I won't belabor that, Your
20 Honor.

21 THE COURT: Let's get to the April amendments
22 and what, if any, court proceedings might be relevant
23 to what happened then on April 22nd, or whatever it
24 was.

25 MR. JOHNSON: I don't think there were any

1 court proceedings that occurred relative to those
2 April bylaws, in fairness.

3 THE COURT: Well, there was an injection that
4 neither party should do it to change the position of
5 the other. Now, when was that?

6 MR. JOHNSON: There were --

7 MR. ROHAN: That was in March.

8 MR. JOHNSON: -- a series of three
9 restraining orders in March.

10 THE COURT: I think that is significant.

11 MR. JOHNSON: There was another court hearing
12 with regard to the restraining order subsequently.

13 THE COURT: In which they found contempt?

14 MR. JOHNSON: Yes.

15 THE COURT: That was in --

16 MR. JOHNSON: June, I believe, and then there
17 was Judge Burdell's ruling with regard to the --

18 THE COURT: Well, that's neither here nor
19 there.

20 MR. JOHNSON: Well, except that it was
21 determined by the one judge that that lawsuit that
22 they filed was one of the acts of contempt, filing the
23 lawsuit to dissolve the corporation.

24 THE COURT: Well, the contempt that Burdell
25 found had to do with dissolving the corporation.

1 MR. ROHAN: Which doesn't have anything to
2 whether the April bylaws are good or not good.

3 MR. JOHNSON: What happened, the temporary
4 restraining orders were filed in this litigation, and
5 then a number of things occurred, which were later
6 argued by Pastor Barnett's attorneys to be acts of
7 contempt.

8 One of those acts was the filing of the
9 dissolution lawsuit. It was argued that merely filing
10 that lawsuit, trying to dissolve the corporation, was
11 an act of contempt, and that was a contempt proceeding
12 in this lawsuit that said filing the other lawsuit was
13 one of the acts of contempt, and Judge Wartnick said,
14 you're right, it was an act of contempt for the judge
15 to file that lawsuit, and in Judge Wartnick's ruling
16 on that, his order of contempt, he delayed imposing
17 some sanctions until Judge Burdell had ruled, and then
18 imposed sanctions subsequently, after Judge Burdell
19 ruled.

20 THE COURT: Well, none of this seems to me to
21 be anything that I should consider or take any action
22 on.

23 MR. JOHNSON: Your Honor, I'm just seeking
24 guidance as to what of the contempt or the --

25 THE COURT: The injunction and whatever

1 happened here on --

2 MR. JOHNSON: April -- okay.

3 THE COURT: Now, what say you, Mr. Rohan?

4 MR. ROHAN: Yes, there were numerous
5 incidents where Pastor Barnett, we believe, violated
6 the court's injunction. I don't think any of it is
7 relevant. I think the injunction is certainly
8 relevant. I don't think the April things are
9 relevant, but we'll get to that when we get to that.

10 THE COURT: All right, let's go.

11 MR. JOHNSON: May I ask whether or not after
12 March 4th any vote was taken?

13 THE COURT: Yes.

14 DIRECT EXAMINATION (continuing)

15 BY MR. JOHNSON:

16 Q Pastor Barnett, were you ever given an opportunity to
17 address a combined, well, the membership of your

1 entered?

2 A The one by Rodney Pierce?

3 Q Yes.

4 A No.

5 Q Well, that was on March 4th, right?

6 A The one on March 4th, the one on March 4th was done in
7 front of a commissioner, and he declined and was going
8 to let the court, the judge, the next week, Judge
9 Bates, decide the issue.

10 Q Did Judge Bates decide the issue?

11 A Judge Bates did approve the restraining order, yes.

12 Q Subsequently, the following week, there was another
13 restraining order that restrained not just the senior
14 elders, but you, as well; is that correct?

15 A I think there were two restraining orders, one that
16 restrained us and one that restrained them.

17 Q Following that, in early April, did there come a time
18 when you were presented with a proposed new set of
19 bylaws?

20 A Yes.

21 Q And I would direct your attention to what has been

1 pages from the end, that's page 36 of the document,
2 and indicate, after doing so, if you can identify the
3 document.

4 A It's a ratification of the Articles of Faith and
5 Bylaws of Community Chapel and Bible Training Center
6 dated 4/6/88, signed by Donald L. Barnett, Scott
7 Hartley and Jack DuBois.

8 Q Would you turn to page one of the document and
9 identify what the document itself is, or purports to
10 be.

11 A Articles of Faith and Bylaws of Community Chapel and
12 Bible Training Center, revision of April 6th, 1988.

13 Q Now, did you receive this document at some time in
14 late March or early April 1988?

15 A Yes.

16 Q Do you recall who you received this from?

17 A I believe it came in the mail from the publications
18 department, from Brenda Erickson, specifically, who is
19 the secretary there.

20 Q When it came to you, did it have any signatures on it?

21 A No.

22 Q Did you review the document in its entirety?

23 A Yes.

24 Q Did the document -- well, did you subsequently sign
25 the document?

1 A Yes.
2 Q Did you subsequently see a copy or the original
3 indicating that it had been signed by Defendant Scott
4 Hartley and Defendant Jack DuBois?

5 A I did.

6 Q On April 6th, 1988, who consisted, what did the Board
7 of Senior Elders consist of at Community Chapel and
8 Bible Training Center?

9 A Scott Hartley, Jack DuBois and Donald Barnett.

10 Q What had happened to Jack Hicks by this point in time?

11 A He had resigned.

12 MR. JOHNSON: I would offer Exhibit 11, Your
13 Honor.

14 MR. ROHAN: May I voir dire?

15 THE COURT: Yes.

16 VOIR DIRE

17 BY MR. ROHAN:

18 Q Pastor Barnett, from the time that you started
19 Community Chapel and you had bylaws, you regarded
20 bylaws as a fairly important part of your church; is

1 A We had a lawyer in our congregation that helped me
2 draft them up.

3 Q You had regular meetings of the Board of Directors of
4 Community Chapel prior to 1987, prior to and including
5 1987?

6 A Yes.

7 Q At some of those meetings you discussed amending the
8 bylaws?

9 A From time to time, you mean?

10 Q Yes.

11 A Yes.

12 Q In fact, you never approved, the only times that you
13 ever approved any amendments to the bylaws was at a
14 meeting of the Board of Senior Elders or the Board of
15 Spiritual Overseers; is that right?

16 A I'm sure that's right.

17 Q And the changes that Exhibit 11 -- one of the things
18 that happened in the end of 1987. was that a lawyer

1 that was discussed, eliminating the provisions for the
2 satellite churches?

3 A Yes.

4 Q The reason why they wanted these provisions eliminated
5 was because the church had been in lawsuits at that
6 time, and people were claiming that the mother church
7 was liable for the actions of one of the satellite
8 churches; is that correct?

9 A Could be, yes.

10 Q That was one of the allegations in the Gabrielson
11 case, wasn't it?

12 A Yes, in one single case, yes.

13 Q At this meeting in 1987, you were present at the
14 meeting, Jack Hicks was present, Jack DuBois was
15 present and Scott Hartley was present, where you
16 discussed eliminating the satellite church provisions;
17 is that right?

18 A Yes.

19 Q And you voted at that time to eliminate the satellite
20 church provisions; is that right?

21 A Yes.

22 Q Then in 1988 there was only one meeting of the Board
23 of Directors, Board of Senior Elders that you attended
24 at Community Chapel; is that right, one in January of
25 1988 or excuse me, there were two -- let me ask you

1 this way: after March 4th, 1988, did you ever attend
2 another meeting of the Senior Board of Elders of
3 Community Chapel?

4 A No.

5 Q Did you ever discuss with Scott Hartley, after March
6 4th, 1988, revising the bylaws of the Community
7 Chapel?

8 A No.

9 Q Did you ever discuss with Jack DuBois, after March

1 I think based on that, that the witness has
2 demonstrated that there was no vote in April of 1988
3 by the Board of Senior Elders which had been their
4 consistent practice all the way back to 1967 to
5 approve changes to the bylaws, and I think based on
6 that that this agreement or whatever it's being
7 called, or ratification or whatever, is just not a
8 valid document.

9 THE COURT: I'm going to admit it as evidence
10 of what was done. The legal significance of that,
11 I'll leave to the people to address.

12 MR. JOHNSON: Thank you, Your Honor.

13 THE COURT: Admitted for the purpose of
14 showing what was done, and my unspoken caveat here is
15 the significance of it I leave to argument and
16 determination.

17 MR. JOHNSON: Thank you, Your Honor.

18 Your Honor, one other housekeeping item.
19 Exhibit Number 12, which constitutes the bulk of what
20 we understand to be the senior elder meeting minutes,
21 not the bulk, but the entirety of the minutes that are
22 in existence today, or have been in existence, as far
23 as we know since March of 1988, we have the minutes,
24 that's Exhibit 12, and I would, they have been, I
25 believe, identified and we would offer them for

1 admission.

2 MR. ROHAN: I have some problem with them,
3 because some of them are parts of pages of documents
4 but not complete documents. Some of them are letters
5 that are not referred to in other documents, and don't
6 appear to be part of the minutes.

7 For instance, there's a page two of the
8 February 25, 1975 meeting, there's no page one. I
9 don't know where page one is. There is a page three.

10 Following that there is some letters which do
11 not appear to be related to the documents, so I cannot
12 state, Your Honor, that in fact these are correct
13 documents, and they appear on their face to be not
14 correct documents. After these letters there's a page
15 three of some other meeting that they apparently had,
16 but no page one or page two.

17 MR. WIGGINS: Could you identify the
18 documents?

19 MR. ROHAN: They're not paginated.

20 MR. WIGGINS: I'd know them by date.

21 THE COURT: I recognize that, plus the fact
22 that some are grossly immaterial, approved bills for
23 painting and various other things that have nothing to
24 do with our lawsuit.

25 I'm going to admit them subject to this

1 requirement, that Counsel point out by the end of the
2 trial what minutes they feel apply and are
3 significant.

4 I don't want to go through reading requests
5 that we take out, at least for Seattle First Leasing
6 and so forth and so on, many pages have absolutely
7 nothing to do with our lawsuit here.

8 MR. JOHNSON: I can do that right now, Your
9 Honor, if you like.

10 THE COURT: Okay. What ones do you --

11 MR. JOHNSON: We think they all apply, Your
12 Honor, because they are all relevant only to the
13 extent of what appears in the first paragraph of each
14 minute stating who was present.

