

**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 IV, pp. 544-728
)	JANUARY 25th, 1991
)	
Defendants.)	
<hr style="width: 100%;"/>)	

**TRIAL TRANSCRIPT, VOLUME IV
PAGES 544-728**

BE IT REMEMBERED the above-named cause of action came on for arbitration on January 25th, 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;

**NOTE: THIS PAGE DOES NOT APPEAR IN ORIGINAL TRANSCRIPT FILES,
AND IS ONLY INCLUDED FOR ORGANIZATIONAL CLARITY AND EASE OF
USE.**

INDEX

PAGE

DEFENDANTS' WITNESSES:

PRISCILLA JOY PIKE

Direct	(by Mr. Shapiro)	544
Voir Dire	(by Mr. Johnson)	545
Direct	(by Mr. Shapiro)	547

SUSAN MARIE ZWACK

Direct	(by Mr. Shapiro)	550
Voir Dire	(by Mr. Johnson)	553
Cross	(by Mr. Johnson)	562

RUSSEL MacKENZIE (continued)

Direct	(by Mr. Shapiro)	565
Cross	(by Mr. Wiggins)	576
Re-direct	(by Mr. Shapiro)	657
Re-cross	(by Mr. Wiggins)	668

LANNY PETERSON

Direct	(by Mr. Rohan)	673
Cross	(by Mr. Pierce)	707

**NOTE: THIS PAGE DOES NOT APPEAR IN ORIGINAL TRANSCRIPT FILES,
AND IS ONLY INCLUDED FOR ORGANIZATIONAL CLARITY AND EASE OF
USE.**

INDEX OF EXHIBITS

No.	Description	Marked	Rec'd
D-34	Letter of Disfellowship from full eldership to Don Barnett, Dated 3/4/88	569	570
P-35	Draft guidelines for eldership hearing	582	583

NOTE: THIS PAGE DOES NOT APPEAR IN ORIGINAL TRANSCRIPT FILES, AND IS ONLY INCLUDED FOR ORGANIZATIONAL CLARITY AND EASE OF USE.

By PIKE - Direct (By Mr. Shapiro)

(The following proceedings
occurred on January 25, 1991)

THE COURT: Are we ready?

MR. SHAPIRO: We are going to be taking two
witnesses out of order. The first witness is
Priscilla Pike, if I may go get her.

PRISCILLA PIKE, called as a witness by the
Defendants herein, after
having been duly sworn by
the Court, was examined and
testified as follows:

DIRECT EXAMINATION

BY MR. SHAPIRO:

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

A My name is Priscilla Joy Pike, P-I-K-E.

Q How old are you, Ma'am?

A I'm 31.

Q And are you employed?

A Yes.

Q Where are you employed?

A U.S. Bank of Washington.

Q How long have you been working there?

A I've been working there for eight years.

Q Are you familiar with a church by the name of
Community Chapel and Bible Training Center?

A Yes, I am.

PIKE - Voir Dire (By Mr. Johnson)

1 Q How are you familiar with that organization?

2 A I was a member of the congregation.

3 Q For how long?

4 A For 12 years.

5 Q From when to when?

6 A From 1977 to 1989.

7

8

9

DELETED MATERIAL FILED UNDER SEAL

10

11

12

MR. JOHNSON: Your Honor, may I ask a few questions on voir dire?

13

14

THE COURT: On voir dire, yes.

15

16

MR. JOHNSON: In early 1988, did you have occasion to give any testimony before a group of elders of Community Chapel and Bible Training Center?

17

18

THE WITNESS: No, I did not.

19

20

MR. JOHNSON: We would object. This witness was not one of the people present during the hearings.

21

THE COURT: Objection overruled.

22

23

MR. SHAPIRO: Your Honor, just so the Court understands, we will connect up that the elders did know about that.

24

25

THE COURT: I assume you will. If you don't

PIKE - Voir Dire (By Mr. Johnson)

1 I'll strike it.

2 MR. JOHNSON: May I have a continuing
3 objection?

4 THE COURT: Yes.
5
6
7
8
9
10
11

12 **DELETED MATERIAL FILED UNDER SEAL**
13
14
15
16
17
18
19
20
21
22
23

24 Q Based on that confusion, did you talk to anybody?

~~by 257a 2 pages of did~~

PIKE - Direct (By Mr. Shapiro)

Q Who did you talk to about with your confusion about the episode?

A I went to Lanny Peterson.

Q Is he an elder at Community Chapel and Bible Training Center?

A Yes, he is, was.

DELETED MATERIAL FILED UNDER SEAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Q How many days after you told Lanny did you find out
2 that he had told Donald Barnett about your
3 conversation?

4 A It was two or three days after.

5 Q Shortly after you found out that Lanny had told Donald
6 Barnett, did something surprising happen at a church
7 service which you believe was directed to you?

8 A Yes.

9 Q Can you tell us what happened?

10 MR. JOHNSON: Objection, Your Honor, as to
11 what the witness believed.

12 THE COURT: What happened, Ms. Pike?

13 Q (By Mr. Shapiro) Tell us what happened.

14 A Don got up and spoke about going directly to the
15 people that you feel, the person you feel wronged by
16 instead of going to a second party.

17 Q Why did you feel this was directed to you?

18 MR. JOHNSON: Your Honor, I'll object. This
19 is simply not relevant to the issues here what this
20 witness felt. This witness's feelings with regards to
21 why she speculated this, number one, it's speculative
22 and, number two, she's being asked her opinion to
23 speculate on what was in someone else's mind.

1 THE COURT: I think she was asked how she
2 felt.

3 MR. SHAPIRO: That's right.

4 THE COURT: She may answer that.

5 Q (By Mr. Shapiro) Why did you feel this was directed
6 towards you?

7 MR. JOHNSON: Object also to relevance, Your
8 Honor.

9 THE COURT: She may answer.

10 Q (By Mr. Shapiro) Go ahead and you can answer.

11 A The reason why I felt it was connected to me is
12 because after the service was over he got up on the
13 microphone and said I would like to speak to Priscilla
14 Pike in the back of the sanctuary.

15 Q This was on a microphone in front of the whole
16 congregation?

17 A Yes.

18 Q What did you think when he announced your name on the
19 microphone that he wanted to speak to you?

20 A I was afraid.

21 MR. JOHNSON: Objection, Your Honor, as to
22 what this witness's state of mind was.

23 THE COURT: She may answer.

24 Q (By Mr. Shapiro) Did you go back and see Donald
25 Barnett?

1 A Yes, I did.

2 Q And what did Donald Barnett say to you, if anything?

3 A He said, he asked me why I had gone to Lanny and
4 talked to Lanny about this matter. He asked me why I
5 didn't go to him and he was very, he said he was
6 disappointed that I did that. He asked me why I
7 didn't, he said he was disappointed that I told
8 somebody.

9 Q How did you feel?

10 A I felt scared, I felt like I was bad.

11 Q Thank you. I have nothing further. I'm sure Mr.
12 Johnson has a few questions.

13 MR. JOHNSON: No questions.

14 MR. SHAPIRO: We'll call our next witness,
15 Your Honor, Susan Zwack.

16 SUSAN ZWACK, called as a witness by the
17 Defendants herein, after
18 being duly sworn by the
Court, was examined and
testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SHAPIRO:

21 Q Would you state your full name and spell your last
22 name, please?

23 A Susan Marie Zwack, Z, as in zebra, W-A-C-K.

24 Q Are you Jerry Zwack's wife?

25 A I am.

1 Q How long have you been married?

2 A Just about two months.

3 Q Prior to that marriage, did you go by another name?

4 A Yes, I did.

5 Q What was that name?

6 A Susan Marie Towery, T-O-W-E-R-Y.

7 Q Are you currently employed?

8 A Yes, I am.

9 Q Where do you work?

10 A BCTI.

11 Q What's that?

12 A Business Computer Training Institute.

13 Q What do you do for them?

14 A I'm a career consultant.

15 Q Would you briefly describe for us what a career
16 consultant does?

17 A Sure. What I do is I talk with people who
18 in to look at the school and check it out
19 them to determine whether BCTI would be a

20 for them to go to school or not.

21 Q Are you familiar with Community Chapel and
22 Training Center?

23 A Yes, I am.

24 Q How do you know that organization?

25 A I went to church there and was an employ

1 Q How long were you a church member there?
2 A About 17 years.
3 Q How long were you an employee there?
4 A About five.

5 Q What did you do as an employee at Community
6 Bible Training Center?
7 A I taught the second and third grade and I was
8 principal for the elementary department.
9 Q Do you know Donald Barnett?
10 A Yes, I do.
11 Q How do you know Donald Barnett?
12 A He was my pastor and a very dear friend.
13 Q Did you have a relationship where you prayed
14 Donald Barnett at any point in time?
15 A Yes, I did. I had a very good prayer relationship
16 with Don. I prayed for him a lot.
17 Q Would you describe that for us?
18 A Well, there's a number of people that would
19 pray for him on a weekly basis and at elders' retreats
20 and that kind of thing we would pray for him.
21 Q In 1987, do you recall an incident regarding
22 Donald Barnett in Vancouver, Washington?
23 A Yes, I do.
24 Q Can you tell us what happened?
25 A Well, there were four of us that had gone to

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

10
11 attempting to get dressed?

12 MR. JOHNSON: Your Honor, may I question on
13 voir dire?

14 THE COURT: Sure.

15 MR. JOHNSON: Did you, Ms. Towery, Ms. Zwack
16 testify before a group of elders in early 1988?

17 THE WITNESS: No, not a group of elders, I
18 did not.

19 MR. JOHNSON: Your Honor, she didn't testify
20 in the eldership hearings, we would object.

21 THE COURT: The objection will be overruled
22 unless you fail to tie it up.

23 MR. SHAPIRO: I'll show that she told a
24 senior elder about this shortly after it happened.

25 Q (By Mr. Shapiro) What happened?

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

DELETED MATERIAL FILED UNDER SEAL

ZWACK - Voir Dire (By Mr. Johnson)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

DELETED MATERIAL FILED UNDER SEAL

19
20
21
22
23
24
25

DELETED MATERIAL FILED UNDER SEAL

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DELETED MATERIAL FILED UNDER SEAL

ZWACK - Voir Dire (By Mr. Johnson)

1 at that point because I was stunned that he didn't
2 remember it. I didn't understand how he couldn't
3 remember that. It was pretty obvious.

Did you go out to dinner with Donald Barnett given
had happened before?

DELETED MATERIAL FILED UNDER SEAL

stop you there for a second. We may be getting
ahead of ourselves. Was there an incident
-- Are you familiar with the eldership
ings?
am.
ere a time during these hearings when you and
d occasion to discuss this incident, not after
arings?

4 Q Why di
5 what h
6
7
8
9
10
11
12
13
14
15
16
17
18 Q Let me
19 a litt
20 during
21 hearin
22 A Yes, I
23 Q Was th
24 Don ha
25 the he

ZWACK - Voir Dire (By Mr. Johnson)

1 A Yeah, that was after.

2 Q Where you and Kristian Erickson went to Don.

3 A Oh, yes, yes. Kristian Erickson and I went over --

4

5

6

7

8

9

10

11

12

DELETED MATERIAL FILED UNDER SEAL

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Don felt betrayed, I kind of felt he would, I
2 felt real bad because I was doing this because I loved
3 Don and cared about Don and wanted to help Don and so
4 I was putting basically my whole friendship on the
5 line when I went over there because I knew he might
6 feel betrayed and not even want to have anything to do
7 with me anymore after that but I knew that I still
8 cared about him.

9
10
11 **DELETED MATERIAL FILED UNDER SEAL**
12
13

14 MR. JOHNSON: Your Honor, I think I would
15 ask the incident not be characterized as a mauling
16 incident because I think that's prejudicial.

18 ~~asked. She can describe it in whatever manner she~~
19 ~~wants.~~

20 ~~MR. JOHNSON: I would ask counsel be~~
21 ~~instructed not to characterize it that way.~~

22 ~~THE COURT: You may proceed.~~

23 MR. SHAPIRO: Thank you, Your Honor.

24 THE COURT: I don't know the question now.

25 MR. SHAPIRO: I'll repeat the question.

ZWACK - Voir Dire (By Mr. Johnson)

1 Q (By Mr. Shapiro) Was there a third occasion where you
2 discussed the incident with Donald Barnett?

3 A Yes, there was.

4 Q Could you tell us about that?
5
6
7
8

9
10
11
12 DELETED MATERIAL. FILED UNDER SEAL
13
14
15
16
17
18
19
20
21
22
23

24 Q Did you even know what an affidavit was?

25 A No, I didn't. I told him I wasn't going to. I didn't

1 know anything about anything. I didn't know there
2 an affidavit out, I didn't know what an affidavit
3 kind of made me curious as to what was going on.
4 didn't know.

5 **DELETED MATERIAL FILED UNDER SEAL**
6

7 A Yes.

8 Q When this occurrence happened, did you have any t
9 of romantic or physical relationship with Jerry Z

10 A No, Jerry Zwack, we knew each other, knew of each
11 other because you just did in the church. I didn't

12 really get to know Jerry in a closer way. Actual

13 there were a few times that I had prayed for Jerry

14 but that was the only relationship that I had. I

15 no romantic relationship. I was married at the t

16 Q To whom?

17 A To Greg Towery.

18 Q When the incident occurred?

19 A Yes, we were still married.

20 MR. SHAPIRO: Thank you, I have nothing
21 further.

22 CROSS EXAMINATION

23 BY MR. JOHNSON:

24 Q Ms. Towery, when you went down to Vancouver, was
25 incident, did this occur when you first got there

e was
was,
I

ype
wack?

't
ly,
y,
had
ime.

this

1 after you'd been there for a day or two, or describe
2 during the period of time of the trip when this
3 incident occurred.

4 A To the best of my recollection, it seems it happened
5 the very first night that we were there. That's the
6 best I can recall it.

7 Q And I take it then subsequently you stayed there
8 overnight?

9 A Yes, we did.

10 Q And returned the next day or do you recall?

11 A I'm not absolutely positive on that point. It seems
12 to me it was a weekend trip.

13 Q You may have stayed there one night or maybe two
14 nights?

15 A Oh, we didn't, stay there two nights, we only stayed
16 there only one night.

17 Q Now, when you went to bed -- and you say there were
18 two beds in this room?

19 A Yes, there were.

20 Q And the four of you stayed in this room in the two
21 beds?

22 A Yes, we did.

23 Q Did you sleep in one bed with whom?

24 A The way the situation was, and this was actually
25 because of even the problem and the way that it was it

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

DELETED MATERIAL FILED UNDER SEAL

MR. JOHNSON: I have no other questions.

20
21
22
23
24
25

ZWACK - Cross (By Mr. Johnson)

1 A Yes. He said again during his testimony, phase one
2 testimony, to us that he was willing to commit perjury
3 in court. I have a quotation in my notes to that
4 effect. He also said that he had deliberately lied on
5 a number of occasions because he thought that it was
6 the wisest of two choices. And in one instance he
7 said he lied because he thought it was the prudent
8 thing to do and it would serve the greater good. He
9 also said that as a rule he doesn't lie but his view
10 on lying was as I have stated.

11 Q When we left off yesterday we were talking about
12 Exhibit 33, which is the March 3, 1988 --

13 THE COURT: Transcript of the sermon?

14 MR. SHAPIRO: No, it's entitled eldership
15 meeting, March 3, 1988, all 16 present.

16 THE COURT: And signed by ten persons?

17 MR. SHAPIRO: Correct.

18 Q (By Mr. Shapiro) I'll show you this copy, Mr.
19 MacKenzie. Prior to my showing you that document
20 yesterday, had you seen that since March 3rd or
21 March 4th, 1988?

22 A No.

23 Q Have you had an opportunity since yesterday to study
24 the document?

25 A Yes.

Page 567 missing from original court record.

6
7
1 manipulated us to do so.

2 Q But at that same meeting there was a show of hands as
3 to who wanted to put Don out?

4 A Right. All 16 men wanted to put Don out and all 16
5 men did put Don out as a group.

6 Q Subsequent to March 3rd, was there any written
7 material or any documents written to put Don out?

8 A Yes. And maybe I should add that it was on March 3rd
9 that we made the decision to produce that written
10 material.

11 Q When you say written material, what are you referring
12 to?

13 A I'm referring to three letters that are dated March
14 4th. And the idea to produce those three letters was
15 discussed and debated on March 3rd, the day that we
16 all voted to put Don out.

17 Q Did you have a hand in drafting any or all of those
18 letters?

19 A I drafted the March 4 elders' letter that is signed by
20 the whole committee, I drafted the committee letter.

21 Q When you say the whole committee, does it include
22 signatures of all 16 men?

23 A Yes. It's the letter that represents the decision and
24 action of the committee.

25 Q You were the one that drafted that?

MackENZIE - Direct (By Mr. Shapiro)

1 A Yes.

2 (Defendants' Exhibit No. 34
3 marked for identification.)

4 Q Mr. MacKenzie, do you recognize the letter I've handed
5 you in front of you which has been marked as Exhibit
6 34?

7 A Yes.

8 Q What is that, sir?

9 A This is the committee letter to Donald Barnett giving
10 him official notice that he is disfellowshipped.

11 Q Did you write that letter, sir?

12 A Yes.

13 MR. SHAPIRO: We would offer 34.

14 MR. WIGGINS: Your Honor, I have no
15 objection to it to the extent that it gives notice and

objecting to this letter to the extent it's
ferred to show that.

THE COURT: It will be admitted to show what
elders based their action on. They all signed it.
Whether it's true or not is another matter.

MR. WIGGINS: Thank you.

THE COURT: It will be admitted.

(Defendants' Exhibit No. 34
received into evidence.)

