

**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 III, pp. 373-543
)	
)	JANUARY 24th, 1991
)	
Defendants.)	
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**TRIAL TRANSCRIPT, VOLUME III
PAGES 373-543**

BE IT REMEMBERED the above-named cause of action came on for arbitration on January 24th, 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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BARNETT - Cross (By Mr. Rohan)

(The following proceedings occurred on January 24, 1991)

DONALD LEE BARNETT,

the Plaintiff herein, having been previously duly sworn on oath, was examined and testified as follows:

CROSS-EXAMINATION (Continued)

BY MR. ROHAN:

Q Before we left last night, pastor, we were talking about whether or not you had appealed from your disfellowshipping and it was your testimony, I believe, that you did not appeal from your disfellowshipping. Well, let me ask you this question. Did you appeal from your disfellowshipping?

MR. JOHNSON: Perhaps the witness was going to answer your previous question.

A Well, the problem is I'm not a lawyer and sometimes you say a thing in a certain vein meaning a certain thing and another time you look at it a little bit different, so you might say the opposite and I am still -- See, I felt like at the time that they said they disfellowshipped me, I think my previous thinking was at least that they said that they disfellowshipped me and the Court was going to have to decide that, and so I took some legal action to overturn that. And not being a professional law man and knowing exactly what terms are legal to use and so forth, I may have said

BARNETT - Cross (By Mr. Rohan)

1 we appealed it just meaning, and I don't know if
2 that's the legal sense or not, but meaning we tried to
3 overturn it.

4 But yesterday when you asked me the question as I
5 was reflecting on it my mind said, no, I didn't really
6 appeal it because it wasn't legal in the first place.
7 I may have said that earlier but today I would think
8 technically I didn't appeal it. And if I said, I
9 meant we took legal action to overturn it.

10 Q (By Mr. Rohan) Do you recall stating in your
11 deposition on December 13, 1988 that you had appealed
12 your disfellowshipping through litigation?

13 A Well, see, I don't recall that but if I said through
14 litigation that was what I was talking about,
15 overturning it. I don't know if you call that
16 appealed it or not really. Technically, I don't
17 believe I appealed it but I may have expressed it that
18 way.

19 Q Why don't you open to page 46 of your deposition.

20 MR. JOHNSON: Is this the same deposition?

21 MR. ROHAN: Yes, of the December 13, 1988
22 deposition.

23 A The page is 46?

24 Q (By Mr. Rohan) Yes.

25 A Okay.

BARNETT - Cross (By Mr. Rohan)

1 Q And you were under oath when you gave this deposition
2 on December 13, 1988; is that correct?

3 A Yes.

4 Q Could you please read starting on line 19 on that page
5 through line 1 on the following page.

6 A Question: Did you appeal your disfellowshipping?

7 Answer: I beg your pardon? Question: Did you appeal
8 your disfellowshipping? What was the date of my
9 disfellowshipping? March the 4th, 1988. Answer: I
10 was told by the elders' counsel, Jim Leach, that if I
11 showed up at my church I would be arrested so I
12 attempted to appeal through litigation.

13 Q That's all, thank you. You appealed your special
14 status by virtue of a letter you wrote after receiving
15 the special status on or about February 15, 1988;
16 isn't that correct?

17 MR. JOHNSON: Your Honor, I'll object
18 because I think that assumes facts not in evidence. I
19 don't think the witness ever said he appealed. I
20 think he indicated he rejected their attempts to put
21 it on him but I don't think he's ever indicated he
22 appealed.

23 THE COURT: I think the question is proper
24 but I'm not sure that he is aware of what you're
25 talking about.

1 MR. ROHAN: I'll lay a little for foundation
2 Your Honor.

3 Q (By Mr. Rohan) You received a letter from the senior
4 elders on or about February 15 that stated that you
5 were placed on special status; is that right?

6 A Yes.

7 Q And at the time you were placed on special status, you
8 wrote back to the elders a letter stating 14 reasons
9 why they couldn't put you on special status; is that
10 correct?

11 A Yes.

12 Q Do you remember writing that letter?

13 A Yes.

14 Q Who did you send that letter to?

15 A The senior elders.

16 Q And you considered that letter an appeal of your
17 special status; is that correct?

18 A I don't think so in a technical sense. My thinking is
19 that I rejected it because they had no grounds. I
20 don't see how I could appeal something, like I said
21 yesterday, unless it was legal.

22 Q Can you turn please to page 45 of your deposition.
23 It's in front of you, December 13, 1988, and could you
24 read from line 14 through line 25? Would you read
25 both question and answer? Could you say question and

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1 answer?

2 A Yes. Question: Had you requested an appeal of being
3 placed on special status? Answer: I appealed it by
4 virtue of a letter reserving it. Question: And that
5 was a letter from you? Answer: Yes. Who was that
6 letter to? Answer: Senior elders. Do you recall
7 when the letter was written? Answer: No. Was it
8 prior to March 4th, 1988? Answer: Yes.

9 Q Have you since March 4, 1988 seen a copy of that
10 letter to the senior elders?

11 A I don't know. I may have.

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1 eldership as a whole allowed you to continue to
2 operate as pastor; is that correct?

3 A Well, I object to characterizing it as a special
4 status imposed on me allowing me. You can't allow me
5 to do anything. You're not allowed. They have no
6 jurisdiction over me. That's why I refused it, I
7 would not accept it.

8 Q But the senior elders, neither the senior elders nor
9 the elders in placing you on special status attempted
10 to curb your authority as pastor; isn't that true?

11 A Well, I would say it may be true that they did not
12 allow me to curb my authority but I think that they
13 did perhaps curb some of my duties and/or privileges
14 and needs.

15 Q You would still have been pastor under the special
16 status had you accepted it; is that correct?

17 A Yes.

18 Q And you still would have received your salary as
19 pastor under the special status; is that correct?

20 A Yes, but there's a lot more to it than that.

21 Q You would still have occupied your position in
22 relationship to the other divisions outside of the
23 church division of Community Chapel; isn't that
24 correct?

25 A Yes.

BARNETT - Cross (By Mr. Rohan)

1 Q And you still would have been able to preach sermons
2 at the church; is that correct?

3 A Yes.

4 Q You still would have been able to perform other
5 ministerial duties in terms of weddings and funerals
6 and counseling individuals; is that correct?

7 A No.

8 Q You would have been able to perform weddings?

9 A Yes.

10 Q And you would have been able to perform funerals; is
11 that correct?

12 A Yes.

13 Q In your testimony either yesterday or the day before
14 you testified that in regard to Jerry Zwack and
15 Barbara Barnett's spiritual connection relationship
16 that one of the aspects of spiritual connections was
17 if a mate of a person couldn't handle the spiritual
18 connection that their mate had with someone else in
19 terms of spending time alone with their connection

BARNETT - Cross (By Mr. Rohan)

1 the fact that their wife was spending alone time with
2 a certain spiritual connection that that alone time
3 should be cut down because the family came first; is
4 that right?

5 A Generally that is true and it was true at the time
6 that I said it because guidelines do change.

7 Q Did that guideline change?

8 A I'm not certain. I'm not certain of the date of that.
9 The principle doesn't change but there was a lot of
10 things that were requested at first that was not
11 requested later and we even told them we would remove
12 the guidelines as we proved we were able to handle
13 these things.

14 And then there came a time when we didn't enforce
15 the guidelines as much as at first because of both
16 changes in the congregation, acceptance in the
17 congregation and also because some things got so far
18 out of hand it wasn't prudent to even try any more.

19 Q This particular guideline about a mate being
20 uncomfortable with someone spending alone time with
21 their connection, did you following that guideline?

22 A I don't remember ever -- What I think I did rather
23 scrupulously in all cases with the possible exception

1 addressing and that her request was totally
2 unreasonable and it wasn't really the general case.

3 Q But as to everyone else other than your wife, you
4 followed that guideline; is that correct?

5 A To the best of my knowledge, yes.

6 Q You had a spiritual connection with a woman by the
7 name of Teri Ann Berry; is that correct?

8 A Yes.

9 Q Teri Ann Berry's husband is named Tom Berry?

10 A Yes.

11 Q And Tom Berry met with you in person and stated to you
12 at one point that he could not handle your going away
13 on vacations with his wife; isn't that correct?

14 A I don't remember that at all.

15 Q Did Tom Berry in that conversation state to you -- Do
16 you recall having private conversations with Tom
17 Berry?

18 A I don't know if I had a private conversation with him
19 at any time, but I do not remember him ever saying
20 that. I only went away with his wife twice and once
21 he was along and the other time she was separated from
22 him and she was really -- We went with a group of 14
23 and she was really with Craig Bluemel as much as with
24 me and I don't, I never heard a word from him of an
25 objection. I didn't even talk to him at that time.

1 Q You went on a trip to Palm Springs and Teri Ann Berry
2 and her husband, Tom Berry, were on that trip; is that
3 correct?

4 A Yes.

5 Q And on that trip did you say to Tom Berry that God
6 showed me the devil was going to use Tom Berry to
7 break Teri Berry's and my connection?

8 A Not on that trip, I said that prior to that time.

9 Q You said that to Tom Berry?

10 A I said that to the whole church, I said it to Tom, I
11 said it to Teri Ann in the church prior to that time
12 and it happened exactly like God showed me.

13 Q That God said the devil used Tom Berry to break your
14 connection with Teri Ann Berry?

15 A The devil or more correctly the demons and spirits of
16 legalism did exactly what I predicted and it had that
17 effect, yes.

18 Q Did you say on the trip to Palm Springs with Tom Berry
19 and Teri Ann Berry that after Tom complained about
20 your spending alone time with his wife that you were
21 going to put on your pastor's cap and insist that Tom
22 Berry submit and allow you to spend alone time with
23 Teri Ann Berry, his wife?

24 A I have never made that statement and he didn't
25 complain of me spending alone time. He was in the

1 front seat with his connection and I was in the back
2 seat with his wife, which is the arrangement we had
3 when we went down there, and he did momentarily when
4 we got into Palm Springs kind of get upset and made
5 statements. And I said, "Hey, Tom, she's your wife.
6 You can have her whenever you want. I thought this
7 was the arrangement." He said, "Well, that's okay".
8 As long as he knew, okay, that's fine, you can have
9 her and no problem. It was a spiritual relationship
10 and he never did ask at any time for me not to be with
11 her. We were all together in a group anyway and we
12 stayed in a group. We were not alone. He was there
13 with her and me.

14 Q We discussed earlier, you stated earlier you were on
15 vacation in June of 1987 and when you came back your
16 wife had separated from you; do you recall that?

17 A Yes.

18 Q And you were on vacation in Hawaii at that time?

19 A I don't think so.

20 MR. JOHNSON: Your Honor, I'll object. This
21 is beyond the scope of direct, I think. I don't think
22 we have ever talked about a particular vacation that
23 Pastor Barnett took.

24 THE COURT: How does this relate to the
25 direct testimony?

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THE COURT: I'm not sure that the question goes to that issue, maybe it does. If you will point out that issue.

MR. ROHAN: What I'm trying to do is build up to that and not just wade right in but I could be a little more direct on that.

Q (By Mr. Rohan) You were on vacation at the time when your wife left your house, is that correct, separated from you?

A Yes.

Q And you were on vacation with a spiritual connection?

A And some other people, nobody alone.

Q And the spiritual connection was Carol Rockwood?

A No.

Q What was the spiritual connection you were with?

1 A I don't remember. I don't think it was her.

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5 MR. JOHNSON: Objection, Your Honor. We
6 have not and will not waive the husband and wife
7 privilege. It's hearsay. They have indicated what
8 they intend to demonstrate that she said. She's not
9 been listed as a witness. She was initially listed as
10 one of their potential witnesses several months ago
11 but they have stricken her and we will object to
12 anything unless this was a statement made in a
13 non-confidential situation.

14 MR. ROHAN: Your Honor, he has testified at
15 length as to conversations he's had with his wife on
16 direct. We did not object to that. They opened the
17 door. I'm frankly surprise that they brought up any
18 of this. I was not aware at any point that --

19 THE COURT: He may answer that question.
20 That's proper as to the issues he's testifying.

21 MR. JOHNSON: If he, Your Honor, has
22 testified with regard to conversations he had with his
23 wife, he has waived the privilege only if those
24 conversations were confidential conversations and that
25 is not in evidence and it's only if he's waived the

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1 privilege with regard to the confidential
2 communication. It's only with regard to that
3 confidential communication, that particular
4 conversation. The law it's quite clear on that. You
5 don't by simply saying something that you said to your
6 wife waive and open up every conversation you've ever
7 had with your wife throughout your life.

8 THE COURT: That's true but don't you waive
9 it as to the gist of the conversation testified to?

10 MR. JOHNSON: I think you waive it as to
11 that conversation, that incident, nothing more.

12 MR. ROHAN: He did testify that his wife
13 never told him the reason why he left her, never gave
14 him the reason. Now, I think --

15 MR. JOHNSON: Why he left her?

16 MR. ROHAN: Why she left him. In fact, I
17 believe his wife did give him the reason on repeated
18 occasions and that's what I'm trying to find out.

19 THE COURT: You may answer the question.

20 MR. JOHNSON: Could we have a continuing
21 objection, Your Honor?

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9 MR. JOHNSON: Your Honor, asked and
10 answered, same objection as before and it's hearsay.

11 THE COURT: You may answer.

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14 THE COURT: That's not the question. The
15 question is, did she tell you that?

16 THE WITNESS: No, she did not tell me that.

17 Q (By Mr. Rohan) You stated in another portion of your
18 direct examination that one of the reasons why you
19 believe you could not be removed as the pastor of
20 Community Chapel was that only God can appoint and
21 only God can remove a pastor. Do you recall that?

22 THE COURT: In what context?

23 MR. ROHAN: I believe he was talking about
24 the formation of the 1967 bylaws.

25 O (By Mr. Rohan) Do you recall testifying in regards to

BARNETT - Cross (By Mr. Rohan)

1 the formation of the bylaws in 1967 that one of the
2 reasons why you felt that you could not be removed as
3 the pastor was because only God can appoint and only
4 God can remove a pastor?

5 A Yes, that's my Biblical and religious belief.

6 Q That's one of the tenets you founded the church on?

7 A Yes.

8 Q And God can remove a subsequent pastor of Community
9 Chapel by a vote of the congregation; is that true?

10 MR. JOHNSON: Objection, Your Honor, to the
11 form of the question. It's vague and confusing and it
12 does not accurately quote the bylaws.

13 THE COURT: Yes, it doesn't.

14 Q (By Mr. Rohan) Can you tell me in regard to that how
15 God goes about removing a pastor?

16 MR. JOHNSON: Your Honor, I'll object to
17 that, too, that's vague and speculative, that's very
18 speculative.

19 MR. ROHAN: Your Honor, he opened up the
20 area.

21 THE COURT: You may answer.

22 A I can't tell you all the ways that God goes about
23 removing a pastor, but God certainly can remove a
24 pastor any way he chooses. He has the power and
25 authority to do that. It would be very easy for him.

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1 One way is just to pull the anointing back. If I
2 don't have God's anointing, I can't continue in the
3 ministry. Another way is he can cause me to die,
4 cause me to get sick. He could lead me elsewhere.
5 There are all kinds of ways of pulling out of the
6 ministry if he wants to do it.

7 Q (By Mr. Rohan) As to a subsequent pastor of Community
8 Chapel other than yourself, is one of the ways that
9 God can remove the pastor having a vote of the
10 congregation to remove him?

11 A I wouldn't characterize it that way. I think a
12 subsequent pastor, God can remove him the same way or
13 the Senior Elder Board can removed him.

14 Q So, the Senior Elder Board could remove a subsequent
15 pastor?

16 A According to the bylaws. I think it requires a
17 congregational vote, if my memory is correct.

18 Q But that would be a way of God removing a pastor also?

19 A No, I won't say that. I wouldn't say that would be
20 necessarily true. I think God has his own sovereign
21 ways of removing. I don't think that just because
22 people do something you can say that God did it.

23 Q Prior to your receiving the disfellowshipping letters
24 which you testified you received on March 4, 1988,
25 were you warned by anyone that you might be put out of

1 the church?

2 A Well, I don't think as my memory is, I don't think
3 that they did actions that I interpreted or
4 suspicioned that they might try to put me out. And
5 one person, I remember asking the question, I don't
6 remember how I asked it exactly, but I said something
7 to the effect that you mean if I don't do so-and-so
8 that you might try to have me disfellowshipped or
9 modify the bylaws or something and they said something
10 like, yep, or if it comes to that or something like
11 that. I don't remember. I don't at this time recall
12 anybody specifically saying we will disfellowship you
13 if or we are planning on doing that.

14 I think I saw the handwriting on the wall and put
15 two and two together and suspicioned they might do
16 that because of the legal claim that they were making
17 because Jim Leach at that time had told them, if my
18 memory is correct, that the articles were contrary to
19 the bylaws, which I think the Supreme Court later said
20 that was not true. But not being a lawyer, I took his
21 word for it, oh, maybe we have a problem because I
22 hadn't looked into it myself. I think that's what
23 happened. And so I thought, well, maybe they can.
24 The bylaws say they can't, maybe they found a legal
25 loop hole. I think that's what he was getting at. I

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1 don't remember anybody specifically warning me.

2 Q Who did you have this discussion with about
3 disfellowshipment? You said you had a discussion with
4 some of the elders about disfellowshipping.

5 A Well, I don't recall who that was at this time.

6 Q Was it prior to March 4, 1988?

7 A Yes.

8 Q And it was a discussion as to that one of the possible
9 outcomes of your disagreement with the elders at that
10 point might be your being put out of the church or
11 disfellowshipped?

12 A I said you mean to tell me if so-and-so, I don't know
13 what words it was exactly, that you guys might do
14 that? He said, yep, maybe or if it comes to that. I
15 didn't know whether to believe them or not. I didn't
16 know if that was just his opinion or his attitude or
17 impression.

18 I didn't ever have a committee saying that or I
19 didn't have an envoy from a committee or I didn't have
20 a committee itself saying that or I didn't have
21 anything in writing, just one person making an
22 off-hand statement I wasn't sure how to take.

23 Q This was an off-hand statement, you said?

24 A Well, I don't know if off-hand is the right word. It
25 was a responsive statement that, you know, I didn't

BARNETT - Cross (By Mr. Rohan)

1 know if he had any authority to make that statement.
2 I didn't know if he was speaking for others or not or
3 trying to pressure me or not. I can't remember
4 exactly, it's been so long. I don't have any way to
5 give perfect recall.

6 Q You say you don't recall, it was one of the elder but
7 you don't recall which one it was?

8 A I think it was one of the elders. I don't know how it
9 could be anybody else.

10 Q So, it could have been David Motherwell talking to
11 you; is that right?

12 A Yeah, I guess it could have been.

13 Q Is it one of your contentions in this lawsuit that you
14 were never warned prior to the time you were
15 disfellowshipped that you might be disfellowshipped?

16 A Well, earlier before I had time to read some
17 depositions and so forth, I was quite positive that
18 nobody had ever said a word about it. But after I got
19 a chance to read some of deps again, it refreshed my
20 memory. I was surprised. I had forgotten totally
21 that there was -- I had forgotten I had even said
22 things to the congregation about that. I know it came
23 as a shock to me when it happened. I was under the
24 impression that nobody ever mentioned a word. But
25 once I went back and read a bit, I remembered that I

1 guess this did happen. I have a little different view
2 of it now than I did then. The further I get away
3 from it the hazier it gets. If I review, it comes
4 back.

5 Q So, at one point in this lawsuit you did contend you
6 hadn't been warned and now you're contending that in
7 fact somebody in fact warned you that you might be
8 disfellowshipped; is that correct?

9 A No, I didn't say that. I think you're putting words
10 in my mouth. I think I explained it in the way that I
11 understood it and I didn't say that somebody just
12 warned me. I don't know if I should go through the
13 whole thing again. I explained it once, it's on the
14 record. I wouldn't characterize it that way.