15 We think it's important for this Court to
16 know that for virtually every meeting that occurred,
17 that the corporation has a written record of, and
18 perhaps Counsel can provide the original of the book
19 to show if there are parts that are missing, but every
20 meeting that occurred, virtually, the pastor was

1 MR. JOHNSON: I understand that.

2 THE COURT: I don't know if that's a matter
3 in dispute or not, but --.

4 MR. JOHNSON: It's part of our case, Your
5 Honor, that he is necessary to hold a meeting, and the
6 bylaws so provide, and we want to demonstrate that in
7 fact not only do the bylaws so provide, but that that
8 has been the consistent practice.

9 He indicated that he remembers only one time,
10 essentially, in 20 years, over 20 years of corporate
11 meetings, where there was a Board of Senior Elders
12 meeting that occurred without his presence, and I will
13 be happy to point that one meeting out.

14 THE COURT: Let me capsulize. Apparently
15 Exhibit 12 is being admitted to show two things. One,
16 that Pastor Barnett was present at virtually all of
17 the board of elders meetings, and that it was the
18 practice of the board to memorialize their meetings.
19 I'll admit it for that purpose.

20 MR. JOHNSON: Thank you, Your Honor.

21 THE COURT: If there's anything significant
22 in any of them beyond that, I want Counsel to point it
23 out, because I have gone through this quite hurriedly,
24 and I didn't see anything other than maybe that.

25 MR. JOHNSON: I would specifically refer to

1 just the one instance that I'm aware of in the minutes
2 the May 8th, '73 meeting, that Pastor --

3 THE COURT: May --

4 MR. JOHNSON: May 8th, 1973, and I believe
5 Pastor Barnett indicated that there was one instance,
6 and I believe that is what he was referring to, where
7 Pastor Barnett was not present, but contains a
8 provision specifically in his absence authorizing
9 someone else to officiate.

10 THE COURT: Anything further, Mr. Johnson?

11 MR. JOHNSON: I'm thinking. There's not much
12 further, Your Honor, and I'm just trying to see if
13 there's --

14 Q (By Mr. Johnson) Just a few final questions, Pastor
15 Barnett.

16 Did you ever, at any point in time prior to
17 March 4th, 1988, agree to change the bylaws, to remove
18 the bylaws of the church corporation, to remove the
19 various protections that you had, that prevented you
20 from being removed from any of your positions at the
21 church?

22 A No.

23 Q Did you agree to permit the Board of Senior Elders to
24 meet on March 4th for any purpose other than to
25 discuss your feelings with regard to them and the

1

actions that they had been taking with the eldership?

2

A No.

1 A Yes.

2 Q Is it against the laws of Community Chapel?

3 A Yes.

4 Q Is it a good example for others to follow?

5 A No.

6 Q Is it a credit to the church?

7 A No.

8 Q Is it a credit to the ministry?

9 MR. JOHNSON: Objection to the form of the
10 question, Your Honor, "credit to the ministry".

11 Q Is it a credit to the ministry of a minister of
12 Community Chapel?

13 A No.

14 Q Is it an example of Godly living?

15 A No.

16 Q Is it Godly?

1 met the same standards that someone would have to meet
2 in order to be an elder at Community Chapel?

3 MR. JOHNSON: Your Honor, I'm going to object
4 to the form of this question, simply because the
5 entire line of testimony has been that he wasn't
6 admitted to anything. He founded the church. He
7 founded the church. There has not been a nickel's
8 worth of testimony that he was entered into or
9 admitted into the church.

10 THE COURT: I'm not sure I understand, Mr.
11 Rohan.

1 the question. You may ask him that question, and you
2 might as well include all those people that you have
3 just mentioned.

4 Q As the pastor of Community Chapel and Bible Training
5 Center, do you believe that you met the standards that
6 were set for being an elder of Community Chapel?

7 A As a pastor?

8 Q Yes.

9 A As a pastor you don't need a standard for some other
10 office, you just have the one.

11 Q All right. Did you, as a person, did you have the
12 qualifications that it took to be an elder in
13 Community Chapel?

14 MR. JOHNSON: Your Honor, again I'd like --

15 THE COURT: He may answer.

16 Q As a person, did you meet the standards that were set
17 to be an elder at Community Chapel?

18 A Yes.

19 Q Did you meet the standards that were set to be a
20 member of the steering committee at Community Chapel,
21 when there was a steering committee?

22 A Well, you don't have to, I didn't have to meet
23 standards to become. I was the one that founded the
24 church and the steering committee, so that presupposes
25 that there was some authority over me and some

1 standard already in existence that I had to meet, and
2 there wasn't any such thing.

3 Q Was there a standard that other people had to meet to
4 be on the steering committee?

5 A Yes.

6 Q Did you personally meet those standards?

7 A I guess I object to having to ask if I met standards
8 that I'm not obligated to meet.

9 Q I'm just asking you whether you met those standards.

10 A I don't think the question can be answered. Did you
11 meet standards of --

12 Q One of the standards of being a member of the steering
13 committee is that you be a born-again Christian, is
14 that right?

15 A Yes.

16 Q So you met that standard?

17 A I didn't need to meet that standard, because no one, I
18 didn't have anybody over me that would bring me into
19 that position. There was nobody to answer to. I
20 don't have to meet that standard of being born again.

21 I founded the church, and then I founded the
22 position of steering committee and senior elders, and
23 then we brought these first members in, and then
24 drafted the bylaws that gave the standards after that,
25 what future ones would have to meet.

1 Even the original ones didn't meet the ones,
2 the requirements that were drafted after they were
3 brought in.

4 Q Let's turn, if we might, to Exhibit 4, which is the
5 1967 Articles of Faith and Bylaws of Community Chapel.
6 Do you have that in front of you there, sir, Exhibit
7 4?

8 A Yes.

9 Q Do you believe that this Exhibit 4, this document that
10 you said you discussed with members, you discussed
11 this with all the members of your congregation; is
12 that right?

13 A Yes.

14 Q Do you believe that, and at that time did you agree to
15 follow the provisions of this document?

16 A No.

17 Q You didn't agree to follow it?

18 A No.

19 Q You could do whatever you want, regardless of whatever
20 was said in this document?

21 A I didn't say that. I just said I didn't agree to
22 follow it. I drafted it up and asked if they all
23 agreed to it.

24 Q Did everybody there agree to it?

25 A Yes.

1 Q Did you agree to it?

2 MR. JOHNSON: Your Honor, the witness has
3 indicated -- objection to the form of the question,
4 Your Honor. The witness has signed the document.

5 THE COURT: You may answer the question.

6 Did you agree?

7 Q Did you agree to the document, the provisions of the
8 document?

9 A I agreed to, I didn't agree to abide by the document.
10 I provided the document, signed my name as one who
11 drafted the document for the church that would be
12 hereafter.

13 Q Did everybody else agree to abide by the document or
14 not abide by the document?

15 A No. They didn't agree to abide by the document.

16 Q So nobody agreed to abide by the document?

17 A No. There wasn't any vote for that purpose.

18 Q Could you turn to page five of the document. Would
19 you read there where it says Article 4, Duties, could
20 you read Paragraph 1.

21 A "The pastor or pastors shall preach, teach, admonish,
22 encourage and advise, as God gives him or them
23 ability. The pastor or pastors shall lead a Godly
24 life and endeavor to shepherd the flock to their
25 spiritual benefit."

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Q It's true, is it not, that this provision, that the pastor shall live a Godly life, is also contained in Exhibit 10, which is the 1986 version of the bylaws? If you can turn to Exhibit 10, page 18, please.

Q Could you read that Paragraph 1 under Duties of the Pastor page 18. Exhibit 10?

1 exactly like God, sinless.

2 It means that you follow the precepts of
3 scripture which allows fallen man to sin, and yet to
4 confess his sins that God might forgive him for all of
5 his sins and all unrighteousness, and be still in the
6 fellowship of the saints, and be still considered
7 Godly, even as King David who committed adultery, was
8 said to be a man after God's own heart.

9 Q And are repeated acts of adultery part of a Godly
10 life?

11 MR. JOHNSON: Your Honor, I'm going to object
12 here, and I'll state my reasons as briefly as I can.

13 Mr. Rohan, throughout this case, has argued
14 that this Court can consider these matters because
15 they have specifically waived all grounds for removal
16 of the pastor that had anything to do with religion.

17 This is not something that is intermixed with
18 religion, with religious standards, and so forth, and
19 now his inquiry is into matters that are Godly, that
20 are biblical and so forth, and those are not things
21 that have anything to do with civil law.

22 Counsel has specifically stated he's limiting
23 the inquiry he's asking this Court to make.

24 THE COURT: He is arguing on the basis of the
25 articles. You may do that.

1 MR. ROHAN: Thank you.

2 Q (Mr. Rohan, continuing) Let's turn to 1967. You
3 testified on your direct examination that you had a
4 discussion with, I believe it was Keith Gunn; is that
5 right?

6 A A discussion about what?

7 Q A discussion with Keith Gunn about Exhibit 4, the
8 bylaws. You had a meeting with Keith Gunn and Scott
9 Hartley and there was a lawyer involved also.

10 A You're talking about to originate the original bylaws?

11 Q Yes, Exhibit 4. You also had a meeting with the
12 congregation, and I believe you testified in regard to
13 Exhibit 4 that you went over each provision and
14 discussed them with Mr. Gunn, Mr. Hartley and the
15 attorney; is that right?

16 A No, I didn't say it quite like that. I didn't go over
17 each provision and discuss it with them. We
18 formulated the bylaws through discussion, and typed
19 them up, and each person read them over and signed
20 them, and then I presented them to the congregation,
21 and they ratified it in a legal or non-legal way of
22 speaking and --

23 Q "Ratified it", you mean they took a vote?

24 A They took a vote.

25 Q And they all voted for it?

1 A Yes.

2 Q Was there a discussion about the bylaws, prior to
3 entering into the vote?

4 A We read the bylaws, asking if anybody had any
5 objection to it or anything to add, and they didn't,
6 and we asked how many would raise their hands to
7 accept them. They were happy with them and all the
8 hands raised.

9 Q In the discussions you had with Mr. Gunn and Mr.
10 Hartley and the lawyer, before you signed your name,
11 did you ever discuss what would happen if the pastor
12 of the church committed adultery with a female
13 congregant of the church?

14 A No.

15 Q Did you ever discuss at that time what would happen if
16 the pastor lied to elders and members of the
17 congregation?

18 A No.

19 Q Did you ever discuss what would happen if the pastor
20 covered up any of his wrongful conduct that he had
21 committed with parishioners?