Mr. Shapiro) Mr. MacKenzie, looking at Exhibit 34
which has been admitted, in the second paragraph
there's a reference to the elders, not including the
senior elders, voting unanimously to put you out of
the church and having the recommendation made to the
senior elders. Could you describe for us how that
happened and why the senior elders also signed this
letter?

The whole committee voted as a group, all 16
men, to put Don Barnett out of the church. And this
is the letter that shows that the elders as a group
put Don out of the church being signed by all men and
the fact that it says many times in it "we put you
out", "we put you out" and it's signed by all 16 men.
The reference to not including the elders is a
reference.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I'm
off
the
Whe
Q (By
whi
the
sen
the
sen
hap
let
A Yes
men
is
put
the
out
The
ref

1 Q Not including the elders?

2 A Excuse me, not including the senior elders is a
3 reference to this additional vote by the elders
4 themselves where they recommended that the senior
5 elders put Don out as senior elders wearing their
6 second hats, not their committee hats, but their
7 senior elder board member hats and they did that.
8 They also wrote Don a letter themselves putting him
9 out of the church as board members.

10 Q Did you have any involvement in the drafting of that
11 letter?

12 A I think I contributed some ideas and a little bit of
13 language. It again was begun on March 2nd and finished on

14 this one was, and Mr. Hicks wrote that letter and I
15 helped him with it a little bit on the day of the 3rd
16 and I stayed up all night on the night of the 3rd and
17 finished this letter the morning of the 4th.

18 Q You indicated in prior testimony that there is a
19 reference in this letter where the committee, the
20 group of 16, is expressing that it is putting Don
21 Barnett out or disfellowshipping him. Could you point
22 us to those references, sir?

23 A Sure.

24 Q And if you could note where the paragraph is.

25 A Okay. Let's see, in the second paragraph, in the

1 second paragraph it refers to every man on the
2 committee. That would apply to all 16, not excluding
3 the three senior elders, and so every man on the
4 committee, that is the whole committee of 16, analyzed
5 the facts, et cetera, and from then on we're talking
6 about the whole committee in the sentence following.

7 And it says in the next sentence, "We found at
8 least eight reasons stated plainly in the Bible that
9 require us to put you out", so we have reasons to put
10 you out refers to every man in the committee. And as
11 you continue reading, it says similar language a
12 number of times. Would you like me to take the time
13 to go through and point out all of them?

14 Q If you could find a few other references to the
15 committee taking action.

16 A Okay. Well, skipping one sentence and going to the
17 next sentence that begins "the January 16, 1987
18 Counseling Center memo on the subject shows that you
19 qualified", that wasn't the one I want, I want the
20 next one. "Don, we sincerely searched our hearts to
21 see if there was any less severe action that we could
22 reasonably take", so that refers to the action of the
23 committee. Next paragraph --

24 Q Does it refer to the people who signed the letter?

25 A Yes. And then next paragraph, "We took this action"

1 is at the end of the first sentence. At the end of
2 that paragraph the last sentence says, "Therefore, we
3 are forced to disfellowship you".

4 Q Where is that, sir?

5 A That's paragraph three in the last sentence. "We are
6 forced to disfellowship you."

7 Q All right, that's sufficient, sir.

8 A Okay.

9 Q Now, you mentioned there were two other
10 disfellowshipping letters.

11 A Yes.

12 Q What other letters were there?

13 A There is the March 4 senior elders' letter to Don
14 which is the senior elders putting Don out in the
15 sense of the board putting him out and there's David
16 Motherwell's March 4 letter.

17 Q What, based on your knowledge, what capacity was David
18 Motherwell?

19 A David Motherwell was Don Barnett's personal counselor.

20 Q Why was a letter from Don's counselor sent?

21 A Because David Motherwell acting as Don's counselor put
22 Donald Barnett out also.

23 Q Based on your experience, was that something that took
24 place, a counselor putting someone out at Community
25 Chapel?

1 A Yes.

2 Q Based on your knowledge, did counselors have authority
3 to do so?

4 A Yes. David Motherwell even told me that he had done
5 this other times with congregation members who had
6 done less things than Don did.

7 Q Given the fact that all 16 men signed this document
8 and clearly expressed that the 16 were taking action
9 to disfellowship, why were the other two letters
10 drafted?

11 A We wanted to send Don Barnett the message loudly and
12 clearly that we disapproved of his behavior, there was
13 no manipulation of the committee by the senior elders,
14 and that he needed correction by the committee. He
15 needed censure by the committee. He needed to be
16 removed from the office of pastor for just cause
17 because of his much bad conduct.

18 And in order to ensure that that message was
19 communicated, his counselor put him out, the Board of
20 Directors put him out, and the whole committee put him
21 out.

22 Q When you say the whole committee, the group of 16?

23 A Yes.

24 Q That was the group of 16 authorized by this special
25 agreement that's up there?

1 A Correct. We believed, I believed and the committee
2 expressed to me also, the concern that Don would defy
3 this disfellowship action in the same manner he did
4 the lower level action we took first which was the
5 special status and, therefore, we felt this would help
6 impress it upon him by doing it in these various ways.

7 Q The three letters as opposed to just the one that's
8 marked as Exhibit 34?

9 A Yes. One more reason in our thinking, in my thinking
10 and the the committee again expressed to me, was that
11 different members of the congregation felt differently
12 toward the members of the eldership committee just
13 based on their jobs at the church. For example, some
14 of them had a pulpit ministry and would preach sermons
15 and teach from the Bible and others very seldom were
16 seen at the pulpit but had more of an administrative
17 role. And in order to show how united we were in this
18 action we felt that broadening the act by having
19 several groups do it this way would make it more
20 acceptable to the congregation.

21 Q At any time when you took the act of either special
22 status or the act of disfellowshipping Don Barnett in
23 the committee of 16 were there any dissenters?

24 A Did you say at any time?

25 Q When you made the decision?

1 A No, there was no dissension at all.

2 MR. SHAPIRO: Thank you, sir. I have
3 nothing further. I'm sure Mr. Wiggins has some.

4 MR. WIGGINS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. WIGGINS:

7 Q Mr. MacKenzie, I notice you've been very careful
8 during your testimony and you've referred to your
9 notes, you've been very familiar with your notes. Did
10 you spend any time preparing for your testimony here
11 today?

12 A Yes.

13 Q How much time did you spend?

14 A I don't know.

15 Q How many hours?

16 A Well, I was thinking in terms of hours and I really
17 couldn't answer the exact number of hours that I spent
18 but I spent several evenings. I could put it in terms
19 of that.

20 Q Did you spend any time with the attorneys for the
21 Defendants in this case?

22 A Yes, they prepared me for my testimony.

23 Q As a result of that, you went through your notes and
24 pulled out information that would be helpful for them?

25 A No, I did my studying basically before I met with

MackENZIE - Cross (By Mr. Wiggins)

1 them.

2 Q And in all of this studying, you didn't look at this
3 March 3 document which was the minutes of what you say
4 is the vote taken by the eldership; is that correct?

5 A That's correct because it was not in my notebooks.

6 Q Did you review any other documents other than your
7 notes?

8 A No, I don't have any other documents other than my
9 notes.

Q Did anybody else show you any documents other than
 your notes?

A No, I brought my notebooks to the lawyers' office
 when we talked and we pulled some papers out of them
 and talked about them.

Q Mr. MacKenzie, at the outset of the eldership hearings
 what in fact was the purpose of the eldership
 hearings?

A It was to resolve the grievances between Jerry Zwack
 and Donald Barnett including all material that Jerry
 Zwack would complain about Donald Barnett. And in the
 complaint Jerry Zwack stated that or alleged that Don
 was guilty of much bad conduct and Don himself
 testified to this conduct. And in order to solve this
 problem, the committee disfellowshipped Don.

Q Mr. MacKenzie, I don't want to cut off your answer to

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 my question but you're drifting a little beyond my
2 question which was the purpose of the hearing, not
3 what was said during the hearings.

4 A Right.

5 Q And that is your answer, to resolve whatever
6 grievances were in Mr. Zwack's, I think you used the
7 term now, complaint; is that right?

8 A Yes, I would characterize it as a complaint.

9 Q What was the complaint? I've not previously heard
10 that term used with respect to Mr. Zwack.

11 A Oh, I used it a number of times yesterday in my
12 testimony and I'm using it as analogous to his
13 grievances as a synonym for that.

14 Q So, you're not thinking of a document as the
15 complaint, you're thinking of whatever grievances he
16 happened to have?

17 A Yes. All of his specific grievances and I included
18 the word "all" in the guidelines to broaden it so that
19 he could complain in any manner he desired. He
20 expressed in his letter that when he confronted Don
21 about all of his immorality, et cetera, Don acted to
22 ~~stop him and shut him down and the committee did not~~
23 want to do that, the committee specifically wanted to
24 broaden it and open up the discovery to bring
25 everything into the light so it could be investigated.

1 So, another part of my purpose --

2 A Excuse me.

3 MR. SHAPIRO: Could counsel allow him to
4 finish his answer?

5 MR. WIGGINS: ~~I beg your pardon, counsel, I~~
6 thought he had finished his rather lengthy answer to
7 the question.

8 THE COURT: You may continue.

9 A And so the purpose would include any investigation
10 necessary and any actions necessary to resolve
11 anything that came up in the hearing.

12 Q (By Mr. Wiggins) So, did you tell Pastor Barnett that
13 the purpose of the hearing was to resolve anything
14 that, ~~any grievance that Jerry Zwack brought up during~~

15 the hearings?

16 A Did I tell him that?

17 Q That's my question.

18 A No, I didn't. He was informed of that but not by me.

19 Q Was he informed of that in your presence?

20 A No, unless we count the fact that he sat at the
21 hearing when I made my openings statement about the
22 guidelines, et cetera, and the guidelines say what the
23 purpose is as him being informed in my presence. But
24 I believe the committee appointed David Motherwell to
25 go to Donald Barnett with the special agreement and

1 with the guidelines and discuss the subject with Mr.
2 Barnett.

3 Q You mentioned your opening statement. Did you say
4 anything in your opening statement relating to the
5 purpose of the hearings? And if you would like to
6 review your notes, please feel free.

7 A Okay, I would like to review my notes. Not
8 specifically, no.

9 Q Let me refer you to page five of your notes, the next
10 to the last paragraph on the bottom of the page. Does
11 that refresh your recollection on whether you said
12 anything in the opening statement about the purpose of
13 the hearing?

14 A Not specifically, no.

15 Q You did not say in the hearing that your purpose to
16 reconcile the two brothers we love can only be
17 achieved if we are all truthful?

18 A Yes, I said that.

19 Q All right. Thank you, you have Mr. Mackenzie, thank you.

20 ~~Mr. Mackenzie, in terms of the scope of the hearing, I~~
21 ~~believe you testified that you were the moderator of~~
22 ~~this hearing.~~

23 A Yes.

24 Q And isn't it correct that as moderator you had to
25 determine the relevance of different issues that might

PAGE 581 OMMITTED IN SCANNING

1 the guidelines for the eldership hearing.
 2 Q (By Mr. Wiggins) Doesn't it say that the purpose of
 3 the hearings is to resolve all of Jerry Zwack's
 4 specific grievances against Don Barnett?
 5 A Yes.
 6 Q Now, you mentioned also an earlier draft of this
 7 particular document, guideline; is that correct?
 8 A Yes, in response to a question.

9 Q And you were the author of the earlier draft as well

10 as this final version?

11 A Yes.

12 THE COURT: This is the ea
13 guidelines?

14 MR. WIGGINS: Of the guide

(Plaintif
16 marked fo

17
18 Q Handing you what has been marked as
19 recognize that document?

20 A Yes.

21 Q What is that document?

22 A This is the draft copy of the guide

23 Q And that document was eventually ch
24 version became the guidelines that
25 that correct?

earlier draft of the
guidelines, Your Honor.

f's Exhibit No. 35
identification.)

Exhibit 35, do you

elines.

changed and the final

is Exhibit 23; is

1 A Yes. There's no sticker on this one but I think it's
2 23.

3 Q All right.

4 MR. WIGGINS: Your Honor, I'd offer Exhibit
5 35 at this time.

6 MR. SNAPIRO: ~~No objection.~~

7 THE COURT: Exhibit 35 will be admitted.

8 (Plaintiff's Exhibit No. 35
9 received into evidence.)

10 Q I'm going to give you a copy that does not have a
11 sticker on it and suggest you put it in the notebook
12 under the tab 35 so we keep it straight.

13 Mr. MacKenzie, referring you to the first
14 paragraph of the draft guidelines, Exhibit 35, isn't
15 it true that the second sentence of the draft, quote,
16 "The issues include whatever material Jerry Zwack
17 grievances contain", end of quote, was stricken from
18 that draft?

19 A That's correct.

20 Q And that sentence does not survive in the final
21 guidelines which were adopted; is that correct?

22 A That's correct.

23 Q And isn't it true that the term "specific" was added
24 to the first sentence so that the purpose of the
25 hearings was to resolve Jerry Zwack's specific

10

1 grievances?

2 A Yes.

3 Q Now, did Pastor Barnett have any hand in making these
4 changes?

5 A No.

6 Q What were the specific grievances of Mr. Zwack?

7 A Those were determined by the committee after listening
8 to his testimony.

9 Q Were they ever set forth by Mr. Zwack or listed by Mr.
10 Zwack?

11 A Yes.

12 Q When?

13 A Let me see. I would have to think. I believe we
14 recited a list of them in one of our documents which
15 is probably our February 24th, 1988 reply letter to
16 Don answering the questions he submitted to us on
17 tape which he made on February 3rd.

18 Q All right. And that has been marked as an exhibit
19 It should be in your exhibit book, sir, just for your
20 convenience as Exhibit 29, I believe, page 5 of
21 Exhibit 29. Is that the letter that you are referring
22 to?

23 A Yes, that's it.

24 Q And this letter recites that a list, that Mr. Zwack
25 submitted a list of grievances in writing to the

ich
to
the
.
your
rring
ck

1 committee; is that correct?

2 A Yes.

3 Q When did he do that?

4 A I don't remember, sometime before this letter.

5 Q Was Pastor Barnett given a copy of the list of
6 specific grievances that Mr. Zwack submitted to the
7 committee?

8 A I don't know if he was or not, I don't remember.

9 Q And you don't remember whether there was this list of
10 specific grievances formulated before the hearings
11 began; is that correct?

12 A That's right. It was not formulated before it began.

13 Q Well, sir, the guidelines refer to specific
14 grievances, do they not, Exhibit 24?

15 A Yes.

16 Q How were you as moderator to know what were the
17 specific grievances at the beginning of the hearings
18 if you didn't have a list of the specific grievances?

19 A Jerry Zwack was going to be allowed to state all the
20 specific grievances that he wanted to in his
21 complaint.

22 Q And that is despite the fact that the guideline was
23 changed from all of Jerry Zwack's grievances to all of
24 Jerry Zwack's specific grievances; is that right?

25 A No, you stated it incorrectly.

1 Q Well, let me restate it then. The first draft said,
2 the first draft of the guidelines, Exhibit 35, stated
3 before it was changed, quote, "The purpose of the
4 hearing is to resolve all of Jerry Zwack's grievances
5 against Don Barnett"; is that correct?

6 A No, that's not correct.

7 Q What did the first sentence of the draft of the
8 guidelines, Exhibit 35, say before it was changed?

9 A The purpose of the hearing is to resolve Jerry Zwack's
10 grievances against Don Barnett.

11 Q Thank you. That was changed to say the purpose of the
12 hearings is to resolve all of Jerry Zwack's specific
13 grievances against Don Barnett; is that correct?

14 A Yes. I would put the emphasize on the word "all"
15 where you put the emphasis on the word "specific".

16 Q I understand that, sir, but how could the change have
17 any meaning unless you had a list of the specific
18 grievances?

19 A Because I told you the intention of the committee was
20 to permit Jerry to state all of his grievances to the
21 committee and we wanted them to be specific. We
22 didn't want him to say Donald Barnett is a bad guy.
23 We wanted him to say Donald Barnett committed adultery
24 June 12, 1987 with woman No. 1, that kind of thing.
25 And we wanted him to say all of those that he knew

1 because he kept telling us that when he would confront
2 Don that Don would deny it. Don would stop him. Don
3 would impose policies in the Counseling Center that
4 limited discovery, that prevented him from being
5 corrected and he was misusing his pastoral authority
6 to hide his continuous immorality with many women and
7 no one would stop him.

8 ~~And I felt that if this is a security issue, I will open it.~~
9 I don't care what anybody says. It was very difficult
10 for me, but I was not going to let him do that. It
11 didn't matter what other people thought. I was not
12 going to let him stop Jerry Zwack from saying anything
13 he wanted. He was going to feel when he was finished
14 that he was satisfied he had brought up everything he
15 knew and it would be all dealt with, all of it, so I
16 put the word "all" in there. You can pick on
17 "specific" because the intention of the word
18 "specific" just meant what I said it meant, it
19 couldn't be a generality, it had to be specific that
20 we wanted all of them.

21 Q And yet whatever Jerry Zwack chose to say during the
22 hearings you felt was within the scope of the
23 hearings?

24 A Correct.

25 Q And you said that despite the fact that Exhibit 35,

1 the original draft, the first guideline, the second
2 sentence was stricken, the sentence reading, quote,
3 "The issues include whatever material Jerry Zwack's
4 grievances contained", end of quote.

5 A Right.

6 O All right. Thank you. Did you explain to Pastor
7 Barnett when you gave him these guidelines or when he
8 received these guidelines that what you meant by
9 specific grievances was anything that Jerry Zwack
10 chose to bring up during the hearings so long as it
11 related to some incident?