15 And I didn't think they had the authority to do
16 it anyway unless it went through a legal process and
17 the Court found the bylaws were inconsistent with the
18 articles. I didn't think they were going to
19 disfellowship, I thought they would maybe have a
20 lawsuit and, as a result of that if they were right,
21 then maybe disfellowship, although I guess I did
22 realize they might try to do something immediately, at
23 least claim it. I didn't think it would be valid. I
24 had gone to an attorney and he indicated that he
25 didn't think that they had the authority to do it and

BARNETT - Cross (By Mr. Rohan)

1 he had a number of reasons.

2 (Defendants' Exhibit No. 24
3 marked for identification.)

4 Q Handing you what has been marked as Exhibit 24 to your
5 deposition, excuse me, as Defendants' Exhibit 24 in
6 this action, that's a letter that you received on or
7 about February 15, 1988 from the senior elders of
8 Community Chapel? Take a minute to review it, if you
9 wish.

10 A Yes, I did receive this.

11 Q And you had a discussion with --

12 MR. JOHNSON: Your Honor, we will object on
13 several grounds. First, it may be, Your Honor, to be
14 candid, it may be admissible as a verbal act of the
15 elders. It is still, however, with inadmissible
16 hearsay and we will object to any of the contents of
17 the letter, the statements other than the specific
18 statements stating to Don.

19 THE COURT: What part will he refer to?

20 MR. ROHAN: It's being offered at this
21 point, Your Honor, to prove that Donald Barnett was in
22 fact warned by the senior elders that he would be put
23 out of the church.

24 THE COURT: That's what I assumed was in
25 here someplace.

BARNETT - Cross (By Mr. Rohan)

1 MR. JOHNSON: And to the extent of any other
2 information, we don't want any of the statements made
3 in there considered or taken by this Court to be true.

4 THE COURT: They will not be regarded as
5 assertive of the truth except as to whether or not
6 this warning was issued.

7 MR. JOHNSON: Yes, except as any admissions
8 that may be made by the Defendants.

9 THE COURT: Maybe ultimately if they
10 authenticate and testify as to some of this, it will
11 come in then.

12 MR. ROHAN: Thank you, Your Honor.

13 MR. JOHNSON: Your Honor, again, and we
14 would not object and believe that it is admissible to
15 the limited extent it may contain admissions by the
16 Defendants as well as by the party Defendant.

17 THE COURT: Okay.

18 MR. ROHAN: I would think so.

19 THE COURT: You may proceed.

20 Q (By Mr. Rohan) Could you turn to page 2, the second
21 full paragraph and read that. It starts "we implore
22 you".

23 A We implore you to sweetly accept this action and not
24 make an issue of in any way before the congregation.
25 So many people are aware of the --

1 MR. JOHNSON: Your Honor, I would object at
2 that. That is certainly not what counsel indicated.

3 THE COURT: Which paragraph are you talking
4 about?

5 MR. ROHAN: It starts "we implore you".

6 THE COURT: Okay.

7 MR. ROHAN: It doesn't mention what the
8 people are aware of or talk about what the issue is.

9 MR. JOHNSON: I think it does make hearsay
10 statements. Well, I'll withdraw my objection, Your
11 Honor.

12 THE COURT: It will be admitted for the
13 purpose indicated that they feel they could bring his
14 ministry to an end.

15 (Defendants' Exhibit No. 24
16 received into evidence.)

17 Q (By Mr. Rohan) Would you read the entire paragraph?
18 A We implore you to sweetly accept this action and not
19 make an issue of in any way before the congregation.
20 Many people are aware of the circumstances that to do
21 so would likely result in dragging the entire issue in
22 front of the congregation. We know you don't want
23 that, nor do they. If that happened, we feel we could
24 precipitate events that would have a high probability
25 of bringing your ministry to an end and we don't want

BARNETT - Cross (By Mr. Rohan)

1 to see that.

2 Q Do you recall discussing in your sermon on March 6,
3 1988 that the senior elders could have a legal meeting
4 with you present and they could vote and then, if they
5 out-voted you, you would follow that vote?

6 MR. JOHNSON: What day was this?

7 MR. ROHAN: March 6, 1988.

8 A Well, I don't recall. If you have anything to show me
9 I can read the context and see what I said.

10 Q (By Mr. Rohan) You don't recall that?

11 A I don't recall that.

12 THE COURT: March 6th sermon?

13 MR. ROHAN: Yes, Your Honor. It's page 5,
14 should be the second line from the top.

15 Q (By Mr. Rohan) Do you recall giving a sermon on
16 March 6, 1988?

17 A No.

18 Q Let me --

19 (Whereupon, a tape
20 recording was played.)

21 Q That was your voice; is that correct?

22 A It sounds like it may be in a garbled way. It didn't
23 sound like my usual voice.

24 MR. JOHNSON: Your Honor, I would like the
25 record to reflect that what was displayed was

BARNETT - Cross (By Mr. Rohan)

1 something that at least in a substantial part was, at
2 least to my ears, not understandable. I don't believe
3 the court reporter was able to understand it and take
4 down a single bit of what was just played.

5 THE COURT: Do you wish to play it over
6 again?

7 MR. ROHAN: Yes.

8 (Tape recording) This is excerpt No. 1. The other
9 side has not discussed it. We, there's had not any
10 disagreements to what had been said, it had not been
11 discussed. There was no attempt to really find out,
12 well, I said, I got to go, my time is up. I have an
13 appointment at six o'clock, and I feel like I am
14 rushing. And he said come back Monday at one o'clock
15 and we will give you a chance to continue and then we
16 will continue to discuss it. And I said okay. I
17 said, no, I don't know why I said this, because I
18 wasn't really thinking that they would do it. I was
19 shocked that they would do it, but I said it anyway.
20 I said okay, I do not, I forbid you to bring this
21 before the church because we haven't even discussed
22 this yet. And remember that I am in charge of all
23 services whether I am present or not according to the
24 bylaws. And we will do everything in a legal manner.
25 So, after we have discussed it and see if we can come

1 to some unity of agreement and see what a person means
2 by his statements and why somebody thinks that it is
3 wrong and take it down to the meeting, at the end of
4 that, the senior elders will have a legal meeting with
5 me present and we will vote. And if I'm out-voted,
6 then you do according to whatever you vote.

7 Q (By Mr. Rohan) That was your voice; is that correct,
8 pastor?

9 A Well, I'm aware of the fact that a person never hears
10 himself exactly like other people do yet I have heard
11 tapes of myself. I would not dispute that's my voice.
12 It probably is. It doesn't sound too much like what I
13 think I sound like, but under the conditions of the
14 tape it probably is me, but I don't know if I could
15 definitely say. I couldn't understand hardly any of
16 it. I could pick up a few words here and there but I
17 couldn't understand the context of it. I have read
18 this. You put it in front of me, but what's printed
19 on here is not what was said, the same as happened
20 yesterday to my knowledge.

21 Q The record will show that. Let's turn if we could now
22 to the --

23 A As I thought I heard you, at least.

24 Q Let's turn if we could now to the March 4, 1988
25 meeting where you testified that the three of the

1 senior elders of the church, Jack DuBois, Jack Hicks,
2 and Scott Hartley, came to your house sometime that
3 morning; do you recall that?

4 A Yes.

5 Q During the time that Jack Hicks -- During the time
6 that the elders were at your house, did Jack Hicks or
7 anyone else ask that a vote be taken?

8 A In a technical sense, in a business sense according to
9 the bylaws, according to any corporate business bylaws
10 sense, no, because to take a vote you have to state
11 the purpose of the vote and you have to state what
12 you're voting for. It has to be clear. In fact, you
13 have to have a discussion prior to that time or at
14 least things brought up which were never brought up.
15 I think they had a code vote saying "do you?", "do
16 you?" which they then came on in court and deposition.

17 I accused them of perjuring themselves which I
18 think they did because they called this a vote and
19 they knew that wasn't a vote. But in effect it was,
20 quote, a vote, unquote, inasmuch as they all knew
21 ahead of time, they decided what to do. It had to be
22 that way in order for them to say this and go down and
23 say they had a vote. So, I can't say I never
24 characterized them as saying they voted, but in a
25 legal sense and proper sense they had no vote.

1 Q Did one of the three of the other senior elders who
2 were there besides yourself ask that a vote be taken?

3 A Nobody said, nobody actually said the words. Well,
4 let me think. No, at this time as I remember it I
5 don't remember anybody saying, "How do you vote?" I
6 think somebody said -- All they said was "do you?"
7 And I suppose that I could have said in a non-legal,
8 non-technical sense they asked for a vote meaning
9 their code vote without saying it was a vote in an
10 improper way they voted, but in my mind they didn't
11 really vote.

12 Q Okay. Did someone at the meeting, one of the three
13 elders, Jack Hicks, Jack DuBois, or Scott Hartley, ask
14 for a vote when they were in your presence on March 4,
15 1988?

16 MR. JOHNSON: Your Honor, I think the
17 witness has described exactly what was said verbatim
18 to the extent he's able to and I think counsel is
19 badgering the witness in terms of trying to get him to
20 characterize it one way or the other. The question
21 has been asked in about three different ways and
22 answered by the witness. I would object.

23 THE COURT: I'm having trouble understanding
24 what the witness is saying. He says in one aspect in
25 effect it was a vote but that actually a vote should

1 incorporate what's being voted upon and identify the
2 motion or the matter. And in that respect, it was not
3 a vote. Is that what he said?

4 MR. JOHNSON: I think that's what he said.

5 THE WITNESS: May I clarify it?

6 THE COURT: Well, I have trouble following
7 exactly what you mean because you say both things.

8 THE WITNESS: Would you like me to explain
9 it?

10 THE COURT: Yes.

11 THE WITNESS: Here's my problem, this is
12 what I'm trying to say. In a real, true, honest,
13 legal business sense, there was absolutely no vote in
14 my mind because no agenda was brought up, no bylaws
15 were shown, no articles were shown, nobody asked for a
16 vote. There was no discussion. I talked and all Jack
17 Hicks said was sign this. There was no document,
18 nothing to sign.

19 THE COURT: Did he say anything about a
20 vote?

21 THE WITNESS: Well, when I then said, well,
22 you might as well leave if you're not going to
23 cooperate, then nobody said vote. Jack Hicks turned
24 to Jack DuBois and said "Do you?" And he said "yes".
25 He turned to Scott Hartley and said, "Do you?" And he

BARNETT - Cross (By Mr. Rohan)

1 said "yes". He might have said "I do", and then they
2 got up and they walked out.

3 Now, the problem I'm having is, see, I might have
4 at some time when I'm not trying to be real accurate,
5 see I have accused them a number of times through my
6 attorneys and others of perjuring themselves before
7 Court and stating that they took a vote to do this
8 , because they didn't. But, see, I feel like they ahead
9 of time set this whole thing up and that was going to
10 be their code vote and because Jim Leach told them
11 they had to have a vote and go down to Olympia and
12 file these amendments without my signature.

13 So, in relaying this to others, I might have said
14 in not me really thinking it was a vote but I might
15 have said in their view, well, they asked for a vote
16 and said "do you?" I might have said a careless
17 statement like that meaning not a real vote but they
18 were trying to make a vote in their minds or at least
19 pretend there was a vote, set it up and I'm afraid
20 that he might try to trap me into looking at a
21 sentence that I said in which I didn't really mean
22 that they actually took a vote.

23 I'm very adamant they never actually took a vote
24 and there was nothing legal was done on that day
25 whatsoever. I took the meeting, I was the one that

1 made all the explanations, we discussed nothing else.
2 We did not discuss the corporation bylaws. But I
3 can't be sure, I know he has some piece of paper. I
4 can't be sure I might have said to somebody, well,
5 they did this, not trying to describe it real
6 carefully and said then they asked for a vote and took
7 it down to Olympia or something meaning "do you?", "do
8 you?" and they called it a vote. That's why I'm kind
9 of hedging here. Do you understand what I'm saying?

10 THE COURT: I think I do. You may proceed.

11 MR. ROHAN: Thank you Your Honor.

12 Q (By Mr. Rohan) You had your deposition taken in this
13 case on January 8, 1991 earlier this month; is that
14 right?

15 A I don't remember the date.

16 Q Is that a copy of the deposition? It's the original
17 of the deposition, January 8, 1991. Do you now recall
18 that you had your deposition taken on that date?

19 A I don't remember the date. I'll take your word for
20 it. I did have a deposition.

21 Q You were under oath at the time you had your
22 deposition taken?

23 A Yes.

24 Q Could you please turn to page 11.

25 A Okay.

1 Q And read lines 4 through 12.

2 A Well, we were on the March 4 meeting, that was the
3 meeting you had at the parsonage and Jack DuBois was
4 in attendance and Scott Hartley and Jack Hicks. Yes.
5 Question: At any time did either Hicks, Hartley, or
6 DuBois ask for a vote on anything while you were
7 there? Answer: No. Question: Are you sure of that?
8 Answer: Positive. How far down?

9 Q That's fine. Now, in that deposition you stated you
10 were positive that they never asked for a vote.

11 A Yes.

12 Q Could you please -- Is Exhibit 18 one of the ones
13 that you were given the other day?

14 A No.

15 Q Exhibit 18 which was formerly marked as Exhibit 85.
16 Exhibit 18 which had been admitted to this case is
17 your rebuttal declaration. Could you please turn to
18 page 7 and read the paragraph that starts on March 4,
19 1988 at line 13 down to the end of that paragraph
20 which appears to end on line 23.

21 MR. JOHNSON: Could we have that reference?

22 MR. ROHAN: We're on Exhibit 18, page 7,
23 lines 13 through 23, starts on March 4, 1988. You
24 have the wrong exhibit. It used to be Exhibit 85.
25 Rebuttal Declaration of Plaintiff Donald Barnett.

BARNETT - Cross (By Mr. Rohan)

1 Q (By Mr. Rohan) Do you have that?

2 A Yes, the sentence starts on line 12.

3 Q On March 4.

4 A It says about the same period.

5 MR. JOHNSON: That's what we have.

6 MR. ROHAN: Well, then I have the wrong
7 reference. It's Exhibit 21.

8 Q (By Mr. Rohan) Handing you what's marked as Exhibit
9 21, would you please turn to page 7 and read from line
10 13 to line 23.

1 THE COURT: I agree with that and that's the
2 rule, of course.

3 MR. JOHNSON: We would ask, Your Honor, that
4 the witness be allowed to read from line 13 on page 7
5 to line 4 on page 8 so that the whole quote is in
6 context.

7 THE COURT: Would you have any objection to
8 that, 13 to 4 on page 8?

9 MR. ROHAN: No, that will be fine.

10 THE COURT: All right, would you read it,
11 please?

12 A On March 4, 1988, three individual defendants came to
13 my residence at approximately 10:30 a.m. At that time
14 I decided that I would talk to all three of them with
15 regards to a policy provision for the church and
16 difference of opinion. I started to talk to them and
17 was eventually interrupted by Jack Hicks who put a
18 piece of paper on the table in front of me. I did not
19 look at that piece of paper during the time that we
20 were together.

21 Jack Hicks had said they wanted to vote on
22 another item of business. I said nothing doing. I
23 told them that we were not going to be talking about
24 Subject B until Subject A was done with. I never had
25 a chance to finish Subject A and go over the

BARNETT - Cross (By Mr. Rohan)

1 resolution of difference of opinions. I asked Jack
2 Hicks if the Board of Senior Elders had been holding
3 meetings illegally without the pastor being present as
4 provided by the bylaws without my direction. Jack
5 wouldn't respond to my question. At that time, I said
6 he could leave the house.

7 Q Now, you signed this declaration on or about March 11,
8 1988; is that correct?

9 A I beg your pardon?

10 Q You signed this declaration on or about March 11,
11 1988, Exhibit 21?

12 A Oh, Rebuttal Declaration of Plaintiff Donald Lee
13 Barnett. I don't see any date or signature on this at
14 all.

15 Q On the last page, if you look at page 11 it's dated
16 March 11, 1988.

17 MR. JOHNSON: The record should reflect the
18 exhibit does not bear a signature.

19 MR. ROHAN: And the record should also
20 reflect that the copy of this document as well as many
21 of the other affidavits of Pastor Barnett submitted by
22 counsel to us throughout this litigation have never
23 had signatures of Pastor Barnett.

24 A I'd also like to say that to get the full context of
25 this, the next paragraph explains what you just got

BARNETT - Cross (By Mr. Rohan)

1 through asking me in a way that this is a half truth
2 you are asking me unless you get to the next
3 paragraph.

4 Q (By Mr. Rohan) Your counsel is free to ask that
5 question. This was signed by you on or about March
6 11, 1988; is that correct?

7 A Well, it said dated the 11th day. There's no
8 signature date, so I don't know when I signed it.

9 Q Was your memory better about the events of March 4,
10 1988 in March of 1988 or in January of 1991?

11 MR. JOHNSON: Your Honor, I'll object,
12 that's argumentative.

13 MR. ROHAN: I'll withdraw the question.

14 Q (By Mr. Rohan) You stated in your direct testimony
15 today that Mr. Hicks at one point during the March 4,
16 1988 meeting handed you a piece of paper; is that
17 correct?

18 A Yes.

19 Q Was it a single piece of paper?

20 A Yes.

21 Q And it had four lines on it and your name was on it as
22 well as Hicks, Hartley, and DuBois?

23 A You mean typed?

24 Q Right.

25 A Yes.

BARNETT - Cross (By Mr. Rohan)

1 Q And there were signatures on it from the other three
2 senior elders but your signature was not on it?

3 A That's true.

4 Q And there was nothing else on that piece of paper.

5 A To the best of my knowledge, that's correct.

6 THE COURT: He testified that three
7 signatures were on there?

8 A Yes. I don't remember anything else on the page at
9 that time.

10 Q (By Mr. Rohan) Isn't it true that that document
11 contained Articles of Amendment and you knew that at
12 the time?

13 A No.

14 Q Why don't you then read part of your deposition or
15 declaration that you wanted to read to the Court on
16 page 8 starting at line 5 where you left off.

17 A I never discussed the Articles of Amendment which had
18 been placed on the table. It was after the meeting
19 that I had an opportunity to view these documents.

20 Q Continue to the end of paragraph.

21 A At no time did Jack Hicks indicate he wanted to vote
22 on another undisclosed matter. No indication was made
23 by any other members of the Board of Elders as to what
24 the vote would be and there was no show of hands at
25 that time of anybody apparently voting in favor of a

BARNETT - Cross (By Mr. Rohan)

1 motion. No motion was presented, nor was any
2 resolutions discussed, approved, or voted on.

BARNETT - Cross (By Mr. Rohan)

1 the church today. Somewhere during that day I
2 realized what they were trying to do to get me to sign
3 that and attach it to the bylaws and the articles that
4 they didn't show me and went down to Olympia and filed
5 it. But I wasn't aware at the time what that paper
6 was. I didn't even look at it. It just laid on the
7 table there because I wasn't going to get into it. I
8 thought they might be trying to pull something but I
9 fortunately didn't look at it and introduced another
10 subject.

11 Q At that time on March 4, 1988 when you were in the
12 presence of these other three members of the Board of
13 Senior Elders, you knew that they wanted you to vote
14 on an amendment to the Articles of Incorporation; is
15 that correct?

16 A No.

17 MR. JOHNSON: Your Honor, that's been asked
18 and answered.

19 A He just said "sign this", he didn't say "vote".

20 Q (By Mr. Rohan) And at the end of that session, that
21 session ended with your directing Mr. Hartley and Mr.
22 Hicks and Mr. Dubois to leave your house right now;
23 isn't that true?

24 A No, that's a false characterization that I've pointed
25 out several times in depositions. I didn't order

1 them. I said you might as well, if you're not going
2 to cooperate, you might as well leave the house right
3 now, so they left. They weren't actually ordered out
4 of the house. They could have stayed and cooperated
5 and we could have talked. I was just saying that
6 there's no sense in going on if you aren't going to
7 get any business done.

8 Q On a sermon you gave on March 6, 1988 two days after
9 this event, you stated to your congregation that the
10 senior elders threw the papers down and they wanted me
11 to vote on this right now and I knew what they wanted
12 me to do. They wanted me to vote --

13 MR. JOHNSON: Your Honor, I will object to
14 reading from this. If he wants to ask the witness
15 whether or not --

16 MR. ROHAN: I think I'm entitled to ask
17 whether or not he made a certain statement on that
18 date.

19 MR. JOHNSON: But counsel is making the
20 statement and is testifying that you made this
21 statement and that's different from asking the witness
22 if he made the statement.