22 A No.

23 Q Did you ever discuss with any of those individuals
24 whether, if the pastor ever abused his pastoral
25 authority?

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MR. JOHNSON: Objection to the question. The words "abused pastoral authority" is not defined.

THE COURT: Substitute another word for abuse.

Q Did you ever discuss if someone used their pastoral authority to coerce women for sexual favors?

A No.

Q At the time that Mr. Gunn, Mr. Hartley and the attorney affixed their signatures to Exhibit 4, the 1967 bylaws, did they believe that you, at that time, were living a Godly life?

MR. JOHNSON: Objection, Your Honor, calls for speculation as to what others would think.

THE COURT: Sustain the objection.

Q Let's turn, if we could, to Exhibit 10. Let's look at page 26, if we might.

Now, Exhibit 10 is the 1986 bylaws of Community Chapel, and on page 26 are the procedures for disfellowshipping; is that correct?

A Yes.

Q Could you read A, one, two and three that appear on that page?

A "There are several reasons where an individual might be put out of the church or disfellowshipped. The following partial list gives examples which are

1 indicative of such reasons. One, robbing a brother
2 and refusing to repent and make restitution. An
3 individual who does so is to be treated as a heathen,
4 Matthew 18, 14 through 18."

5 "Number two, fornicating or committing
6 adultery, castigating others or the church, being a
7 drunkard, extortioner or idolater, or being covetous.
8 An individual who continues in any of these sins, who
9 is involved in any wickedness, is to be put away from
10 the church, First Corinthians 5, 9-13."

11 "Number three, being significantly out of
12 step with the church's rules, doctrines and practices.
13 An individual in such a condition is not to be
14 companied with, although he may still be considered a
15 brother in the faith and not an enemy. Second
16 Thessalonians 3, 6 to 15."

17 Q Thank you, sir. Is there any provision in Article 2
18 that states that the pastor of the church, whether
19 it's the original pastor or a subsequent pastor,
20 cannot be disfellowshipped?

21 A No, and if there was, we wouldn't put it there.
22 That's not where it belongs.

23 Q Looking at Paragraph C on that page, page 26, can you
24 read Paragraph C of the disfellowshipping provisions?

25 A "We recognize that the bible teaches clear procedures

1 for dealing with grievances and accusations against
2 other persons, brethren within the church and the
3 church government. When an individual with a
4 grievance consistently obeys completely the teachings
5 of holy scriptures in these matters, he shall, under
6 no circumstances, be put out of the church or
7 disfellowshipped."

8 Q When you just read, used the phrase "church
9 government" does the church government refer to the
10 hierarchy of the church?

11 A Yes.

12 Q The hierarchy would include the elders, senior elders
13 and the pastor; is that correct?

14 A No.

15 Q What does the hierarchy consist of, or what does the
16 church government consist of?

17 A The pastor and the senior elders are also called the
18 voting elders.

19 THE COURT: Pardon me?

20 THE WITNESS: Also called the voting elders.

21 Q The pastor and the senior elders constitute the church
22 government?

23 A Yes.

24 Q If you could turn to the next page, 27, and read
25 Paragraph E-4.

1 A "The counselor shall always seek the concurrence of
2 the pastor or his designee in putting someone out of
3 the church. In an emergency or aggravated matters the
4 pastor or his designee shall be notified as soon as it
5 is reasonably possible.

6 Q That's all the questions I have for that exhibit.

7 Switching to another topic, Scott Hartley and
8 Lanny Peterson were your counselors at one point; is
9 that correct?

10 A They were my marriage counselor for a short time.

11 Q What period of time were they your marriage
12 counselors?

13 A For a period of, well, for a period of two meetings
14 in, I don't remember the month for sure, but possibly
15 July, I would guess would be the month.

16 Q This would be July of 1987; is that right?

17 A Of '87, yes.

18 Q And you fired them; is that right, as your counselors?

19 A Yes.

20 Q Can you tell me why you fired them as your counselor?

21 MR. JOHNSON: Your Honor, I'm going to object
22 to things involving the private communications between
23 the pastor and his two counselors. It was a
24 consistent practice, I think, of the church to treat
25 all congre --

1 THE COURT: I don't know that he's asking for
2 communications here. On what basis did you fire them,
3 what grounds?

4 THE WITNESS: I fired them because they were
5 violating the basic principals of counseling, of
6 fairness, of Christian conduct, and also the word I
7 want is, well, capability, for want of a better word.

8 Q How were they doing that?

9 MR. JOHNSON: Objection, Your Honor. I think
10 this does go into the content of his private
11 communications to these two individuals, and it was
12 the consistent practice of the counseling center to
13 retain the confidentiality of communications between
14 counselors and --

15 THE COURT: I don't think it necessarily goes
16 into that. I will stop you if I think that you're
17 getting into that sort of thing.

18 MR. ROHAN: Can we have argument on that?

19 THE COURT: No, he may answer.

20 Q How were they --

21 A Well, I'm going to say things that they said to them
22 and they said to me.

23 THE COURT: What?

24 THE WITNESS: I'm going to say things what
25 they said to me and I said to them. That's the basis

1 for my determination of their inability and improper
2 counseling practice, and so forth.

3 MR. ROHAN: Your Honor, there is no
4 recognized privilege here, and Counsel has not raised
5 a recognized privilege. Counsel has discussed in his
6 direct examination Barnett's counselors. He asked who
7 his counselors were, and I think I'm entitled, Jerry
8 Zwack was his counselor, Pastor Barnett testified at
9 length as to what Jerry Zwack said to him.

10 I did not object on the hearsay or any other
11 basis as to what Jerry Zwack and Pastor Barnett talked
12 about, and I think I'm entitled to inquire into the
13 counselors that he had during the relevant time
14 period, 1987, which is going to lead to evidence which
15 is very relevant to this case, because it goes to the
16 cover-up of Pastor Barnett's wrongful conduct.

17 MR. JOHNSON: Your Honor, Pastor --

18 THE COURT: Could you lead him? This is
19 cross-examination. That way I'd get a better idea of
20 what you're getting at or whether he, if his answers
21 would violate some personal privilege.

22 Q (By Mr. Rohan) Is it true that your counselors, that
23 you fired your counselors because they brought up to
24 you complaints that women had against you for sexual
25 misconduct with them?

1 MR. JOHNSON: Same objection, Your Honor.

2 THE COURT: He may answer that question.

3 A Totally false.

4 Q Was Lanny Peterson at that time your son-in-law?

5 A Yes. Let me think of that question.

6 Q He might have been your ex-son-in-law at the time?

7 A Yeah, he might have been my ex-son-in-law.

8 THE COURT: I didn't hear that.

9 THE WITNESS: He might have been my ex-
10 son-in-law at the time. I have to think of the date.

11 I think perhaps he was not. I'm not positive.

12 Q Did David Motherwell, David Motherwell became your
13 counselor sometime in the fall of '87, is that right?

14 A He became my marriage counselor.

15 THE COURT: Your what?

16 THE WITNESS: My marriage counselor.

17 Q He continued as your counselor until March 4th, 1988;
18 is that correct?

19 A No.

20 MR. ROHAN: Why don't you get out Exhibit 87.

21 (Defendants Exhibits 20 and 21
22 marked.)

23 MR. ROHAN: I believe Counsel has agreed to
24 admit both of these documents.

25 MR. JOHNSON: Yes.

Q It's your testimony David Motherwell was not your

1 counselor up to March 4th, 1988?

2 A That's correct.

3 Q Showing you what has been marked as Exhibit 20 to your
4 deposition, could you look at page two, lines four to
5 nine, and read those, please?

6 A "There came a change when the counseling center was
7 established. At that point the policy was that there
8 would be no counseling except by counselors in the
9 counseling center.

10 Q Wait a minute, page two?

11 A Page two.

12 Q Starting at line four, "At one time in the summer of
13 1987".

14 A Oh, line four instead of Paragraph 4?

15 "At one time in the summer of 1987, I briefly entered
16 into a counseling relationship with Defendant Hartley
17 with respect to my marital situation."

18 Q Keep reading through line nine.

19 A "However, I terminated that counseling relationship in
20 the summer of '87."

21 Q Keep reading.

22 A "As of March 4th, 1988, none of the senior elders were
23 my counselor. David Motherwell was my counselor."

24 Q Isn't it correct that as of March 4th, 1988, David
25 Motherwell was your counselor?

1 A No. This is unfortunately a mistake, because this was
2 unfortunately drafted by my attorney, trying to say
3 what I told him, and when it was FAXed back, I think
4 from Hawaii, I'm afraid I didn't catch it. This is
5 not the truth. I apologize for it. This is not the
6 truth. I didn't catch it.

7 He didn't communicate apparently accurately.
8 He drafted it up, not me. I would never have said
9 this if I were really thinking straight, and clearly I
10 was on my vacation and we were kind of time-squeezed,
11 and I read it through and didn't see it. As I reflect
12 upon it today, I would not sign that statement.

13 Q What is your understanding of Jerry Zwack's
14 grievances?

15 A Jerry Zwack --

16 MR. JOHNSON: Is Counsel referring to the
17 grievances at the end of 1987?

18 MR. ROHAN: Yes, 1987, 1988, that were the
19 subject of the elders hearings in 1988.

20 MR. JOHNSON: Specifically with regard to
21 grievances regarding the witness?

22 MR. ROHAN: The grievances that you had
23 vis-a-vis you, yes, not his grievances about any other
24 topic.

25 A Well, the grievances that David Motherwell told me

1 that was in Jerry Zwack's letter, as he enumerated
2 them to me, and the grievances that were in my mind
3 and what I used to, as grounds and conditions to
4 attend what's been called the hearings, and conditions
5 that I reiterated at the start of the meeting was
6 three-fold.

7 One, that he believed that I had wrongfully
8 put him out of the bible college class, that two, that
9 I had had a part in setting up Jack Hicks to lay him
10 off from the counseling center, and three, that I was
11 engaged in or, perhaps engaged in, one of the two,
12 present sexual activity, or at least relationships of
13 some sort, I think sexual relationships, that might,
14 that would hurt my wife, although I have to qualify
15 that by saying, he admitted at the meeting he didn't

1 time.

2 Q Look behind you and see your Counsel's notes there,
3 Item B, and the chronology, 12/87, Jerry Zwack writes
4 letter of complaint to the elders.