12 A No, because I was not present when Donald Barnett
13 received the guidelines.

14 Q So, the answer to my question is, no, you did not
15 explain your understanding of specific grievances?

16 A No, because I was not present in the room. It was Mr.
17 Motherwell and Mr. Barnett so, of course, I couldn't
18 say anything to him.

19 Q During the hearings did Pastor Barnett ever object to
20 you that a particular line of questioning was beyond
21 the scope of the hearings?

22 A Yes.

23 Q When in the hearings did that occur?

24 A It occurred during Jerry Zwack's phase one testimony.

25 Q How early?

notes in order to
of the guidelines

January 25th, 1988.

your notes?

use one.

Barnett raised that

started a new

1 A Again, I would have to review my notes
 2 find out exactly when that violation
 3 occurred.
 4 Q I would be happy to let you do that
 5 A Okay. It occurred at 3:35 p.m. Jan
 6 Q Can you give me a page reference in
 7 A Page 5 of my hearings notes for ph
 8 Q Now, isn't it true that Pastor Barn
 9 objection right after Jerry Zwack s

10 subject, namely exhibitionism?

11 A No, that is not true.

12 Q Your notes don't reflect that?

13 A No, they don't.

14 THE COURT: Is this a different time or is
15 that the time?

16 MR. WIGGINS: I'm looking at page 5 of his
17 notes, Your Honor.

18 Q (By Mr. Wiggins) Well, can you tell me whether this
19 objection by Pastor Barnett occurred when Jerry Zwack
20 brought up the subject of exhibitionism?

21 A No, it occurred immediately before he did. He didn't
22 even mention the subject and Don objected. Don, I'm
23 searching for the word, anticipated what Jerry was
24 about to say and was extremely agitated and fearful
25 and nervous and his very presence and the look of

1.

1 horror on his face for something Jerry was about to
2 say bothered me deeply because he hadn't said the
3 point and Don was objecting.

4 Q What did he say immediately before Pastor Barnett
5 objected, he being Jerry Zwack?

6 A I think he said something like he started to mention
7 something about a car is what I recall and Don
8 immediately objected and Jerry had not told what it
9 was that he was about to say and the look on Don's
10 face and his demeanor made me wonder what is this
11 dastardly thing that Don did that he doesn't want
12 anybody to hear about.

13 Q Something about a car?

14 A That's my recollection.

15 Q And did Jerry Zwack continue at that point?

16 A No, Don interrupted him when he barely spoke his first
17 words before he could state to the committee what this
18 specific grievance was.

19 Q Okay. So, did Pastor Barnett in the course of making
20 an objection object that this was beyond Jerry Zwack's
21 specific grievances?

22 A No, he objected that the material was irrelevant.

23 Q Did you understand that to mean that that was beyond
24 the scope of Jerry Zwack's specific grievances?

25 A Ask me the question again, I didn't understand the

11 1

question.

12 2

Q Relevance. Did you understand his objection to
3 relevance to mean that the material was beyond the
4 scope of Jerry Zwack's specific grievances?

5 A Well, he didn't state it in those words. He only used
6 one word "relevancy" and he said this is not relevant
7 and he objected to it on the grounds of relevancy.

8 Q My question went to your understanding as to what your
9 understanding was he objecting to going beyond the
10 scope of Jerry Zwack's specific grievance, yes or no.

11 MR. SHAPIRO: I'm going to object, that's
12 been asked and answered.

13 MR. WIGGINS: It's been asked but not
14 answered.

15 THE COURT: You may answer.

16 A My understanding was that Donald Barnett was doing
17 what some of the members were concerned that he would
18 do and that was he was raising an objection which I
19 think the guidelines said he couldn't do. Right now I
20 can't remember, I'll have to look it up again.

21 MR. WIGGINS: Your Honor, he is again --

22 THE COURT: Just a minute.

23 A And, No. 4, without interruptions or objections by the
24 other party, and he was going to stop Jerry from
25 telling what he did, his bad conduct. He wanted to

1 hide it. And the committee did not want him to hide
2 it any longer, we wanted to bring it into the light,
3 bring it to light. That was the intention.

4 Q (By Mr. Wiggins) So, then the answer to my question
5 apparently is that you did not understand Pastor
6 Barnett's objection to be that it was not relevant,
7 i.e., it was beyond the scope of Jerry Zwack's
8 specific grievances. Is that the answer to the
9 question?

10 A You may characterize my answer any way you wish for
11 your own purposes, but I understood in my mind that
12 Donald Barnett did not want this committee to find out
13 what he had been doing and Jerry Zwack was going to
14 reveal it and Donald Barnett did not want it revealed.

15 Q And as moderator, you had a responsibility to
16 determine whether it was within the scope of Jerry
17 Zwack's specific grievances?

18 A I had an obligation to not allow objections. And if
19 he wanted to object, he could wish he could object but
20 he could not object.

21 Q So, did you then as moderator permit Mr. Zwack to
22 continue?

23 A We held a recess and discussed, because of our great
24 care for Don, should we go ahead and let him
25 interrupt, shut down Jerry's complaint, hide the

1 problem more, limit the discovery, wallpaper all the
2 immorality over, hide it longer, et cetera, or should
3 we allow and bring it all to light and deal with it
4 and solve this problem once and for all, is it true,
5 is it false, is he really lying, is he hiding
6 anything, and we decided that we should bring it all
7 to light. So, after a caucus without Don and without
8 Jerry, the committee made that decision. We came back
9 and said you may proceed and we denied Don's objection
10 and allowed Jerry to proceed.

11 (Short break taken.)

12 THE COURT: We're prepared to continue.

13 MR. WIGGINS: Thank you, Your Honor.

14 Q (By Mr. Wiggins) Mr. MacKenzie, I'd like to talk
15 about your selection as moderator for the eldership
16 hearings. I believe you testified that Pastor Barnett
17 indicated through someone else that he would consent
18 to having you as moderator but you were elected by the
19 committee; is that correct?

20 A Yes.

21 Q So, Pastor Barnett did not select you to be the
22 moderator of these hearings; is that correct?

23 A No in that there was not a vote taken, it was a

consensus of the committee. And since Donald Barnett
was agreeable to me, he was included in the consensus

24

25

1 but there wasn't an actual raising of hands to vote.

2 Q Now, I believe you testified also that as an elder
3 your responsibility, your specific responsibility in
4 this church was spiritual overseer of the Word of God;
5 is that correct?

6 A That's what Donald Barnett, those are the terms he
7 used for my job, yes.

8 Q Do you know if it was important to Donald Barnett that
9 the moderator of this hearing be a person who was
10 Biblically sound and Biblically literate?

11 A It was important to him? I don't know, I would assume
12 so. You'd have to ask him that question.

13 Q Was it important to others in the hearings?

14 MR. SHAPIRO: Objection, calling for
15 speculation. ,

16 Q (By Mr. Wiggins) Well, did anyone else in the
17 eldership group indicate whether it was important to
18 them that the moderator would be a man with Biblical
19 sensitivity or Biblical knowledge?

20 A Not specifically, no.

21 Q Did anyone in the committee indicate that it was
22 important that this hearing be conducted consistently
23 with the Bible?

24 A Not specifically, no.

25 Q Did anyone -- I believe though you indicated

1 yesterday that at various points during the
2 deliberations you in fact went to the Bible for
3 guidance on how to conduct the hearing; is that
4 correct?

5 A That's correct.

6 Q In fact, you looked to the Bible for your authority as
7 elders in this hearing; is that correct?

8 A Yes.

9 Q Now, I'd like to talk about the January 25 agreement
10 and tell me now what the purpose was of having Pastor
11 Barnett sign this agreement. I'm putting a copy on
12 the overhead.

13 A The purpose was to authorize the committee to have
14 final authority over the hearings and the result of
15 the hearings,, any action we wanted to take as a result
16 of the testimony we heard and conclusions we came to.
17 And included in that was the concern that Don would
18 try to exercise unfair control over the hearings,
19 which he tried to do but we did not allow him to do,
20 ~~and that he would act to stop the hearings which he~~

21 also tried to do and we did not allow him to do, and
22 we wanted to protect him from charges that he would
23 act as a judge and jury at his own trial.

24 And it was asserted by some members of the
25 committee their concern that he was likely to do that

1 and so if we had final authority over everything that
2 had to do with the hearing in any way, shape, or form
3 Donald Barnett could not do anything at all regarding
4 the hearing except testify then he would be protected
5 from charges that all the complaints were dismissed
6 because he dismissed them. If any complaints were
7 dismissed, the committee would dismiss them, Don
8 Barnett would not. That was the purpose, to give us
9 total authority and thereby protect Don Barnett from
10 that charge.

11 Q I noticed while you were testifying you didn't look
12 over here at the overhead, you looked over at that
13 copy. Are you more comfortable using that copy that
14 Mr. Shapiro prepared?

15 A Because it's closer.

16 Q Okay, then let's turn off the overhead. I believe you
17 also testified that you believed that the committee,
18 the eldership, had authority to proceed with the
19 hearings even without this agreement; is that correct?

20 A Yes. We didn't know whether Don would cooperate with
21 us. We may have to have a person state a complaint
22 and Don choose not to participate in his own defense
23 because he couldn't control what you were doing. We
24 wanted Don to participate, we wanted him to come, we
25 wanted him to be able to state his case in defense

1 and, of course, we asked him to do so, he voluntarily
2 agreed to do so, he signed, he came. He never raised
3 any objections like you're raising at all. He sat
4 there and we all agreed to go by the guidelines in the
5 special agreement.

6 Q So, now I ask you if in fact you believed that you had
7 authority to proceed even without the agreement and
8 your answer is yes; is that correct?

9 A Yes.

10 Q Thank you. Now, Mr. MacKenzie, did the members of the
11 eldership committee discuss whether you would have
12 proceeded even without an agreement signed by Pastor
13 Barnett?

14 A No.

15 Q Would you have proceeded even without an agreement
16 signed by Pastor Barnett?

17 MR. SHAPIRO: Objection to the form, calls
18 for speculation.

19 A I don't know.

20 THE COURT: Asked and answered, says he
21 didn't know.

22 Q (By Mr. Wiggins) And I believe you testified that
23 your authority to proceed with these hearings despite
24 the agreement was found in a couple of places, No. 1,
25 the Bible; is that correct?

That's correct.

No. 2, a statement in Balance Two; is that correct?

MR. SHAPIRO: Rumor 20, Your Honor.

Balance Two is the name of the publication and the section is called Rumor No. 20.

(By Mr. Wiggins) Did that article say in any way that the article modifies the bylaws of Community Chapel? Specifically Rumor 20 or the whole article that Rumor 20 is contained in?

Let's take them one by one, Mr. MacKenzie. Did Rumor 20 and the answer say that it modified bylaws of Community Chapel?

I don't know, I would have to review it.

You may certainly review it, sir, it's right there in front of you, Balance Two.

I believe it was page 19. No, it does not say the statement amends the bylaws in any form.

Okay. And then I think you also said that another authority or source of authority for you to conduct these hearings was your responsibility to the congregation as an elder; is that correct?

Yes.

Mr. Shapiro, I'd like to show you Exhibit 10 or I'd like to direct your attention to Exhibit 10, which is in this large volume before you. Exhibit 10 is the bylaws

1	A	T
2	Q	N
3		
4	A	B
5		s
6	Q	(
7		t
8	A	S
9		2
10	Q	L
11		2
12		C
13	A	I
14	Q	Y
15		f
16	A	I
17		s
18	Q	O
19		au
20		th
21		co
22	A	Ye
23	Q	Si
24		di
25		la

1 which were in force at Community Chapel as of the date
2 Do you find Exhibit 10 in there? 2 Of these hearings?

1. Are you at page 21?

discusses the office of elder; is

the office is, is that right, in

talks about ministering to the
e church as requested by the
ds them; is that correct?

ntence gives a lengthy list of
er which is preceded with the
he pastor's concurrence", end of
t?

n Article 2 under Letter A it
ders, states that, quote,
collectively are responsible to
of the corporation under the
ect?

3 A Yes.

4 Q I refer you to page 2

5 A Yes.

6 Q Section 2, Article 1
7 that correct?

8 A Yes.

9 Q And it describes what
10 the first sentence?

11 A Yes.

12 Q The second sentence t
13 spiritual needs of th
14 pastor and as God lea

15 A Yes.

16 Q And then the third se
17 functions for the eld
18 terms, quote, "with t
19 quote; is that correc

20 A Yes.

21 Q And then down below i
22 talks about senior el
23 "Ordained elders who
24 be the governing body
25 pastor"; is that corr

13
14

- 1 A Yes.
- 2 Q Thank you. Does that article say that the elders have
3 authority to hold hearings to determine grievances
4 against the pastor?
- 5 A Which article, Article 2?
- 6 Q Section 2, any one of those articles under Section 2
7 that describe elders.
- 8 A Article 2, A, B, and C you mean?
- 9 Q Is that your answer.
- 10 A No, I don't know the question you're asking me because
11 you weren't specific. You tapped the paper and said
12 does this say such and such and I don't know what you
13 were tapping.
- 14 Q Excuse me, Mr. MacKenzie, I'm referring you to Section
15 2.
- 16 A Article 2.
- 17 Q This entire page is Section 2.
- 18 A All right.
- 19 Q You may certainly review it if you would like to see
20 if it says the elders have the authority to hold the
21 hearing to resolve grievances against the pastor.
- 22 A Right. It doesn't, it probably doesn't say that, I'm
23 sure it doesn't.
- 24 Q All right. Thank you. Now, I'm finished with Exhibit
25 10, if you are finished reviewing it.

MACKENZIE - Cross (By Mr. Wiggins)

1 A Yes.

2 Q Now, I'd like to direct your attention to the
3 guidelines and I'll put them up on the overhead. I
4 believe they are Exhibit 24.

5 A May I ask a question? Is this a copy that I can use,
6 like write on?

7 MR. SHAPIRO: No, this is just the witness
8 copy.

9 MR. JOHNSON: Exhibit 23.

10 Q (By Mr. Wiggins) I've put them up on the overhead,
11 Mr. MacKenzie, if that's more convenient.

12 A I'll probably just look at this page.

13 Q All right. The Guideline 11, I believe when you went
14 through the list of sources of authority of the
15 eldership to hold this hearing you mentioned Guideline
16 11; is that correct?

17 A Yes.

18 Q And you said, I believe this is correct, your
19 testimony was that the reference to authority of the
20 elders was that this mentions final decision; is that
21 correct?

22 A Yes, twice.

23 Q Does Guideline 11 say anything about the term
24 authority?

25 A No, it's implied.

1 Q And now I refer you to the earlier version of the
2 bylaws which is I think Exhibit 35. I'll put those up
3 as well.

4 A Okay. Okay.

5 Q Now, the draft of the guidelines, Guideline 11
6 actually uses the term authority, does it not?

7 A Yes, Guideline 12.

8 Q I guess it's Guideline 12. Now, Guideline 12 became
9 Guideline 11 in the final version; is that correct?

10 A Correct.

11 Q And it actually uses the term authority, does it not?

12 A The draft copy does.

13 Q Yes. And that is stricken from the draft and then
14 does not appear in the final, does it?

15 A That's right,

16 Q And the draft Guideline 12 also includes the third
17 sentence speaking of the elders, "Their final decision
18 may not be overturned", does it not?

19 A Yes.

20 Q And that sentence is also stricken from the
21 guidelines; is that correct?

22 A That's correct.

23 Q All right, thank you. That's all I have on that
24 particular document at this time.

25 Sir, I believe yesterday you talked about what

1 you believed were indications that Pastor Barnett
2 recognized the authority of the eldership to hold the
3 hearings; is that correct?

4 A Yes.

5 Q At one of the points you refer to a statement made by
6 Pastor Barnett in your notes at page 65 of the third
7 tab of your notes; is that correct? Please take your
8 time and find that statement, page 65 of the third
9 tab.

10 THE COURT: Of the sermon?

11 MR. WIGGINS: This is not an exhibit. He
12 identified the place in his notes he was referring to.

13 A Yes, I did identify that yesterday.

14 Q (By Mr. Wiggins) All right. You testified that
15 Pastor Barnett made statements at that time that
16 recognized the authority of the committee?

17 A Correct.

18 Q Now, isn't it true that in the context in which he was
19 speaking he stated that he did not relinquish his
20 authority?

21 A Yes.

22 Q And isn't it true that in that context he stated that
23 the pastor is in charge of all meetings and that the
24 statute, well, the bylaws provide that the pastor is
25 in charge of the meetings?

1 A Yes. He was asserting these things in violation of
2 the side agreement he had signed but of course he

3 didn't believe him because we knew that he signed
4 side agreement. He could say these things. You

5 he asking me did he say it and the answer is, yes,
6 said it.

7 MR. WIGGINS: Your Honor, I would move
8 strike everything after "yes". My question called for
9 a yes or no answer.

10 THE COURT: His answer will stand.

11 Q (By Mr. Wiggins) All right. Now, let's go back to
12 the agreement which is Exhibit 15. Did Pastor
13 Barnett -- strike that. Other than adding the
14 "and Jerry" to the second paragraph, did Pastor
15 Barnett participate in drafting the agreement?

16 A No.

17 Q I think you testified you drafted the agreement
18 that correct?

19 A Yes.

20 Q And you testified also that you are a careful writer
21 in fact I believe you said, quote, "I am a careful
22 writer", end the quote; is that correct?

23 A Yes.

24 Q I think you also testified that the agreement gave
25 committee authority to investigate and act at the

1 conclusion of the meeting; is that correct?

2 A Um-hmm (Affirmative).

3 Q Does the agreement say that?

4 A No.

5 Q Does it contain those words?

6 A No.

7 Q I think also on direct you stated that you drew your
8 attention to the language of the agreement that the
9 hearings will, quote, "continue until they are
10 concluded to the satisfaction of the elders", end of
11 quote; is that correct?