23 Q (By Mr. Rohan) Did you make the following statement
24 on March 6, 1988. They threw the paper down. We want
25 you to vote on this right now. And I knew what they

1 wanted me to do. They wanted me to vote so they could
2 out-vote me. They would run down to Olympia so they
3 could get it stamped. It was already written up and
4 ready to go. They just wanted to out-vote me real
5 quick and run down and say it was legal.

6 A Well, it's pretty obvious to me, I don't remember for
7 sure if I made that statement or how I said what, but
8 it's pretty obvious that was all said in hindsight
9 adding things I didn't know at the time. And when I
10 said "I knew", I probably said I'm surmising or maybe
11 I surmised it or something. I'm afraid I've added a
12 lot of things I didn't know at the time. It was
13 hindsight.

14 Q Did you state on March 6, 1988 that you stated to Mr.
15 Hicks, Mr. Hartley, and DuBois, quote, then you are
16 going to leave this house right now, closed quote?

17 A Well, I don't remember saying that. And if I did say
18 that I didn't quote myself accurately.

19 Q Let me see if that refreshes your recollection. This
20 is that March 6, 1988 sermon and it's at page 28 of
21 the March 6 tape. It started at the first full
22 paragraph on the bottom of the page.

23 (Tape recording.) See what happened is, well,
24 even last night, one of them said to John ... He
25 said, well, we called the pastor to a senior elder

BARNETT - Cross (By Mr. Rohan)

1 meeting for a vote on the bylaws, to a senior elder
2 vote on the bylaws ... upset because ... didn't have
3 two men or not, and he said, Don wouldn't come so we
4 voted him out and it was legal. See, that's not the
5 truth. What the truth was, I asked to speak to Jack
6 Hicks at one time, and Jack DuBois an hour later, then
7 Scott an hour later, and so I asked them to come to my
8 house and they all three came at the same time. And
9 they had papers in their hands.

10 I called a meeting and I started to discuss some
11 of these things, as to what their motives were and
12 what they were doing, and why they were doing them.
13 They did not want to talk about it. They wanted to
14 shut it off real fast. Well, how long are we going to
15 be and so forth. They were really pushy, pushing and
16 they threw the paper down and said, we want you to
17 vote on this right now. And I knew what they wanted
18 me to do. They wanted me to vote so they could
19 out-vote me, then they could run down to Olympia with
20 it and get it stamped. It was already written up and
21 ready to go, and they just wanted to have a meeting so
22 they could out-vote me real quick and run down and say
23 that it was legal.

24 And I wasn't going to give in to them on that
25 point, and I said, no, I have called a meeting. I

BARNETT - Cross (By Mr. Rohan)

1 called the meeting and I want to discuss your actions,
2 and your improprieties and your motives for doing
3 these things and dishonesty and things that you are
4 doing, their efforts behind this whole sculduggery.
5 They wanted to get off that subject fast and said, we
6 insist, we insist that you vote right now. How many
7 agree to vote right now on this? And I said, hold
8 just a moment. I am the chairman of the committee. I
9 decide the meeting. I decide the agenda. I am now on
10 meeting number A that I have called and we will not
11 vote on meeting number B before we discuss it, before
12 we finish meeting A. First we have to deal with
13 meeting A. Until meeting A is taken care of we are
14 not even going to discuss meeting B.

15 So, I went on then and a little later I said,
16 Jack, I warned you about illegal things. I said you
17 stand before God and God said do not do evil that good
18 may come of it. And Jack said, I am not so foolish to
19 do anything illegal. Then I said let me ask you a
20 question. He said I haven't done anything illegal.
21 And I said then let me ask you a question. Did you,
22 contrary to the bylaws and contrary to my expressed
23 orders to you as your supervisor get the Board of
24 Directors together without me, contrary to the bylaws
25 and vote when I'm not present? Yes or no? And he

BARNETT - Cross (By Mr. Rohan)

1 said I'm not going to answer that question. I said
2 why aren't you going to answer that question? And he
3 said because I don't want to.

4 I said then you can leave the house right now if
5 you are not going to be honest and if you are not
6 going to face up to your illegal activities and you
7 can't talk before one another, you can leave. And

8 they got up and left. We never got to the piece of

BARNETT - Cross (By Mr. Rohan)

1

MR. JOHNSON: Your Honor, the only objection

BARNETT - Cross (By Mr. Rohan)

1 Q You were the Chairman of the Board of Senior Elders?

2 A Yes.

3 Q You were the pastor of the corporation church?

4 A Yes.

5 Q And you were also the president or chief executive
6 officer of the Bible College, the Christian school,
7 the publication department and the communications
8 department?

9 A Yes.

10 Q The changes that were made to the articles and bylaws,
11 and I'll say that were purported so we won't have an
12 objection to the question, on March 4 and March 10
13 purported to remove you from those positions as
14 president, Chairman of the Board, and pastor; is that
15 correct?

16 A I'm not familiar about March 10.

17 Q Okay, let's restrict it to March 4. The changes that
18 the other three senior elders purported to make to the
19 articles and bylaws on March 4 purported to remove
20 you, and other actions they took, purported to remove
21 you as president, Chairman of the Board, and pastor of
22 the church; is that right?

23 A Yes.

24 Q On April 6, 1988, you've indicated that you signed a
25 copy of the articles and bylaws that consisted of the

BARNETT - Cross (By Mr. Rohan)

1 same articles and bylaws that existed at the church as
2 of March 3, 1988 except it didn't have the satellite
3 church provision; do you recall that?

4 A Well, I think I signed the original, not a copy.

5 Q Okay, you signed the original. And if the document
6 that had been given you to sign on April 6, 1988, the
7 ratification of the bylaws had contained the bylaws as
8 the elders, senior elders had purported to revise them
9 on March 4, 1988, you wouldn't have signed that
10 document; is that right?

11 A That's correct.

12 Q And that's because if you had signed that document it
13 would have indicated that you were removed as
14 president, Chairman of the Board, and pastor of the
15 church; is that right?

16 A Yes.

17 Q And it's your understanding under the restraining
18 order that's Exhibit 25 that the senior elders and the
19 Defendants in this action were restrained from doing
20 anything that would affect your position as pastor or
21 president or Chairman of the Board of Senior Elders;
22 is that right?

23 A As of what date?

24 Q As of the date of this restraining order which is
25 March 15, 1988. It's at the bottom of page 3. The

BARNETT - Cross (By Mr. Rohan)

1 senior elders were restrained from taking any action
2 that interfered with your position as the president,
3 Chairman of the Board, and pastor; is that right?

4 A Yes.

5 Q And if you look at paragraph 2 on page 3 of Exhibit
6 25, could you read that please?

7 A From damaging --

8 Q From doing or performing, page 3, paragraph 2.

9 A Oh, pardon: From doing or performing any acts
10 contrary to or in contravention of the terms and
11 conditions of the Articles of Incorporation and
12 Articles of the Faith and Bylaws of Community Chapel
13 and Bible Training Center as they exist on March 3,
14 1988.

15 Q And that was, one of the things that both you and the
16 Board of Senior Elders were restrained from by this
17 restraining order; is that right?

18 A Yes.

19 MR. ROHAN: I don't have any further
20 questions. We do intend as we indicated earlier to
21 call this witness in our case in chief.

22 THE COURT: I don't know whether you intend
23 that he should be here at all times.

24 MR. JOHNSON: I don't know, Your Honor, but
25 I suspect for the vast majority Mr. Barnett will be

BARNETT - Cross (By Mr. Rohan)

1 here.

2 THE COURT: Let Mr. Johnson know when you
3 are going to call him.

4 MR. ROHAN: We're going to call him after
5 Russ MacKenzie.

6 THE COURT: Redirect?

7 MR. JOHNSON: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. JOHNSON:

10 Q Pastor Barnett, Mr. Rohan asked you a number of
11 questions about standards for the elders and for the
12 steering committee. Were there elders of Community
13 Chapel in 1988 who did not meet the standards set
14 forth that Mr. Rohan read from the bylaws, the
15 standards to be an elder? Were there elders that
16 didn't meet those standards?

17 A I don't know if I fully understand the question.

18 Q Mr. Rohan read to you --

19 A He asked me something about elders and godliness.

20 Q Yes. I direct your attention to Exhibit No. 10.

21 A If you are asking me to...

22 Q Well, are there standards of godliness and behavior
23 referred to in the bylaws with regards to elders?

24 A Yes.

25 Q My question is were there elders in 1987 and 1988 who

BARNETT - Redirect (By Mr. Johnson)

1 did not meet those standards?

2 MR. ROHAN: Objection, Your Honor. I
3 believe that's beyond the scope of the earlier
4 examination. I don't think it's relevant to this
5 case.

6 THE COURT: You may answer.

7 Q (By Mr. Johnson) Were there, without going into it,
8 just a yes or no.

9 A I think I need to qualify it, generally yes.

10 Q My next question is were any of those elders
11 disfellowshipped?

12 A No.

13 MR. ROHAN: I further object on the basis of
14 foundation of this witness's knowledge on this.

15 THE COURT: I'll let the answer stand.

16 Q (By Mr. Johnson) Would you turn in Exhibit No. 10
17 there, would you turn to page 27, paragraph E-4.

18 A The counselor shall always seek the concurrence of the
19 pastor or his designee in putting someone out of the
20 church or in emergency or aggravated matters the
21 pastor or his designee should be notified as soon as
22 is reasonably possible.

23 Q In an emergency, well if there's an emergency and
24 somebody is disfellowshipped, who do the bylaws
25 require be contacted subsequently?

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1 A The pastor.

2 Q And I direct your attention to Exhibit No. 14 and I'd
3 ask you to read the last sentence of the first
4 paragraph on Exhibit 14.

5 A These disfellowships are subject to ratification by
6 the pastor upon his return.

7 Q Pastor Barnett, there was some colloquy on
8 cross-examination with regard to appealing your
9 disfellowshipment by the senior elders. My first
10 question is do the bylaws provide that a person has a
11 right to appeal a disfellowshipment?

12 A Yes.

13 Q And is that appeal an appeal to the senior elders
14 or some of the senior elders?

15 A It says that they can appeal, I think it says to two
16 or more, two or three, one of the two, and of course
17 then it has to be with pastor's concurrence.

18 Q I direct your attention again to page 27 of Exhibit 10
19 and I ask you to read the paragraph in the middle of
20 the page that is under section E, capital E, Arabic 1
21 and then down under paragraph e.

22 A Notify the individual that either he is put out of the
23 church with the concurrence of the pastor or his
24 designee or else that a recommendation is being sent
25 to the pastor or his designee to the effect that he be

BARNETT - Redirect (By Mr. Johnson)

1 put out of the church and, therefore, that he would
2 not have fellowship with the church.

3 Q Were you ever notified that you were put out of the
4 church with the concurrence of the pastor?

5 A No.

6 Q And had you on March 4, 1988 revoked your designation
7 of Jack Hicks for purposes of this paragraph?

8 A No.

9 Q Was Jack Hicks your designee on March 4?

10 A No.

11 Q I ask you to read the next paragraph, paragraph F.

12 A Explain to the individual that he has a right to
13 appeal the expulsion to a board of two or more senior
14 elders in addition to the counselor if he is also a
15 senior elder, as determined by the pastor or his
16 designee.

17 Q Were you ever advised that you had the right to appeal
18 to two of the senior elders?

19 A No.

20 Q Would have your right to appeal to the two senior
21 elders been any right at all given the fact that they
22 were the ones that disfellowshipped you?

23 MR. ROHAN: Objection, leading.

24 THE COURT: I think we're getting into the
25 argument about what the bylaws say.

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1 MR. JOHNSON: I'll withdraw the question.

2 THE COURT: I think this is proper that I
3 take cognizance of what the bylaws say. You may argue
4 from the bylaws.

5 MR. JOHNSON: That's fine, Your Honor.

6 Q (By Mr. Johnson) Directing your attention to Exhibit
7 No. 25 and I'd ask that you read -- Would you read on
8 page 2 the language between line 5 and line 12,
9 begining with the words "ordered, adjudged, and
10 decreed".

11 A Ordered, adjudged, and decreed that the Defendants,
12 their agents, servants, employees, and attorneys and
13 those persons in active concert or participation with
14 them receive actual notice of the orders by personal
15 service or otherwise be and they hereby are restrained
16 and enjoined during the pendency of this action from
17 individually and collectively as the Board of Senior
18 Elders of Community Chapel and Bible Training Center
19 as follows.

20 Q Now, I would ask that you read on the following page
21 the paragraph Arabic 3 beginning at line 10.

22 A How far would you like me to read?

23 Q Just down to line 13.

24 A From destroying, damaging, removing, secreting,
25 selling, or encumbering the files, records, notes,

[REDACTED]

BARNETT - Redirect (By Mr. Johnson)

1 A Yes, Judge Bates issued a restraining order that put
2 me back in.

3 Q When you did get back to the church, did you discover
4 that any papers or documents had mysteriously
5 disappeared in your absence?

6 A I would like to qualify my statement by saying either
7 put me back in or ratified that I was in or legally
8 testified I was in, whatever the case would be.

9 Q Do you remember my question?

10 A No.

11 Q When you returned, did you discover whether or not any
12 documents or papers had mysteriously disappeared in
13 your absence?

14 A Yes.

15 Q Did you subsequently discover that the files of an
16 entire section of Community Chapel had been destroyed?

17 A Yes.

18 Q What section of the chapel was that?

19 A Well, a couple of files. First, the entire counseling
20 files were taken out and destroyed by Chris Mathews
21 and there was a file in the vice president's office
22 labeled Don Barnett and all that was left was just the
23 folder with the name on it and everything was out of
24 it, plus there were loads of things gone in other
25 files and files missing from the communications

BARNETT - Redirect (By Mr. Johnson)

1 department or publication department, as we called it
2 previously, files missing from operations, files
3 missing from the Christian School, and even some
4 missing from the accounting office. And I think, if
5 my memory serves me correct, 11 pages of inventory of
6 many, many items, word processors, all kinds of things
7 were taken.

8 Q Mr. Barnett, have you over 20 years of being a pastor
9 regularly met alone with members of your church?

10 A Yes.

11 Q Is this a common practice for you as a pastor of the
12 church to meet alone with one of the members of your
13 congregation?

14 A Yes.

15 Q What percentage of your congregation would you have
16 been denied that ministry to if you had accepted
17 special status?

18 A Fifty percent.

19 Q You mentioned some written guidelines that ultimately
20 came to be adopted at the hearings. Do you remember
21 whether there was a guideline with regard to the
22 number of witnesses, well, with regard to when an
23 allegation would be accepted as true?

24 A Yes. I was told that by Russ MacKenzie after they had
25 a pre-hearing meeting, Don, we promise you before God

BARNETT - Redirect (By Mr. Johnson)

1 we will accept no accusations against you as being
2 true unless you admit it or there are two or three
3 witnesses.

4 Q Pastor Barnett, Mr. Rohan asked you some questions
5 with regard to two sermons, one dated February 28 and
6 one dated March 6 and provided you with what he
7 indicated were presumably accurate transcriptions of
8 the tape recordings of those records. My question is
9 first, have you had a chance to review more of those
10 transcripts than just the portion that Mr. Rohan asked
11 you to read?

12 A Well, you mentioned two. March 6 was one?

13 Q March 6.

14 A I had a chance to look at March 6.

15 Q And February, 28?

16 A Oh, yes, I've looked at those.

17 Q Now, I ask you as a result of your review, can you
18 indicate what the context was of the statements that
19 Mr. Rohan asked you regarding, specifically the
20 statements with regard to your meeting with senior
21 elders and the senior elders having a vote and whether
22 you would go along with the vote or whether they could
23 vote.

24 A Okay. Well, I understood Mr. Rohan to say something
25 to the effect, I can't quote it perfectly, of course.

BARNETT - Redirect (By Mr. Johnson)

1 but something to the effect that I said I want
2 everything to be done legally and that means in a
3 Senior Elder Board meeting, don't go run off and do it
4 illegally. And if you have any complaints, let's take
5 it to a Senior Board Eldership meeting and let's do it
6 legally. And I thought he said and then you vote,
7 something like that, I'll follow your vote or
8 something along those lines, and I never said a
9 statement like that so I objected.

10 Q Let me interrupt. You would never make a statement
11 like what?

12 A Well, the way I took it at the time, I thought he said
13 I will do whatever you say. I will follow your vote
14 to put me out or do whatever you wanted.

15 Q You would go along with their vote, is that what you
16 thought he said?

17 A Yeah.

18 Q What in fact did you say, as the tapes indicate?
19 Well, first, I'll direct your attention with regard to
20 the February 28 tape to page 16 which is where I
21 believe the quote began.

22 A Well, this didn't have the word "I'll".

23 Q Go ahead and read where you thought he had the word
24 "I".

25 MR. JOHNSON: That's the February 28

BARNETT - Redirect (By Mr. Johnson)

1 transcript, Your Honor, beginning at the top, and I
2 said.

3 A And I said that means that we have to have a senior
4 elder meeting with the pastor present. We'll discuss
5 the issues and then we'll vote on it. And then if you
6 out-vote me, go according to your vote which is
7 totally different.

8 Q What did you think he said when he asked you the
9 question?

10 A I thought he said I'll go according to your vote.

11 Q In other words, you thought between the words "me,
12 comma, go" in the fifth line down that there was a
13 word "I", that he had inserted the word "I'll go along
14 with the vote"; is that correct?

15 A Yes and I thought he said it again today.

16 Q I'll direct your attention to page 5 of the March 6
17 transcript, beginning midway down with the words "so,
18 after we have discussed it".

19 A So, after we have discussed it, see if he can come to
20 some unity of agreement and see what the person means
21 by his statement and why somebody thinks it is wrong
22 and take it down to the meeting. At the end of that,
23 the senior elder will have a legal meeting with me
24 present and we'll vote. And if I'm out-voted, you do
25 according to whatever you vote, but we are going to do

1 everything honestly and above board.

2 Q Now, I believe Mr. Rohan's quote did not have that
3 last sentence, but we are going to do everything
4 honestly and above board. My question is have you
5 reviewed the balance of this transcript and what is
6 the thrust of all of your comments in this transcript
7 with regard to meetings?

8 A Well, I always kept saying the same thing as that. I
9 kept saying we better to do things honestly. Don't go
10 to the church and let's finish the meeting. Let's go
11 to the Senior Elder Board meetings if you have
12 anything that you disagree and we'll handle it in a
13 legal manner according to the bylaws.

14 Q Did you ever suggest that they do things differently
15 than the bylaws?

16 A No.

17 Q Is that true of the entire sermon or apologetica that
18 you preached on February 28 as well?

19 A Yes.

20 Q With regard to --

21 THE COURT: Are you going now to a different
22 subject?

23 MR. JOHNSON: Yes, Your Honor.

24 THE COURT: I'm having a little trouble with
25 how to regard the two transcripts. I haven't read the

BARNETT - Redirect (By Mr. Johnson)

1 March 6 but I have read February 28. What should I do
2 with it?

3 MR. JOHNSON: I think Your Honor should
4 return them unless and until they are introduced.

5 MR. ROHAN: We're going to introduce them,
6 Your Honor.

7 THE COURT: Then I will suspend any action
8 that I take until then, but I do want to find out how
9 I'm to regard those transcripts.

10 Q (By Mr. Johnson) Pastor Barnett, I'd like to direct
11 your attention to Exhibit No. 11.

12 THE COURT: Which is?

13 Q (By Mr. Johnson) Which is the Articles of Faith and
14 bylaws dated April 6, 1988. Now, these were, I think
15 you told Mr. Rohan, signed by you and the two senior
16 elders, Scott Hartley and Jack DuBois, after Judge
17 Bates' restraining order was entered; is that correct?