5 A Yes.

6 Q Did you receive a copy of that letter?

7 A No.

8 Q You never saw a copy of that letter?

9 A I didn't say that. You asked me if I received it. I
10 assumed you meant at that time.

11 Q Okay. Did you later receive a copy of that letter?

12 A At some future time, yes.

13 Q When, in the future time, did you receive a copy of
14 that letter?

15 A I don't recall when I saw it. I don't remember when I
16 saw it.

17 Q But you saw it and you read it at the time you saw it;
18 is that correct?

19 A At the time I saw it I did, yes.

20 Q Showing you what will be marked as Exhibit 22, is that
letter from Jerry Zwack to the elders?

1 if it is?

2 Q Please. Take your time.

3 (Defendant's Exhibit 22 was
4 marked.)

5 A I have seen this letter, yes.

6 Q Do you believe there was more than one letter from
7 Jerry Zwack to the elders in December of 1987
8 regarding his grievances against you?

9 MR. JOHNSON: Your Honor, that calls for
10 speculation and --

11 THE COURT: He may testify as to his
12 knowledge of it.

13 A Well, --.

14 MR. JOHNSON: As to his knowledge, Your
15 Honor?

16 THE COURT: Yes.

17 MR. JOHNSON: I'm sorry.

18 Q Are you aware of whether or not the elders sent a
19 second letter -- excuse me -- whether or not Mr. Zwack
20 sent a second letter to the elders sometime in
21 December or January of 1987, regarding his grievances?

22 A Well, it's been my long-term memory, or at least what
23 I thought was my memory, that there was another letter
24 that he wrote in which he listed his three grievances,
25 and I have mentioned this from this time throughout.

I cannot find my copy of the letter, and I

1 have begun just in the last few days begun to wonder
2 if maybe I thought that because David Motherwell
3 characterizes his grievances to me, and I thought it
4 was in a letter I got from him.

5 I have consistently maintained he sent me
6 that letter, because I remember the grievances and I
7 remember that the reasons I agreed to meet was because
8 of those three grievances, so it's my memory that he
9 wrote another letter, perhaps not to the elders,
10 perhaps to me personally, outlining those grievances,
11 but I was surprised to find those grievances not in
12 this.

13 Q Those grievances aren't in Exhibit 7?

14 MR. JOHNSON: Objection to the content of the
15 letter, Your Honor. It has not been admitted.

16 A I didn't read every line here, but I didn't see the
17 ones about the bible college and the one about the
18 counseling center in here. Maybe they are, but I
19 didn't read every bit of it. I didn't want to take
20 the time.

21 Q Why don't you take the time.

22 I'm going to offer Exhibit 22, Your Honor.

23 MR. JOHNSON: I'll object, for the record.

24 THE COURT: This is addressed to senior
25 elders and elders. In some fashion that must be

1 authenticated.

2 MR. ROHAN: It will be authenticated at a
3 later time, but he already indicated he thought it was
4 a letter from Jerry Zwack, and that he read it during
5 the relevant time period.

6 THE COURT: I don't know when he read it.

7 Q Let me ask some follow-up questions. You read this
8 letter in either December of 1987 or January of 1988;
9 is that right?

10 A I don't remember when I read it. I may not have seen
11 it until a long time after. I don't know. I don't
12 remember.

13 Q You may not have seen it after, a long time after
14 January of '88?

15 A I may not of. I cannot remember when I read this
16 letter.

17 Q You were concerned at the time of the elders hearings
18 about Jerry Zwack's grievances, is that right?

19 A Yes.

20 Q And you knew this letter was in existence; is that
21 right, because Mr. Motherwell told you such a letter
22 was in existence?

23 MR. JOHNSON: Your Honor, I will object to
24 the form of the question since there has been no
25 evidence that indicates that Mr. Motherwell told him

1 about this letter.

2 The question was you knew this letter was in
3 existence, and that's not what the witness's testimony
4 has been. He knew that a letter was in existence.

5 THE COURT: I thought he said Motherwell told
6 him.

7 MR. JOHNSON: That a letter was in existence,
8 not that this letter was in existence.

9 THE COURT: The form of the question wasn't
10 as to this letter, as I understand it, your question.
11 Would you repeat the question.

12 Q You were aware that Mr. Zwack had written a letter to
13 the elders in December of 1987 --

14 A Yes.

15 Q -- complaining about your behavior; is that right?

16 A In part -- well, no, I was aware, or at least it was
17 my impression that he had written a letter saying
18 that, being either afraid that I was now having
19 relationships that would hurt my wife, or that I was,
20 plus the bible college incident and the counseling
21 center incident.

22 Q Maybe I can sort of cut to the short of this thing.

23 Why don't you look at Exhibit 18. Showing
24 you what has been agreed as Exhibit 18. In this
25 action, would you turn to the last page of that

1 exhibit, which is Exhibit 85 in your book. Is that
2 your signature that appears on page 31 of that
3 exhibit?

4 A Yes.

5 Q It's dated December 26th, 1986?

6 A Yes.

7 Q Were you on vacation in Hawaii when you read this
8 document, before you signed it? Were you on vacation
9 when you signed this October document here, or were
10 you in Seattle?

11 A Does it say anyplace?

12 Q It doesn't say anyplace.

13 A I don't remember.

14 Q Why don't you turn to page eight and read Paragraph 11
15 to that declaration of yours.

16 A "As a result of these events Jerry became enormously
17 bitter against me. Jerry sent two letters to the
18 eldership, that I am aware of."

19 "One was a rather long rambling letter in
20 which he unjustly accused me of many things,
21 characterized me, in highly negative terms, alleging
22 false things and stating things highly inaccurately.
23 These accusations were mainly against my past sexual
24 behavior, 10 months to two years after my wife had
25 abandoned me as her husband, and concerning

1 relationships between himself and me and my
2 relationship with my wife."

3 Q And that letter that's referred to in that Paragraph
4 11 is the letter that you have in front of you that's
5 been marked as Exhibit 22; isn't that correct?

6 A Probably. I don't know that for certain, but I would
7 assume it probably is.

8 Q You wrote, I mean you signed this declaration that's
9 exhibit --

10 MR. JOHNSON: He has indicated, Your Honor,
11 that he signed it. That was the first question.

12 Q -- 18. Prior to signing this, you read a letter from
13 Jerry Zwack; isn't that correct,

14 A Yes.

15 Q -- or you wouldn't have signed your name to this
16 declaration; isn't that correct?

17 A Yes.

18 Q Isn't, in fact, the declaration that you read, the
19 letter that you read, this letter here which has been
20 marked as Exhibit 22? I want you to take the time to
21 read it again, if you need to.

22 A Well, see, I'm trying to be accurate and careful here,
23 and technical, and I have no way to know for certain
24 by reading this letter 20 times whether this is the
25 letter. I already said that I wouldn't contest the

1 fact that it's the letter. I already said that it
2 probably was. I can't categorically say it was. How
3 do I know?

4 Q Why don't you read the next paragraph in that. So
5 you're not aware this was the letter, or it may be
6 some other document that's the letter?

7 A I'm not trying to dodge anything, I'm just trying to
8 be accurate. I can't be positive this is the letter.
9 I would assume it is.

10 Q Fine. I can call you again in my case in chief, and
11 I'll do so as to this and any other document. Why
12 don't you read the next paragraph in that affidavit?

13 A Paragraph 12?

14 Q Yes.

15 A "The second letter was shorter and to the point, and
16 dealt with three specific issues. One, his being put
17 out of the counseling center, two, his being put out
18 of his college class, three, his fear that I might be
19 engaged in sexual behavior outside of the marriage."

20 Q At the point you wrote this in September 1990, you
21 were sure there was a second letter from Jerry Zwack;
22 is that correct?

23 A That was my impression.

24 Q And today you are not sure whether there was a second
25 letter or not; is that correct?

1 A Well, I think there was a second letter. I'm not sure
2 whether it was to the elders now, or whether maybe it
3 was just to me. I'm quite sure there was another
4 letter.

5 Again, I cannot, at this far-removed date, be
6 catagorically positive, but that has been my memory
7 all along. I think that I specifically remember
8 reading it, and not just hearing it through David, so
9 I would say yes, but I can't say now whether it was to
10 the elders or just maybe to me alone. He wrote me a
11 number of letters and I wrote him a number of letters.

12 Q Since January or since March of 1988 you have never
13 seen a copy of that, or the original of that second
14 letter; is that correct?

15 A Well, I can't say I have seen it since March '88, I
16 don't know that, either. I have had a number of
17 letters in my files that are not in my files at this
18 present time, and I don't know when the last date is.
19 If I had it and read it, I wouldn't be able to tell
20 you when the last time was I saw it.

21 Q Did you destroy any documents between March of 1988,
22 and December of 1988 such as this letter, that are
23 relevant to this action?

24 A Well, I had pretty large legal files, and some of the
25 things I sent to, let's see, March 4th, a number of

1 things I sent to my attorney.

2 Some of the, I had my secretary actually get
3 rid of quite a lot of legal material that I thought
4 wasn't going to be useful anymore. Hopefully one of
5 these wasn't one of them, but I have searched in vain
6 two or three times through my files, being a little
7 bit disturbed and perturbed at not being able to find
8 certain pieces of paper that I knew I had, and not
9 being able to lay my hands on them, and they're gone.

10 I don't know whether I have mislaid them
11 someplace, they're someplace that I don't know where
12 they are. My office got so full that she put things
13 in some other places in boxes, and I have had to look
14 for them.

15 I haven't necessarily gone through and
16 doublechecked her in all the looking, but there are
17 more than this one letter missing. There are a number
18 of letters missing and other things, that I don't know
19 what happened to.

20 Q Is it possible that this second letter just simply
21 never existed?

22 A Well, I guess anything is possible. My memory is that
23 it existed, and it's been my claim from the very
24 beginning, and it's my impression that I remember
25 reading those things.

1 In fact I was, when this letter was showed
2 me, I was, you know, I have been vainly looking for
3 that same piece of paper and talking to my lawyers and
4 expressing being distraught over the fact that I know
5 that letter exists and I can't find that, and I have
6 said we have got to find that for the court, and I
7 have had my secretary look, we have called down to
8 have Roger look, you know, in his office.

9 Q Let's turn, if we might, to the January 25th, 1988
10 agreement.

11 Which number did we put on that one?

12 MR. JOHNSON: Fifteen, I believe, Robert.

13 MR. ROHAN: Exhibit 15 in your book?

14 MR. WIGGINS: That's correct.

15 Q This morning you testified that you discussed this
16 document with David Motherwell; is that correct? Oh,
17 Exhibit 15?