12 A Yes, it says that.

13 Q And I think you testified that you used this language
14 because you feared that Pastor Barnett would use his
15 authority to, stop the hearings; is that correct?

16 A Yes. During the discussion phase prior to his
17 temporarily suspending his authority that was the
18 fear, yes.

19 Q And you testified that the phrase, quote,
20 "satisfaction of the elders", quote, meant that the
21 elders could take any action which satisfied the
22 elders.

23 A Yes.

24 Q But the language doesn't say that the elders can take
25 any action which satisfies the elders; does it?

1 A It doesn't say it in those terms you stated it, no.

2 Q Thank you. Does the agreement say anything about
3 Pastor Barnett giving up or surrendering any of his
4 protections or rights under the church bylaws?

5 A It doesn't specifically refer to it in the language
6 that you stated, no.

7 Q Okay. The agreement says nothing about
8 disfellowshipping, does it?

9 A No, not specifically.

10 Q It says nothing about discipline, does it?

11 A No, not specifically.

12 Q Do you know if anyone stated to Pastor Barnett before
13 he signed this agreement that the agreement meant that
14 Pastor Barnett was giving up his protections and
15 rights under the bylaws?

16 A No, I don't know that. The inferences he drew from
17 giving us final authority --

18 Q Sir, there's no question before you.

19 MR. SHAPIRO: Your Honor, the witness should
20 be allowed to finish his answer.

21 THE COURT: He said the words do not appear.

22 MR. WIGGINS: Thank you, Your Honor.

23 Q (By Mr. Wiggins) Now, let's go back to the
24 guidelines. I think the guidelines are Exhibit 24 in
25 this book. Did Pastor Barnett participate at all in

1 the drafting of these guidelines?

2 A Excuse me a moment, I have to get them back.

3 Q I'm putting them up on the overhead if you would like
4 to refer to them there or you can certainly use the
5 hard copy.

6 A I had one a moment ago, I would like to use the hard
7 copy. Are they 24? There we go, 23. Okay, go ahead.

8 Q Did Pastor Barnett participate in drafting the
9 guidelines?

10 A No.

11 Q Did Pastor Barnett to your knowledge ever see the
12 earlier draft of the guidelines?

13 A Not to my knowledge. The final draft is the one that
14 was delivered to him.

15 Q All right, Mr. MacKenzie, I'd like to direct your

attention to the sixth paragraph or the sixth
guideline which states, "The hearings shall be
strictly confidential". Now, in your testimony you
discussed the February 26th service I believe after
the hearings and you described how the eldership got
up and announced the decision to place Pastor Barnett
on special status; is that right?

That's correct.

And did any of the guidelines give you the right to do
that, to stand up during the service and announce you

16

17

18

19

20

21

22

23

A

24

Q

25

1 were placing Pastor Barnett on special status?

2 A Guideline 11.

3 Q What in Guideline 11 gave you that right?

4 A It was one of our final decisions. We decided that
5 was necessary to protect the congregation and protect
6 Don so we made the decision and did it.

7 Q So, your testimony is it's a final decision and that
8 you decided it was necessary to protect the
9 congregation and Don?

10 A Yes, so we did it.

11 Q And Guideline 11 in your testimony authorizes that
12 because it is a final decision; is that correct?

13 A Yes, but you asked me which one of the guidelines
14 authorized us to do it. I wouldn't particularly focus
15 in on Guideline 11 as being the only authority we had
16 to do that. But since you restricted our authority to
17 this document, I would say that is the one section of
18 this document that would authorize us to do that.

19 Q Are you aware of whether there was a provision in the
20 bylaws that stated that the pastor was in control of
21 all worship services whether he was present or not?

22 A Was I aware of that?

23 Q Yes.

24 A Yes.

25 Q All right, thank you. Now, I think you testified that

1 the elders were mindful of this confidentiality
2 promise and they wrote speeches so they wouldn't
3 disclose any breach of confidences that occurred
4 during the eldership hearings; is that correct?

5 A I wouldn't say that they wouldn't disclose any breach
6 of confidences, I would say that they wouldn't
7 disclose any confidences.

8 Q Thank you. And were there certain elders who were
9 chosen to speak?

10 A Yes.

11 Q And did the elders discuss with one another what they
12 would say?

13 A Each elder did not discuss with the entire committee
14 what they would say, each elder discussed with his
15 colleagues in his own subcommittee what he would say.

16 Q Did you set out any form of outline or plan that

18 A A rough draft form, yes.

19 Q Did you following the plan?

20 A More or less.

21 Q Do you have the plan in your notes?

22 A I think I do.

23 Q Would you refer to it, please.

24 A I have it. No, wait, excuse me. I th
25 it. Okay, I have it.

16

ought I found

MackENZIE - Cross (By Mr. Wiggins)

- 1 Q Is it a typewritten document?
- 2 A Yes.
- 3 Q Now, did you follow this plan?
- 4 A I followed my segment of the plan, yes.
- 5 Q Did others follow their segments of the plan?
- 6 A To the best of my knowledge, they did.
- 7 Q And I think you testified you were at the February 26
- 8 service; is that correct?
- 9 A Yes, I spoke at it.
- 10 Q All right. Now, did anyone during the February 26
- 11 service, did anyone read to the congregation a copy of
- 12 senior elders' letter to Pastor Barnett placing him on
- 13 special status, the February 15 letter?
- 14 A I believe Jack DuBois did.
- 15 Q He did read that letter?
- 16 A I don't remember for sure, but I believe he did. It
- 17 says on the plan that that was the plan and my
- 18 recollection is that he did, but I can't remember for
- 19 sure.
- 20 Q Now, did anyone read to the congregation the letter
- 21 that the eldership wrote to Pastor Barnett supporting
- 22 the decision to place Pastor Barnett on special
- 23 status?
- 24 A I believe so. The plan was to have Mark Yokers read
- 25 that letter, I believe he did.

1 THE COURT: I'm a little confused. DuBois
2 wrote what letter?

3 MR. WIGGINS: We're discussing the February
4 26 service. Mr. DuBois read to the congregation the
5 letter of February 15. Your Honor, just for your

6 notes that's Exhibit 24.

7 THE COURT: That's the one that placed him
8 on special status.

9 MR. WIGGINS: Purported to place him on
10 special status.

11 THE COURT: And then the next letter was
12 what?

13 MR. WIGGINS: He asked about the letter from
14 the eldership. I believe it was the February 24
15 letter supporting the decision of the senior elders
16 regarding special status. For your notes, that's
17 Exhibit 30.

18 THE COURT: And I think the witness
19 testified that he believes who read that letter?

20 THE WITNESS: Mark Yokers, Y-O-K-E-R-S.
21 He was a committee member.

22 THE COURT: That was the letter of?

23 THE WITNESS: 2/24/88.

24 THE COURT: I'm up to date, I put this in
25 context. You may proceed.

MackENZIE - Cross (By Mr. Wiggins)

1 Q (By Mr. Wiggins) Mr. MacKenzie, is it your best
2 recollection that these two letters were read in
3 their entirety?

4 A Well, I believe I said that I can't be sure because I
5 don't remember exactly what everyone did but, yes,
6 that would be my statement they read the whole letter.

7 Q I'd like you to refer now to Exhibit 24.

8 A I think that's the one I turned to a moment ago and I
9 didn't have it.

10 Q Let me see if I can find it then and put it where it
11 belongs. Now, is that the letter that your best
12 recollection is that Mr. DuBois read to the
13 congregation on February 26?

14 A Yes.

15 Q And your best recollection is, you're not sure but
16 your best recollection is he read the entire letter;
17 is that correct?

18 A Like I said, I can't be sure, but yes. I suppose we
19 would have to ask him or listen to the tape recording.

20 Q Now, would you read the first sentence of the third
21 paragraph of Exhibit 24.

22
23 **DELETED MATERIAL FILED UNDER SEAL**
24
25

1 senior elder board intervention is necessary for the
2 future protection of the women in our church."
3

4 **DELETED MATERIAL FILED UNDER SEAL**
5

6 A Ask me the question again, please. I was reading and
7 I wasn't listening to you.

8 (Whereupon, the requested
9 portion of the record was
read by the reporter.)

10 A Yes, I would say his admissions were confidential.

11 Q Now, I would refer you, sir, still on Exhibit 24 to
12 the fourth paragraph. Will you read the second
13 sentence of the fourth paragraph beginning
14 "nevertheless". Would you read it aloud?
15

16 **DELETED MATERIAL FILED UNDER SEAL**
17
18

19 MR. WIGGINS: Your Honor, I'm going to move
20 to the eldership letter of February 24 which is
21 Exhibit 30.

22 Q (By Mr. Wiggins) Have you found Exhibit 30?

23 A All right, Exhibit 30.

24 Q I direct your attention to the fourth paragraph of
25 Exhibit 30. Do you see where I mean? It begins "the

1 senior elders' restrictions"?

2 A Yes.

3 Q Would you read that sentence beginning "the senior
4 elders' restrictions".

5

6

7

8

9

DELETED MATERIAL FILED UNDER SEAL

10

11

12

13

14

MR. SHAPIRO: Object to the form of the
question, Your Honor. Does counsel mean the details
of those admissions?

16

17 A No, that's not the question. The question was the
18 fact that he admitted and I would distinguish --

19 Q (By Mr. Wiggins) Thank you, Mr. MacKenzie.

20 A And I would distinguish between the fact that he
21 admitted it and his admissions and I don't believe
22 anyone stated any of his admissions, they stated that
23 he admitted this in order to give a reason for the
24 imposition of the special status so it would make
25 sense as the women, all the body of women in the

1 congregation were informed "don't be alone with Don".
2 And instead of just saying "don't be alone with Don",
3 that doesn't make sense, you need to explain that.
4 And so we explained it by stating what you called the
5 fact that he had admitted this, so it was brief and to
6 the point and nonspecific.

7 Q Thank you for that explanation, Mr. MacKenzie. May we
8 go on to paragraph 7 now of the guidelines. Now,
9 paragraph 7, we had some discussion by you yesterday
10 on direct about this last sentence of paragraph 7, "No
11 allegation shall be accepted as fact unless it is
12 admitted to be true or it is supported by witnesses".
13 And in discussing that language, I think you stated
14 that you, you even said that in your opening
15 statement; is that correct? I'm not sure whether you
16 said that. Did you say that in your opening
17 statement?

18 A I didn't read all of the guidelines. I did refer to
19 them at the beginning of the hearing in my opening
20 statement and no one objected to any of the guidelines
21 and they all submitted to the jurisdiction of the
22 committee by appearing without challenge to us, so it
23 was accepted by everyone.

24 Q I understand that, but my question is did you refer in
25 your opening statement to the fact that accusations

1 must be proven by witnesses or by admissions?
2 A Again, I would have to review my notes to refresh
3 memory.

4 Q Please do so. I'll direct your attention to page

5 A Yes, I read this to the committee in my opening
6 statement and it is not identical language to
7 Guideline 7 but it refers to the same substance.

8 Q Now, referring you to page 5 of your notes, my
9 question is did you in fact even use the term
10 "eyewitness testimony" at one point during your
11 opening statement?

12 THE COURT: Eyewitness?

13 MR. WIGGINS: Eyewitness.

14 A Yes, I did.

15 Q Now, did you admonish or tell Pastor Barnett that
16 should tell the truth even if Mr. Zwack could not
17 establish the truth of some of his allegations through
18 witnesses?

19 A Through eyewitness because Mr. Zwack had alleged
20 his original letter to us appealing to us to please
21 something, that much of the nature of his complaint
22 would be sexual misconduct and, of course, I knew
23 there's not going to be eyewitnesses in the bedrooms
24 of hotels itself with Mr. Barnett who will testify
25 that this happened. And so we broadened the term

MackENZIE - Cross (By Mr. Wiggins)

1 witness beyond what your civil rules would say to what
2 we meant which included statements made by all members
3 of the committee.

4 Q Well, let's talk a little bit about what you meant by
5 the term witness. First of all, this requirement that
6 allegations must be proven by witnesses, plural,

7 witnesses in these biblical contexts for the discipline of

again, please? ... how'd you word the question

ereupon, the requested (Wh
tion of the record was por
d by the reporter.) rea

Let me restate the question

to confuse you, this is not a 12 question. I don't mean t

13 quiz show or something.

14 like to ask you what you meant Mr. MacKenzie, I'd l

15 of guidelines and what the by witnesses in this set

16 s and what Pastor Barnett elders meant by witnesses

17 meant by witnesses.

18 A Everyone agreed --

19 Q Well, I want to ask you t

20 there Biblical precedent

21 an accusation against cer

22 A I'm sorry, I'm going to a

23 more time so I make sure

24 question before I answer

25 Q Is this a verse in the Bi

MacKENZIE - Cross (By Mr. Wiggins)

1 accusation against an elder should not be accepted
2 unless it is proven or established by the testimony of
3 two or more witnesses?

4 A That is not a quotation from the Bible, no.

5 Q Would you like me to read a quotation? Would you be
6 more familiar or comfortable with that?

7 A I'll answer any question you ask me.

8 Q Did the committee consider 1 Timothy 5:19 to be an
9 important verse in guiding the conduct of these

10 ~~discussions or these hearings?~~

11 A Yes.

12 Q And do you have that memorized?

13 A No, I don't, I would have to look it up.

14 Q What version would you like? How about the King
15 James; is that okay?

16 A That's fine.

17 Q You can disregard the marginal notation in that.

18 A Depends upon the denomination of the writer, I
19 suppose.

20 Q You've got me there. Would you read for us 1 Timothy
21 5:19.

22 A "Against an elder receive not an accusation but before
23 two or three witnesses."

24 Q All right, thank you. Now, Mr. MacKenzie, let's talk
25 about witnesses and what your understanding of

18

1 witnesses is and what you meant when you wrote witness
2 in this document. Is it correct that a witness is
3 someone who hears something or sees something or
4 otherwise senses something?

5 A Are you asking me for a legal definition or what I
6 thought when we wrote the guidelines? Can you narrow
7 your question?

8 Q I'm asking you what you thought when you wrote the
9 guidelines and what you believe the committee thought
10 when you wrote the guidelines and you adopted them.

11 A We took it to mean anyone with direct or indirect
12 information about Don Barnett's bad conduct.

13

14

15

16

17

18

DELETED MATERIAL FILED UNDER SEAL

19

20

21

22

23

24

25

MackENZIE - Cross (By Mr. Wiggins)

1 Q He did say both adultery and sexual contact?

2 A Yes.

3 Q Now, let's call her X, just any one of the people, I
4 don't care about the identity, let's call them X.

5 A Right.

6 Q Would Jerry Zwack then, if he testified that X came to
7 him and said that I committed adultery with Pastor
8 Barnett, would in your interpretation of what the
9 guideline meant, would Jerry Zwack be a witness to the
10 adultery?

11 A Yes. We accepted him as a truthful man that was
12 giving information to the committee, direct or
13 indirect, about sexual conduct Donald Barnett had with
14 various women.

15 Q Did any women come and testify before the eldership?

16 A No, we tried as much as we could to keep the
17 information within the committee so that it wouldn't
18 be spread. That was the thinking of the committee.

19 Q All right, we'll come back to that, but I want to
20 continue this line of questions. Now, if X had come
21 and testified to adultery, if X, the woman, had
22 testified to adultery, and if Mr. Zwack had also
23 testified that X told him about the adultery, how many

24 ~~witnesses would that make that testify before the~~

25 committee to the adultery?

1 A That never happened. I would have to speculate about
2 what the committee would have decided had we discussed
3 this possibility and what the committee would have
4 concluded we would regard that kind of testimony as.
5 It never happened. I don't know what the committee
6 would have decided. We would have to reconvene the
7 committee now and ask them what would you have decided
8 had you debated this matter, but we never did that.

9 Q Okay. Well, you wrote the guidelines. How many
10 witnesses would you think that made?

11 A Well, I was a member of a committee, I didn't act
12 alone, and so the guidelines were adopted by a
13 committee and we would have to discuss that as a
14 committee and come to a committee decision as to how
15 many we would have regarded that to be.

16 Q Well, Mr. MacKenzie, I'm asking you for your
17 interpretation of witnesses. You drafted these
18 guidelines, I'm asking for your interpretation.

19 A Not as a member of the committee now, you're asking me
20 as a person what do I think, not as a member of the
21 committee?

22 Q I'm asking you based on what your understanding was of
23 the term witnesses when you wrote these guidelines.

24 A I have already stated that, it meant anyone with
25 direct or indirect information about Donald Barnett's

1 bad comment.

2 Q I'm asking you based on your understanding of what you
3 thought witnesses meant when you wrote these
4 guidelines if X came and testified to the committee
5 that she had committed adultery with Pastor Barnett
6 and Jerry Zwack testified that X had come to him and
7 stated that she committed adultery with Pastor
8 Barnett, how many witnesses would there be to the
9 adultery?

10 A One, because in your hypothetical there you didn't say
11 Jerry Zwack told the committee anything.

12 Q Well, let's add that fact to the hypothetical. Then
13 how many witness would there be?

14 A Well, I could speculate about this and say perhaps the
15 committee would have decided that that would
16 constitute two, but there would only be one sin
17 involved and we didn't -- I don't know, it's hard to
18 answer that question because it never happened and
19 it's pure speculation. I don't know.

20 Q Sir, I really don't mean to call for speculation and I
21 don't mean to call for what the committee would have
22 done, I'm asking you for your interpretation based on
23 your understanding of witnesses when you wrote the
24 guidelines. If your answer is you don't know, that's
25 fine. I don't mind that answer, but I'm looking for

1 the answer.