18 A Yes.

19 Q And is it also true as I think you indicated to Mr.
20 Rohan that you didn't discuss these bylaws with Mr.
21 Hartley or Mr. DuBois after March 4?

22 A That's true, I did not.

23 Q When these bylaws came to you, I think you indicated
24 they came attached to a memo from some woman; is that
25 correct?

BARNETT - Redirect (By Mr. Johnson)

1 A Yes.

2 Q Who was that woman?

3 A Melinda Erickson who was the secretary of the
4 publications department.

5 Q This was after Judge Bates' restraining order, was it
6 not?

7 A Yes.

8 Q And you were, again, the pastor of the church and
9 Chairman of the Board according to Judge Bates' order.

10 A Yes.

11 Q In spite of that, was Ms. Erickson respecting your
12 authority at the time as her boss or was she in fact
13 following the directions of Mr. Hartley?

14 MR. ROHAN: Objection, I think that lacks
15 foundation and calls for speculation.

16 THE COURT: Yes, unless you give background
17 on that.

18 Q (By Mr. Johnson) Had you talked to Ms. Erickson prior
19 to this time but after March 4 with regard to whether
20 she would follow your direction?

21 A No.

22 MR. ROHAN: Objection, hearsay.

23 MR. JOHNSON: I'm asking whether or not he
24 talked with her.

25 THE COURT: Did you talk?

BARNETT - Redirect (By Mr. Johnson)

1 THE WITNESS: No, but she signed the
2 document.

3 THE COURT: The answer is no.

4 Q (By Mr. Johnson) Did you ever talk to her with regard
5 to these bylaws?

6 A No.

7 Q Well, I'd like to direct your attention back to the
8 previous exhibit, Exhibit 10, at the very end of the
9 exhibit and ask if there are amendments attached to
10 those bylaws that define certain changes in the
11 bylaws. This is the previous exhibit.

12 A End of 10, they are amendments, yes.

13 Q I'd like to direct your attention to the previous
14 exhibit, Exhibit 9, and ask if there are amendments
15 attached to the back of Exhibit 9.

16 A Yes.

17 Q How many exhibits are there attached to Exhibit 9?
18 Would you count them up?

19 MR. ROHAN: By exhibit, you mean what?

20 Q (By Mr. Johnson) Exhibit No. 9, well, the bylaws
21 themselves apparently have 38 pages and then there's
22 the ratification of the bylaws and then Exhibit No. 9
23 contains a whole bunch of additional pages. Could you
24 count up how many amendments there are to the bylaws
25 of Exhibit 9.

BARNETT - Redirect (By Mr. Johnson)

1 A Seven.

2 Q Is it fair to say that Exhibit 10 could have been

1 beyond --

2 THE COURT: I don't know what relevancy it
3 has. I don't know what you expect me to do about it
4 or regard it.

5 MR. JOHNSON: Let me say two things.

6 THE COURT: Make an offer of proof.

7 MR. JOHNSON: Well, the proof would show
8 they were and I think the conclusion to draw from that
9 is that contrary to Mr. Rohan's implication that the
10 senior elders were afraid to violate the restraining
11 order and for that reason adopted or ratified these
12 bylaws in April that in fact the record of this case
13 indicates that the senior elders in a number of ways
14 did violate the restraining order.

15 THE COURT: Meaning what? What am I to do
16 about that?

17 MR. JOHNSON: Meaning that one should not
18 draw the conclusion that they had to amend the bylaws
19 in this form and keep in the provision pre-March 4,
20 1988, to do otherwise would have violated the
21 restraining order and they didn't want to violate the
22 restraining order. That's the thrust of Mr. Rohan's
23 argument or the argument that he certainly will make
24 and I think it's a sophistic argument to make simply
25 because the record shows they had no hesitancy in a

1 whole number of regards to violate the restraining
2 order.

3 MR. ROHAN: Then I would be forced to put on
4 evidence to show that all of the things Judge Wartnick
5 held my clients in contempt for were things that they
6 in fact did not believe were in contempt, some of
7 which would involve constitutional questions of
8 whether or not if you start a separate action to
9 dissolve a corporation if that in fact does violate
10 their restraining order which my research shows it
11 does not. We were ready to appeal Judge Wartnick's
12 restraining order. We settled out of court on that
13 portion of this case. That is also going to drag in
14 that settlement out of court on that and this thing
15 goes on and on forever and ever. But I don't think it
16 shows that this witness testifying to it in any way
17 shows my clients intended on the one hand to not
18 violate at one point, it just doesn't go to that.

19 THE COURT: I don't know what the record
20 shows right now but I take it from the statements that
21 counsel has made that the Senior Elders board was held
22 in contempt by Judge Wartnick. The facts giving rise
23 to that order I do not know. I don't know why he held
24 them in contempt.

25 MR. JOHNSON: It's not that big a deal, Your

BARNETT - Redirect (By Mr. Johnson)

1 Honor.

2 THE COURT: I don't know if that carries
3 over into this or not. I'll assume they were found in
4 contempt. I don't know whether that suffices.

5 MR. JOHNSON: That does suffice, Your Honor.

6 MR. JOHNSON: Your Honor, the Plaintiff
7 rests.

8 MR. ROHAN: Your Honor, I have some
9 additional rebuttal here.

10 MR. JOHNSON: Then perhaps I should say
11 we're done with redirect, Your Honor.

12 THE COURT: Recross.

13 RECROSS-EXAMINATION

14 BY MR. ROHAN:

15 Q Pastor, did you have an office at Community Chapel?

16 A My personal office was in the parsonage in my home.

17 Q And to the extent --

18 THE COURT: The answer to that question then
19 I guess is, no, you did not have an office at the
20 church?

21 THE WITNESS: Not on the church grounds.

22 Q (By Mr. Rohan) The parsonage was church property?

23 A Well, I think the title was held by the church. I
24 think it had an encumbrance on it.

25 Q And the parsonage is located approximately a mile or

BARNETT - Recross (By Mr. Rohan)

1 two miles from the church proper?

2 A About a half mile.

3 Q It's not right next door, it's a half mile away. And
4 the records you kept at your office would have
5 included any letters that you received from Jerry
6 Zwack; isn't that true?

7 A The reason I'm thinking is because all the letters,
8 the letters I type, that I generate are kept down in
9 the vice president's office and my secretary was down
10 there. Letters sent to me, I would think letters sent
11 to me would be kept in my own home.

12 Q And the letter that you sent to the senior elders with
13 the 14 items of rebuttal on it, that's a letter that
14 you wanted to keep in your own home because you wanted
15 to keep this matter as private as possible; isn't that
16 true?

17 A That one typically would not be filed in my home
18 because letters I dictate are typically dictated by
19 Bonny Martin who is on church proper. I dictate them
20 on a linear line over the phone. She files them in
21 the vice president's office.

22 Q All right. You testified that when you received
23 Exhibit 11 that it came attached with a memo to it
24 from Melinda Erickson.

25 THE COURT: What was 11?

BARNETT - Recross (By Mr. Rohan)

1 MR. ROHAN: The April 1988 ratification.
2 (Defendants' Exhibit 26
3 marked for identification.)

4 MR. ROHAN: This is also in your books as
5 Exhibit 70.

6 MR. JOHNSON: We have no objection to the
7 admission of this exhibit.

8 THE COURT: That's 26. It will be admitted.
9 (Defendants' Exhibits 26
10 admitted into evidence.)

11 Q (By Mr. Rohan) Showing you what's been marked as
12 Defendants' Exhibit 26, this is the memo, is it not,
13 that was attached to the Bylaw revisions that you
14 reviewed that you later signed on April 6, 1988?

15 A This says Exhibit 25. Oh, at the bottom.

16 Q That was for a deposition exhibit.

17 A So, the question again?

18 Q The question again is this is the memo that was
19 attached, that memo that states attached bylaw
20 revision, this was a memo that was attached to the
21 bylaw revision that you later signed on April 6, 1988
22 some one week after the date of this memo; is that
23 right?

24 A Yes.

25 Q And would you read that memo into the record, please.

BARNETT - Recross (By Mr. Rohan)

1. 1 MR. JOHNSON: If I could say one thing for
2 the record, I think the exhibit has some other stamps
3 on it that were not on it.

4 MR. ROHAN: That's correct.

5 THE COURT: Exhibit 25 to the Witness
6 Hartley.

7 MR. JOHNSON: Probably there's an initial in
8 the upper right-hand corner.

9 THE COURT: What do you want done about
10 that?

11 MR. JOHNSON: I just wanted the record to
12 note that.

13 THE COURT: Okay.

14 Q (By Mr. Rohan) This memo discusses the changes as
15 severing the satellite church's legal ties to the
16 corporation; isn't that true?

17 A Yes.

18 Q There's nothing in this memo that indicates that in
19 any way changes anything that the senior elders did on
20 March 4, 1988; isn't that true?

21 A Yes.

22 MR. ROHAN: I don't have any further
23 questions.

24 MR. JOHNSON: No redirect.

25 MR. JOHNSON: Plaintiff rests, Your Honor.

Plaintiff Rests

1 THE COURT: I recall when we started that
2 somebody said or at least I was left with the
3 impression that Plaintiff's case would be ended today.
4 I took it the end of the day, but apparently it's at
5 noon. I take it from all of this that the case is
6 moving along as per you gentlemen's schedule, is that
7 right, not falling behind?

8 MR. ROHAN: I think that's right.

9 MR. PIERCE: I have a preliminary motion. I
10 want to make a motion to dismiss the Defendants' case
11 based upon the opening statements. Normally, if you
12 are going to make that motion it would occur at the
13 beginning of Plaintiff's case, after the opening
14 statement is done before the evidence is produced by
15 the Defendants in this case. The Defendants are just
16 ready to start and that is the appropriate time to do
17 that.

18 There is a case, Your Honor, that is --

19 MR. ROHAN: Your Honor, I would object to
20 raising the motion at this time because I think if you
21 are going to raise this motion it has to be raised
22 before any of the evidence is in.

23 MR. JOHNSON: The case State v. Gallagher is
24 one that is 15 Wn. App 267. This case clearly states
25 that there's now not a statute or a rule that requires

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1 a Plaintiff in a civil action to make an opening
2 statement. However, the ruling says that nevertheless
3 if a Plaintiff in a civil proceeding chooses to make
4 an opening statement, the sufficiency thereof is
5 subject to certain judicial duty. That's what I'm
6 asking the Court to consider at this time.

7 The case further goes on to say in quoting from
8 Scott v. Rainbow Ambulance, this is a 75 Wn 2nd 494, a
9 Supreme Court case, occasionally, however, the opening
10 statement deliberately and understandably invites the
11 Court's ruling at this stage of the proceeding if the
12 statement is framed so as to eliminate all factual
13 differences or consequence leave an isolated and
14 determinative question of law and thus make possible
15 the expeditious conclusion of the matter.

16 And what has happened, Your Honor, in the opening
17 statement that has been framed by the Defendants in
18 this case, and I have asked the court reporter to
19 produce it, they have limited the issues in this
20 matter by saying in their opening statement, and this
21 occurs at the very beginning when talking about what
22 has transpired in this proceeding that it has, in
23 talking about what Mr. Wiggins said, counsel
24 indicated, "but it clearly has nothing to do with
25 whether or not Pastor Barnett was validly

Motion to Dismiss

1 disfellowshipped or whether or not he was removed from
2 this corporation for breach of fiduciary duty, two
3 things we believe the evidence will show were validly
4 done". They have thus limited their issues with
5 regards to what happened at the eldership hearing, not
6 with regards to other matters.

7 The matter goes on a little bit further with
8 regards to this matter because later on counsel has
9 stated as to what is going to happen here by saying
10 that now if that minimal restriction -- First let me,
11 I think it would be more correct to read what counsel
12 has said. "Donald Barnett was not supposed to be in
13 the company of women not his wife when he was alone.
14 That was it, plain and simple. It was taken as the
15 most minimal restriction given the admissions made by
16 Donald Barnett to try to protect not only Donald
17 Barnett but the countless women who attended Community
18 Chapel." "Now, if that minimal restriction was
19 followed, we would never be here today and that's the
20 real irony of this thing."

21 What has happened, Your Honor, is by limiting the
22 issue further as to whether or not he was proper in
23 following or not following the restriction, they have
24 framed the issue as just this one and that happened in
25 this proceeding here. Rather than just being limited

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1 down to what happened at the eldership hearings
2 without having to hear about what the other witnesses
3 said, they have limited it even further, and that
4 evidence clearly indicates, I don't believe there is
5 any evidence that could be shown here which would
6 indicate that the pastor was required in any manner to
7 follow the restrictions that these individuals wanted
8 to put him under. If we limit it down to that issue,
9 maybe that will limit the matters that come forward,
10 but I don't think on the basis of what they have shown
11 here that they can in any manner show to this Court
12 that there's any set of facts which would indicate
13 that the pastor was required to follow the
14 restrictions.

15 The State v. Gallagher case goes on to say, "In
16 other words, charges frame the issue, statements of
17 counsel do not. However, when some fact is clearly
18 stated or admission is expressly made leaving only an
19 isolated and determinative issue of law, the Court may
20 resolve that issue." What I present to the Court is
21 that the issue that they've left us with is whether or
22 not he was proper in following those restrictions that
23 the elders wished to place on him. And their opening
24 statement limited as such and bound by it and this
25 Court I'm asking to limit and exclude any other

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10
1 evidence that they wish to present here and also to
2 grant the motion to dismiss the Defendants' case.
3 Thank you, Your Honor.

4 MR. SHAPIRO: I would like the Court to
5 review my opening statement. I believe it is replete
6 with references to the fact that the evidence will
7 show --

8 MR. PIERCE: I have notes written on my
9 copy.

10 MR. SHAPIRO: You can take your notes off,
11 I'm not interested in your highlighting. I'll give it
12 back to you.

13 THE COURT: Let me see what I have in the
14 way of notes. Let me go over my own notes.

15 MR. SHAPIRO: I believe, Your Honor, I
16 specifically said the evidence will show and I did not
17 limit it to anything outside of the hearing. It was
18 that he was properly disfellowshipped on three
19 occasions. That is based on the evidence during the
20 hearings that he was also properly put out of this
21 corporation for breach of fiduciary duty and the
22 evidence at the hearings also show that.

23 He was also put out, as my opening statement
24 indicates, because he was unwilling to abide by the
25 most minimal restriction. In no way in that opening

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1 statement was there any indication that we were only
2 here today on the question of special status. I
3 specifically referred to the January 25 agreement
4 which specifically talked about authority.
5 Furthermore, Mr. Wiggins in his opening statement made
6 the same argument that this was a question of
7 authority.

8 Finally, and I think this is an ill-founded
9 motion and I know the Court has tried a number of
10 cases and knows the Gallagher case. That is a
11 criminal case which dealt with the sufficiency of
12 information. That is not the case here. That has
13 nothing to do with that. And furthermore, as the
14 Court knows, the burden of proof in criminal cases is
15 substantially higher than they are here.

16 Counsel has been entitled to put on his case.
17 He for some very obvious reasons didn't want us to put
18 on our case. The objections have been made very clear
19 why they do not want us to put on our case. It is
20 actually an interesting procedural maneuver but not
21 one that has any merit. If you look at Rule 50, Rule
22 50 states that this type of motion is to be made after
23 we have put on our case, not before. Now, if he
24 was --

25 THE COURT: A motion on opening statement?

Motion to Dismiss

1 MR. SHAPIRO: Well, if he was to make the
2 motion on opening statement, he should make it after
3 my opening statement. But what I'm saying to the
4 Court is that we specifically brought into question
5 all of the sources of the authority for
6 disfellowshipment, all of the sources of authority for
7 throwing Pastor Barnett out for breach of fiduciary
8 duty. My reference to Mr. Wiggins' chronology had to
9 do with his attempts to prejudice this Court to talk
10 about the fact that the elders were somehow held in
11 contempt. I still am under the impression that does
12 have nothing to do with this case. In no way did I
13 indicate to the Court that I was somehow changing the
14 issues to indicate that I was only interested in this
15 interpretation that Mr. Pierce had.

16 On page 2 I talk about what happened here, why
17 authority is important and the basis for authority.
18 Page 3, there's sources of authority separate and
19 apart from the scriptural authority that they believe
20 they had and do so today. This authority, mind you,
21 is separate and apart from their authority that they
22 had as overseers of the corporation to put out a man
23 who has breached this fiduciary duty. The evidence
24 will show that breach was obvious, it was rampant, and
25 there are clear cases of misuse of pastoral authority.

Motion to Dismiss

1 There was no law which requires a corporation to keep
2 an officer who has clearly breached his fiduciary
3 duty.

4 Further, you will hear that a number of these
5 women came to senior elders and church leaders and
6 complained about what Donald Barnett was doing.
7 Clearly that's no inference of limiting these issues.
8 A number of these women came to a man who has already
9 been identified to you as Jerry Zwack, misuses of
10 Donald Barnett's authority he was taking in order to
11 gain sexual favors.

12 I talk about the Zwack letter. I talk about the
13 Zwack hearings. To now claim that somehow I limited
14 the issue is I think in the words of counsel a
15 sophistic argument and I think the motion is not well
16 founded and I ask that it be denied. And I would ask
17 the Court to deny

Court's Ruling

1 trial brief. We have a Constitutional objection that
2 the position of the pastor is so intertwined with
3 Constitutional protection that you cannot separate out
4 the fact that the pastor by virtue of the bylaws also
5 is the Chairman of the Board and president. You can't
6 separate out the secular from the religious in this
7 case.

8 Moreover, before any evidence of sexual
9 relationships could come into this case, there would
10 have to be a foundation to link up any evidence of
11 sexual relationships to one of the theories that the
12 Defendants are asserting, namely breach of fiduciary
13 duty.

14 Next, we think any evidence of sexual misconduct
15 under the Defendants' own theory should be limited to
16 what came out during the hearings. That is their
17 theory and that is the bed that they should lie in.

18 After I made my objections, Mr. Shapiro made a
19 comment about they also have another grounds of
20 disfellowshipping, they were entitled to disfellowship
21 Pastor Barnett to the extent that they are claiming
22 they disfellowshipped him and that is the way they
23 removed Pastor Barnett. That is clearly a religious
24 decision that the Court really cannot get into and I
25 believe they have actually claimed that they removed

Court's Ruling

1 him by disfellowshipping him, which is a religious
2 matter, clearly a religious matter, so that is the
3 record of my objection. Thank you.

4 THE COURT: Okay, the last remark, of
5 course, seems not in line with what we were talking
6 about but it could be brought in that fashion. The
7 Court will hold to its original ruling on that matter
8 and find that evidence of sexual misconduct is
9 admissible and that isn't a blanket permission to all
10 sexual evidence but within the parameters that I've
11 described previous it will be.

12 Okay, you may call your first witness.

13 MR. SHAPIRO: Your Honor, we would call
14 Russell MacKenzie. I believe he's outside, if I may
15 get him.

16 RUSSELL MACKENZIE,

having been first duly sworn
17 on oath was called as a
18 witness for the Defendants,
was examined and testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. SHAPIRO:

22 Q Would you state your full name and spell your last
23 name for the record, please.

24 A Arthur Russell MacKenzie, M-A-C K-E-N-Z-I-E, Jr.

25 Q Do you go by Russ?

A Yes.

- 1 Q Could you spell your last name, please.
- 2 A M-A-C K-E-N-Z-I-E.
- 3 Q Russ, I'm going to stand back here. If you could
- 4 speak to me, that would ensure that everyone in the
- 5 room can hear you.
- 6 A Okay.
- 7 Q Where do you reside?
- 8 A 21912 18th Place South, Seattle 98198.
- 9 Q Are you currently employed?
- 10 A Yes.
- 11 Q Could you tell us a little bit about your job?
- 12 A I work at the Washington State Convention and Trade
- 13 Center for ARA Services.
- 14 Q How old are you, Russ?
- 15 A Thirty-six. ,
- 16 Q Are you familiar with a church by the name of
- 17 Community Chapel and Bible Training Center?
- 18 A Yes.
- 19 Q How are you familiar with that organization?
- 20 A I was employed there and attended there.
- 21 Q How long did you attend Community Chapel and Bible
- 22 Training Center, sir.
- 23 A From 1971 until 1988.
- 24 Q And how were you employed there?
- 25 A As a Bible College teacher.