18 A I don't have Exhibit 15.

19 MR. ROHAN: Did you not give him 15?

20 (Remarks made off the record.)

21 THE COURT: Gentlemen, it's a quarter to
22 three. Let's recess at this point and you may
23 organize the pastor's book of exhibits, if you want
24 to, during the recess. We're now at recess until
25 3:00.

1 (A break was taken.)

2 Q (By Mr. Rohan) Let me ask another question that I
3 forgot to ask before our break about in December of 19
4 -- was the first time that you were aware that Jerry
5 Zwack wrote a letter to the elders complaining about
6 your behavior, was when David Motherwell talked to you
7 about it?

8 A Yes.

9 Q On or about December 23, 1987, didn't you call Russell
10 McKenzie and ask him not to read the letter that had
11 been delivered to him from Jerry Zwack?

12 A I have no recall of that.

13 Q Didn't you call several of the other elders that day,
14 or on or about that day, December 23rd, 1987, and ask
15 them not to read Jerry Zwack's letter, and send it
16 back to you in the letter they got it in, unopened?

17 A I have no recall of that.

18 Q Let's turn to Exhibit 15, if we might.

19 This morning you stated that Mr. Motherwell
20 discussed this with you on January 25th, 1988; is that
21 true?

22 A No, I don't think I said that.

23 Q Did David Motherwell discuss this document with you at
24 any time?

25 A He may have discussed things that were here, but not

1 as a written document. We did talk about a number of
2 things we felt should be in the meetings, but I don't
3 think this document was prepared prior to 1/25. I
4 didn't discuss the document with him.

5 Q Was the document prepared, then, on January 25th, the
6 same day it's dated?

7 A I don't know. I would assume whoever prepared this
8 did it just before that, and brought it to the meeting
9 on 1/25, and showed it to us for the first time, and
10 we signed it.

11 Q So it's your belief that you signed Exhibit 15 in
12 front of all the other elders on January 25th, 1988?

13 A Well, that's my assumption. I couldn't catagorically
14 state that for sure. That's what I think happened.

15 Q If you signed it, did you talk to anybody about what
16 it meant?

17 A No.

18 Q And you added the --

19 MR. JOHNSON: Just a second.

20 A I thought I knew what it meant. I mean I was
21 interpreting it in light of everything else that had
22 been said and promised and so, you know, I thought, at
23 that time I thought everyone was up and above board
24 and was honest and had integrity and were doing
25 things.

1 I didn't know they had all these other things
2 underneath the bush, underneath the table, underneath
3 the carpet, so I guess I wasn't really being wary. I
4 thought we were signing something that basically we
5 were agreeing on, in light of what was previously
6 stated.

7 Q In Paragraph 2 to that, you added the words "and
8 Jerry" to that; is that correct?

9 A Yes.

10 Q That's your own handwriting; is that correct?

11 A Yes.

12 Q And you added the phrase "and Jerry" because you did
13 not want Jerry to walk out of the hearings, or to
14 disrupt them once they started; is that correct?

15 A Well, I was concerned that as soon as Jerry saw that
16 the eldership was taking my side and that there was
17 substantial reason to put him out of the college
18 office and all, that there were witnesses standing in
19 Jack Hicks' office, that I reluctantly put him out,
20 fought for him being put out, and finally gave in to
21 them, and/or when David Motherwell testified that he
22 knew nothing I had done for six months.

23 He had been checking with everybody that I
24 had been with, and Jerry Zwack himself had admitted
25 that he knew nothing that I had done the last six

1 months.

2 I thought Jerry might, because he was in a
3 state of bitterness, and he was trying to get at me, I
4 thought he might get up and walk out, since they were
5 taking my side, and not let them counsel him, and
6 bring him into reconciliation with me, and so I don't
7 want just Don at the meeting, I wanted Jerry too,
8 because the whole idea was, in my mind, to get rid of
9 his bitterness, to try to help him not try to jump to
10 this wild conclusion that I'm after him and out to get
11 him through these things, and I was hoping to help his
12 hurts.

13 Q You believe that the purpose of the hearings were to
14 counsel between yourself and Jerry over your problems,
15 and to mediate between yourself and Jerry; is that
16 right?

17 A Well, basically, in my mind, I really thought that it
18 was, the way it was going to turn out was to help
19 Jerry. I wasn't sure we could reconcile him, but I
20 was hoping we might be able to help his heart.

21 That was the only reason I agreed to the
22 meetings, really, but I left it open, of course, to be
23 fair, that, hey, if Jerry is right and I'm wrong on
24 these points, then they counsel me, and if I'm right,
25 then they counsel him, and if we were both partially

1 wrong and right, they counsel us both, and they try to
2 mediate, give us counsel, not that they're our
3 counselors in a legal sense, but give us counsel and
4 mediate and try to bring our hearts together. These
5 were grievances, that was the problem, between two
6 parties.

7 Q As part of this counseling and mediation, it was your
8 understanding that the elders would take a vote on the
9 grievances that Jerry came up with; is that right?

10 A Well, I wouldn't say take a vote, no. I would say
11 that after he had made his accusations and there was
12 rebuttals, and we get through that again, another
13 rebuttal to rebuttal and rebuttal, and then
14 cross-examination and then discussion, and then they
15 would retire and talk it over among themselves.

16 After they, I wouldn't think it would be a
17 vote, I would think it would be a matter of discussing
18 what they felt was truth, and what they thought they
19 should do and how they should approach it.

20 Then once they came to that conclusion they
21 would come back before us and they would

1 wasn't trying to do this to you, Jerry, he tried to
2 keep you from, you know, he loves you. He wasn't
3 trying to do this to you. You're just bitter. You
4 need to submit this before God and get healed.

5 Q Do you want to read the first paragraph of Exhibit 15,
6 please.

7 A "The elders agree that it is necessary to protect Don
8 from accusations of conflict of interest and of
9 misusing his pastoral authority to exercise unfair
10 control over these hearings for his personal
11 advantage. Therefore the others asked Don to
12 voluntarily submit to conditions."

13 Q And the reason why the elders were concerned about
14 accusations of conflict of interest was because at the
15 end of the proceedings they intended to take a vote on
16 this, isn't that true?

17 (Attorney Shapiro arrived.)

18 MR. JOHNSON: Your Honor, object to the form
19 of the question. The witness has just been asked if
20 he thought they intended to take a vote, and he said
21 no, so this question has been asked and answered.

22 THE COURT: Well, he may answer this
23 particular question.

24 A Well, I cannot tell you what the elders thought.
25 You're asking me what the elders thought. I don't

1 know what was behind this motivation, and as time went
2 on I began to suspect more and more that, I began, I
3 do not think that their motivation was different than
4 what I thought it was to begin with, and I can't speak
5 for the elders.

6 Q Did you suggest that David Motherwell and John Bergin
7 be included in the meetings as elders?

8 A Well, not as elders, but that they be considered on
9 the same basis as elders, excepting I think the rule
10 said that, I'm not positive about this, but it seems
11 to me the rule said that the counselors could not
12 speak. I don't know how this equates right now.

13 Q But in any event you wanted Mr. Motherwell and Mr.
14 Bergin there; is that correct?

15 A Yes.

16 Q And they would participate, other than you think maybe
17 they could speak or maybe they couldn't speak, but
18 otherwise they would participate fully in the
19 proceedings?

20 A Well, it's unclear to me now as to why, when I
21 initially wanted them there, yeah, I think I expected
22 them to be able to participate the same as anybody
23 else. It's unclear to me now why that provision was
24 in there.

25 I think Jerry Zwack did object to Chris

1 Matthews, who was also there, as being there, and I
2 think Jerry only agreed to it on the basis that he not
3 speak.

4 Now, perhaps he was the only one permitted, I
5 mean invited, and not allowed to speak, and if he was
6 invited I don't know why he was invited, if he was not
7 allowed to speak. That wasn't my doings, that was
8 somebody else's doings, so I'm not sure about that.

9 Q You appointed Russ McKenzie to be the chair and the
10 moderator of the hearings; is that correct?

11 A Yes.

12 Q One last question, or two last questions on Exhibit
13 15. Exhibit 15, the agreement, doesn't mention in any
14 way that the elders are going to, at the end of the
15 meetings, counsel you and Jerry, does it?

16 A No.

17 Q And it doesn't mention at the end of the meeting that
18 the elders are going to mediate anything between you
19 and Jerry, does it?

20 A No. These were not the complete agreements however.

21 Q You believe there's another agreement, other than
22 Exhibit 15, that you signed, that relates to the
23 hearings?

24 A I didn't say that. I didn't say these aren't the only
25 agreements I signed. I said these aren't the only

1 agreements.

2 Q Are there other agreements related to the hearings
3 that you signed?

4 A I don't think there were any more that I signed, but
5 there were other agreements.

6 MR. ROHAN: Would you mark that.

7 (Defendant's Exhibit 23 was
8 marked.)

9 Q Showing you what's been marked as Exhibit 23 in this
10 case, have you seen that document before?

11 A Have I seen it before this date?

12 Q Yes, sir.

13 A Yes.

14 Q And those are the guidelines that were used at the
15 elders hearings?

16 A I don't know. I never saw page two, I don't think,
17 until recently.

18 Q Page one, were those the guidelines, excluding page
19 two, was page one, was that the guidelines that were
20 used at the elders hearings?

21 A Since page two and one are stapled together, I can't
22 be sure that these guidelines are exactly the same.
23 There were guidelines at least similar to these, and
24 that had a lot of these same things on it. I can't
25 attest whether these are exactly the same ones used.

I have seen in deposition, three, four, five

1 different versions of guidelines, crossed out and
2 different names on them and so forth, and so how they
3 evolved to this and what was actually used at the
4 beginning of the meetings, I cannot be positive.

5 Q You agreed to guidelines, you testified earlier?

6 A I agreed to guidelines in addition to the agreement I
7 signed.

8 Q You testified this morning that you signed the
9 guidelines you agreed to?

10 A No. I said I signed the agreement I agreed to. I
11 just got through saying I don't think that I signed
12 any other guidelines, to my knowledge, but we agreed
13 to some other guidelines. If you want to show me a
14 copy of any guidelines that I signed, I'd be happy to
15 testify.

16 Q There aren't any guidelines that you signed, that I'm
17 aware of.

18 A Well, I'm not either. That's what I said.

19 Q You don't recall whether these are the guidelines that
20 were used or not?

21 A Well, Mr. Rohan, there's no way I can say. It has a
22 second page on it, and I have testified that I have
23 seen several different versions of it, so knowing that
24 people can sit down and type up things and leave
25 certain things out and add certain things, and we have

1 already seen some of this in this case, I have seen
2 them and I have seen blank spots in people's papers, I
3 have seen a lot of things. I don't know that this is
4 the same.