2 MR. SHAPIRO: Your Honor, is that a question
3 or is that a speech by counsel? I didn't know there
4 was a question pending.

5 THE COURT: If you don't know, say you don't
6 know. This is a long time around for this.
7 Apparently he isn't getting it.

8 MR. SHAPIRO: I'm not so sure the witness
9 understands the question is the problem, Your Honor.

10 THE COURT: Well, it involves a mixed
11 question of law and lay understanding of what a
12 witness is.

13 MR. SHAPIRO: Then I would object. It
14 therefore calls for a legal conclusion.

15 THE COURT: He is asking this witness what

19
word witnesses means in this
it never occurred in the first
place -- I mean that issue never
not sure what the committee would
personal feelings. I gather he is

The problem with the question,
's objectionable is because it's
all, it's speculative and
follow up with the fact that there

16 witnesses means, the w
17 guideline and he says
18 place. In the second
19 occurred. Plus he's r
20 decide plus his own pe
21 saying he doesn't know

22 MR. SHAPIRO:
23 Your Honor, and why it
24 imperfect. First of a
25 secondly it doesn't fo

1 were elders there who also gave information about
2 women that would come to them. If he wants to include
3 that additional fact and whether or not those people
4 are witnesses, then that would close up what is an
5 imperfect hypothetical.

6 THE COURT: Your Honor, I'd be happy to
7 accept that invitation. I would like to say I regard
8 this as a very critical part of our case because we
9 think that a critical issue here is whether they
10 followed these guidelines in what they did and these
11 are the guidelines. Pastor Barnett had an
12 understanding of the guidelines. This man had an
13 understanding of the guidelines. And I'm trying to
14 get at that understanding, and I apologize if my
15 questions are inartful, but I am trying to get at
16 this.

17 Q (By Mr. Wiggins) Now, let's take Mr. Shapiro's
18 suggestion and talk about elders who were at the
19 hearing. Was Lanny Peterson, for example, one of the
20 elders at the hearing?

21 A Yes.

22 Q And let's launch a new hypothetical. Let's suppose
23 that X went to Lanny Peterson and told Lanny Peterson
24 she had committed adultery with Pastor Barnett. And
25 then let's suppose that X came in and testified before

MackENZIE - Cross (By Mr. Wiggins)

1 the committee hearing. No, we don't want to do that
2 because Mr. Shapiro wants to know about the elders.
3 Let's suppose Mr. Zwack said to the committee in the
4 hearings X came to me and said she committed adultery
5 with Pastor Barnett. Then Lanny Peterson said to the
6 other elders X came to me and said that she committed
7 adultery. Based on your word of witness when you
8 wrote these guidelines, would there be one witness,
9 two witnesses. how many witnesses before the

10 committee?

11 A Two.

12 Q All right. So, in your interpretation, this Biblical
13 injunction, that an accusation has to be proven by
14 two or three witnesses is satisfied if a person repeats
15 the accusation to two different people who then come
16 and testify to the accusation; is that correct?

17 MR. SHAPIRO: I'll object to the form of
18 question, it mischaracterizes this witness's
19 testimony. He did not say that the guidelines were
20 solely from that Biblical passage and he didn't say

21 that his understanding was solely from that Biblical
22 passage, so it mischaracterizes his testimony.

23 THE COURT: If it was, if it was based
24 solely on that Biblical passage, what would your
25 answer be?

MACKENZIE - Cross (By Mr. Wiggins)

1 THE WITNESS: If it were -- I guess I lost
2 your question in the discussion.

3 Q (By Mr. Wiggins) All right, here it is. Here's my
4 question. If the guideline referring to witnesses was
5 based on the Biblical passage which you read to us
6 earlier, 1 Timothy 5:19, I'm asking for your
7 interpretation of the word witness. Would that
8 interpretation be that you have two or more witnesses
9 to the accusation of adultery if a person relates to
10 two different people that there has been adultery and
11 those two people come in and testify to the fact that
12 they are told there was adultery? Do you have two

1 further evidence or it would make it stronger that it
2 happened. We would assume that those elders would
3 have questioned the woman sufficiently to learn any
4 discrepancies, et cetera, and if they themselves in
5 their own mind had dismissed the complaint they
6 wouldn't have mentioned it as a witness so it must
7 have had some validity in their mind or they wouldn't
8 have brought it up.

9 Q So, whether a particular elder would be a witness
10 really depends on that elder's impression of whether
11 the accuser is telling the truth; is that right?

12 A For the purposes of hearing, we allowed all the elders
13 to submit information to the committee that they knew,
14 and yes.

15 Q Now, if X had come and testified before the committee
16 and all the committee believed her, you would then
17 have 16 witnesses to the adultery; is that correct?

18 MR. SHAPIRO: Object to the form of the
19 question, it's misleading.

20 A That never happened. We didn't have any live women
21 come in and speak in person, it didn't happen. We
22 didn't want that.

23 Q (By Mr. Wiggins) Now, did you contemplate that
24 witnesses other than Pastor Barnett, Jerry Zwack, and
25 the elders might come in and testify when you wrote

1 these guidelines?

2 A I remember the subject came up for discussion and we
3 decided that it would be better not to do that and so
4 we decided not to do that.

5 THE COURT: I understand the answer to mean
6 that they did not expect live witnesses other than
7 those.

8 A That's right. We knew they would not come in because
9 we discussed the subject and agreed not to, so we
10 didn't mean third parties coming into the room and
11 talking when we wrote that. That's not what we meant.

12 Q All right, thank you.

13 (Luncheon break taken.)

14 THE COURT: You may proceed.

15 MR., WIGGINS: Thank you, Your Honor.

16 Q Mr. MacKenzie, before lunch we were talking about
17 about Guideline No. 7 of Exhibit 23 which discussed
18 the meaning of the term witnesses and I am now
19 finished with that, but I'd like you to keep the
20 guidelines before you, Exhibit 23. I'm through with
21 Guideline 7, I'd like to talk about Guidelines 4 and
22 5.

23 Now, Guidelines 4 and 5, I believe you described
24 to us yesterday the two phases that the hearings
25 consisted of, namely an opening and then a second

1 phase of rebuttals and answers; is that correct?

2 A Yes, the second phase included more than just
3 rebuttals and answers.

4 Q Does Guideline 5 say anything else other than
5 rebuttals and answers as being part of the second
6 phase?

7 A No.

8 Q Then Guideline 5 in your testimony is incomplete,
9 there's something else?

10 A Yes, the exclusive eldership review session is
11 mentioned in Guideline 11.

12 Q Oh, is that part of the second phase?

13 A Yes, I would say the second phase lasted all the way
14 until March 4 when Donald Barnett was put out. We had
15 phase one which was direct testimony by Jerry Zwack
16 and Don Barnett and then phase two which consisted of
17 rebuttals by both men and then exclusive eldership
18 review sessions where we reviewed the testimony, the
19 rebuttal, and any other additional information the
20 elders could throw in the pot.

21 Q Now, the only reference to presenting evidence or
22 information in phase two is in Guideline 5; isn't that
23 correct?

24 A The only reference in the world or the only reference
25 on this piece of paper do you mean?

1 Q Well, let's confine ourselves to this piece of paper
2 so we can finish by 3:30.

3 A Okay. I believe that's correct, yes.

4 Q And the only reference on this piece of paper to
5 presentation of evidence or information says in the
6 first sentence here this consists of rebuttal and
7 answers to rebuttal by the two parties; doesn't it?

8 A Yes.

9 Q Does it say anything about presentation of evidence or
10 information by the elders?

11 A No, it doesn't use the word information anywhere in
12 it.

13 Q ~~Does it say anything about information that the elders
14 could throw into the pot?~~

15 A ~~No.~~

16 Q ~~The fact, in Guideline 5 the only reference about the
17 elders is the questioning by the elders and, of course,
18 regulations by the moderator; isn't that correct?~~

19 A Within Guideline 5; that's correct.

20 Q Do you want to look at Guideline 9?

21 A Yes, I really would like to look at Guideline 7, but
22 if you're directing me to look at 9 I'll look at 9.

23 Q Do you think that Guideline 7 is relevant to this
24 question of who can present testimony?

25 A Sure, because the elders --

MACKENZIE - Cross (By Mr. Wiggins)

1 Q Excuse me, your answer is sure, you think it is
2 relevant.

3 A I think all of these guidelines --

4 Q Excuse me, I asked you do you think that Guideline 7
5 is relevant to the question of who can present
6 evidence.

7 A Yes, because --

8 Q Yes, thank you.

9 MR. SHAPIRO: Your Honor, can the witness
10 finish the question?

11 THE COURT: Well, he said but. But what?

12 THE WITNESS: I said yes, but the
13 investigation that the elders did to me included any
14 studying or anything they did in the evenings and they
15 may come back and present information to us based upon
16 their research and thinking and pondering the problem.
17 And so that pertains to them submitting information,
18 the fact that they were authorized to investigate, to
19 me it did then and it does now.

20 Q (By Mr. Wiggins) Let me ask you a slightly different
21 question, Mr. MacKenzie. Jerry Zwack would present

22 information in that hearing and by that time, based on the information

23 an opportunity to answer Jerry Zwack's information; is

24 that correct?

25 A Yes.

20
1 Q And Pastor Barnett had an opportunity to rebut Jerry
2 Zwack's information; is that correct?

3 A That's correct.

4 Q And Jerry Zwack had a similar opportunity to answer
5 and rebut Pastor Barnett's information; is that
6 correct?

7 A Well, I wouldn't segment it into answer and rebut
8 because his original complaint wasn't really an answer
9 to Don, it was his initial statement on the subject.

10 Q But Jerry Zwack did have an opportunity to respond in
11 some way to the information presented by Pastor
12 Barnett.

13 A Yes in the rebuttal part of phase two.

14 Q And the reason you give a party or the reason you gave
15 Pastor Barnett an opportunity to respond or answer and
16 rebut information presented by Jerry was so that
17 Pastor Barnett could present his side of the case
18 knowing what Jerry Zwack had charged; is that correct?

19 A Um-hmm (Affirmative).

20 Q You have to answer audibly for the court reporter.

21 A Yes.

22 Q Now, is there anything in these guidelines that says
23 that information can be presented by the elders that
24 Pastor Barnett will not have an opportunity to answer
25 or rebut?

... didn't write anything like that in the
lines.

... you. Did anyone say to Pastor Barnett that the
... would present information or evidence which he
... not be privy to and which he would not have an
... tunity to rebut?

... t know what everyone told Donald Barnett, I
... se you'd have to ask each person.

... start with you. Did anybody tell Donald Barnett
... ur presence or did you tell Pastor Barnett that
... lders would be able to present information or
... nce against Pastor Barnett that he would not hear
... ould not have an opportunity to rebut?

... unless it's covered by Guideline 11, I would say
... ut he was certainly aware that we were going to
... exclusive eldership review sessions not including
... f and, obviously, he would know that would mean
... e's not there to answer what we discussed in our
... gs. So, he was aware of that, yes.

... was aware that there would be exclusive
... ship review sessions, but other than that, no one
... n your presence to Pastor Barnett that the
... would be presenting evidence or information
... e would not hear and would not have an
... nity to answer or rebut?

1 A No, w
2 guide
3 Q Thank
4 elders
5 will
6 opport
7 A I don
8 suppos
9 Q Let's
10 in you
11 the el
12 eviden
13 and wo
14 A Well,
15 no, bu
16 hold e
17 himsel
18 that h
19 meetin
20 Q So, he
21 elders
22 said i
23 elders
24 that h
25 opport

1 A No one said that in those terms in my presence; that's
2 correct.

3 Q Thank you. Now, what were the elders to review in the
4 exclusive eldership review sessions?

5 A The charges by Jerry Zwack which were brought and in
6 the review sessions everyone contributed what they
7 knew on the subject.

8 Q That is what you've testified happened during the
9 review sessions.

10 A Right.

11 Q The word review, I'm asking you about your
12 understanding of the word review when you wrote these
13 guidelines. Does the word review mean that something
14 has occurred and you were looking back at something
15 that's already been presented?

16 A Yes, and we talked about it. And as we talked about
17 it, people said, oh, and I also know this about that
18 that Jerry didn't mention.

19 MR. WIGGINS: Your Honor, I move to strike
20 that part because this is totally unresponsive. He is
21 not telling me what the word meant, he is now reciting
22 once again what happened.

23 THE COURT: Well, do you need any better
24 explanation of what the word meant?

25 MR. WIGGINS: I think not from this witness,

1 I don't think I do. I'll move on. I don't think that
2 I need that.

3 Q (By Mr. Wiggins) Now, Mr. MacKenzie, after Pastor
4 Barnett and Jerry Zwack had presented everything that
5 they presented and you met as elders, did you make any
6 kind of findings?

7 MR. SHAPIRO: Object to the form of the
8 question unless counsel defines what he means by
9 findings. It's vague and very ambiguous.

10 THE COURT: Would you express findings? You
11 and I and Mr. Shapiro understand what we mean by
12 findings, but I'm not sure that this witness does.

13 MR. WIGGINS: I guess, Your Honor, I'm at a
14 little bit of a loss and I'm using a term he used in
his deposition. I'd be happy to show him his

d ask him about the term. Maybe that is

oceed, but that's the reason I'm asking
in that form.

E COURT: Well, the word findings has a
peculiar unique meaning to us that may not
d by many people.

ins) During the eldership review
d you make or enter, make any kind of
t you would consider to be a finding?

11 standard upon what you're calling

25 A Well, again, it would

16

17

18

19

20

21

22 Q

23

24

deposition an

the way to pr

the question

THE

distinctive p

be understood

(By Mr. Wigg

sessions, di

decision tha

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

a finding.

Q And did you make any that you would call a finding?

A That would be one way to express it, I suppose. We made decisions based upon what we concluded Don Barnett did as far as conduct. And so when we decided what it was that he did as conduct we had to design appropriate censure for that conduct. And so if you call reaching the conclusion of what it is he did factually a finding, then I would answer, yes, we did do that.

Q Let's use that as a working definition, the conclusions of what Pastor Barnett did factually, let's use that. That's the term I'd like to use for finding; is that acceptable?

A Yeah. By facts, I don't mean absolute facts in time and space, I mean facts as presented to the committee.

Q All right. In reaching your findings, did you rely on the evidence that was presented by the elders during the exclusive eldership review session?

A Boy, it's difficult for me to remember exactly everything we did because we met so many times and so many people said so many different things over all those days, 16 men in a room and they're all talking one at a time. It's difficult for me to remember exactly what we did and didn't use. We used

1 everything everyone said.

2 Q So, in making your findings, is it your testimony that
3 you used the evidence given you by the elders during
4 the exclusive eldership review sessions as well as the
5 evidence given my Pastor Barnett and by Jerry Zwack?

6 A Well, it depends again on what you mean by used. It
7 was in my mind, so it would be difficult for me to

8 ~~make decisions without it being since it~~
was there, so I guess in that regard I used it. It
was part of our contemplation.

MR. WIGGINS: Okay. Now, Your Honor, I'm
not sure what procedure we're using with these
depositions that are sealed. Do we just open them and
use them that way?

THE COURT: I think that's what you did, Mr.
Rohan.

MR. ROHAN: That's right, Your Honor.

THE COURT: As far as I'm concerned, the
rule with respect to opening and publishing
depositions is rather artificial and is abused more
than it's followed. I see no reason why with notice
to all we can't open any deposition that is in the
providence.

MR. WIGGINS: All right, Your Honor, I will
open it.

MackENZIE - Cross (By Mr. Wiggins)

1 THE COURT: Let the record show Mr. Wiggins
2 is opening the deposition of this witness.

3 (Deposition published of
4 Russell MacKenzie, dated
5 October 19, 1990.)

6 Q Mr. MacKenzie, do you recall that your deposition was
7 taken in this case on October 19, 1990?

8 A Yes.

9 Q Mr. Johnson here on behalf of Pastor Barnett asked you
10 questions during the deposition?

11 A Yes, he was very kind and nice to me and I appreciated
12 that.

13 Q I'm glad to hear that. And were you under oath at the
14 time of the deposition?

15 A Yes.

16 Q Now, I would ask you, I've handed you your deposition
17 taken on October the 19th, 1990 and I'd ask you to
18 turn to page 35 of your deposition. I'm handing the
19 Court a copy of the deposition. Page 35 is the page
20 I'm referring to.

21 MR. SHAPIRO: Your Honor, if I may look on
22 with the witness. What line, counsel?

23 Q (By Mr. Wiggins) Page 35, I'm going to begin on line
24 24 and I would like you to read questions and answers
25 beginning on line 24 down through page 36, line 15.

1 Do you see where I mean?

2 A Yes.

3 Q Would you read those, please.

4 A Okay.

5 Q Question, by Mr. Johnson: Did anyone provide any
6 facts to the eldership during this period of time that
7 were not facts that had previously been provided to
8 the eldership by either Pastor Barnett or Jerry Zwack?

9 Answer: Yes.

10 Question: During that -- Answer: Excuse me.

11 By facts, I mean something which they stated.

12 Question: Alleged? Answer: Yeah, alleged to be
13 true.

14 Question: That's what I'm referring to. Is that
15 what you're referring to? Answer: Yes.

16 Question: Were Pastor Barnett or Jerry Zwack or
17 either of them or both of them present when that
18 occurred? No. And those facts were not used as a
19 part of the findings. They were brought up during
20 discussion.