MackENZIE - Direct (By Mr. Shapiro)

1 Q Were you employed in that capacity for all 17 years
2 that you were there?

3 A No, from 1976 to 1988.

4 Q So, 12 years?

5 A Yes.

6 Q And who hired you as a Bible teacher?

7 A Donald Barnett.

8 Q Did you hold any other positions while you were at
9 Community Chapel and Bible Training Center?

10 A Yes, I functioned as a minister and as an elder, as
11 well as a Bible College teacher.

12 Q Briefly during your tenure at Community Chapel and
13 Bible Training Center, could you describe what your
14 understanding of the duties of an elder were.

15 A Well, they're basically spiritual leadership of the
16 church and specifically I was an elder or overseer of
17 the Word of God which would be doctrines taught from
18 the Bible.

19 Q Are you still a member of Community Chapel?

20 A No.

21 Q Do you have anything to do with Community Chapel
22 today?

23 A No.

24 Q Do you have any interest or involvement with Community
25 Chapel?

MackENZIE - Direct (By Mr. Shapiro)

1 A No.

2 Q I'm going to refer to an event called the eldership'
3 hearings. Are you familiar with that term?

4 A Yes.

5 Q Could you briefly describe what that term means to
6 you?

7 A The term the eldership' hearings refers to a set of
8 meetings attended by a committee of 16 men called the
9 hearing committee and also Donald Barnett and Jerry
10 Zwack, Z-W-A-C-K, in which Jerry Zwack made charges
11 regarding Donald Barnett's bad conduct and Donald
12 Barnett stated his defense of those charges and then
13 the committee dealt with the problem.

14 Q All right. Was there something, pardon the use of the
15 colloquialism, but was there something that brought
16 the eldership' hearings to a head, something that
17 started them off in your mind?

18 A Yes, it was a letter written by Jerry Zwack.

19 Q Do you recall approximately the date of that letter?

20 A I recall exactly the date of the letter. It's
21 December 23, 1987 and that letter was delivered to me,
22 hand-delivered to me, December 24th, 1987. In fact,
23 Jerry Zwack delivered that letter by hand by placing
24 it on the porch of all the elders to whom it was
25 addressed.

1 Q I'm showing you what I believe has been marked as
2 Exhibit 22.

3 THE COURT: Dated December 23rd addressed to
4 senior elders and elders of the Seattle Community
5 Chapel and Bible Training Center.

6 Q (By Mr. Shapiro) Take a look at that letter, if you
7 would, briefly and tell me if that is the letter you
8 received on December 24th, 1987.

9 A Yes, it is.

10 Q Now, shortly after receipt of this letter, did you
11 have a conversation with Donald Barnett about this
12 letter and its content?

13 A Yes, I received this letter the morning of the 24th
14 and received a call shortly after that by telephone
15 from Donald Barnett regarding the letter.

16 Q What did Donald Barnett say to you about the letter?

17 A He asked me if I got a letter on my porch that morning
18 and he ordered me to not open the letter and to return
19 it to him unsealed.

20 Q Did he explain why he wanted you not to read it and
21 return it to him unsealed?

22 A I don't recall but I got the impression, of course,
23 that he didn't want me to know the contents of the
24 letter and I told him --

25 Q How did you respond to him?

1 A I said I've already opened and read the letter and I'm
2 sorry but it's an important letter to me and I've
3 already read it.

4 MR. SHAPIRO: We would offer No. 22, Your
5 Honor.

6 MR. WIGGINS: Your Honor, we believe that
7 the letter has at best -- First of all, we object to
8 it as hearsay. It has at best very limited relevance
9 and the relevance is limited to the fact that a letter
10 was received from Jerry Zwack and that it triggered
11 the hearings. I guess that's the relevance. We
12 object to the contents of the letter as hearsay.

13 THE COURT: Well, the letter will be
14 admitted. I believe that it's relevant to frame the
15 basis for the hearing and what prompted it.

16 MR. WIGGINS: May I ask, Your Honor, is it
17 limited to that issue and is it not admitted for the
18 truth of the matter asserted?

19 THE COURT: I think it's relevant in that
20 fashion, its contents will be simply regarded as
21 complaints of Jerry Zwack, not as proof of them
22 necessarily at all but the complaints that he had.

23 MR. SHAPIRO: Notice of those complaints.

24 MR. WIGGINS: Thank you, Your Honor.

25 (Defendants' Exhibit 22

MackENZIE - Direct (By Mr. Shapiro)

1 received into evidence.)

2 Q (By Mr. Shapiro) Turning to the letter directly, Mr.
3 MacKenzie, in substance and obviously I don't want you
4 to reread the letter, what was your understanding of
5 the nature of Mr. Zwack's complaints?

6 MR. WIGGINS: I object to that, Your Honor,
7 the document speaks for itself.

8 THE COURT: Let me start by saying I'm going
9 to follow the practice that's been established here
10 and that is the witnesses have been asked to read
11 exhibits that have been admitted into evidence and why
12 they were asked to read them I don't know other than
13 to advise me and I recognize that exhibit speaks for
14 itself, but it seems to be the custom to have them
15 read and you may read it.

16 MR. SHAPIRO: Would you like him to read
17 this whole letter? I'm just asking him to sum up in
18 his opinion what he thought the complaints were so he
19 need not read it.

20 MR. WIGGINS: Well, I object to a summary of
21 what he thought.

22 THE COURT: He may answer.

23 Q (By Mr. Shapiro) Go ahead, Russ, if you can. Sorry
24 for the interruption.

25 A His complaints consisted of all of the material

1
2
3
4
5 **DELETED MATERIAL FILED UNDER SEAL**
6
7
8
9
10

11 so it is an appeal to the elders to please investigate
12 the problem and take actions, appropriate actions.

13 Q Is there any complaint anywhere in that letter by
14 Jerry Zwack to the best of your understanding that he
15 was complaining about losing his position at the
16 Counseling Center or the Bible College?

17 A Well, he mentions in the second paragraph that he has
18 been laid off for two and a half months at the time
19 the letter was written. But as far as his complaints
20 in this letter, I don't see that listed as one of the
21 items of complaint.

22 Q All right. Now, after you received the call from
23 Donald Barnett and informed him that you had read the
24 letter and weren't going to disregard it or send it
25 back, what did you do next?

MACKENZIE - Direct (By Mr. Shapiro)

1 A Well, this letter prompted me to talk to other elders
2 and ask if they had received the letter, because it
3 was addressed to all of them, and formulate a plan to
4 investigate the problem and take appropriate action.

5 Q And did you come up with a plan which you thought was
6 the best way to take appropriate action?

7 A Yes.

8 Q Would you describe for the Court what that plan was?

9 A That plan was to conduct an eldership' hearing which
10 would investigate the charges and reach a finding
11 about whether they were true and then take appropriate
12 actions to solve the problem.

13 Q And to that end, what steps did you take or any of the
14 elders take to bring that about?

15 A I called Jack Hicks and had a lengthy phone
16 conversation with him as well as talking in person to
17 other elders and we eventually agreed that we would
18 hold some preliminary meetings prior to the opening of
19 the hearing in order to define issues regarding the
20 hearing, how it would be held, et cetera.

21 Q What were the subjects that were discussed at the
22 preliminary meetings?

23 A By preliminary meetings, I'm referring to meetings
24 between January 21, 1988 and January 24, 1988 where
25 the elders met as a group to discuss the hearings,

1 potential hearings, I should say at that point, and
2 subjects discussed would be the subject matter of the
3 hearings, the membership of the committee, the choice
4 of moderator, the special agreement document signed by
5 Don, that needed to be signed by Don, guidelines for
6 the hearing, the time and place of the hearing and, of
7 course, a final decision whether there would be a
8 hearing.

9 Q Now, you have spoken of the elders in these
10 preliminary meetings. Who was present during these
11 preliminary meetings?

12 A There were 16 people present in the preliminary
13 meetings, basically the elders of the church and then
14 three counselors, John Bergin, David Motherwell and
15 Chris Mathews.

16 Q Was Donald Barnett present at the preliminary
17 meetings?

18 A No.

19 Q Do you know or do you have information that he was
20 being kept apprised of what was happening at the
21 preliminary meetings?

22 A No.

23 MR. WIGGINS: I'm sorry.

24 MR. SHAPIRO: He does not have information.

25 Q (By Mr. Shapiro) I understand that's your answer; is

1 that correct?

2 A That's my answer.

3 Q Now, you've talked about the topics that were
4 discussed at the preliminary meetings and I think the
5 first one that you spoke of was the subject of the
6 hearings. What was decided to be the subject of these
7 upcoming hearings?

8 A The subject of the hearings was the resolution of
9 Jerry Zwack's grievances against Donald Barnett.
10 Jerry Zwack had complained about Donald Barnett's bad
11 conduct and so the subject matter was as broad as
12 Jerry Zwack chose to complain and he was permitted to
13 complain in any manner that he wished to about any
14 subjects that he wished to.

15 Q Was there any limitation agreed to at any point during
16 the preliminary meetings or the hearings themselves
17 that there was a six month time period limitation on
18 these grievances?

19 A No.

20 Q Now, the next point you made that was discussed at the
21 preliminary meetings was, I believe, the time and the
22 place of the hearings. What was discussed and what
23 was decided regarding that?

24 A The meetings would be held in the recording studio of
25 Community Chapel in Burien because it has thick

1 soundproof walls, therefore, no one could hear the
2 proceedings, and they were to be held on weekday
3 afternoons between 1 and 6 p.m.

4 Q The next thing you talked about was choice of
5 moderator. Who was chosen?

6 A I was.

7 Q Do you know who was involved in choosing you?

8 A The committee discussed the subject and someone
9 mentioned that Don was agreeable to my name and I was
10 nominated and selected by the committee.

11 Q Then you mentioned a document you called a special
12 agreement. Could you describe for us briefly what the
13 special agreement was?

14 A The special agreement was a document which I wrote on
15 January 24th, 1988 which gave the committee authority
16 to investigate the charges made and to act upon them
17 at the conclusion of the hearing. And it was designed
18 also to protect Don from future charges of a conflict
19 of interest, because some members of the committee
20 voiced a concern that Don might act or use his, misuse
21 his pastoral authority to act as a judge at his own
22 trial in these hearings and that they feared he may
23 act to control the hearings or limit the discovery of
24 the hearings or decide the final decisions at the end
25 of the hearings, et cetera.

MackENZIE - Direct (By Mr. Shapiro)

1 And so to protect Don from charges that he was
2 the judge and jury at his own trial, we suspended his
3 pastoral authority for the purpose of the hearings and
4 gave that final authority to reach decisions and take
5 actions to the committee. That's what the paper was
6 for.

7 Q You drafted this paper?

8 A Yes.

9 Q I'm showing you what has been marked as Exhibit 15,

10 Mr. MacKenzie, placing before you Exhibit 15. When

MackENZIE - Direct (By Mr. Shapiro)

1 necessary. And so that was the basic idea behind
2 it. I also included the words -- So, that would be
3 the hearings to continue. The idea of continuing was
4 to prevent Don from acting to stop them and the word
5 "satisfaction" of the elders was chosen so that the
6 elders could continue to investigate and take any
7 action they wanted which satisfied their minds and
8 their opinions. I wanted them to feel satisfied that
9 the problem was addressed fully and not limited.

10 Q Did you submit this document to Donald Barnett?

11 A The committee appointed David Motherwell to take the
12 special agreement to Don's home along with a copy of
13 the guidelines and go over it with Don, have Don sign
14 it, leave the guidelines with Don and then come back.
15 And David Motherwell did those things so I didn't do
16 it myself.

17 Q Did the agreement come back to you?

18 A Yes.

19 Q Did it come back with Don's signature?

20 A Yes.

21 Q Turning your attention to what's up on the board here,
22 is that an accurate blowup of the form of the document
23 that came back to you on the 25th of January 1988?

24 A Yes.

25 Q Do you recognize Don Barnett's signature?

MackENZIE - Direct (By Mr. Shapiro)

- 1 A Yes.
- 2 Q Is that his signature?
- 3 A Yes.
- 4 Q On how many occasions have you seen his signature,
5 approximately?
- 6 A Signature, probably hundreds, his handwriting
7 thousands of times.
- 8 Q The words "and Jerry" that are there, did you put
9 those in there when you sent that over to Donald
10 Barnett?
- 11 A No, we sent a clean typed copy with a blank signature
12 line.
- 13 Q And do you know who put those words "and Jerry" in
14 there?
- 15 A Yes.
- 16 Q Who?
- 17 A Don Barnett.
- 18 Q Now, you mentioned guidelines. Can you describe for
19 us what you meant by the term guidelines? By the way
20 before you get to that question, were guidelines
21 discussed at the preliminary meetings?
- 22 A Yes.
- 23 Q And what was the purpose of discussing guidelines at
24 the preliminary meetings?
- 25 A The purpose was to formulate them.

MACKENZIE - Direct (By Mr. Shapiro)

1 Q Were they in fact formulated?

2 A Yes.

3 Q By the way, who drafted the guidelines?

4 A I did.

5 Q You wrote them?

6 A Yes, I wrote them.

7 Q Was a set furnished to the best of your knowledge to
8 Donald Barnett?

9 A Yes.

10 Q How many pages were the guidelines?

11 A Two.

12 Q And how many guidelines did the guidelines consist of,
13 if you recall?

14 A Eleven, I believe, I'd have to look at a copy again.

15 Q Let me show you a copy.

16 A There's a second page with a chart and, if you include
17 that as a twelfth item, it would be 12 but there's 11
18 that are numbered.

19 Q This has been marked as Exhibit 23, I believe. Let me
20 show you what's been marked as Exhibit No. 23 and ask
21 you to take a look at that document and see if you can
22 identify it.

23 A I can identify it. It is a copy of guidelines used at
24 the hearing.

25 Q All right. Those are the guidelines you drafted?

MackENZIE - Direct (By Mr. Shapiro)

1 A Yes.

2 Q Were those guidelines in fact utilized at the
3 hearings?

4 A Yes, I kept a copy in front of me as moderator at each
5 hearing session.

6 Q Let me ask, did you go over the guidelines at the
7 beginning of the hearings?

8 A I didn't read all of them because my opening statement
9 was rather brief, but I did refer to them.

10 Q Did you identify what guidelines you were speaking of?

11 A Yes, everyone at the table, including Don Barnett and
12 Jerry Zwack, had a copy in front of them.

13 Q This would be a copy of the paper you have in front of
14 you?

15 A The same paper I have right here.

16 MR. SHAPIRO: Move for the admission of 23.

17 MR. WIGGINS: Your Honor, may I voir dire?

18 THE COURT: Yes.

19 MR. WIGGINS: Mr. MacKenzie, I'm Charles
20 Wiggins, one of the attorneys representing Pastor
21 Barnett. Were there prior versions of these bylaws --
22 of these guidelines?

23 THE WITNESS: There's one prior version that
24 I know of.

25 MR. WIGGINS: Oh, there is one prior

MackENZIE - Voir Dire (By Mr. Wiggins)

1 version. What day were the guidelines finalized to
2 crystallize into this form?

3 THE WITNESS: January 24th, 1988.

4 MR. WIGGINS: All right. When were they
5 taken to, you say they were given to David Motherwell
6 to take to Pastor Barnett's home. What day were they
7 given to David Motherwell to do that?

8 THE WITNESS: I believe they were given to
9 him on the 24th, the day they were finished, but I
10 don't know that for sure. It's possible that he
11 obtained the copy that he carried to Don's home on the
12 25th. I don't know, I think you would probably have
13 to ask him.

14 MR. WIGGINS: Did you know whether he took
15 this version of the guidelines or a prior version of
16 the guidelines to Pastor Barnett?

17 THE WITNESS: He was instructed by the
18 committee to take this version and I believe he was
19 given two copies when we passed them out so that the
20 extra copy would be the one that he would take to Don.
21 I'm not sure how he could get another copy unless he
22 photocopied it or something, I don't know.

23 MR. WIGGINS: Your Honor, there is a prior
24 version, I think the prior version should be admitted
25 as well.

MackENZIE - Voir Dire (By Mr. Wiggins)

1 THE COURT: Could well be, but I'll admit
2 23.

3 (Defendants' Exhibit No. 23
4 received into evidence.)

5 THE COURT: Who has the prior version?

6 MR. SHAPIRO: I don't believe it's been
7 identified as an exhibit.

8 MR. WIGGINS: I have copies of the prior
9 version, Your Honor. It was produced and it's been
10 bandied about throughout discovery.

11 MR. SHAPIRO: But just so I'm clear, Your
12 Honor, and I want to ask this clarification so we
13 don't get a difference of opinion later on, counsel
14 would like to put in a document that they did not list
15 on their exhibit list, if that's the case.

16 THE COURT: Any reason why it shouldn't come
17 in?

18 MR. ROHAN: There were some reasons but they
19 did list it.

20 THE COURT: I don't know if anybody saw it
21 or acted upon it but I was wondering if anybody had a
22 specific reason to object.

23 Q (By Mr. Shapiro) Let me ask you this, Mr. MacKenzie,
24 and maybe we can clear up any confusion that might
25 exist. The prior version that Mr. Wiggins was asking

1 you about, was that a draft version?

2 A Right.

3 Q Was that ever enacted?

4 A No.

5 Q Was it ever adopted by the committee?

6 A No. It was a draft version which was used in the
7 preliminary meetings as a basis for discussion and I
8 edited it with a pen and so did some other people and
9 eventually the final version was typed clean with the
10 changes the committee agreed upon and this version was
11 adopted.

12 Q And this was the version given to Don Barnett?

13 A Yes and all the committee members and this is the one
14 I used as the moderator.

15 Q I think you mentioned that you referred to these
16 guidelines in opening hearings. Did you at any point
17 in your opening indicate that the guidelines that you
18 have in front of you would apply?

19 A Yes, I said that.

20 Q Was there any objection or questioning by anyone at
21 the hearings about the use of these guidelines?

22 A No.

23 Q I take it Don Barnett was present at that point.

24 A Yes.

25 Q And he had a copy of these guidelines in front of him?

1 A Yes, everyone at the table did.

2 Q Now, looking at the guidelines themselves, I would
3 like to go through a few of them since you were the
4 draftsman as to what your understanding was. Now,
5 with respect to the format of the hearings, is there a
6 specific guideline that covers what form the hearings
7 would take?

8 A That would be Guidelines 4, 5, and 11.

9 Q And 4, 5 and 11 -- Well, 4, for example, indicates
10 what the initial phase of the hearings was to be.

11 A Correct.

12 Q Was that followed?

13 A Yes.

14 Q Five indicates what the second phase of the hearings
15 was to be and, if I could paraphrase the document,
16 consisted of rebuttals and answers to rebuttals and
17 questioning by the elders. Was that also followed?

18 A Yes.

19 Q And then 11 indicates that the eldership will go into
20 exclusive eldership review sessions without Donald
21 Barnett and Jerry Zwack and make a final decision.
22 Was that also followed?

23 A Yes, with one exception.

24 Q What exception?

25 A There was an exclusive eldership review session where

MacKENZIE - Direct (By Mr. Shapiro)

1 Donald Barnett petitioned us to allow him to come to
2 address us. And because we were trying to be as open
3 to him and as merciful and gentle to him as we could,
4 we allowed him the opportunity to come and address us.

5 Q Notwithstanding --

6 A Notwithstanding the guideline. We waived the
7 guideline and let him say his piece.

8 Q There weren't any instances where Jerry Zwack did the
9 same thing?

10 A No, he never asked to do that.

11 Q No. 6 indicates that the hearings shall be
12 confidential and any notes taken should be destroyed.
13 Was that agreed to?