5 Q Have you seen, since March 4th, 1988, a copy of the
6 guidelines that you approved for use at the elders
7 hearings?

8 A There would be no way that I would know at this time
9 exactly which version, if any, we used at that time.
10 I do remember some specific things we agreed upon. I
11 don't remember each and every thing we agreed upon, or
12 the exact wording of everything, but I do remember
13 guidelines, and the substance of a number of the
14 guidelines.

15 Q But if I were to show you any piece of paper, then,
16 today that had guidelines written on it, you couldn't
17 tell me whether they were the guidelines that you
18 approved at the time of the elders hearings or not;
19 isn't that true?

20 A Well, it wasn't a matter of me approving them. Well,
21 I guess I had sent it to them, we all did. I cannot
22 tell you exactly which would be the original copy.

23 Q Okay. By "original" you mean original or a copy of
24 it?

25 A Yes, original or a copy of the one that was present on

1 January 25th.

2 Q Fine. One of the guidelines that you talked about
3 this morning was that all of anything to be regarded
4 as true at the elders hearing either had to be
5 admitted by you or testified to by two or more
6 witnesses; is that correct?

7 A That is correct.

8 Q One of Mr. Zwack's charges against you was that you
9 were currently involved in sexual misconduct; is that
10 true?

11 A No. He testified at the hearings that he knew nothing
12 I had done in the last six months. He made that
13 statement at the elders hearings.

14 Q But that was one of the three grievances that you
15 thought he had, that you were doing sexual things
16 outside of your marriage?

17 A No, I said that either, my understanding was either
18 that I was or was possibly doing current things or
19 relationships with women that might be sexual.

20 See, my wife would come in the house with him
21 after he had, my wife would come home after being with
22 him for this long period of time, and if I was sitting
23 in the living room with a lady showing her a photo
24 album, she would get upset and just suppose once, you
25 know, suppose that well. Don has probably had some with

1 her.

2 This is an ongoing problem I have had with my
3 wife jumping to these kind of conclusions, and so
4 Jerry was all steamed up to protect her, so I don't
5 know what he was really charging, but I know he was
6 concerned lest it be happening, and at the meeting he
7 admitted that he didn't know of any case in six
8 months.

9 Q In order to prove that you had been engaged in sexual
10 conduct, then, at the elders hearings, according to
11 your testimony, you either would have had to admit it
12 or there would have had to have been two or three
13 witnesses to that conduct; isn't that true?

14 A That's what Mr. McKenzie and the eldership promised me
15 before God, yes.

16 Q So let's say you had had sexual conduct with someone
17 privately in your own home. If you hadn't admitted to
18 it, there was no way that the elders could prove it?

19 MR. JOHNSON: Objection, Your Honor. I think
20 that calls for a legal conclusion and assumes facts
21 not in evidence, and it's speculative.

22 THE COURT: Well, I think he can testify as
23 to his understanding, what is required by witnesses.
24 I don't know what, how to construe that myself.

25 A Well, as we understand it at Community Chapel and

1 Bible Training Center, as I have taught it, and they
2 were at that time, to the best of my knowledge, under
3 the same doctrinal impressions as I.

4 I was the one that taught them and there was
5 never anyone that said anything different. If
6 someone, the Apostle Paul wrote Pastor Timothy, First
7 Timothy 5:17, and said to not accept any accusations
8 against an elder, one of his elders, except in the
9 mouth of two or three witnesses, don't accept it, so
10 if an elder had been accused by somebody of forcing
11 him sexually, he said, don't accept it.

12 This is our theology, that we do not accept
13 it, if we have an accuser, because the devil is out to
14 call people that are accused.

15 We have had so many examples of people making
16 up malicious lies, and you can't take a man and put
17 him out of the church, shoot him or hang him on the
18 nearest tree, or anything else, just because he's got
19 an accuser. There has got to be some witnesses.

20 Better to let a guilty man go free than to
21 hang an innocent man, so that was the theology, and
22 that was the promise made to me. That is true.

23 Q Let's turn to the eldership meetings. You testified
24 this morning that Jerry Zwack testified for nine
25 hours, and you believe he testified for somewhere

1 between four and 12 hours.

2 **DELETED MATERIAL FILED UNDER SEAL**

3
4
5 MR. JOHNSON: Objection, Your Honor. Your
6 Honor, may I be heard on this?

7 THE COURT: Yes.

8 MR. JOHNSON: We strenuously object to any
9 testimony at the hearing for a number of reasons.

10 THE COURT: I recognize that. I'd sustain
11 the objection on the grounds of relevancy at this
12 point, but eventually, because it is relevant to a
13 Cross Complaint, I'm going to permit this kind of
14 testimony.

15 MR. JOHNSON: Well, Your Honor, at this time
16 it is beyond the scope of direct.

17 MR. ROHAN: Your Honor, I don't believe it's
18 beyond the scope of direct, because Pastor Barnett
19 testified as to what has happened at the hearing. He
20 testified as to what Russell McKenzie said at the
21 hearings. He said that Russell McKenzie, at the
22 beginning of the hearings, read off what the rules of
23 the hearings were.

24 I think it's legitimate cross-examination for
25 me to go into what was said at the rest of the

1 hearings.

2 THE COURT: Nothing was said about the
3 testimony at the hearing.

4 MR. ROHAN: He testified I believe this
5 morning that Russell McKenzie, who was the moderator,
6 gave the rules. Those rules were set at the hearings.
7 That was part of the hearings.

8 THE COURT: Yes, but I mean the testimony was
9 taken, the evidence in support or contradiction.

10 MR. JOHNSON: Your Honor, we would like to
11 make certain that before any other testimony with
12 regard to this later on in the trial comes in, that we
13 have a further opportunity to address the court with
14 regard to relevance.

15 THE COURT: You have addressed it a couple of
16 times. I don't expect to have any extended argument
17 on it. I'll make myself clear. The mandate of the
18 Supreme Court and the cross-claim, counterclaim of the
19 defendants allege that the elders had inherent power
20 to terminate and remove Pastor Barnett because of a
21 breach of fiduciary duty.

22 The Supreme Court did not say there was such
23 a breach or was such a supportable theory. They did
24 say that that should be considered.

25 I take it that before I can consider whether

1 or not facts support the breach of fiduciary duty, I
2 must know what the claimed facts are, and some
3 indication that the claims were made and supported
4 before the elders, and that they acted upon them.

5 Then I will be able to tell whether or not,
6 number one, there is such a supportable claim, and
7 whether it is validly a counterclaim here, and that's
8 as far as I go.

9 What I'm trying to say is that just because a
10 claim is made and the elders act on it, is not
11 sufficient to determine whether it was a believable
12 claim and, number one, and number two, that it
13 constituted a breach of fiduciary relation or duty.

14 MR. JOHNSON: We would like to address this
15 at some point.

16 THE COURT: Well, we have done it. I
17 recognize that you want to pursue this. I don't know
18 why we should spend undue time to, because I have
19 heard you. I have heard you at length on this issue.

20 MR. JOHNSON: Well, Your Honor, I do believe
21 there was a great deal of testimony there -- well,
22 number one, I believe we're talking about something
23 that was stated between people, all of whom agreed
24 would not go forth from that room, number one.

25 Everybody there agreed that under no

1 circumstances, and this is the testimony, and I
2 believe when Counsel admits what they will say the
3 guidelines were, the written guidelines, there was to
4 be no mention of anything.

5 Everybody agreed this isn't a situation where
6 we are an outside party and an inside party. These
7 are all people within the same church agreeing we will
8 get together and we will talk and nothing we say will
9 ever been spoken outside this room. That's, number
10 one, this is without regard as to whether they can go
11 into the issue of sexual conduct. This is what was
12 set at the hearings.

13 I think if it was allowed to come in, there
14 would be evidence as to Mr. Zwack and statements made
15 to him by the pastor's wife, and it may go back in
16 time many, many, many, many years, and it may be of a
17 very intimate nature, and what I'm saying is --

18 THE COURT: I'd like to limit it to the
19 orders that I have previously set.

20 MR. ROHAN: You think that that's the
21 appropriate --

22 MR. JOHNSON: Beyond that, Your Honor, I do
23 want to stress that we feel, Your Honor, one, this is
24 a gross breach of the private agreement reached by the
25 parties to this lawsuit, and number two, that Your

1 Honor indicated that the Supreme Court sent it back
2 for two purposes, one, to determine if there was a
3 supportable theory, and two, if there are facts, then,
4 to fit within that period.

5 I do not believe that Counsel has indicated
6 there is a supportable theory that there is a breach
7 of some duty to the corporation, owed to the
8 corporation by this plaintiff, that they, the senior
9 elders, had a right to enforce.

10 If they can show a tort that he could have
11 committed, and they should be limited to evidence only
12 with regard to a tort that he could commit that would
13 subject the corporation to some sort of liability, and
14 things that are not tortious, things that are
15 perfectly okay under the law, that may be sin, but are
16 not matters that would subject anybody to any tort,
17 that are not tortious, and consensual sex is not
18 tortious. It may be a sin, it may be a biblical
19 problem, it may be significant from a religious
20 standpoint, but it is not significant whatsoever with
21 regard to, standing alone, it is not significant
22 whatsoever with regard to any civil standard.

23 Counsel has specifically limited his claims
24 of removal to those that are civil in nature, so he
25 should be held to that standard.

1 Only that which subjects the corporation to
2 potential liability, civilly, should he be allowed to
3 go into; because of the witness's constitutional
4 rights of privacy, and the very private private nature
5 of this, and because, most specifically, of the
6 private agreement that the evidence will show is what
7 all of the people there agreed to, that nothing should
8 go forth in this hearing.

9 MR. ROHAN: Your Honor, we do in our practice
10 antitrust work, and every single antitrust case we
11 have been involved in, people make promises that
12 they're not going to tell anyone else that they fix
13 prices. Well, we all know that a private agreement,
14 unless it's subject to a privilege, is not a private
15 agreement that the Court will honor in terms of
16 whether something be confidential or not. Otherwise
17 you'd have antitrust laws and you'd never be able to
18 prove it.