21 Q Now, were those questions asked and were those the
22 answers you gave?

23 A I believe so, yes.

24 Q Would you read beginning on line 16 through page 37
25 line three, the next question and answer, please.

1 A When you say were not used as part of the finding,
 2 please tell me what you mean by your words the
 3 finding? I mean at the end of the exclusive eldership
 4 review sessions without Don and without Jerry, Don was
 5 found to be guilty of offenses which our church laws,
 6 rules, past practices required disfellowship for. And
 7 so the finding is the fact that based solely on his
 8 own admission and not these additional facts. Do you
 9 know what I mean by additional facts? Those ones
 10 brought by the other people during phase two. The
 11 finding was reached that Don Barnett should be
 12 disfellowshipped.

13 Q And was that the question that was asked and the
 14 answer that you gave?

at the time that you were
 question?
 moment ago, this other
 and it was used in the sense
 and if that modifies this,
 that's how I recall it right
 I take the deposition back.
 questions based on the

15 A I believe it was, yes.

16 Q Was that true and correct a
 17 asked and answered that que

18 A I believe so. As I said a
 19 material was in my mind and
 20 that it was in my mind. An
 21 then it modifies it, and th
 22 now.

23 Q All right, thank you. I'll
 24 I don't have any other ques
 25 deposition.

MackENZIE - Cross (By Mr. Wiggins)

1 I'd like to refer you, Mr. MacKenzie, to Exhibit
2 33 which we discussed earlier. Exhibit 33 I believe
3 you testified was the, did you say minutes of the
4 March 3 session of the eldership?

5 A No.

6 Q How did you characterize Exhibit 33?

7 A I never characterized it.

8 Q What is it?

9 A It is a piece of paper that says eldership meeting on
10 the top and it records the fact that ten men voted to
11 disfellowship Don.

12 Q Are these minutes of the meeting that the eldership
13 held on March the 3rd, 1988?

14 A It depends on what you mean the eldership meeting that
15 was held on, that day because there's a committee
16 meeting is what's going on, but we wanted to make
17 sure, as I testified earlier, that the elders' part of
18 the committee was not accused of being manipulated by

19 one senior elders part of the committee. An

20 addition to voting as the 16 member committee

21 the elders subsequently held this vote to pro

22 ourselves from that later charge which some m

23 expressed a concern might be lodged by Don Ba

24 Q So, does Exhibit 33 reflect only a vote by th

25 elders?

1 A Yes, I believe so.

2 Q Referring you to Guideline No. 11, this is in Exhibit
3 23, doesn't that say that final decisions regarding
4 each grievance should be determined by the majority
5 vote of all elders present at the exclusive review
6 session?

7 A Yes, we did that.

8 Q This particular vote though was not a majority vote
9 of all elders present at the exclusive eldership
10 review session; is that right?

11 A Right, this is an initial act in addition to that.

12 Q All right. So, this isn't an act of the 16 elders
13 holding the eldership hearings pursuant to these
14 guidelines, is it?

15 A I don't believe it was, no. I think this is the piece
16 of paper that we used to show that in addition to
17 acting as a committee we were trying to make sure that
18 Don could not accuse us of putting him out through
19 some wrong method like the senior elders put us up to
20 it. He was accusing us of enacting some kind of a
21 power play. I called it a communist-style takeover
22 movement and he had derogatory language and we didn't
23 want to be accused of that kind of a thing.

24 MR. WIGGINS: Excuse me, Your Honor, I think
25 he has answered the question whether this was a vote

MackENZIE - Cross (By Mr. Wiggins)

1 of the 16 elders pursuant to the guidelines. I think
2 he has answered that and we're just rambling at this
3 point.

4 THE COURT: You may move to strike.

5 MR. WIGGINS: I move to strike everything
6 after he said that's right, that document, this
7 Exhibit 33 --

8 THE COURT: The Court will accept that
9 answer to the question with his explanation of what it
10 is that he means by what he says.

11 MR. WIGGINS: Thank you, Your Honor.

12 THE WITNESS: I didn't finish my
13 explanation.

14 MR. WIGGINS: Your Honor, I guess I just ask
15 for your ruling on whether he may finish his
16 explanation. I didn't ask for it.

17 THE COURT: I'll hear what the witness has
18 to say.

19 THE WITNESS: So, I was saying that in
20 addition to the committee acting because of Don's
21 charges that the senior elders were somehow enacting
22 this secret attempt to oust him from power. And he
23 called it a coup and other names like that. We wanted
24 to show him, no, they are not putting us up to this.
25 We all believe it. We believe it separately, we

MackENZIE - Cross (By Mr. Wiggins)

1 believe it together, we believe it individually.

2 THE COURT: I understand what you are
3 saying.

4 THE WITNESS: Okay, thank you.

5 Q (By Mr. Wiggins) Mr. MacKenzie, you prepared Exhibit
6 33 then to document this vote that the ten men took;
7 is that correct?

8 A No, I did not prepare this document.

9 Q This document was prepared to document the fact that
10 these ten men voted in this way on March the 3rd; is
11 that correct?

12 MR. SHAPIRO: Object to the form of the
13 question, calls for speculation due to the fact the
14 witness just answered he didn't prepare this document.

15 Q (By Mr. Wiggins) I'll withdraw the question. All
16 right, my next question is this. Was any document
17 prepared to reflect or document a vote by the 16 as a
18 group on March the 3rd?

19 A Yes.

20 Q And did that letter or that document, did it say at
21 the top "eldership meeting"?

22 A No.

23 Q Did it have a vote recited on it, approved by a
24 certain margin?

25 A I don't believe so. The document I'm referring to is

MackENZIE - Cross (By Mr. Wiggins)

1 the March 4 committee letter disfellowshipping Don.

2 Q All right. You don't know of another document that

3 reflect a vote by the entire 16 elders that is in the
4 same format as this document which is Exhibit 33; is
5 that correct?

6 A No, I don't. I didn't prepare documents that were
7 this format, so if it was done and handed to me to
8 sign I would have signed it. But we had no secretaries
9 taking minutes, et cetera, so someone else in the
10 committee undertook to record these votes in this
11 manner. The committee's action was the one
12 disfellowship letter and we, of course, decided that
13 the other two letters should also be written. Those
14 were our disfellowship documents.

15 Q All right. Now, this document, Mr. MacKenzie, Exhibit
16 33 refers to a recommendation by David Motherwell to
17 disfellowship Pastor Barnett; is that correct?

18 A Yes.

19 Q And it states that you are passing, that these ten
20 people are passing the recommendation on to the senior
21 elders also recommending that Pastor Barnett be
22 disfellowshipped; is that correct?

23 A Right.

24 Q And someone was concerned enough about making sure
25 that you documented the vote by these ten people to

1 prepare this document; is that correct?

2 A Right, because the concern was that Don would charge
3 us of going along with what he called the senior
4 elders' power play. There was no such power play, but
5 just to cover that problem this was made, someone's
6 idea, I don't remember whose.

7 Q Did the committee decide that this document should be
8 prepared?

9 A I don't remember.

10 Q The ten elders here are recommending to the senior

11 ~~||~~ ~~||~~ elders that Pastor Barnett should be disfellowshipped

12 because the ten elders didn't have power or authority
13 to disfellowship Pastor Barnett; isn't that correct?

14 A No. They had power under the special agreement to do
15 anything they needed to solve the problem. But since
16 they had already made their vote and decision as a
17 committee, this was our advice to the senior elders
18 evidence that we agree with what you're doing. You
19 didn't make us do anything. We did this on our own
20 and we're telling you now you need to do this as board
21 members.

22 Q You just referred to the special agreement. Are you
23 referring to the January 25 agreement signed by Pastor
24 Barnett?

25 A Right.

1 Q Did that January 25 agreement authorize these ten men
2 who signed Exhibit 33 to act to disfellowship Pastor
3 Barnett as a group of ten?

4 A Not as a group of ten, but as members of the
5 committee, sure.

6 Q And you have testified already just a few minutes ago
7 that this Exhibit 33 was not a decision of the entire
8 committee, did you not?

9 A Now, say the question again.

10 Q You just testified a few minutes ago that this Exhibit
11 33 was not a decision of the entire committee of 16,
12 didn't you or isn't that true?

13 A I don't understand what you're saying. Are you saying
14 the decision made by ten was not a decision of the 16,
15 because it's, a decision of ten? What are you asking
16 me?

17 Q I think you have answered the question, sir. The
18 agreement of January 25 authorized 16 people to act as
19 a group.

20 A Right, and we did that and then when that was finished
21 our next item of business was this.

22 Q Let me ask you a question then, perhaps this is
23 susceptible to an answer by yes or no. This document,
24 Exhibit 33, is not a decision or an action of the 16
25 as a group; is it?

MACKENZIE - Cross (By Mr. Wiggins)

1 A No. I think this is what I said it was. It's not the
2 16 as a group telling the senior elders, it's ten of
3 the group telling the senior elders.

4 Q All right. Thank you. Now, I'd like to refer you to
5 Exhibit 34 which is the letter of March 4 signed, I
6 believe, by all 16; is that correct?

7 A Yes.

8 Q And this letter here, the second paragraph which you
9 read, said that the elders, not including the senior
10 elders, voted unanimously to put you out of the
11 church; is that correct?

12 A Yes.

13 Q Now, the elders voting without including the senior
14 elders, that's not the committee of 16, is it?

15 A No.

16 Q That's a different group of people; isn't it?

17 A Yes.

18 Q And the January 25 agreement empowered the 16 people
19 to act as group; didn't it?

20 A Yes.

21 Q And the guideline, Guideline 11, said that the action
22 will be taken by a majority vote of all the elders
23 present; didn't it?

24 A Yes.

25 Q And you go on to say in the first sentence of the

1 was not in the purview of the committee.

2 Q I'm not asking you what was in the purview of the
3 committee. My question to you is at the time Exhibit
4 33 was written and at the time Exhibit 34 was written,
5 March 3rd and March 4th, 1988, the eldership
6 recognized that the senior elders had no authority to
7 disfellowship Pastor Barnett without amending the
8 bylaws; isn't that true?

9 MR. SHAPIRO: Object to the form of the
10 question, calls for speculation.

11 THE COURT: He may answer to his own
12 understanding.

13 A When we made the recommendation to them, it would be
14 up to them to decide whether they could or not. We
15 believed they could. We said they will vote and act
16 on it and, of course, we believed that they would act
17 on it by disfellowshipping him as the board, just as
18 we were disfellowshipping him as the committee. But
19 that was their item of business, I didn't conduct
20 that. I wasn't a member of the board.

21 Q Mr. MacKenzie, my question had to do with the power or
22 the authority of the senior elders to disfellowship
23 Pastor Barnett without amending the bylaws and my
24 question was when this document was written, isn't it
25 true that the eldership recognized that the senior

1 elders did not have the power to disfellowship Pastor
2 Barnett without amending the bylaws; isn't that true?

3 A I don't believe that's true.

4 MR. SHAPIRO: I'd object, asked and
5 answered, it's argumentative.

6 MR. WIGGINS: It has been asked, it has not
7 been answered.

8 THE COURT: He says he doesn't believe it's
9 true.

10 A I was just going to say any counselor could
11 disfellowship anybody on the spot, for example, or
12 they were authorized under that special agreement to
13 disfellowship him at least in terms of acting as a
14 member of the group, and so there are ways that they
15 could disfellowship him. So, I don't know how to
16 answer other than just to say, no, they could
17 disfellowship him. Of course, they could and they
18 did.

19 Q Mr. MacKenzie, I don't know if you testified to this
20 but on or about April 21, 1988 did you author a letter
21 perhaps 20 or more pages in length directed to members
22 of the congregation from the eldership of Community
23 Chapel?

24 A Yes.

25 Q Were you the author of that letter?

of the letter. Other people helped me work on it
Yeah, basically.

THE COURT: Do I know what you're talking

MR. WIGGINS: I don't believe it's been
or admitted or anything, Your Honor.

THE COURT: I wondered if I knew what you
talking about, I don't.

(By Mr. Wiggins) Well, let's talk about that letter.

10 You authored a letter to members of Community Chapel

11 on or about April 21, 1988; is that correct?

12 A Right, the letter is dated April 21, 1988.

13 Q And it went out to members of Community Chapel and it
14 went out on behalf of the eldership; is that correct?

15 A Right.

16 Q And there are several statements --

17 THE COURT: This is the group of elders --

18 Q (By Mr. Wiggins) Well, what elders are included in
19 the eldership on whose behalf you penned that letter?

20 A It's the eldership of Community Chapel.

21 Q So, this is more than just the senior elders.

22 A Right.

23 Q This is other elders, this is a different group than
24 from the 16 elders who were empowered to hold
25 hearings; is that correct?

1

A

Most o

2

but, ye

3

4

about?

5

6

marked

7

8

were ta

9

O

(By Mr.

MackENZIE - Cross (By Mr. Wiggins)

1 A The hearings are over, Don is out. We are now elders
2 without Don and without a committee convened anymore.
3 Phase two was over and the hearing was over and we had
4 acted and Don was gone, he was removed.

5 Q All right. Now, Mr. MacKenzie, didn't you say in this
6 letter several times that the senior elders did not
7 have power to disfellowship Pastor Barnett without
8 amending the bylaws? If you'd like a specific page
9 reference, I can give it to you, but I'm asking you if
10 that's your recollection. I can tell you where to
11 look, if you'd like.

12 A Okay. Can you tell me where to look, please?

13 Q Page 10, answer to allegation 29.

14 MR. SHAPIRO: If counsel wants to admit this
15 as a document and identify it, so be it, but he can't
16 read from a letter without having it entered.

17 THE COURT: The question is did you write
18 such a letter that indicated that the senior elders
19 did not have the authority to do that?

20 Q (By Mr. Wiggins) Do you have a copy of the letter?

21 A I think I have one in this notebook. So, are we
22 saying that there's an objection that I can't look at
23 the letter until it's admitted?

24 Q I think you can look at the letter, I'm not offering
25 the letter. I don't particularly care to offer the

MackENZIE - Cross (By Mr. Wiggins)

1 letter.

2 THE COURT: You can look at the letter.

3 Q (By Mr. Wiggins) I'm just trying to be fair to you,
4 Mr. MacKenzie, so you can look at your own letter
5 before you answer the question.

6 A Well, I think the fair thing to do would be to take
7 the whole letter because it contains a lot of
8 information in it.

9 MR. WIGGINS: Your Honor, I move to strike

10 that.

11 THE COURT: You started the

12 so you have to live with it. I think

13 little editorial, not only on the qu

14 answers, and it's sort of a self-dee

15 could just keep the questions simple

16 simple.

17 THE WITNESS: I would appor

18 THE COURT: I will follow

19 doing.

20 MR. WIGGINS: I apologize.

21 THE WITNESS: I'm sorry to

22 we on?

23 Q (By Mr. Wiggins) I'm referring you

24 answer to allegation 29. I'm not as

25 it aloud, I'm asking you to read it

1 then I'll ask you the question again.

2 A Okay. What is the question?

3 Q I'll refer you to a few more places. Look at page 11,
4 the answer to allegation 32.

5 A Okay.

6 Q Page 14, the answer to allegation 43.

7 A Okay.

8 Q Now, my question to you, sir, is when you wrote a
9 letter on April 21st to the entire congregation on
10 behalf of the eldership, did you state in that letter
11 that the senior elders do not have the authority to
12 disfellowship Pastor Barnett without amending the
13 bylaws?

14 A No, that's not what these paragraphs you directed me
15 to say.

16 MR. WIGGINS: Your Honor, I'm going to need
17 a moment here to look at the rest of this letter. I'm
18 really surprised by this witness's answer.

19 Q All right, Mr. MacKenzie, you might as well look back
20 at page 10. Did you write in the letter that you
21 revised bylaws because they were contrary to scripture
22 inasmuch as the doctrine of ex-communication applied
23 to every individual on earth except Donald Barnett?

24 A Yes.

25 Q Did you write that once you knew that Don had to be

1 put out of the church you had to amend portions of the
2 bylaws so this scriptural action would be done legally
3 according to the laws of man?

4 A Yes, but that's in view of the prior sentence which
5 says this is a legal opinion of the attorney, so
6 that's where the opinion is, it's an attorney's
7 opinion that this is the case.

8 Q Now, let's look at page 17, allegation 56. Did you
9 write that the provision in the bylaws that the pastor
10 or president shall not be put out was one reason why
11 the senior elders found it necessary to revise the
12 bylaws?

13 A No, because that's not a provision in the bylaws, that
14 quotation came from the Donald Barnett letter. The
15 bylaws didn't say what Don Barnett said the bylaws
16 said. Do you follow me? That's not a quotation out
17 of the bylaws, that's a quotation out of the letter
18 Don wrote where he misstated what the bylaws said.

19 Q You characterized Pastor Barnett's statement as a
20 provision of the bylaws, did you not, in this answer?

21 A Yes.

22 Q And you state that this provision was one of the
23 reasons why the senior elders found it necessary to
24 revise the bylaws; is that correct?

25 A Yes.

1 Q Thank you.

2 MR. WIGGINS: Your Honor if I could take
3 just one moment here. I have no further questions.

4 THE WITNESS: May I ask one question for
5 clarification for my own purposes?

6 THE COURT: No, unfortunately you are left
7 to answering questions put to you unless it has to do
8 with something procedural. I mean I can answer a
9 question as to when you will be released from further
10 testimony.

11 THE WITNESS: No, it was a substantive
12 question.

13 MR. SHAPIRO: I'll be brief, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. SHAPIRO: ,

16 Q Mr. MacKenzie, Mr. Wiggins asked you about some
17 selected portions of a 20-some-odd page letter, did he
18 not?

19 A Yes.

20 THE COURT: We're talking now about the
21 last --

22 MR. SHAPIRO: This April 21, 1988 letter.

23 Q (By Mr. Shapiro) Now, the references he showed you
24 about the bylaws being changed, to the best of your
25 understanding was that based on the advice of counsel?