14 A Yes.

15 Q Did you take notes?

16 A Yes.

17 Q Did you produce your notes to counsel, Mr. Wiggins and
18 Mr. Pierce, in this case?

19 A Mr. Pierce and Mr. Johnson.

20 Q Why did you keep your notes, sir, if No. 6 says it was
21 to be confidential and notes were to be destroyed?

22 A Because on the day that phase two ended and Donald
23 Barnett was put out of the church and removed as
24 pastor, he went to the King County Superior Court and
25 began a lawsuit on the subject. And so it was only a

MackENZIE - Direct (By Mr. Shapiro)

1 matter of hours between the close of the hearings and
2 the beginning of the lawsuit and I did not want to be
3 accused of destroying evidence for a lawsuit.

4 Q Is that why you saved your documents?

5 A Yes.

6 Q No. 7. can you tell us what you intended when you

- 1 Q Did some of these committee members, were they also,
2 now based on what you've learned, recipients of
3 complaints from women?
- 4 A Yes.
- 5 Q Were they, under your understanding of this, were they
6 entitled to discuss what they knew via that source?
- 7 A Yes. At the exclusive eldership review sessions
8 without Don and without Jerry, all members of the
9 committee were permitted to state what they knew to be
10 the case and give information to the committee, direct
11 or indirect information.
- 12 Q And was that your understanding that that would be
13 treated as evidence?
- 14 A Yes.
- 15 Q Now, you've indicated that you wanted Donald Barnett
16 to sign the January 25 agreement. Did you believe
17 that prior to his signing the agreement that you as
18 elders had the authority to hold these hearings?
- 19 A Yes.
- 20 Q What were the bases of the authority that you believed
21 you had outside of this agreement that you had to hold
22 these hearings?
- 23 A No. 1 would be the Bible because that was agreed to by
24 all as our final authority and there are arguments
25 that can be used from scripture which would give

1 elders the right to investigate charges and take
2 appropriate action. Donald Barnett himself made
3 statements which you authorized the elders to
4 investigate and take action against people who were
5 charged with wrongdoing.

6 Q Tell us about those examples.

7 A For example, in a sermon in 1979 he preached and
8 covered the subject of how to handle a pastor who
9 committed adultery and he said in that sermon that the
10 elders should take the matter into their own hands and
11 make a final decision. So, we were relying on such
12 statements in the past made by Don as a source of
13 authority.

14 Q Any other statements?

15 A He wrote in an informative newspaper called Balance
16 published by the church that it had been rumored that
17 he was accountable to know one. So, to answer this
18 rumor in Balance No. 2 in a section call Rumor No. 20
19 he said that he was accountable, and he was
20 accountable to God and to the bylaws and the senior
21 elders and all the elders and even to the
22 congregation.

23 MR. PIERCE: I would object to the
24 references to a document here unless there is a
25 showing that the statements were actually made by Don

1 Barnett.

2 MR. SHAPIRO: Your Honor, I understand that
3 Mr. Wiggins is conducting this.

4 THE COURT: One person should handle the
5 cross-examination and raise objections, so you decide
6 on who is to do it.

7 MR. WIGGINS: All right, Your Honor, I'll
8 object to this testimony on the grounds there's a lack
9 of foundation. He's talked about a publication that
10 contains a statement that was attributed to Don
11 Barnett but we don't have a foundation that Pastor
12 Barnett made that statement.

13 THE COURT: Is there --

14 MR. WIGGINS: It's hearsay, basically.

15 MR. SHAPIRO: Your Honor, it's an admission.

16 MR. WIGGINS: If you can lay a foundation,
17 it's an admission.

18 THE COURT: What is the name of the
19 publication?

20 THE WITNESS: Balance No. 2.

21 Q (By Mr. Shapiro) Let me ask you to take a look at a
22 document here and see if you can find the rumor and
23 the answer to the rumor that you have spoken about.

24 A Yes, I have it.

25 Q Then I'd ask you, sir, if you would look an page 2 of

1 the magazine whether or not Donald Barnett's signature
2 is on that magazine talking about the contents and
3 this issue of Balance?

4 A Yes.

5 Q Is that his signature?

6 A Yes.

7 MR. SHAPIRO: We would offer the document,
8 Your Honor.

9 MR. WIGGINS: Your Honor, may I voir dire?

10 THE COURT: Yes.

11 MR. WIGGINS: Mr. MacKenzie, has Pastor
12 Barnett ever acknowledged to you that he wrote the
13 words that you relied on?

14 THE WITNESS: He said he did in the
15 quotation.

16 MR. WIGGINS: That's not really my question.
17 My question is has Pastor Barnett ever acknowledged to
18 you that he wrote the words that you are quoting?

19 THE WITNESS: I'm trying to remember. The
20 reason I'm taking time is I'm trying to remember that
21 there was a time when he referred to this and I
22 believe it was in a sermon spoken publicly and I was
23 in the congregation. So, if that can be construed to
24 be a communication to me since I was a member of the
25 audience, then I would answer yes.

MackENZIE - Voir Dire (By Mr. Wiggins)

1 MR. WIGGINS: Your testimony then is that in
2 a sermon Pastor Barnett stated that he wrote the words
3 that you are quoting from this document; is that
4 correct? Is that your testimony?

5 THE WITNESS: Boy, it's difficult because I
6 don't remember whether he actually said, quote, I
7 wrote these words, closed quote. I'm sure he did not
8 say it that directly. I'm sure what I am remembering
9 is the fact that he read this and, since he uses the
10 first person pronoun "I", he obviously was referring
11 it to himself.

12 MR. WIGGINS: It's your recollection that he
13 read the rumor that you are quoting and the answer
14 that you are quoting and that was during a sermon that
15 he gave and he acknowledged that he was the author of
16 it?

17 THE WITNESS: No, I would have to answer no,
18 that he did not acknowledge that he was the author of
19 it. But he was making the statement using the first
20 person pronoun "I" saying I do this, I do this, which
21 is what the quotation says. So, whether he wrote it
22 prior to that or whether he is saying it verbally, I
23 do this, I do that, it is his words. Do you
24 understand the distinction I'm trying to make?

25 MR. WIGGINS: I understand. Your Honor, I

MacKENZIE - Voir Dire (By Mr. Wiggins)

1 have no further voir dire.

2 MR. SHAPIRO: Given the signature and given
3 Mr. MacKenzie's testimony in response to Mr. Wiggins'
4 questions, I would re-offer the Exhibit No. 27.

5 (Defendants' Exhibit No. 27
6 marked for identification.)

7 MR. WIGGINS: Your Honor, at this point I
8 guess my objection is a little different because the
9 witness hasn't identified this as a statement that
10 Donald Barnett wrote. What he has identified, he
11 testified to a statement that Donald Barnett made from
12 the pulpit which is different than this entire
13 publication.

14 THE COURT: What he testified to is that
15 these were the words he spoke at the sermon; is that
16 not right?

17 THE WITNESS: Yes, by reading these words to
18 us using the first person pronoun "I".

19 MR. WIGGINS: Your Honor, my objection is
20 that that doesn't make this entire document
21 admissible.

22 THE COURT: That's true, but it would be
23 admitted for the purpose of this testimony.

24 (Defendants' Exhibit No. 27
25 received into evidence.)

MackENZIE - Direct (By Mr. Shapiro)

1 Q (By Mr. Shapiro) Now, when did the hearings start?

2 A January 25, 1988.

3 Q Now, you just testified about the sources of authority
4 you believed you had. By the way did you finish?

5 Other than the 1/25 agreement, had you finished your
6 answer about what you believed were the additional
7 sources of authority you had to hold these hearings?

8 A No.

9 Q I'm sorry, why don't you continue.

10 A Okay. Other sources of authority that I believed we
11 had were my general leadership responsibility in the
12 church as an elder, a general responsibility of
13 leadership to protect the women of the congregation
14 from Don if these allegations were true, and to
15 protect Don from himself if these allegations were
16 true and to protect the church from any civil
17 liability that may arise as a result of bad conduct by
18 Don such as a lawsuit.

19 Q Anything else?

20 A If I can refer to the guidelines, since we're omitting
21 the special agreement at this point as a source of
22 authority, there is authorization in the guidelines
23 also which would be a source of authority.

24 Q And that source of authority was what?

25 A Guideline 11.

MACKENZIE - Direct (By Mr. Shapiro)

1 Q Do you have that in front of you, sir?

2 A Oh, yes, I do.

3 Q Why did Guideline 11 give you that authority in your
4 mind?

5 A Because it says final decisions shall be determined by
6 a majority vote of all elders present at the exclusive
7 eldership review sessions, not including Don Barnett
8 or Jerry Zwack. Let me see if there is anything else
9 in the guidelines that also gives authority. That
10 would be all.

11 Q Being that the case, why did you feel you wanted to
12 have Don Barnett sign the January 25, 1988 agreement?

13 A To ensure Don Barnett's compliance with the findings
14 and actions of the committee because, as I said,
15 certain members were concerned that he would try to
16 control the hearings, limit the discovery, perhaps
17 stop them once they started and refuse to abide by any
18 sanctions or anything we would impose at the end. So,
19 we felt we needed a paper that he would sign saying he
20 voluntarily agrees to participate, not stop them,
21 temporarily suspend his pastoral authority by giving
22 us final authority.

23 Q All right. So that there was no question?

24 A So there was no question.

25 Q Now, you mentioned the hearings started on January 25.

1 At any time during the hearings did Pastor Barnett
2 ever indicate to you in any way that he was submitting
3 to the authority of this committee or this eldership
4 hearing?

5 A Are you asking on the day of the 25th or are you
6 broadening it to other times?

7 Q I'm broadening it to the hearings themselves. By the
8 way, why don't you tell me in your mind when did the
9 hearings began and when did they conclude?

10 A They began on January 25, 1988. The last hearing
11 meeting was on March 3rd, 1988. But I would say that
12 the hearings actually concluded on March 4, 1988 when
13 the action was implemented that the committee had
14 decided what to do and that is putting Don out of the
15 church and relieving him from his office as pastor.
16 That is part of phase two in the sense that it is the
17 carrying out of the final decision. It is what the
18 guidelines call the --

19 Q Guidelines or special agreement?

20 A The special agreement called for the exercise of final
21 authority and that occurred on March 4, so I would say
22 January 25, 1988 through March 4, 1988.

23 Q During this period of time, did Donald Barnett give
24 any indication to you that he was willing to submit to
25 the committee and abide by its decision?

1 A Yes.

2 Q Can you give us those instances?

3 A If I could look at my notes that I took it would help
4 refresh my memory. But, yes, I can list a number of
5 them. Now, are you saying, are you asking me nothing
6 prior to the 25th?

7 Q Well, maybe I shouldn't narrow it so much. Were there
8 times prior to the 25th?

9 A Well, I guess as I've indicated, he had given general
10 authorization for elders to investigate such problems
11 by his statements during his sermons from the past and
12 most I think of what I'm thinking in my mind now would
13 be from the 25th forward, so maybe I should answer it
14 that way.

15 Q You mentioned your notes. Are these the two red
16 volumes that are here?

17 A Yes, those are my notes.

18 Q Were those produced to both sides in this case?

19 A Yes.

20 Q Did you ensure that they were given to Pastor Barnett
21 and his counsel?

22 A Yes.

23 Q How did you ensure that, sir?

24 A By walking over to a copying business with Rodney
25 Pierce and handing the two notebooks to the company

MackENZIE - Direct (By Mr. Shapiro)

1 and they were instructed by Mr. Pierce to produce two
2 notebooks identical to those page for page with every
3 tab, every paper clip so that they were identical to
4 mine.

5 Q And you got your original back?

6 A Right. We left them at the copy center and I picked
7 mine up from there and I presume he picked his up.

8 Q All right. Referring to your notes, we would refresh
9 you recollection and why don't you go ahead and take a
10 look at your notes.

11 A To answer the question about times Donald Barnett made
12 statements or did actions that would indicate his
13 submission to the committee --

14 (Off-the-record discussion.)

15 Q If you could, I know your notes aren't numbered
16 sequentially, if you could to the best of your ability
17 indicate to counsel where your references are so they
18 can follow along.

19 MR. ROHAN: Which volume are you in?

20 THE WITNESS: I'm in volume one and I'm
21 behind the second tab.

22 Q (By Mr. Shapiro) What's the label of the tab?

23 A 1/25 through 2/2/88, hearing notes, page 18; line 1.

24 I have submitted myself to this panel, statement made
25 by Donald Barnett. I would refer also to the special

1 agreement which we have referred to, Guideline 11,
2 which we have referred to, Balance 2, Rumor 20, which
3 we referred to, past statements from sermons like the
4 1979 sermon.

5 Q Any other evidence during the hearings themselves
6 about his willingness to submit to the authority of
7 this tribunal and its decision-making ability?

8 A Yes, I have under the third tab a note that Don passed
9 to me during Jerry Zwack's phase one testimony which
10 indicates his submission to the committee.

11 Q What tab is that?

12 A This is the third tab 1/25 to 2/2. I was going to
13 say, because I've studied my notebook many times I
14 probably could find them for Mr. Wiggins faster than
15 he could find them. Is that okay with you?

16 MR. WIGGINS: That's fine.

17 THE WITNESS: I'll flip to the page for you.

18 Q (By Mr. Shapiro) What does it say at the top of the
19 page you are looking at?

20 A Page 2. It's too bad they didn't put tabs in there
21 like mine. This is another example of Don Barnett's
22 knowledge that he is submitting himself to the
23 committee and our final decision.

24 Q Can you tell us what you are referring to?

25 A A note passed to me by Don Barnett handwritten by him

MACKENZIE - Direct (By Mr. Shapiro)

1 and passed to me as the moderator of the panel across
2 the table during Jerry Zwack's phase one testimony.

3 Q Would you go ahead and take out that note, if you
4 would, just the note that Donald Barnett passed to
5 you, if you could take it off the piece of paper.

6 A It's taped into my notebook with Scotch tape.

7 Q And let me ask you -- First of all, let's mark this.
8 By the way, do you recognize Pastor Barnett's
9 handwriting?

10 A Yes.

11 Q On how many occasions have you seen Pastor Barnett's
12 handwriting in the past?

13 A Thousands of times.

14 Q Why would you have seen his handwriting thousands of
15 times in the past?

16 A I worked in his home at his office for five years plus
17 I worked for him as my boss and saw many letters,
18 papers, sermon notes, directives, et cetera written to
19 me and to others in his handwriting.

20 (Defendants' Exhibit No. 28
21 marked for identification.)

22 Q Do you recognize the signature as Don's?

23 A Yes.

24 MR. SHAPIRO: I would offer 28.

25 MR. WIGGINS: Your Honor, my objection to

MackENZIE - Direct (By Mr. Shapiro)

1 this document and all of these notes is that there
2 were to be no permanent notes of these hearings.
3 Notes were to be destroyed and I don't think they
4 should be admissible, it's an agreement.

5 THE COURT: As to confidentiality the
6 problem, the Court will regard no privilege and will
7 admit anything that would be said about the hearings,
8 any quotes from the hearings, any notes from the
9 hearings, the guidelines to the contrary
10 notwithstanding.

11 MR. WIGGINS: Your Honor, there are two
12 provisions in the guidelines. One is confidentiality
13 and the other is permanent notes, there should be no
14 permanent notes. So, this is not merely confidential,
15 this is the second part of that, that is the basis of
16 my objection.

17 THE COURT: The same ruling applies to that.
18

1 Q And this was handed directly to you by Donald Barnett?

2 A Well, it was passed through a number of hands to get
3 to me, but yes.

4 Q Do you know who he was referring to when he referred
5 to JZ?

6 A Yes, that's Jerry Zwack, the person who complained at
7 the hearings.

8 Q At what stage of the hearings was this that he passed
9 you this note?

10 A It was either on January 25 or January 26, I don't
11 remember which day. It was on one of the two days
12 when Jerry Zwack was giving his phase one testimony.

13 Q So, this was at the beginning of the hearing?

14 A Right.

15 Q All right. Any other instances or evidence that you
16 know of of Donald Barnett submitting to the authority
17 of this committee and the finality of its decision?

18 A Yes. On February 3rd, page 65, Donald Barnett held a
19 meeting with what I'll characterize as a subcommittee
20 of the large committee.

21 Q When you say a subcommittee, was that a subcommittee
22 composed of by the committee or demanded by Donald
23 Barnett?

24 A I don't know the format in which Donald Barnett called
25 it, but it was his meeting that he initiated. The

1 committee did not initiate it, so it was a Donald
2 Barnett meeting which he held with the senior elders,
3 that would be Jack Hicks, Scott Hartley and Jack
4 DuBois, and then, of course, Don himself and he
5 included David Motherwell, his personal counselor.
6 And the morning of February 3rd he held this meeting
7 and directed that it be tape recorded. And so that
8 afternoon when we got together for our exclusive
9 eldership review session meeting without Don and
10 without Jerry when the committee convened that tape
11 was played to us at the direction of Donald Barnett.

12 Q Was there something in that tape -- First of all, did
13 you recognize Donald Barnett's voice on that tape?

14 A Yes.

15 Q You've heard his voice before?

16 A Yes.

17 Q And was there something on that tape that indicated
18 that he was willing to submit to the final judgment of
19 this committee?

20 A He said here on page 65 which are notes that I took as
21 I was listening to the tape that he volunteered to
22 have the hearing and that he allowed himself to be
23 examined by the hearings. And so my mind took that to
24 be further confirmation of his statements that he was
25 submitting himself to the jurisdiction of the

1 committee.

2 MR. WIGGINS: Excuse me, Your Honor, I think
3 since he has read this sentence I have volunteered to
4 have it, he should be asked at this time to read the
5 next sentence.

6 THE COURT: You may.

7 THE WITNESS: I have power over the meeting.

8 MR. WIGGINS: Thank you.

9 THE WITNESS: May I say more about that?

10 Q (By Mr. Shapiro) Well, if that cuts off the sentence.

11 A No, that's the end of it.

12 MR. WIGGINS: He should read the sentence
13 that precedes that or the statement that precedes it.

14 THE COURT: Have you decided what all he
15 could read?

16 MR. SHAPIRO: It seems that counsel can do
17 this in cross-examination.

18 THE COURT: Let's get the whole thing in,
19 all that's pertinent on this particular tape right
20 now.

21 MR. WIGGINS: May I voir dire?

22 THE COURT: All I want to know is what all
23 am I supposed to hear.

24 MR. SHAPIRO: I'm not offering this. He's
25 refreshing his recollection.

MACKENZIE - Direct (By Mr. Shapiro)

1 THE COURT: I'm expecting only to hear him,
2 I'm not expecting to see anything. That's why I want
3 to know what I should hear.

4 MR. WIGGINS: That's my question, whether
5 he's reading or whether he recollects at this point.
6 My impression is it's more than just recollection, I
7 think he's probably reading the document that's not in
8 evidence.

9 Q (By Mr. Shapiro) Mr. MacKenzie, based on your view of
10 that note, does that refresh your recollection about
11 whether or not Donald Barnett said anything about
12 submitting to the jurisdiction of the committee?

13 A Yes, it was one more time where he said he was
14 allowing himself to be examined. He made a strong
15 point on the tape, I volunteered this, and it was just
16 one more case of it.

17 Q Anything else that you recall?

18 A Yes. On February 25th, that was the day that he
19 petitioned us to talk to the exclusive eldership
20 review session, and on page 6 of my notes from the
21 25th, you'd have to go forward 20 pages from where we
22 were before, still under the same tab line 5. He
23 again said I submitted myself to being investigated by
24 in committee.

25 Q Now --

MACKENZIE - Direct (By Mr. Shapiro)

1 A There are a few more cases of that.

2 Q All right. There's no need to go into ad nauseum.

3 A Just, for example, he said I give the elders the right
4 to take me by the scruff of the neck and correct me,
5 et cetera.

6 MR. WIGGINS: I object, Your Honor, there's
7 no question before the Court.

8 Q (By Mr. Shapiro) Let me ask you this, and I apologize
9 for not posing the question, did he ever say anything
10 about the elders being able to take him by the scruff
11 of the neck?

12 A Yes.

13 Q When was that?

14 A During one of his many speeches. I think that was
15 during his testimony before the committee rather than
16 one of the later meetings, his phase one testimony.

17 Q So, this was during his actual testimony during phase
18 one?

19 A Yes.

20 Q He was speaking to the committee?

21 A Yes. And I remember that phrase because it was not a
22 phrase I would normally use and it kind of stuck in my
23 mind.