19 MR. JOHNSON: If we can agree --

20 MR. ROHAN: Don't interrupt me, Counsel.

21 MR. JOHNSON: Sorry.

22 THE COURT: For the purposes of my seeming
23 impatience, and I don't mean to cut you people off or
24 act in a fashion arrogant or high-handed, but we have
25 discussed this at length in the motion in limine, we

1 have discussed it not so much in length on issues
2 involving taking subpoenas and the scope of the
3 subpoena. We have discussed it partially in our
4 summary judgment motions.

5 I have agonized over this question, and I
6 believe we have exhausted all of the grounds, both for
7 the admission of this evidence and against it.

8 I take a, I don't know exactly what plaintiff
9 believes they can produce or should be permitted to
10 produce, but I believe that they should be permitted
11 to show that complaints were made, the extent and
12 nature of the complaints that were made, the bases
13 that was produced before the elders in reaching the
14 decision they did, and when I say "bases", I mean the
15 evidence that they had available to them, and does it
16 go to questions of whether or not sex occurred, yes,
17 it does, does it go to, I mean does my inquiry go to
18 those things, does the effect that it had upon the
19 corporation and its congregation, yes, it does, it
20 involves all of those things, and that is within the
21 scope of time that I previously set.

22 MR. JOHNSON: Was that an eight-year period,
23 then, Your Honor?

24 THE COURT: Yes. Eight years gets pretty
25 remote, I think.

1 MR. JOHNSON: I think under one circumstance
2 when we argued this, and it probably is in the
3 transcript of your comments, for one set of
4 circumstances Your Honor limited it to seven years,
5 and I don't recall.

6 MR. ROHAN: It's in the order.

7 THE COURT: Yes, I think that probably seven
8 years. Eight years is an arbitrary figure. I don't
9 know what the evidence is. Frankly, I have never,
10 other than reading the Mrs. A affidavit,
11 and I think one other, are the only evidence I know
12 of, and some of the statements by Pastor Barnett, and
13 I don't know how far back they go, but I think it is
14 within a reasonable time, and so if you people want
15 to talk about time, I'm willing to hear you on
16 that.

17 MR. JOHNSON: Well, would Your Honor also
18 include within the restricted area things that
19 happened between the pastor and his wife? The pastor
20 and his wife, I can't imagine that that's --

21 THE COURT: I can't imagine what you're
22 talking about. What my wife and I do are certainly --

23 MR. JOHNSON: I think if allowed to, Counsel
24 will try to introduce into evidence things that were
25 said there about things that Barbara Barnett said she

1 and her husband did.

2 MR. ROHAN: Your Honor, we have no intention,
3 I don't know where Counsel gets the impression, but we
4 have no intention of doing this.

5 MR. JOHNSON: I frankly don't know what
6 Counsel intends to do.

7 THE COURT: Generally speaking, that area is
8 open for this --

9 MR. JOHNSON: Counsel has only given me the
10 exhibits that he says he intends to offer. I'm
11 relying on what Counsel has given me, and based on
12 that I make my comments, and so I would ask Counsel if
13 he's prepared to agree not to introduce any evidence
14 with regard to what Barbara might have said to
15 somebody, the pastor's wife.

16 MR. ROHAN: We're prepared, Your Honor, to
17 the extent there are notes of the hearings of what
18 Donald Barnett said, and notes of the hearings of what
19 Jerry Zwack said, and to the extent that they want to
20 excise out any comments that were made about what
21 Barbara Barnett said this, or something like that,
22 that's fine with me.

23 I will state this morning that they
24 introduced into evidence statements by Barbara Barnett
25 that she made to the pastor, and I believe that any

1 privilege that they may claim as the husband and wife
2 privilege may have been waived this morning by that,
3 and we intend to argue that at the appropriate time
4 but that would not --

5 THE COURT: I'm not sure I understand what
6 you mean.

7 MR. ROHAN: We're not going to introduce any
8 evidence as to activity between the pastor and his
9 wife, if that's what they're concerned about.

10 MR. JOHNSON: Fine.

11 MR. ROHAN: But they will have the burden of
12 excising that out of any documents that we have, and
13 we'd be happy to excise it out.

14 THE COURT: The reason I agree with you is
15 probably not on ethical grounds or moral grounds, but
16 on the grounds that it's difficult for me to imagine,
17 although I have a pretty wild imagination, that that
18 sort of the conduct could be construed as a breach of
19 a fiduciary relationship, particularly where the
20 corporation is concerned, so I don't see how that's
21 even admissible if everyone, if nobody complains about
22 it.

23 MR. JOHNSON: Just one final thing, Your
24 Honor. If other evidence of sexual activity comes in,
25 all I would ask is that before it comes in, it come in

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1 this hearing which was held in January and February
2 1988, and without disclosing what was done or what
3 evidence was before the board at the hearing, and I
4 don't believe that you can cross-examine him on that.

5 MR. ROHAN: Okay.

6 THE COURT: Now that's not to say that that's
7 admissible. It's part of your case.

8 Q (By Mr. Rohan) You testified earlier in your
9 testimony that you gave a sermon on February 28th,
10 1988; is that correct?

11 A No.

12 Q You called it something else, other than a sermon.
13 You talked to the congregation on February 28th, which
14 was a Sunday?

15 A Yes.

16 Q You call it an apologetic --

17 A I may have called it an apologetic.

18 Q What's an apologetic?

19 A It's a defense for a position.

20 Q And during that apologetic did you tell the
21 congregation that you had stated to the senior elders
22 that we would have, that you were willing to have a
23 senior elder meeting with you present, you would
24 discuss the issues, and then you would vote on it,
25 vote on whether to remove you or not, and then if the

1 senior elders outvoted you, you would go according to
2 their vote?

3 A I said no such thing.

4 MR. ROHAN: The tape of February 28th, which
5 number is it?

6 MR. JOHNSON: Didn't you withdraw this?

7 MR. ROHAN: This is excerpt one from Don
8 Barnett's --

9 MR. JOHNSON: Counsel, we talked yesterday,
10 and I indicated there was an exhibit you claimed you
11 were proposing, that I said I don't have and --

12 MR. ROHAN: Twenty-eight, you have. I told
13 you it was 75. I mean the February 28th exhibit you
14 have.

15 MR. JOHNSON: It was the last exhibit in one
16 of the books. I guess it's the last exhibit in the
17 book --

18 THE COURT: It's a transcript of whatever he
19 wants to call it, sermon or --

20 MR. ROHAN: The last exhibit in one of the
21 books. That's notes by Lanny Peterson, or the
22 February 3rd, that's the February 3rd, this is
23 February 28th.

24 Exhibit, the last one, Exhibit 93, was the
25 last one, and that was February 3rd, 1988. I'm

1 talking about February 28th, 1988, which is Exhibit
2 75, and a tape which is Exhibit 31. We provided you
3 the tape and the transcript.

4 MR. JOHNSON: Well, Your Honor, my memory was
5 that the tape of both meetings, February 26th and
6 February 28th -- first, I will indicate both of those
7 tapes have been provided to me. I don't want -- let
8 me just check to see whether we have got a copy of the
9 transcript.

10 MR. ROHAN: Exhibit 75.

11 MR. JOHNSON: We do have a copy of the
12 transcript. My memory was that Counsel indicated that
13 the tape of February 26th and the transcript and the
14 transcript and tape of February 28th were being
15 withdrawn. That's my memory. Counsel indicates to
16 the contrary, I guess.

17 Q (By Mr. Rohan) Some of your sermons, all of your
18 sermon or apologetics at Community Chapel were
19 tape-recorded, weren't they, through March 4th, 1988?

1 A Typically.

2 Q Numerous copies were made of most of them; is that
3 correct?

4 A Of most of them.

5 Q And then members of the congregation were allowed to
6 check them out so they could listen to them at home or
7 in the car or other times, if they wanted to hear the
8 service again; is that right?

9 A If they weren't restricted tapes.

10 Q Can you identify the person that is speaking on this
11 tape? (Playing tape.)

12 THE COURT: Can you identify the speaker
13 there?

14 THE WITNESS: Yes.

15 THE COURT: Is it yourself?

16 Q Is it yourself?

17 A Yes.

18 MR. JOHNSON: Your Honor, can I ask a few
19 questions on voir dire?

20 THE COURT: Sure.

21 *****

22 VOIR DIRE

23 BY MR. JOHNSON:

24 Q Were there two speakers that we just heard there, or
25 was there just one?

1 A There were two.

2 Q Were you both of them?

3 A No.

4 Q Do you know who the first one was?

5 A No.

6 MR. ROHAN: The first one is the person who
7 put the tape together for me, now, so I wouldn't have
8 to fumble around.

9 MR. JOHNSON: Is that the entire tape?

10 MR. ROHAN: No, you have the entire tape. We
11 have given you the entire tape. We can play the
12 entire tape, which is an hour, but this is one
13 particular portion of it, that's been put on this
14 tape.

15 MR. WIGGINS: Where is it on the transcript?

16 MR. ROHAN: I don't know where it is on the
17 transcript, but I do have a separate transcript of it
18 right here, and I'd be happy to give it to you after
19 we play the tape and after we get it admitted into
20 evidence.

21 MR. JOHNSON: Your Honor, if we could maybe
22 take a few minutes, then, to see where in this 60-page
23 transcript this comes. It's a little hard for me to
24 keep this in context, if --

25 MR. ROHAN: Your Honor, I think I should be

1 able to play the tape and have the witness identify,
2 move to have it, well, I'm using it actually to
3 impeach the witness from what he has stated happened.
4 He already stated it didn't happen. Under Evidence
5 Rule 106 I'm entitled to play a portion. If they wish
6 on redirect to put in the entire tape and play the
7 entire tape, they're --

8 THE COURT: That's not the basis for
9 Counsel's --

10 MR. JOHNSON: If this was a deposition, for
11 instance, Your Honor, that he was attempting to use,
12 he would indicate the page, and so forth, where in the
13 entire deposition this appeared, and that's, at this
14 point, all I'm asking.

15 If Counsel can tell me where in this entire
16 deposition or transcript this appears, I don't think
17 that's, I mean. After all we may want to introduce
18 other portions.

19 THE COURT: Are there several areas that you
20 wish to play?

21 MR. ROHAN: Yes, Your Honor.

22 THE COURT: I was going to suggest that if
23 you have other questions to ask Pastor Barnett, that
24 we might take those up, and over the evening tag the
25 areas that you want to play, and notify Counsel

1 tomorrow where they are. I didn't even notice whether
2 those are numbered pages. I don't think they are.