1 A The bylaw changes?

2 Q Yes, the rationale that was put in that letter.

3 A I guess so. I wasn't part of that. It was a senior
4 elder board member action and I wasn't on the board.
5 I don't know what their discussions consisted of, et
6 cetera.

7 Q But in terms of the references in the letter, I think
8 he pointed you to page 10?

9 A Yes.

0 Q For example, allegation 29. Is there a reference in
1 there about the attorney advising the changes to be
2 made?

3 A Yes.

4 Q Okay. It's not something that to the best of your
5 knowledge the eldership decided, was it?

6 A No, that's why I stated it would state it wrongly to
7 say we thought this was true. It was a legal opinion
8 from an attorney.

9 Q And that was the church's lawyer at that time?

10 A Yes.

11 Q Now, Mr. Wiggins also asked you about what is Exhibit
12 33.

13 A Yes.

14 Q Now, just so we're clear, was there a separate vote,
15 for want of a better term, of all of the 16 on the 3rd

MackENZIE - Redirect (By Mr. Shapiro)

1 about what the group of 16 wanted to do regarding
2 Donald Barnett?

3 A Yes. There was a vote which I called myself as
4 moderator. We indicated our votes by raising our hand
5 and all 16 men raised their hands and voted to
6 disfellowship Don as a group.

7 Q And this Exhibit 33, this second vote, was a vote of

8 just the ten regular elders; was it not?

9 A That's correct.

10 Q And that was subsequent to the vote of the 16; isn't
11 that right?

12 A That's correct. And it is the separate vote that I
13 was referring to in the first paragraph of the March 4
14 letter.

15 Q Now, that's a good point. Let's turn to the March 4
16 letter which is Exhibit 34. Mr. Wiggins spent a
17 considerable amount of the time focusing on the phrase
18 "the elders excluding the senior elders". Does the
19 document reflect affirmation by its contents by a
20 number of men?

21 A Yes.

22 Q How many men signed this document, sir?

23 A Sixteen men.

24 Q And that included the elders, did it not?

25 A Yes.

1 Q The senior elders?

2 A Yes.

3 Q And the three people who were on the committee who
4 were neither senior elders nor elders; isn't that
5 true?

6 A Right, counselors.

7 Q Was that an action that was consistent with their vote
8 the prior night?

9 A Yes. In fact, I began writing this letter the same
10 night as a result of the vote.

11 Q So, based on the charge you had gotten, based on the
12 charge you had gotten from the other 15 men, you began
13 writing this letter and had signature lines for all
14 16?

15 A The committee, appointed me to write this letter to
16 express what the committee did. We put Don out as it
17 says and we also voted without the senior elders and
18 recommended to them that they put Don out.

19 Q But the senior elders also as committee members signed
20 this letter, did they not?

21 A Yes, because this is the letter, this is the committee
22 letter disfellowshipping Don.

23 Q Just so I understand, this is the senior elders
24 wearing their committee hats?

25 A Yes.

1 Q And then they later would write a senior elder letter
2 wearing their senior elder hats?

3 A Right.

4 Q Did you ever see that senior elder letter when they
5 were wearing the senior elder hats?

6 A Yes.

7 Q What do you recall was the decision of the senior
8 elders when they had taken off their committee hat and
9 put on their senior elder hat?

10 A They accepted our recommendation because their vote
11 was unanimous and they put Don out.

12 Q As well?

13 A Yes.

14 Q Was that in addition to the committee putting Don out?

15 A Yes.

16 Q Now, Mr. Wiggins asked you a number of questions about
17 the term "witnesses" in I believe it was the
18 guidelines, that's Exhibit 23. Do you recall those
19 questions, sir?

20 A Yes.

21 Q Why was it decided not to bring the live complaining
22 women witnesses?

23 A Well, there were a number of considerations suggested
24 by various members. For one thing, Don himself would
25 have objected to bringing live witnesses in to make

MACKENZIE - Redirect (By Mr. Shapiro)

1 statements and probably would not have participated in
2 any hearing in which live witnesses were present

~~because he had stated many times publicly while~~
preaching from the scripture 1 Timothy 5:19 that if a
woman whom we'll call X, as Mr. Wiggins did, committed
adultery with a pastor and she lodged a complaint,
that woman is not to be regarded as a witness. He
said, quote, "that's not a witness, that's an
accuser", closed quote.

DELETED MATERIAL FILED UNDER SEAL

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Were you at all concerned about trying to keep the

1 information that was coming out within a relatively
2 small circle of people?

3 A That was another idea suggested by some committee
4 members, yes.

5 Q Now, ~~Mr. Wiggens~~ also asked about the confidential
6 provisions of the guidelines and asked you whether
7 not, turning your attention to Exhibit 30 and Exhibit
8 24, whether or not you felt reading those letters
9 Jack DuBois and Mark Yokers read them violated that
10 guideline. Do you recall those questions?

11 A Yes.

12 Q Were any details, specific details about what Don
13 Barnett was alleged to have done with individual
14 witnesses which came up at the hearing, were any of
15 those items disclosed to the congregation during the
16 2/26 service?

17 A No, because we were careful to distinguish between
18 fact that he had admitted this and the exact
19 admissions and we stated none of those. But to impose
20 a special status which included that Don could not
21 alone with any women in the congregation other than
22 his wife in any situation, in a room, in his home,
23 anywhere, of course, included notifying the women
24 restriction now exists, so if he asks you to do that
25 please don't do that.

ility
er or
hibit
when

at

of
the

the

pose

be

an

this

at

1 And it would be difficult to say such a thing
2 without giving some form of justification of it, so we
3 stated it in as simple a manner as we could and did
4 not feel that violated the guideline of
5 confidentiality.

6 Technically, of course, as I have testified
7 already, Donald Barnett himself had already violated
8 the confidentiality guideline on February 1st, many
9 days before this by calling one of the women
10 recounting Jerry Zwack's testimony to her, asking her
11 if it was true and that he came back to the committee
12 the next day and reported on that conversation to us
13 and alleged that the woman denied what Jerry Zwack had
14 alleged in his complaint.

15 And, of course, I didn't say anything at the time
16 but my mind as moderator said why is he violating the
17 guidelines and calling the women and telling them what
18 the testimony is. We're not supposed to be doing
19 that.

20 Q Mr. Wiggins also asked you to compare the final set of
21 the guidelines with the draft version. Do you recall
22 that group of questions?

23 A Yes.

24 Q Let's turn to those exhibits. I believe the draft is
25 Exhibit 35 and the final version is 23. Now, first of

1 all, with respect to Exhibit 35, Mr. Wiggins -- Well,
2 with respect to the whole document, Donald Barnett
3 never reviewed or received a copy of Exhibit 35, did
4 he?

5 A No, there was no reason for him to.

6 Q There's no way he could have relied on any of the
7 language in this document.

8 A No.

9 Q Now, with respect to Mr. Wiggins asked you about
10 Guideline No. 1, do you see the items that you took
11 out, the last sentence?

12 A Yes.

13 Q ~~Did you think that this was a better case of my wife~~

14 insertion of the word "all"?

15 A Yes. And I made similar deletions in other parts of
16 it to simply omit redundancies because in our
17 publications department we were on a program where the
18 editors were trying to train us don't say the same
19 thing twice and we had to read William Zinsser's book
20 on writing well. And we were going through all these
21 exercises of say everything once, cross out extra
22 words, blah, blah, blah. And so my mind was focused
23 into that kind of a format in these months. And when
24 we amended them, one of my duties was just by
25 conditioning almost was get out my black pen and cross

1 out every word I can while retaining the same meaning.
2 We don't mean we don't believe that anymore, we meant
3 cross out extraneous things but make it say the same
4 thing. That's what I was attempting to do. That was
5 my intention.

6 Q Is that what you intended to do when you crossed out
7 the first paragraph half of what was then called
8 Guideline 12 which became Guideline 11?

9 A Yes, because we still have final authority and final
10 decision and we didn't need those repetitious
11 statements about it. It still existed even without
12 those sentences.

13 Q Final decision was still in Guideline 11?

14 A Well, yeah, in the new finalized 11, yes.

15 Q And how many times was final decision in Guideline 11?

16 A Two times.

17 Q Was that language about final decisions also in the
18 1/25 agreement?

19 A Yes.

20 Q Now, Mr. Wiggins also asked you about sources of
21 authority for holding these hearings. Had you ever
22 been taught by Donald Barnett about your role as an
23 elder in this church as it relates to the oversight of
24 the church?

25 A Yes.

**PAGE 667 OMMITTED FROM SCANNING
NEEDS TO BE RE-SCANNED AND
INSERTED**

1 authority?

2 A To hold the hearing and to issue sanctions against
3 Don, no, I think I recited a whole list of them
4 yesterday.

5 Q I thought you did as well, but I want to clear up any
6 confusion Mr. Wiggins might have on that.

7 MR. WIGGINS: I went through the whole list
8 of things myself, I didn't have confusion.

9 MR. SHAPIRO: I'm sorry, I'll strike my
10 comment.

11 MR. SHAPIRO: I believe that's all.

12 MR. WIGGINS: Mr. MacKenzie, I only have one
13 or two questions.

14 RE-CROSS-EXAMINATION

15 BY MR. WIGGINS:

16 Q I'd like to refer you back to that April 21 letter.

17 A Yes.

18 Q To page 10, the answer to allegation 29.

19 A Yes.

20 Q Mr. Shapiro asked you whether the first sentence
21 referred to an attorney's opinion; is that correct?

22 A Yes.

23 Q And you said, yes, it did.

24 A Yes. And the second sentence in which you state that
25 they had to be revised because they provided that the

MackENZIE - Recross (By Mr. Wiggins)

1 doctrine of ex-communication applied to everyone
2 except Don Barnett. That's the second sentence; isn't
3 it?

4 A Yes.

5 Q And that second sentence begins we also revised them;
6 doesn't it?

7 A Yes, that's how it begins.

8 Q Also, in addition to or did you mean by also in
9 addition to the attorney's opinion?

10 A Well, I'm not sure how you answer that. What we're
11 doing is we're answering Don Barnett's allegations,
12 that's what we're doing. In other words, he wrote I
13 think eight letters to the church and we felt the poor
14 people are confused by all these things he's saying,
15 so they need us to write a letter answering all of
16 this material that he's barraging them with after his
17 removal. So, we were explaining our position on
18 things. Does that answer your question?

19 Q I'm not going to pursue that any further. Thank you,
20 Mr. Mackenzie. During the hearings when Pastor

21 Barnett referred to women, I think you testified
22 direct yesterday he used kind of code numbers 1
23 through five; is that correct?

24 A Yes.

25 MR. WIGGINS: I have no further question

MackENZIE - Recross (By Mr. Wiggins)

1 Your Honor.

2 MR. SHAPIRO: Nothing further.

3 THE COURT: That is an area that confuses me
4 right now. Were these code names or numbers such that
5 the person whose code was being used was identifiable?
6 In other words, could you tell or did you know that
7 Woman A was a married women, 27 years of age, a member
8 of the congregation, whatever she was? I'm just
9 hypothesizing. Did you know anything about that
10 person or was it just a hypothetical Woman A?

11 THE WITNESS: It was not a hypothetical
12 Woman A. Woman A was a real women.

13 THE COURT: Did you know anything, could you
14 identify, not by name, but by at least, oh, yes this
15 is the 27-year old married women who was a member of
16 the church?

17 THE WITNESS: Yes, the reason we could do
18 that is I had a piece of paper and, as Jerry Zwack
19 stated his complaint when he got to the first woman I
20 made those designations. We will call her Woman No.
21 1. And so I wrote down Woman No. 1 equals and then as
22 he testified, I can't remember the exact way it

23
24 **DELETED MATERIAL FILED UNDER SEAL**
25

MackENZIE - Recross (By Mr. Wiggins)

1 month person. And so whenever the seven month person
2 came up, I knew that was Girl No. 1 and I would
3 highlight that in the margin of my notes. So, they
4 were identified by Don Bennett's conduct with them

invoked when we call the rule, quote, the
 the rule of exclusion means that witnesses
~~are not to discuss their testimony or anything that~~
 when are later called and they testify either
 stating or confirming what you have to say. A
 violation of that rule is when a witness is excused
 not discuss their testimony or anything that
 at the hearing except with the attorneys
 and that means your own or opposing
 attorneys; do you understand that?

MR. MOTHERWELL: Yes. Would that include
 Mr. Shapiro? He's not really representing me but I
 would like to talk to him about this?

THE COURT: Let me put it this way. It
 includes all of the attorneys involved in this case.

MR. MOTHERWELL: Okay. So, just don't talk
 about what we did today.

THE COURT: Except as to those people you
 attempted to discuss it with.

(Short break taken.)

MR. SHAPIRO: We're ready to present our
 case, Mr. Lanny Peterson.

having been first duly sworn
 on oath was called as a
 witness on behalf of the
 Defendants and testified as
 follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Court has
 rule. And
 cannot
 say and t
 contradic
 corollary
 they may
 occurred
 involved,
 attorneys

Mr. Shapi
 could tal

includes

to anyone

are permi

next with

LANNY PETERSON

PETERSON - Direct (By Mr. Rohan)

DIRECT EXAMINATION

BY MR. ROHAN:

- 1 Q State your name, please.
- 2 A Lanny Peterson.
- 3 Q And your address?
- 4 A 15929 C 3rd Place SW.
- 5 Q At one point were you a member of Community Chapel and
- 6 Bible Training Center?
- 7 A Yes, I am.
- 8 Q When did you first join Community Chapel?
- 9 A 1967, spring.
- 10 Q How old were you at that time?
- 11 A Correct that, it was 1969. I was 19 years old.
- 12 Q And you remained a member through March 4, 1988; is
- 13 that correct?
- 14 A Yes.
- 15 Q Mr. Peterson, did you attend Bible College at
- 16 Community Chapel?
- 17 A Yes.
- 18 Q What years did you attend Bible College?
- 19 A From 1969 to 1975 full time and part time for a number

PETERSON - Direct (By Mr. Rohan)

1 A A Bachelor in Theology and Master in Theology.

2 Q Did you ever participate in the Ministers in Training
3 program?

4 A Yes.

5 Q How were you selected for that?

6 A I'm not sure how the selection process was.

7 Q Who taught that course?

8 A Don Barnett.

9 Q How long did that course go on for?

10 A As I remember, around a year or so.

11 Q Did you ever become a minister of Community Chapel?

12 A Yes.

13 Q What year was that?

14 A I believe it was 1975.

15 Q And did you become at one point a Bible College
16 teacher yourself at Community Chapel?

17 A Yes.

18 Q What year did you first become a Bible College
19 teacher?

20 A 1973.

21 Q For how long did you continue to teach at the Bible
22 College?

23 A Up until I believe 1987.

24 Q Did you have other responsibilities at Community

25 chapel. Other than being a minister and at Bible College?

10

PETERSON - Direct (By Mr. Rohan)

1 teacher?

2 A Yes.

3 Q Could you tell me what those responsibilities were?

4 A Ministerial functions, baptized people, performed
5 weddings. I led the youth group. I taught Sunday
6 School. I led retreats, prayer meetings, deliverance
7 activities. I was also an elder.

8 Q At one point did you begin to spend time at the
9 Barnett household?

10 A Yes.

11 Q Could you tell me why you began spending time at the
12 Barnett household?

13 A Well, when I first came to the church I was real good
14 friends with David Barnett who was Don Barnett's
15 youngest son and we spent a lot of the time playing
16 chess.

17 Q Did you become subsequently friends with other of
18 Donald Barnett's children?

19 A I was real good friends with his elder brother Daniel.
20 We did a number of things together.

21 Q Don's brother Daniel or Don's son Daniel?

22 A Don's son.

23 Q And --

24 A I also met Carolyn, the daughter, and married her.

25 Q When did you marry Mr. Barnett's daughter?

1 A How about 1974, I guess.

2 Q At one point you separated from her and then obtained
3 a divorce; is that correct?

4 A Correct.

5 Q When did you separate?

6 A 1986.

7 Q What was your relationship like after 1986 with Donald
8 Barnett after you had separated from his daughter?

9 A About the same, I would say.

10 Q About the same as it had been before?

11 A Um-hmm (Affirmative).

12 Q What was your relationship like with him before you
13 separated from his daughter?

14 A I felt we were friends, associates.

15 Q At one point, in 1988 do you recall that there were a
16 series of elder hearings regarding charges by Jerry
17 Zwack against Donald Barnett?

18 A Yes.

19 Q And you were one of the elders that participated in
20 those hearings; is that correct?

21 A Yes.

22 Q Can you tell me at those hearings what was stated by
23 individuals about -- Well, first of all, let me ask
24 you what Jerry Zwack's grievances were as you
25 understood them at those hearings?

1 A There were a list of grievance that amounted to very
2 serious charges, abuse of pastoral authority, misuse
3 of the pulpit ministry, lying, immorality, covering up
4 immorality, coercion. I can't remember all of them
5 now, they're listed on a letter that Jerry had.

6 Q Can you tell me what was stated at the hearing as you
7 recall regarding allegations that Donald Barnett was
8 lying?

9 A There were a number of things at the hearing. I can
10 give a number of examples of lying that I've
11 remembered.

12 Q You are looking at a document. Is that to refresh
13 your recollection?

14 A Yes, these are some notes that I brought so that I
15 wouldn't forget some of these things. He lied to
16 me --

17 MR. PIERCE: I'm going to object unless we
18 have a foundation for the use of these documents. If
19 he doesn't recall, that's fine. If they are notes
20 that are contemporaneously made and they're used to
21 refresh, that's a different point. But if these are
22 notes just made for purposes of litigation, I'm going
23 to object to his reviewing those documents.