24 Q What was the specific phrase you recall?

25 A I've always believed they can take me by the scruff of

MackENZIE - Direct (By Mr. Shapiro)

1 them?

2 MR. WIGGINS: Who are you talking about?

3 MR. SHAPIRO: They are Susan Towery Zwack
4 and Priscilla Pike.

5 THE COURT: Would you prefer to interrupt
6 this witness at the cross-examination stage or what?

7 MR. SHAPIRO: I was just hoping to for their
8 convenience.

9 THE COURT: We'll see how we get along with
10 this witness.

11 MR. WIGGINS: Our preference would be to
12 continue with Mr. MacKenzie.

13 THE COURT: I believe that the last area of
14 testimony was that Jerry Zwack spoke for some nine
15 hours over two days, the 25th and 26th. You may
16 proceed.

17 MR. SHAPIRO: Thank you, Your Honor.

18 Q (By Mr. Shapiro) Prior to getting into the discussion
19 of Mr. Zwack's testimony and what he told the
20 eldership committee, when the hearings started had you
21 in any way prejudged Donald Barnett?

22 A No.

23 Q Why are you sure of that?

24 A Because some members of the committee --

25 MR. WIGGINS: I'm going to object to any

MackENZIE - Direct (By Mr. Shapiro)

1 statement by members of the committee. It sounded to
2 me like he was going to say something that was said by
3 other members of the committee and I would object to
4 that.

5 THE COURT: Go ahead, you may say whatever.

6 Q (By Mr. Shapiro) Go ahead, Mr. MacKenzie.

7 A Some members of the committee said to me that they
8 were actually concerned the other way, that because of
9 my past loyalty to Donald Barnett that perhaps I would
10 be inclined to maybe dismiss the complaints against
11 him more than I should. However, nonetheless I was
12 regarded as a very fair-minded person and so I was
13 chosen.

14 Q As moderator?

15 A Yes, as moderator.

16 Q You mentioned Jerry Zwack spoke for nine hours.
17 During his testimony, what was the substance of his
18 testimony?

19 MR. WIGGINS: Your Honor, I'm going to
20 object to the substance of Jerry Zwack's testimony.
21 We are at the point here where we are now dealing with
22 total hearsay through this man about what Jerry Zwack
23 said. And we either should be talking about the type
24 of theory that they have been asserting here which is
25 you listen to the evidence and the testimony that was

1 presented to the elders and decide what they said,
2 that's their theory and in that case he could probably
3 testify to what Jerry Zwack said. Or we do this by
4 calling people and don't do it through hearsay, and
5 that's my objection. If they want to stick to their
6 theory, then I think it's probably all right for them
7 to say that. But I don't think it's proper for him to
8 testify to hearsay. Jerry Zwack is endorsed as a
9 witness by them, I anticipate Jerry Zwack will
10 testify.

11 MR. SHAPIRO: I understood the Court's
12 ruling to a number of motions to exclude evidence by
13 Mr. Wiggins that the Court has overruled to say that
14 the Court would allow in what the elders knew and
15 heard during these hearings. That's all I'm asking
16 about and that's all I'm going to elicit from this
17 witness and I'm doing it pursuant to the Court's
18 ruling.

19 THE COURT: Well, we better, as they say in
20 the Queensberry rule, you better protect yourself at
21 all times and do what you think is best, but that's
22 the way I envisioned it. You may answer the question.
23 What was the nature of Jerry Zwack's testimony.

24 MR. WIGGINS: Well, Your Honor, I have
25 another objection to the form of the question. What

MackENZIE - Direct (By Mr. Shapiro)

1 is the substance of Jerry Zwack's testimony is what he
2 said and it called for a characterization, not a
3 question of what Jerry Zwack said.

4 MR. SHAPIRO: I was trying to speed things
5 up, but if counsel wants me to go into any detail I'll
6 be happy to do so.

7 Q (By Mr. Shapiro) What did Jerry Zwack say regarding
8 his chief complaints?

9 A Well, I certainly can't quote all nine hours of Jerry
10 Zwack testimony, so --

11 Q What do you recall?
12
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18 MR. WIGGINS: Your Honor, I'm going to
19 object to this because he is now not testifying as to
20 what Jerry Zwack said, he is testifying to his
21 characterization --

22 THE COURT: These are general questions.

23 Q (By Mr. Shapiro) Go ahead, Mr. MacKenzie.
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7 Q This went on for approximately nine hours?

8 A Yes.

9 Q- Now, who spoke after Jerry Zwack?

10 A Donald Barnett.

11 Q And tell me how long Donald Barnett spoke for?

12 A Approximately 20 hours.

13 THE COURT: How long?

14 THE WITNESS: Twenty hours.

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18 MR. WIGGINS: Your Honor, again, I have a
19 foundation objection here because sexual contact with
20 female congregants is not a breach of fiduciary duty.

21 THE COURT: I suppose we will get into more
22 detail as it's tied in.

23 MR. SHAPIRO: We will get into more detail,
24 Your Honor, and I'll get to that.

25 THE COURT: Preliminarily I'm going to

1 overrule the objection.

2 MR. WIGGINS: Your Honor, is this subject to
3 being stricken if it can't be tied up?

4 THE COURT: No, it's not being stricken.

5 Q (By Mr. Shapiro) Do you have my question in mind?

6 A Would you repeat the question, please.

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17 MR. WIGGINS: Excuse me, Your Honor, I'm
18 going to object to this because this is coming in
19 without foundation. We are now getting into matters
20 that may pertain strictly to Pastor Barnett and his
21 wife, an area you have excluded and this is a case --

22 THE COURT: I will require foundation.

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MR. WIGGINS: Your Honor, I have another objection to this because I think you have limited the scope of this to within the past eight years.

Q (By Mr. Shapiro) Within the past eight years, with that clarification.

A Okay. Well, that would exclude some of his admissions.

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Q Can you give us the gist of some of the admissions?

MR. WIGGINS: Your Honor, I object to the gist of the admissions. It calls for a conclusion and characterization.

THE COURT: I think we better get to names and dates.

Q (By Mr. Shapiro) Were names used, sir?

A No.

Q Numbers were used, were they not?

A Yes. These women were designated as girl No. 1, girl No. 2, girl No. 3, et cetera.

Q Were any of these women -- How many women were numbered --

A Five.

MackENZIE - Direct (By Mr. Shapiro)

1 MR. WIGGINS: The number of what?

2 MR. SHAPIRO: I hadn't finished the
3 question.

4 MR. WIGGINS: He answered the question. I
5 move to strike then. If you don't have a question,
6 he's answered prematurely.

7 THE COURT: Go ahead, you may ask the
8 question.

9 Q: (By Mr. Shapiro) How many women were designated by
10 number?

11 A Five.

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MR. WIGGINS: Your Honor, may I have a
22 continuing objection to this?

23

THE COURT: Yes, go ahead.

24

Q (By Mr. Shapiro) Now, had Donald Barnett taught
25 against this?

25

MackENZIE - Direct (By Mr. Shapiro)

1 A Yes.

2 Q On how many occasions?

3 A Dozens of times. He even preached whole sermons
4 against it occasionally.

5 Q Now, after Donald Barnett spoke for 20 hours, what
6 happened next? What other phase of the hearing
7 happened?

8 A Well, at the end of the two men's direct testimony
9 where Jerry Zwack complained and Donald Barnett stated
10 his defense, that was the end of phase one. Phase two
11 began with rebuttal and so Jerry Zwack offered his
12 rebuttal and completed it and Donald Barnett offered
13 his rebuttal and completed it and that occurred on
14 February 2nd, 1988.

15 Q That's when Mr. Zwack and Mr. Barnett finished
16 speaking both phases?

17 A Yes. During phase two there was rebuttal and they
18 both spoke and both completed their rebuttal.

19 Q Then what happened, what was the next phase?

20 A Well, it was a continuation of phase two that we
21 designated as a exclusive eldership review session
22 without Don and without Jerry and that commenced the
23 next day on February 3rd.

24 Q Was there something that happened on February 3rd that
25 delayed the exclusive eldership review session?

MackENZIE - Direct (By Mr. Shapiro)

1 A Well, it didn't precisely delay them because we
2 wouldn't convene until 1 o'clock anyway when certain
3 committee members were done teaching their college
4 classes at noon, but there was an event on the morning
5 of the 3rd and that was Donald Barnett calling a
6 meeting of the senior elders and David Motherwell and
7 himself during which he castigated the committee and
8 criticized them.

9 MR. WIGGINS: Excuse me, I'm going to object
10 to this as hearsay unless he heard this.

11 Q (By Mr. Shapiro) Did you hear that?

12 A Yes.

13 MR. WIGGINS: I withdraw that objection if
14 he's testifying as to what he heard.

15 Q (By Mr. Shapiro) How did you hear that, sir?

16 A Donald Barnett directed that the meeting be tape
17 recorded and played to the committee and it was that
18 afternoon. So, as the exclusive eldership review
19 session where the committee was convened, I heard his
20 remarks that he made earlier in the day to this other
21 meeting.

22 Q What was he complaining or remarking about on that
23 tape?

24 MR. WIGGINS: Your Honor, I'm going to
25 object to this, Your Honor. Again, most of these

MackENZIE - Direct (By Mr. Shapiro)

1 questions call for a characterization --

2 THE COURT: We'll have to get a little more
3 detail for this to get over the hurdle.

4 Q (By Mr. Shapiro) What was said on the tape, to the
5 best of your memory?

6 A He said the committee was committing great wickedness
7 in God's sight and made many religious references. He
8 said basically that the committee was unfair and he
9 asked a number of specific questions such as who made
10 you a judge over me? He basically was challenging the
11 authority to conduct and to continue the hearings.

12 Since the direct testimony phase was over and we
13 were now going to deliberate, he was challenging our
14 authority to continue and deliberate as he had signed
15 under the special agreement, so he said who gave you
16 authority to do that? Did I give you the right? Did
17 the Bible give you the right? Do the bylaws give you
18 that right? And he asked specific questions. That
19 was the main part of the tape. The rest of it was
20 blaming his wife for his immorality and other slurs
21 against the elders, including name calling.

22 MR. WIGGINS: Your Honor, I'm going to move
23 to strike the witness's conclusionary statement that
24 he was challenging their authority. I asked for a
25 specific statement as to what Pastor Barnett said.

1 THE COURT: The answer will stand at this
2 point.

3 Q (By Mr. Shapiro) Did you respond to the questions
4 posed by Donald Barnett in the tape?

5 A Yes.

6 Q How did you respond?

7 A After the tape was finished playing we, of course,
8 discussed the tape in the exclusive eldership review
9 session and decided at that time to appoint a
10 subcommittee of theology teachers at the college to
11 investigate the theological aspects of his questions
12 so we could answer them properly in writing.

13 Q Did you do that?

14 A Yes. On February 8th, the subcommittee met and
15 discussed the theology of it. The intervening days we
16 had studied to prepare for that subcommittee meeting
17 and we wrote down our conclusions. And then
18 eventually we got together with the whole committee
19 and presented our draft copy of our written response
20 and we discussed it, the letter was adopted by the
21 committee, and it was eventually mailed to Don Barnett
22 and it answered his specific questions.

23 Q Were you the draftsman or a draftsman of this letter?

24 A Yes, I basically wrote the whole letter. It does
25 include edits by the committee. The ideas were not

MackENZIE - Direct (By Mr. Shapiro)

1 all mine because the subcommittee worked on the
2 project as a committee.

3 Q But the prose is yours?

4 A Right.

5 (Defendants' Exhibit No. 29
6 marked for identification.)

7 Q Showing you what's been marked as Defendants' Exhibit
8 No. 29, take a moment to look at that letter and see
9 if you recognize that letter, sir.

10 A Yes, I recognize this letter.

11 Q Was that the committee's response to Donald Barnett's
12 February 3rd taped questions?

13 A Yes.

14 Q And the one you drafted?

15 A Yes.

16 Q Did every committee member sign it?

17 A Yes.

18 Q And what was the reason for having everyone sign it?

19 A Because the committee was authorized to act as a group
20 by the special agreement.

21 Q You were acting pursuant to the special agreement?

22 A Yes.

23 Q Now, on the top of page 1 there's a list of eight
24 questions. Do you see those?

25 A Yes.

MackENZIE - Direct (By Mr. Shapiro)

1 Q Were those Donald Barnett's questions to you in the
2 tape?

3 A Yes, they are verbatim from the tape.

4 Q Did you respond to those?

5 A Yes.

6 Q With respect to the sources of authority which you
7 indicate in this letter, what bases did you tell
8 Donald Barnett that you had to act as a committee?

9 MR. WIGGINS: Your Honor, I'm going to
10 object. Mr. Shapiro is asking questions about the
11 content of the document and it hasn't been offered.

12 MR. SHAPIRO: He's absolutely right, Your
13 Honor. I would offer it.

14 MR. WIGGINS: Your Honor, the document is a
15 piece of hearsay. The witness is here, but this is a
16 piece of hearsay and we object to any statements that
17 are offered to the --

18 THE COURT: I don't see that this is
19 hearsay. The author of this paper is here.

20 MR. SHAPIRO: He drafted it, he signed it,
21 and he formulated it.

22 THE COURT: I overrule.

23 MR. SHAPIRO: Thank you, Your Honor.

24 (Defendants' Exhibit No. 29
25 received into evidence.)

MackENZIE - Direct (By Mr. Shapiro)

1 Q (By Mr. Shapiro) What sources or authority did you
2 indicate to Pastor Barnett in response to his February
3 3rd taped message to the committee about which you
4 believed gave you the right to hold these hearings and
5 decide them?

6 A That would include the item he asked for in No. 2
7 which is scripture.

8 Q So, you listed scriptural authority for you holding
9 these hearings and making these decisions?

10 A Yes.

11 Q Any other sources of authority mentioned in the
12 letter?

13 A The special agreement.

14 Q Where is the special agreement mentioned?

15 A On page 4. ,

16 Q Can you point out where it is mentioned?

17 A Under the answer that begins in the paragraph that
18 says "the fourth question is".

19 Q Right in the middle of the page?

20 A The middle of the page.

21 Q Where is the special agreement mentioned?

22 A It says, this is the question, quote, "Did I give you
23 that right?" And we inserted "to hold the meeting"
24 enclosed in parentheses, question mark. The answer is
25 yes because you agreed to the hearing and we're

MackENZIE - Direct (By Mr. Shapiro)

1 referring to the special agreement at which time he
2 agreed to the hearings.

3 Q Is there any language in that letter lifted straight
4 from the special agreement?

5 A Yes, the next sentence it says voluntarily agreed that
6 the elders as a group shall exercise final authority
7 over these meetings.

8 Q Could you point to the Court on this blowup where that
9 language is taken from.

10 A Let's see. The elders as a group shall exercise final
11 authority over these meetings. It's lifted from there
12 and used as part of his answer. Did I give you that
13 right and we're saying yes because you signed this
14 letter.

15 Q Did you tell Donald Barnett at that time if you had
16 any other sources of authority which allowed you to
17 carry on these hearings to judgment and action?

18 A Yes, the quotation from Balance No. 2 which we have
19 referred to already today.

20 Q That's in this letter as well?

21 A Yes, that's right in that same paragraph.

22 Q So, you had that on your mind when responding to
23 Pastor Barnett?

24 A Yes.

25 Q That's Rumor 20?

MacKENZIE - Direct (By Mr. Shapiro)

1 A Right.

2 Q That's part of the prior exhibit that had been
3 entered, Exhibit 27, I believe? Is that verbatim the

MACKENZIE - Direct (By Mr. Shapiro)

1 opportunity to respond. We're now talking about
2 triple hearsay, Mr. MacKenzie relating that another
3 person related that someone else had said something.

4 THE COURT: He's relating the hearings. Go
5 ahead, overruled.

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12 Q (By Mr. Shapiro) And did this happen over one day or
13 a course of several days?

14 A A course of several days.

15 Q How many would you estimate?

16 A Oh, probably three or four. We discussed different
17 subjects, more than one subject on each day we met and
18 this subject was one that was discussed on more than
19 one day.

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25 Q How did he do that?

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3 **DELETED MATERIAL FILED UNDER SEAL**
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6 MR. WIGGINS: Your Honor, I move to strike
7 that. I didn't see this coming. We're now talking
8 about statements that Pastor Barnett made about his
9 marriage. That is the statement that's been made.

10 THE COURT: I don't understand that as being
11 communication.

12 MR. SHAPIRO: It wasn't a communication,
13 it's a stated justification by Pastor Barnett during
14 these hearings.

15 THE COURT: I'll permit the answer to stand.
16

17 **DELETED MATERIAL FILED UNDER SEAL**
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20 MR. WIGGINS: I move to strike that last
21 statement by the witness. It's really a value
22 judgment by this witness, it's not anything that
23 Pastor Barnett said

- 1 THE COURT: Strike the last part.
- 2 Q (By Mr. Shapiro) Let me ask you this so we can cure
3 Mr. Wiggins' concern. Had Pastor Barnett ever said
4 whose fault it was? Was there any justification for
5 adultery?
- 6 A He had spoken on the subject and, of course, forbidden
7 all adultery regardless of the cause.
- 8 Q This was in the past?
- 9 A Right.
- 10 Q Now, during the course of the hearings, do you recall
11 that Pastor Barnett was placed on special status?
- 12 A Yes.
- 13 Q What is to the best of your knowledge special status
14 when you were at Community Chapel? What did it mean?
- 15 A It meant that a restriction was placed upon a person
16 who had exercised bad conduct, committed bad conduct.
17 Basically it was a behavior restriction and the terms
18 would be specified in writing and provided to the
19 person.
- 20 Q When was the first, during the hearings, when was the
21 first action regarding special status?
- 22 A February 15, 1988.
- 23 Q Tell us about that.
- 24 A The senior elders wrote a letter to Don on that date
25 placing him on special status.

MackENZIE - Direct (By Mr. Shapiro)

1 Q All right. Did the rest of the committee ever voice
2 their concern and ratification in that action?

3 A Yes, we discussed the subject of their letter and
4 their action and agreed that it was appropriate
5 although we discussed how minimal of an action it was
6 in light of the mass of information that had been
7 stated by Don in his phase one testimony, but we
8 decided to write a letter of concurrence ratifying
9 what they did.

10 Q Did you do that?

11 A Yes.

12 Q When did you do that?

13 A We actually drafted the letter on February 22nd and
14 discussed the draft copy on February 24th and finished
15 it and adopted it and mailed it on the 24th. The
16 letter is dated February 24, 1988.

17 Q That would be Exhibit 66 in your book.

18

(Defendants' Exhibit No. 30)

MackENZIE - Direct (By Mr. Shapiro)

1 Q Did you attempt to have all the remaining committee
2 members besides the senior elders sign this letter?

3 A Yes.

4 Q Why was it important to do that, in your mind?

5 A Because we were acting in accordance with the special
6 agreement we all operated under, including Don and
7 Jerry, and we acted as a group.

8 Q When you say the special agreement, are you talking
9 about the agreement that's up on the board?

10 A Right. The elders as a group is the phrase I'm
11 referring to.

12 Q And this was sent to Pastor Barnett?

13 A Yes.

14 MR. SHAPIRO: We would offer No. 30.

15 MR. WIGGINS: May I voir dire?

16 THE COURT: Yes.

17 MR. WIGGINS: Mr. MacKenzie, I think you
18 said you attempted to have all members of committee
19 sign this letter.

20 THE WITNESS: That's right.

21 MR. WIGGINS: Did all members of the
22 committee sign this letter?

23 THE WITNESS: Chris Mathews' signature is
24 not on the letter?

25 MR. WIGGINS: How many signatures are on

MackENZIE - Voir Dire (By Mr. Wiggins)

1 this letter?

2 THE WITNESS: Twelve.

3 MR. WIGGINS: How many were on the
4 committee?

5 THE WITNESS: Sixteen.

6 MR. WIGGINS: So, apparently there were a
7 few more people who did not sign this?

8 THE WITNESS: Right, the three senior
9 elders. They had already written a letter to Don on
10 the subject.

11 MR. WIGGINS: And your testimony is that the
12 committee was to act as a group in making a decision
13 under the agreement?