3 MR. ROHAN: Yes, they are. Your Honor, let
4 me make a point here. Why can't I just question him
5 about it today, play the tape, and then tomorrow
6 morning I can furnish the page numbers, because they
7 can't ask him about the pages until they're on
8 redirect, so it's not going to help him at all today
9 to do that.

10 If Pastor Barnett is speaking on the tape,
11 the tape to some extent has already been
12 authenticated, it has been authenticated. The witness
13 already said it's his voice. According to the
14 evidence rules, I don't see where --

15 THE COURT: I'm inclined to let him play the
16 tape.

17 MR. JOHNSON: Your Honor, it's just that if
18 he were being asked to read a deposition, I would be
19 able to read along, and this is even worse.

20 MR. ROHAN: You can listen along.

21 MR. JOHNSON: Because if I can listen to him,
22 I can see whether or not he's reading it correctly.
23 If I'm listening to that, I can read along to see what
24 came just before, what came just after, what the
25 context is, and so forth.

1 I think that's the purpose in pointing out
2 where in the deposition it is, and then asking the
3 witness to read. That's all I'm asking. I can't
4 imagine that Counsel is not prepared to let me know
5 where in this thing it is. I don't want to be
6 obstreperous or obstructionist, but I do feel --.

7 THE COURT: The only problem, the only reason
8 I have for suggesting what I did was quite honestly
9 this is the first time I have heard only excerpts of
10 recordings. Usually they play the whole thing.

11 MR. ROHAN: The whole thing I believe is
12 about an hour long, and most of it is not related to
13 anything --

14 THE COURT: That's right, and I say for that
15 reason, probably, we better treat it in that fashion.

16 MR. ROHAN: They have a copy of the whole
17 tape. They can put in the whole tape if they think
18 it's taken out of context on redirect. I think that's
19 the appropriate thing for them to do, is put it in on
20 redirect.

21 THE COURT: I think they're entitled to see
22 where in the transcript, the recording is being
23 played.

24 MR. JOHNSON: Your Honor, I might refer to
25 Evidence Rule 106. "When a writing or recorded

1 statement or part thereof is introduced by a party, an
2 adverse party may require the party at that time to
3 introduce any other part or any other writing or
4 recorded statement which ought, in fairness, to be
5 considered contemporaneously."

6 MR. ROHAN: Your Honor, we're not introducing
7 this tape. We're putting this in as impeachment of
8 the witness.

9 We may intend to put in this tape. If we do,
10 we'll put it in through another witness in our case in
11 chief. We're only doing this for impeachment, and he
12 denied, he clearly denied ever saying it.

13 THE COURT: I think in impeachment you're
14 normally required to give the page and line, but I
15 think I'll go with my original ruling, particularly in
16 view of the hour.

17 You have about 10 minutes. Can you use 10
18 minutes in some other fashion?

19 Q (By Mr. Rohan) Did you personally approve all
20 disfellowshippings at Community Chapel after July
21 30th, 1987?

22 A I did after the memo that rescinded Jack Hicks'
23 authority. I don't remember the date of that memo.

24 Q But you personally approved all disfellowshippings
25 after that date?

1 A To the best of my knowledge yes.

2 Q Did you personally approve all placements of people on
3 special status after that day and prior to February
4 15th, 1988?

5 A Well, I would have to have --

6 MR. JOHNSON: Objection, Your Honor, I
7 believe this is beyond the scope of direct.

8 THE COURT: No.

9 A (Continuing) I cannot say that someone didn't do
10 something improperly, illegally without my knowledge,
11 without conferring with me, but the rules would be
12 that I would have to, I don't remember that we had
13 such a case, I don't remember such a case, but if
14 there were to be such a case, I would have to,
15 according to the authority, I would have to be the one
16 to approve it.

17 Q And during the time period, how long did Jack Hicks
18 have the authority, as your designee, to approve
19 disfellowshipments?

20 A I don't remember.

21 Q During the time that he had that authority did he
22 approve, to your knowledge, all disfellowshippings at
23 Community Chapel?

24 A Well, I would say no. I would say that even though he
25 had the authority to delegate authority to,

1 undoubtedly there were times when he called me up on
2 cases where he needed my counsel, and wanted to know
3 what I thought about it, whether we should or not.

4 Q So either you or he, during the time period when he
5 was your designee, approved all disfellowshippings; is
6 that correct?

7 A Yes, that is, he should have, unless somebody put
8 somebody out, bypassed the system.

9 Q You would have known about that, because
10 disfellowshippings were placed in the Sunday bulletin
11 of the church; isn't that true?

12 A I wouldn't necessarily have known. There's lots of
13 paperwork going through that place, and as the
14 president of a pyramid government, there's no way you
15 can keep track of everybody's name, every such thing
16 going on, just like Bush doesn't know everything
17 that's going on in all of his cabinet, all the way
18 down, just because he's responsible. I wouldn't
19 necessarily know that.

20 Q Were all disfellowshippings placed in the Sunday
21 bulletin of the Community Chapel?

22 A Yes.

23 Q You read the Sunday bulletin; is that correct?

24 A I did not necessarily check the names in light of what
25 I knew. I would assume that everybody was doing their

1 job and following very careful orders of how we had
2 people listed to put them out and so forth.

3 I did not go through and review it for that,
4 no. I got a bulletin, I would get the bulletin at, I
5 think generally when the other people did, stick it in
6 my bible, and because I was so busy, I might not even
7 read it for a few days. I might not even read it
8 thoroughly. I might just kind of glance through it
9 and see if there's anything in it, and throw it away.

10 Q Is it true that anybody at Community Chapel who was
11 disfellowshipped had a right of appeal?

12 A Yes.

13 Q And that right of appeal was to the Board of Senior
14 Elders?

15 A I think the bylaws say, to the best of my memory, that
16 they can appeal to a board of, I think it's two or
17 three senior elders, if my memory is correct.

18 If you want to show me the bylaws, I could
19 tell you exactly, and I think even then the pastor has
20 to approve it. I'd like you to show me the bylaws, if
21 you want me to tell you exactly what it says.

22 Q Let's go back to the tape for a minute. If you look
23 at page fifteen of Exhibit 75.

24 Counsel?

25 MR. PIERCE: Your Honor, I'd have to object

1 to the use of this document unless we have some
2 certification that it is a true and correct copy of
3 the original transcript. Somebody must have made --

4 THE COURT: Counsel, we're just talking about
5 the tape now.

6 MR. PIERCE: You have a transcript. That's
7 what I'm talking about.

8 THE COURT: He confirms that he recognizes
9 his voice. That would be, if it was my voice you'd
10 have to have it confirmed, but he authenticated his
11 own voice.

12 MR. PIERCE: I have no problem with that.
13 I'm talking about the transcript.

14 MR. ROHAN: I haven't moved to admit the
15 transcript. I don't know why you're talking about it.

16 (Following was taken from the
17 tape recording.)

18 "I asked them to do everything according to
19 the bylaws. I said, everything you do I want you to
do according to the bylaws. and if you're going to

1 and then if you outvote me, go according to your vote,
2 do what you want."

3 Q On February 28th, 1988, it's true, is it not, that you
4 stated to the congregation that the senior elders
5 should have a vote on removing you and then go
6 according, if you outvote me, go according to your
7 vote?

8 A Well, I did not mean what you're construing it to
9 mean.

10 Q I have not construed it. Is it true that you stated
11 that, is that right, and that was your voice on the
12 tape?

13 A I don't think I said what you just got through saying.

14 Q Was that your voice on the tape?

15 A Yes. That isn't how I understood what you said to me.

16 Q Well, you can explain that when your Counsel asks you
17 about it.

18 Is it true that anybody at Community Chapel
19 who was disfellowshipped, had a right to appeal?

20 A Yes.

21 Q And you knew that on March 4th, 1988 after you
22 received the letters at your home stating that you had
23 been disfellowshipped, that you had a right to appeal;
24 is that correct?

25 A No, I object to that characterization that I had a

1 right. Every person has a right to appeal when they
2 are legitimately disfellowshipped. You don't appeal
3 something when it's not legal, when it's not
4 legitimate.

5 Q Do you claim in this lawsuit that you were not aware
6 of your right to appeal?

7 A I claim in this lawsuit that nobody could put me out,
8 and there was no such thing as appealing to an illegal
9 maneuver or claim to put somebody out if you have no
10 authority.

11 For example, if the janitor and two people in
12 music ministry wrote me a letter that you're out, I
13 wouldn't appeal it because it's not valid.

14 Q Well, isn't it true that you consider the filing of
15 this lawsuit to be your appeal from your
16 disfellowshipping?

17 A No.

18 MR. JOHNSON: Objection, Your Honor.

19 THE COURT: Asked and answered.

20 MR. JOHNSON: Yes, asked and answered.

21 A I consider it to be --.

22 MR. JOHNSON: Asked and answered.

23 MR. JOHNSON: Your Honor, I would move to
24 publish Pastor Barnett's deposition of December 13th,
25 1988.

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THE COURT: Any reason not to?

MR. PIERCE: I have a problem, it may have to be done in superior court and then have the depositions removed to JAMS. I think that may be the more appropriate procedure. We do not have a clerk here, I understand, to take care of these matters. Correct me as to the procedure you have used in the past, as to use of depositions.

THE COURT: I'm under the impression now that you don't have to follow that procedure; is that not correct, to publish a deposition? As a matter of fact, they come in published, don't they, to the clerk's office?

MR. PIERCE: No, I think they actually go to the attorneys now, and the attorney brings them to the court proceeding, and at the court proceeding asks that they be opened and published, and any problems or difficulties that occur before the Court in the court proceedings are handled at that time.

THE COURT: Rather than to the clerk.

MR. ROHAN: I don't understand. Are there any objections?

THE COURT: Well, the fateful hour having arrived, why don't you --

MR. ROHAN: Can I just show him the

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reference?

THE COURT: Tell Counsel what you want to do by publishing a deposition. Do you have an objection to his tearing open the envelope?

MR. PIERCE: Which deposition is this?

MR. ROHAN: December 13th, 1988.

THE COURT: December 13th, 1988 depo in which case, in this case?

MR. ROHAN: In this case, Your Honor.

MR. PIERCE: We do have a copy of it.

MR. ROHAN: My next question would be to ask the witness to read from page 46 of that deposition, line seven.

THE COURT: Line seven.

A Page 46 line seven. "Was it prior to the time you left for vacation --

Q Just a minute.

MR. PIERCE: He will tell you how far to read.

MR. ROHAN: Maybe I'm saved by the bell. I have the wrong reference in this deposition.

THE COURT: We're about to recess.

(Court was adjourned at 4:00 p.m..)