14 THE WITNESS: Yes.

15 MR. WIGGINS: But the group in this case was
16 12; is that correct?

17 THE WITNESS: No, the group was 16.

18 MR. WIGGINS: Okay. Your Honor, this is not
19 an action by the 16 elders, this is an action by 12
20 people. It doesn't include the senior elders. The
21 witness's own testimony indicates it doesn't include
22 the senior elders. I still would object to it on the
23 grounds of hearsay. It is not admissible for the
24 truth of the matter asserted in this letter.

25 THE COURT: This is a letter by the other

MACKENZIE - Voir Dire (By Mr. Wiggins)

1 elders other than the senior elders and that combined
2 with the senior elders constitutes the action it seems
3 to me and I'll admit the exhibit.

4 (Defendants' Exhibit No. 30
5 received into evidence.)

6 Q (By Mr. Shapiro) Anywhere in this letter did you
7 indicate a desire to help Donald Barnett?

8 A Yes.

9 Q Can you point out where you've done that and your
10 feelings for Donald Barnett?

11 A CHECK EXHIBIT - The very first sentence says, "We want
12 you to know that every one of us really loves you --
13 very deeply", and so there's an acceptance of love.
14 In the following sentences, would not stand back but
15 want to help, you and we express sorrow over the
16 trouble he went through, et cetera.

17 MR. WIGGINS: Your Honor, again, this is a
18 self-serving statement. I move to strike that portion
19 of the letter and this answer. This is a self-serving
20 statement this is offered for the truth of the matter
21 asserted.

22 THE COURT: He's just reading the letter.

23 MR. WIGGINS: That's correct, and I object
24 on the grounds it's hearsay. It's coming in for the
25 truth of the matter asserted.

MACKENZIE - Direct (By Mr. Shapiro)

1 THE COURT: Objection overruled.

2 Q (By Mr. Shapiro) When you wrote those words, did you
3 mean that, Mr. MacKenzie?

4 A We did. We acted as minimally as we could to prevent
5 the information from becoming known to other people as

MACKENZIE - Direct (By Mr. Shapiro)

1 A Yes.

2 Q What did you learn?

3 A Well, after Don got the letter, we learned that he
4 said that he was not going to kowtow to the special
5 status.

6 Q Were those his words?

7 A Yes.

8 MR. WIGGINS: Excuse me, I'm going to move
9 to strike that. The question was after this letter
10 did he learn that Don Barnett refused to agree or
11 abide by the January 25 agreement. His answer has to
12 do with the special status, it's not responsive.

13 MR. SHAPIRO: Excuse me, Your Honor, I
14 believe the question, and I'll be happy to rephrase
15 again if Mr. Wiggins would like me to do it, did you
16 learn whether or not Don Barnett would follow the
17 admonitions in the February 24 letter that you've
18 testified was part of your authority under the January
19 25 agreement.

20 THE WITNESS: Yes.

21 MR. WIGGINS: Now, we have a compound
22 question, Your Honor.

23 THE COURT: I think the witness understands
24 the question.

25 Q (By Mr. Shapiro) Do you understand the question, Mr.

MackENZIE - Direct (By Mr. Shapiro)

1 MacKenzie?

2 A Yes.

3 Q Why don't you go ahead and answer.

4 A Yes, we learned whether he would comply with the
5 special status.

6 Q What did you learn?

7 A That he said he would not kowtow to the special
8 status.

9 Q Were those his exact words?

10 A Yes, among other things.

11 Q What was the tenor and tone of his response to this
12 February 24 letter?

13 MR. WIGGINS: Your Honor, I object to this
14 characterization of tenor and tone.

15 THE COURT: He's asking for a generic
16 answer. What was the tenor?

17 THE WITNESS: The tenor occurred the next
18 day on the 25th which was the day that Don petitioned
19 the exclusive eldership review session to address us
20 and we granted that and he addressed us. And the
21 tenor or tone was a tirade against us which included
22 name calling and abusive language directed at the
23 committee criticizing us strongly and saying that we
24 had no right and he would not give into this under any
25 authority.

1 Q (By Mr. Shapiro) Based on that reaction, did you
2 think there was something you had to do, you as a
3 group?

4 A Yes, eventually. We knew that the problem was
5 escalating and this sanction was not working and so we
6 had to take more severe action.

7 Q Prior to taking more severe action, did you do
8 anything to alert anybody?

9 A Yes. The next day, which would be February 26, we
10 held another exclusive eldership review session
11 without Don and without Jerry where we discussed
12 special status and Don's open defiance he had
13 expressed to us and decided that it would be
14 appropriate to notify the congregation that Don was on
15 special status, whether he said so or not.

16 Q When you made that decision, were you mindful of the
17 confidentiality guideline that is part of the exhibit
18 that's been admitted?

19 A Yes.

20 Q What did you do to make sure -- What did you do, if
21 anything, to make sure that details were not
22 disclosed?

23 A We discussed the subject, we broke in subcommittees
24 and helped each other write speeches that would not
25 breach the guidelines.

MackENZIE - Direct (By Mr. Shapiro)

1 Q When did this come up, the disclosure that Don was on
2 special status?

3 A On February 22nd.

4 Q When you alerted members of the congregation?

5 A Oh, excuse me, I thought when did we learn of it,
6 February 26, 1988.

7 Q Were you present? Was that a service?

8 A Yes, it was a church service.

9 Q Were you present during that service?

10 A Yes.

11 Q Were there any confidences or any details of the
12 testimony disclosed at that service?

13 A No.

14 Q What was the thing that was discussed?

15 A The fact that Don Barnett had been placed on special
16 status and we felt it was necessary to notify the
17 congregation because they are involved in the subject
18 that we call special status. Don's special status
19 included such things as forbidding him to be alone
20 with women other than his wife and the women of the
21 congregation would not know that that was a
22 restriction unless they were notified, so notice had
23 to be given.

24 Q Why did you think it was important to notify these
25 women?

MACKENZIE - Direct (By Mr. Shapiro)

1 A No. 1, to protect them from further sexual
2 exploitation by Don and, No. 2, to protect Don himself
3 from causing further harm to himself spiritually and
4 mentally and every way and also to protect the
5 corporation from civil liability that may arise later
6 as a result of Don's bad conduct.

7 Q Do you have any recollection during either the time
8 when Don Barnett spoke or Jerry Zwack spoke or during
9 the exclusive eldership review session the subject of
10 lawsuit, the chapel being involved in lawsuits come
11 up?

12 A Would you repeat the question again?

13 Q Do you recall the subject of lawsuits being brought up
14 ~~and the chapel's involvement in these lawsuits?~~

1 Q Did you know at the time of the hearings whether or
2 not the chapel was in fact involved in lawsuits?

3 A I was not involved in any of it but Donald Barnett
4 himself, for example, on February 28 during his sermon
5 explained to the congregation that there were these
6 lawsuits and that he was not being sued for sexual
7 misconduct, that his conduct was such that he was not
8 being sued and, therefore, we should be assured that
9 that wouldn't happen, so he brought up the fact.

10 Q What is disfellowshippment when you were at Community
11 Chapel?

12 A It is a censure, a form of censure.

13 Q Is that a practice that was followed at Community
14 Chapel?

15 A Yes.

16 Q Now, you were a Bible teacher?

17 A Yes.

18 Q You studied the Bible?

19 A Yes.

20 Q When you were there, was it believed to be
21 scripturally based?

22 A Yes.

23 Q When you say a form of censure, did it usually take a
24 particular form?

25 A Yes.

1 Q What form would it take?

2 A It involved the removal of that person from attending
3 the worship services and functions and services of the
4 church. There was no membership per se, but to
5 characterize it, it is the removal of a person from
6 being a member of the congregation so that they would
7 not benefit from the services provided by the church.

8 Q Now, you were an elder. Based on your -- How many
9 years were you at Community Chapel, 17 years?

10 A Yes.

11 Q What was your understanding of who had, based on
12 practice who had authority to disfellowship?

13 MR. WIGGINS: Your Honor, I'm going to
14 object. We have been through the bylaws on the
15 subject of disfellowship, we have been through a
16 published procedure that was adopted in 1987, we have
17 had a memo introduced into evidence of mid-1987. What
18 this witness understood is really irrelevant in light
19 of the fact that there are documents that very clearly
20 establish the requirements for disfellowship.

21 THE COURT: I'm aware of that. I'm also
22 aware that pastor has testified as to what is
23 disfellowship. I don't know what you are getting at,
24 counsel.

25 MR. SHAPIRO: If I might, Your Honor, just

MackENZIE - Direct (By Mr. Shapiro)

1 briefly and I won't go into length on this, but I
2 think Mr. Wiggins in the past used the words "actions
3 speak louder than words" and you will hear from this
4 witness that on a number of occasions people were
5 disfellowshipped on the spot without prior approval
6 from the pastor.

7 THE COURT: Okay, if he knows of the
8 practice.

9 Q (By Mr. Shapiro) Do you have my question in mind?

10 A No, I don't.

11 MR. WIGGINS: Your Honor, I'm going to again
12 object to this because the reference that actions
13 speak louder than words, of course, was in a summary
14 judgment brief. In another summary judgement brief we
15 cited a case to which the Defendants have not
16 responded pointing out that the bylaws govern a
17 church's procedures and that, practices
18 notwithstanding, you can demand the protection of the
19 bylaws. It's a Louisiana case. I don't have the name
20 of it on the tip of my tongue, but this is not really
21 relevant what this witness knew about practice.

22 THE COURT: He can testify as to practice.

23 MR. WIGGINS: I ask there be a foundation
24 that he has personal knowledge of what he's talking
25 about.

MacKENZIE - Direct (By Mr. Shapiro)

1 THE COURT: I think he said that, he said 17
2 years.

3 Q (By Mr. Shapiro) Are you aware of instances where
4 people were disfellowshipped?

5 A Yes.

6 Q Are you aware of any instances of people being
7 disfellowshipped on the spot?

8 A Yes.

9 Q Give us some examples of what you are aware of. You
10 don't have to name names, obviously.

11 MR. WIGGINS: Well, Your Honor, again
12 awareness does not show personal knowledge and I would
13 object to that. If this man has personal knowledge --

14 THE COURT: Personal knowledge.

15 Q (By Mr. Shapiro) Do you have personal knowledge?

16 A Well, I cannot remember any case right now, does not
17 come to mind.

18 Q Where you had personal knowledge?

19 A Right. I might just offer that --

20 MR. WIGGINS: I object, Your Honor, the
21 witness has no question before him.

22 Q (By Mr. Shapiro) Was there anything memorable to your
23 mind that happened on February 28?

24 A Yes, Don Barnett preached a sermon in church. Now,
25 this is two days after the elders had notified the

MackENZIE - Direct (By Mr. Shapiro)

1 church that he was on special status and so basically
2 he's replying to that notification. And he preached a
3 lengthy sermon, probably exceeding two hours, in which
4 he used portions of his February 25 presentation to
5 the hearing committee and, again, complained about the
6 hearings, the elders, the special status, his wife,
7 people that he had sex with, and other such things
8 that pertained to this whole problem.

9 Q Was there any meeting by the committee on that day or
10 the day after?

11 A The next day, February 29th, yes.

1 could be printed, a retraction of our February 26
2 statement and we refused to give that.

3 Q Why did you refuse?

4 A Because we did not retract anything, we had the
5 authority to do what we did. I believed in my mind it
6 was the right thing to do and I was standing firm
7 regardless of anything he tried to do to stop us. He
8 had no right to stop us or to demand that we print
9 some retraction he wanted.

10 Q That ended that meeting with Donald Barnett?

11 A Well, I warned Don to make sure that he did not draft
12 a false letter and affix our signatures to it and
13 submit it to the newspaper, that that would be
14 unethical.

15 And then Greg Thiel met Don at the door of the
16 Room 701 where we were in the church building and
17 offered for Don to meet with the committee again any
18 time, any place and Don refused. And he said, and I
19 was there and I listened to the conversation, he said
20 to Greg I will not meet with the committee unless I
21 receive individual letters from all 16 committee
22 members repenting of their wickedness. Otherwise, I
23 have no basis to meet with you again and he walked out
24 of the room.

25 Q Did the committee meet after that?

MACKENZIE - Direct (By Mr. Shapiro)

1 A Yes, that afternoon, the 29th we met.

2 Q What did the discussion center around during that
3 meeting?

4 A The February 28th sermon by Don.

5 THE COURT: I beg your pardon?

6 THE WITNESS: The February 28th sermon by
7 Donald Barnett was the subject of discussion at the
8 exclusive eldership review session meeting that
9 afternoon.

10 Q (By Mr. Shapiro) And did the subject of
11 disfellowshipment come up at that point?

12 A Yes.

13 Q How did it come up?

14 A David Motherwell, Don's counselor, recommeried to the
15 committee that the committee disfellowship Don and he
16 said that he was committed to disfellowshipping Don as
17 his counselor.

18 Q This was on the 29th?

19 A Yes, February 29th, 1988.

20 Q And what did the committee do in response to David
21 Motherwell's statement?

22 A Well, agonized over it because we knew this would be
23 an extreme action, it would be difficult, Don would
24 fight it, we weren't sure how the congregation would
25 accept it. We knew most of them would accept it but

MackENZIE - Direct (By Mr. Shapiro)

1 we knew there would be some that would reject it and
2 we debated the authority to do it again from the Bible
3 particularly and made references to the documents
4 which I have talked about today and we never came to a
5 conclusion on that day. There were other subsequent
6 days where we continued to debate it.

7 (Defendants' Exhibits 31
8 and 32 marked for
identification.)

9 Q I'm handing you what's been marked as Exhibit 32. Do
10 you recognize those tapes?

11 A Yes.

12 Q What are they?

13 A These are tape recordings of Donald Barnett's February
14 28th, 1988 two-hour long sermon.

15 Q You were present at that sermon?

16 A Yes.

17 Q Have you reviewed those tapes?

18 A Yes.

19 Q On how many occasions?

20 A At least 10 times, maybe 20 times, many times, too
21 many times.

22 Q Are the tapes an accurate reflection of what Donald
23 Barnett said?

24 A Yes, they were a tape recording of his words as he
25 spoke.

MackENZIE - Direct (By Mr. Shapiro)

1 MR. SHAPIRO: I would offer 32, Your Honor.

2 MR. WIGGINS: May I voir dire, Your Honor?

3 THE COURT: Yes.

4 MR. WIGGINS: What do the tapes begin with?
5 Where do they begin?

6 THE WITNESS: They begin where the recorded
7 portion of tape begins after the leader.

8 MR. WIGGINS: What words are on this, Mr.
9 MacKenzie?

10 THE WITNESS: What words?

11 MR. WIGGINS: Yes.

12 THE WITNESS: I would have to relisten to it
13 to know.

14 MR. WIGGINS: At what point in the service
15 do those words come that are at the beginning or the
16 end of the leader on the tape which is Exhibit 32?

17 THE WITNESS: Well, I guess I would have to
18 listen to the very first few words and see if he made
19 a preliminary statement such as -- I can't recall the
20 exact words, I'd have to listen to it and then I could
21 tell you, but he usually began his sermons by
22 statements which would reflect that this is the
23 opening of a sermon.

24 MR. WIGGINS: Without making this very

MacKENZIE - Voir Dire (By Mr. Wiggins)

1

Does Exhibit 32 begin with the beginning of the

MackENZIE - Direct (By Mr. Shapiro)

1 somewhere, but this is an accurate transcript of the
2 sermon.

3 MR. SHAPIRO: We would offer 31.

4 MR. WIGGINS: May I voir dire?

5 THE COURT: Yes.

6 MR. WIGGINS: Does this transcript begin at
7 the beginning of the sermon?

8 THE WITNESS: Yes.

9 MR. WIGGINS: Does it end with the end of
10 the sermon?

11 THE WITNESS: Yes.

12 MR. WIGGINS: And it's otherwise accurate?

13 THE WITNESS: Yes.

14 MR. WIGGINS: I don't have any objection.

15 (Defendants' Exhibit No. 31
16 received into evidence.)

17 Q (By Mr. Shapiro) Now, you indicated on the 29th that
18 the subject of disfellowshipment came up. How long
19 did the committee, as you say, agonize and discuss
20 this issue?

21 A Several days. We discussed it on February 29th, on
22 March 1st, on March 2nd, and on March 3rd.

23 Q And this was the committee?

24 A Yes.

25 Q Were any subcommittees chartered to do anything?

8
1 A Let's see, well, on February, excuse me, on March 1st
2 Greg Thiel made a theological presentation. I believe
3 on the 29th he was asked to prepare that. So if one
4 person can be called a committee, then yes.

5 Q Did the committee of 16 ever meet and make a decision
6 about disfellowshipping Donald Barnett?

7 A Yes. I remember one more act that we did and that was
8 on March 2nd we constructed a list of charges against
9 Don based upon acts that were considered
10 disfellowshipable and so stated in the bylaws and
11 Counseling Center memoranda and put specifications
12 under those charges. And then on the 3rd, we finished
13 debating and the answer to that question would be,
14 yes, on the 3rd.

15 Q The committee came to a decision on the 3rd?

16 A Yes.

17 Q Tell us about how, where the decision took place.

18 A You mean physically which room?

19 Q Was it at the chapel? Was it somewhere else?

20 A No. We actually moved to a different area for this
21 meeting because it was believed that Don would try to
22 act to stop us and, therefore, the committee agreed to
23 meet at a secret location.

24 MR. WIGGINS: Your Honor, I'm going to move
25 to strike the speculation about Pastor Barnett.

MackENZIE - Direct (By Mr. Shapiro)

1 document. Why is that, sir? Is it a meeting of the
2 committee or a meeting of the elders?

3 A This was written as a result of the committee
4 meetings. I guess I don't understand your question.

5 Q You indicated that on March 3rd there was a vote
6 taken.

7 A Yes.

8 Q There are ten signatures on this document.

9 A Right.

10 Q They are the elders?

11 A Right.

12 Q Excluding the senior elders and the three people who
13 were not on the committee that were not elders or
14 senior elders?

15 A Right.

16 Q Do you recall why their signatures were not placed on
17 there?

18 A Yes, because other documents covered their votes.

19 Q How did they vote, when you say on March 3rd everyone
20 voted to disfellowship?

21 A We voted by raising our hands.

22 Q Was there any dissenting votes among the 16 to the
23 disfellowshipment of Donald Barnett?

24 A No. Everyone voted for it.

25 MR. SHAPIRO: We would offer 33, Your Honor.

MackENZIE - Direct (By Mr. Shapiro)

1 MR. WIGGINS: Your Honor, may I voir dire
2 him on this?

3 THE COURT: Yes.

4 MR. WIGGINS: Mr. MacKenzie, you have
5 characterized this as the minutes of the action of the
6 committee; is that correct?

7 THE WITNESS: Yes.

8 MR. WIGGINS: And there are only ten people
9 who have signed on here. The committee consisted of
10 16 people, did it not?

11 THE WITNESS: Yes.

12 MR. WIGGINS: So, it's still your testimony
13 that this represents minutes of a vote of all 16
14 people?

15 THE WITNESS: I don't think this says on
16 here. This is a record of who voted which way.

17 MR. WIGGINS: My question to you is, is it
18 still your testimony that this represents the minutes
19 of a vote of all 16 people?

20 THE WITNESS: I'm struggling because I don't
21 remember if we made any other documents other than our
22 disfellowship letters which were the official
23 committee documents and so I don't know how to answer
24 your question.

25 MR. WIGGINS: Okay, Your Honor, my objection

MackENZIE - Voir Dire (By Mr. Wiggins)

1 to this is that this document he characterizes as a
2 decision by the committee of 16 people. It does not
3 appear to be what he says it is, and that's my
4 objection to it. It's a vote of ten people. It's
5 signed by ten people. He has mischaracterized it.

6 THE COURT: I don't know whether the
7 visitors were voting delegates or not. I can
8 understand why the senior elders were omitted. I'll
9 admit it for what it purports to be.

10 (Defendants' Exhibit No. 33
11 received into evidence.)

12 (Court was at recess.)
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