24 MR. ROHAN: Your Honor, I think he's
25 entitled to review document to make sure --

1 THE COURT: Ask him what this list is.

2 Q (By Mr. Rohan) When did you prepare this list?

3 A I prepared this list this morning.

4 Q And you prepared it from what?

5 A I prepared it from some notes that I took during the
6 last several years that pertain to these matters.

7 Q And those notes were taken, some of them, during the
8 hearings themselves?

9 A Yes.

10 Q And some of those notes were conversations of women
11 that you interviewed during the hearings and prior to
12 the hearings?

13 A Yes.

14 MR. ROHAN: I think he's entitled to refresh
15 his recollection.

16 MR. PIERCE: To refresh his recollection
17 from the notes he had at that time. He doesn't need
18 this if he's made this today.

19 THE COURT: Will this assist you in
20 testifying here?

21 THE WITNESS: Well, he's asking me for times
22 when I believe Don Barnett lied and I thought of this
23 morning about eight different times and I don't know
24 that I'm going to be able to recall all eight from
25 memory right now in this particular situation.

PETERSON - Direct (By Mr. Rohan)

1
2
3
4

THE COURT: He may use them.

MR. PIERCE: Your Honor, may I also have an opportunity to review the notes that he has?

~~THE COURT: When do you want to see him?~~
before cross-examination?

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q

MR. PIERCE: I would, Your Honor. If going to be available Monday, we could bring him and look at this at that point, I don't know.
(By Mr. Rohan) Can you explain to me what was the hearing, the elders' hearings, regarding Don Barnett lying?

A

Well, I brought up an incident where he lied to when I went to warn him about doing things with They were coming to the me in the Counseling Center.

MR. PIERCE: I'm going to object at this point, it's outside the scope of the areas that intended to be inquired of pursuant to the terms of the agreement. The agreement talked about having phases for the hearings where Don would testify, Jerry would testify. There was no testimony taken from any third parties. If he's going to testify to areas, that's outside the scope of what that agreement covered if he is going to provide information.

THE COURT: These these matters brought up at the elders' hearings?

11

PETERSON - Direct (By Mr. Rohan)

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DELETED MATERIAL FILED UNDER SEAL

PETERSON - Direct (By Mr. Rohan)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

DELETED MATERIAL FILED UNDER SEAL

11

1

2

3

4

5

6

7

8

9

10

11

DELETED MATERIAL FILED UNDER SEAL

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PETERSON - Direct (By Mr. Rohan)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

DELETED MATERIAL FILED UNDER SEAL

PETERSON - Direct (By Mr. Rohan)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

DELETED MATERIAL FILED UNDER SEAL

DELETED MATERIAL FILED UNDER SEAL

12
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PIERCE: I'd like to object to this whole line of questioning.

MR. ROHAN: Would you wait until he has finished with his answer.

MR. PIERCE: This is all hearsay that's coming in, Your Honor. If the Court would allow me to have a continuing objection I won't continue to bring it up. But I understand that the Court, through a previous witness, wanted to allow everything to come in that occurred at the elders' hearings and it's all hearsay and sometimes second and third party hearsay, too. May I have a continuing objection with regard to this area?

THE COURT: Okay, your objection is continuing.

PETERSON - Direct (By Mr. Rohan)

1
2
3
4
5
6
7
8
9
10
11

12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PIERCE: Your Honor, I'm going to object to what might have occurred at the hearing. What we want to do is stay within the parameters as to what happened.

THE COURT: I didn't understand that as possibly.

MR. ROHAN: I can deal with that.

DELETED MATERIAL FILED UNDER SEAL

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

DELETED MATERIAL FILED UNDER SEAL

PETERSON - Direct (By Mr. Rohan)

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DELETED MATERIAL FILED UNDER SEAL

1 anything that has happening with any individual and he
2 said you can only go to the individual that is
3 involved. Well, I considered that to be extremely
4 harmful because these women did not come to me to
5 accuse him or to ruin his reputation, they came to me
6 because they had a guilty secret that they were
7 harboring that they could barely live under and they
8 needed to tell somebody. They needed somebody to just
9 get this off their chest.

10 MR. PIERCE: Your Honor, this has to be
11 outside the scope of what occurred at the elders'
12 hearings what they came to him for unless he's going
13 to say that that's what he told the other elders.

14 THE COURT: You should restrict what you are
15 telling, this is the restriction, on matters that were
16 brought up at the hearing and, more particularly, at
17 the hearing during which both Mr. Zwack and Pastor
18 Barnett were present and heard. Now, you mentioned a
19 number of things here. Were those brought up in
20 Pastor Barnett's presence?

21 THE WITNESS: Some of them were brought by
22 Jerry Zwack. A number of the specifics --

23 THE COURT: I'm talking now about in his
24 presence, regardless of who brought them up.

25 Q (By Mr. Rohan) Jerry Zwack was only present at the

PETERSON - Direct (By Mr. Rohan)

1 hearings when Donald Barnett were there; is that
2 right?

3 A Correct.

4 Q So, anything Zwack brought up he would have brought up
5 in front of Don Barnett.

6 A Zwack brought the charges and some specifics. The
7 elders deliberated alone on these charges, and some of
8 which I'm bringing is research that was done to either
9 confirm, substantiate, or deny those changes. So this
10 was --

11 THE COURT: Was he given an opportunity to
12 hear and deny these?

13 THE WITNESS: He was given that opportunity
14 but he refused.

15 THE COURT: Now, you are permitted only to
16 tell about what came up at the hearings, and more
17 particularly, during the time that Pastor Barnett was
18 present and would have heard these.

19 MR. ROHAN: Your Honor, it's our contention
20 in this case, and this is a fairly important one, that

21 ~~the elders' hearing containing certain facts that were not to~~

22 Barnett and Jerry Zwack were there but also
23 afterwards.

24 THE COURT: Well, I am restricting this
25 of it to when he was there because I can't separa

part
te

1 out what he found out later on and brought to the
2 elders and what was said at the elders' hearings when
3 Pastor Barnett was present.

4 MR. ROHAN: But all of this was prior to the
5 time they disfellowship on March 4, 1988.

6 THE COURT: That may be, but as I say, I'm
7 not able to tell which is which, which was before and
8 which was after phase two.

9 MR. ROHAN: But we can ask about both, you
10 just want me to separate them out one from the other?

11 THE COURT: Let's do it orderly and have
12 those occurring during phase one and two.

13
14
15
16 **DELETED MATERIAL FILED UNDER SEAL**

17
18
19 MR. PIERCE: Objection, Your Honor, move to
20 strike what his knowledge was of others.

21 THE COURT: Let's restrict it to the
22 hearings.

23 A I believe the hearings when he was there was limited
24 to the five or possibly six.

25 Q (By Mr. Rohan) Can you tell me what was said about

1 his immorality in regard to those six women?

2 MR. PIERCE: Objection, Your Honor, he didn't
3 say there were six, he said five, possibly six. Let's
4 not mischaracterize the testimony.

5 A The extent of the involvement, the types of
6 involvement, lying and cover up, coercion and threats,
7 and the resolution of each situation.

8

9

10

11

12

13

14

15

DELETED MATERIAL FILED UNDER SEAL

16

17

18

19

20

21

22

23

24

25

1 them and that Don had lied about that and that he had
2 been angry when it was broken up.

3 Q Would you go into a little more detail if there was
4 more detail gone into at the elders' hearings about
5 what you mean by this was broken up? Was a woman
6 involved and something was broken up or what was
7 broken up?

8 MR. PIERCE: Objection --

9 MR. ROHAN: He said it was discussed at the
10 hearings.

11 MR. PIERCE: This is all leading here when
12 he leads him down the path and says to the extent it
13 was discussed. You can't have him telling him what to
14 say and then saying to the extent it was discussed.
15 It's certainly leading, Your Honor.

16 THE COURT: What counsel is trying to do
17 is get you to be more specific in more detail.

18
19
20
21 DELETED MATERIAL FILED UNDER SEAL
22
23
24
25

PETERSON - Direct (By Mr. Rohan)

1

2

3

4

5

~~DELETED MATERIAL FILED UNDER SEAL~~

6

7

8

9

10

11

12

authority from the pulpit.

13

MR. PIERCE: I'm going to have to object.

14

This is outside the scope of the question.

15

THE COURT: Yes it's beyond.

16

17

18

19

20

~~DELETED MATERIAL FILED UNDER SEAL~~

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Barbara, now everything is fine, this and that and everything.

DELETED MATERIAL FILED UNDER SEAL

1 parsonage. Well, she moved out of the parsonage, and
2 in her words --

3 MR. PIERCE: I'll object to anything that
4 Barbara would you have said, Your Honor, and their
5 relationship that existed between Don and Barbara.
6 We want to stay out of that relationship as to what
7 Barbara was talking about here, so we can maintain --

8 MR. ROHAN: Your Honor, I believe he will
9 testify and he will correct me if I'm wrong because
10 I'm not aware of this but this was mentioned at the
11 hearings during that time and it is in response to a
12 question that was asked of Donald Barnett on direct
13 testimony, if you will recall when Donald Barnett said
14 my wife never gave me reasons why she left the
15 parsonage and why she moved out. And this witness is
16 about to testify that this in fact was brought up at
17 the hearing, the very reason why Barbara Barnett left
18 Donald Barnett and left the parsonage and moved out of
19 the parsonage with her husband. They bought it up on
20 their direct.

21 THE COURT: You may continue.

22 A Well, the bone of contention was Barbara moved out of
23 the parsonage and, in her own words, said I could not
24 take --

25 MR. PIERCE: Objection, unless this witness

1 has personal knowledge of what she said.

2 THE WITNESS: I do have personal knowledge,
3 I was her counselor. This is what she told me.

4 MR. PIERCE: Your Honor, I'm going to object
5 as to what was told to him because that would not have
6 occurred during the time period of the elders'
7 sessions. That would have been outside. He's
8 repeating hearsay.

9 THE COURT: I'm not sure. Did this happen,
10 was this a matter that was brought up at the hearing?

11 THE WITNESS: This was a matter brought up
12 at the hearing as an example of Don lying.

13 MR. PIERCE: I have to inquire. Was it done
14 during the time period when Don was present?

15 THE WITNESS: Yes.

16 MR. ROHAN: I think he answered yes.

17 MR. PIERCE: Excuse me, am I to understand
18 Mr. Peterson testified at that time as to what he told
19 the hearings while Don was present? He's the only one
20 who knew.

21 MR. ROHAN: He didn't say he was the only
22 one who knew, I think a lot of people knew.

23 MR. PIERCE: He was the one that got the
24 information from Barbara, so he had to be the one who
25 had the information and did supply it to the hearing

1 while Don was present.

2 THE COURT: Did you?

3 THE WITNESS: No, Barbara had written a
4 letter and it was a part of Jerry Zwack's
5 presentation. He had the letter. She had written a
6 letter to us.

7 THE COURT: Well, was this letter passed
8 around or seen?

9 THE WITNESS: It was a part of the
10 information at the hearing Jerry brought up as one of
11 his big objections as to Don's --

12 THE COURT: You may inquire. I don't want
13 to get into the interrogation of witnesses.

14 MR. ROHAN: Your Honor, if I could make two
15 points. One is that Donald Barnett in his direct

reason why Barbara Barnett,
parsonage, never understood
statement on direct. I didn't
made that statement on

as knowledge about that, is
t regardless of whether it
r out of the hearings
ught it up himself in his

17

18

19

20

21

22

23

24

25

he did not understand the
his wife, moved out of the
that. And he made that st
ask him that question, he
direct.

This witness, if he h
entitled to talk about tha
happened in the hearings o
because Donald Barnett bro

PETERSON - Direct (By Mr. Rohan)

1 direct case. So, whether it happened in the hearings
2 or out of the hearings, this witness is entitled to
3 testify about that.

4 In addition to that, in fact it appears that it
5 was brought up at the hearings in a letter, so on
6 either of two bases we're entitled to bring it up. I
7 did not choose to drag in Donald Barnett's marital

1 presence of Donald Barnett?

2 A Yes.

3 THE COURT: The answer will stand but let's
4 be specific and listen to the question and answer the
5 question.

6 MR. ROHAN: May I continue on that line?

7 THE COURT: Um-hmm (Affirmative).
8

9 **DELETED MATERIAL FILED UNDER SEAL**
10

11

12 MR. PIERCE: May I have a continuing
13 objection with regards to anything that the witness
14 says which would be hearsay and which would invite the
15 avoidance of, the marital privilege that exists and any
16 communication that occurred between Pastor Barnett and
17 Barbara Barnett? I think this clearly violates it, is
18 clearly hearsay. It was never intended that those
19 areas --

20 I remember the first day of our hearing Your
21 Honor said I don't want to find out what's happened
22 between them and the communications that have occurred
23 here or any problems that exist between Barbara and
24 Don, that's not what I'm going to inquire into. And
25 here we continuously have to hear that.

1 MR. ROHAN: The only reason I brought this
2 up is Donald Barnett in response to his own counsel's
3 questions in his own case-in-chief brought up this
4 subject. I would not have chosen to bring it up, he
5 chose to bring it up as a justification --

6 THE COURT: It has been testified to this
7 extent, we can move along.

8 Q (By Mr. Rohan) Was there anything else discussed at
9 the hearings regarding, when Donald Barnett was
10 present at the hearings, testified to by either Donald
11 Barnett or Jerry Zwack about Donald Barnett's
12 immorality?

13 A The last incident I mentioned was the vacation in
14 Chelan. I'm searching my memory here. I may not be
15 able to remember anything else.

16 Q What was mentioned at the hearings in the presence of
17 both Donald Barnett and Jerry Zwack concerning Donald

16

18 ~~Bar covering up, and to the extent you've already~~

19 answered that, you can so state.

20 A I've given examples of the type of covering up that
21 went on and it went on with some of those five women
22 that were brought up at the hearings.

23 Q And this was in the presence of --

24 MR. PIERCE: Excuse me, counsel, I would
25 move to strike the answer as being non-responsive and

1 it was difficult to understand from the question that
2 was presented counsel's question which was state what
3 occurred at this point in time and make reference, if
4 you can, to the information that was provided earlier.
5 The witness did not respond by indicating what he had
6 said earlier but just said I testified and didn't say
7 whether or not that occurred when Donald Barnett and
8 Jerry Zwack were present. And without having a
9 limitation or identification, it's impossible to know
10 what occurred during the time period both of those
11 parties were present.

12 MR. ROHAN: I believe he has testified early
13 on. There was no objection on that basis and the
14 information was allowed in. Now, we're going back and
15 we're going over that and the witness has stated that
16 some of the information was information that was there
17 at the time that they were both in the hearing. I
18 don't think the answer should be stricken.

19 THE COURT: Well, the answer to the last
20 question will be stricken. You may proceed.

21
22
23 **DELETED MATERIAL FILED UNDER SEAL**
24
25

PETERSON - Direct (By Mr. Rohan)

1 get help, forbidding Scott and I to talk to any women,
2 forbidding the women individually to talk as opposed
3 to from the pulpit.

4 Q Was there more stated at the hearing about forbidding
5 the women to talk in the presence of both Donald
6 Barnett and Jerry Zwack?

7 A A little bit was said.

8 Q Could you tell me in detail what was said?

9
10
11
12
13
14
15 DELETED MATERIAL FILED UNDER SEAL
16
17
18
19
20
21
22
23
24
25

PETERSON - Direct (By Mr. Rohan)

1

2

3

4

5

6

7

8

9

10

11

DELETED MATERIAL FILED UNDER SEAL

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PETERSON - Direct (By Mr. Rohan)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

DELETED MATERIAL FILED UNDER SEAL

1 Q But I meant generally what type of relationship, you
2 don't have to mention --

3 A Adultery.

4 Q And did any of these relationships continue even after
5 Jerry had attempted to break them up?

6 A I don't remember. I think -- I don't remember.

7 Q Were there any other acts of coercion, covering
8 up, or lying that you can recall that was stated at
9 the hearings when Jerry Zwack was present? I mean
10 when Donald Barnett was present.

11 A I guess not.

12 MR. ROHAN: Thank you. I have no further
13 questions.

14 MR. PIERCE: We've not had an opportunity to
15 review the notes, not those notes, the other notes he
16 said.

17 MR. ROHAN: These notes you already have.
18 We gave you these. They're in your binder. You've
19 already been provided with them, counsel. Those are
20 the notes he testified to. He didn't bring the notes
21 today, I brought these notes. The only note he
22 brought was that. They're No. 59.

23 CROSS-EXAMINATION

24 BY MR. PIERCE:

25 Q Mr. Peterson, you have one sheet of paper here that

PETERSON - Cross (By Mr. Pierce)

1 were your notes that you made and they were made from
2 what appeared to be three separate groups of
3 documents; is that correct?

4 A They're from personal notes that I possess.

5 Q And those notes were ones that you had prepared at the
6 time of the elders' hearings; is that correct?

7 A Yes.

8 Q We understand the elders' hearings started on a
9 certain date and ended on a certain date or are they
10 still going on in your mind?

11 A This is an extension of those hearings in that the
12 verdict of those hearings is being contested.

13 Q In fact, you have not destroyed your notes because the
14 elders' hearings are not concluded in your view; is
15 that correct?

16 A I felt I might need to refer to them.

17 Q So, as far as you are concerned, the elders' hearings
18 are not completed and you have not destroyed your
19 notes accordingly; is that correct?

20 A It depends on how you look at it.

21 Q I'm asking how you look at it.

22 A The formal elders' hearings taking place at Community
23 Chapel have concluded, a verdict rendered.

24 Q So, as far as you are concerned, the elders' hearings
25 are completed then?

PETERSON - Cross (By Mr. Pierce)

- 1 A Yes.
- 2 Q Now, when the elders' hearings were completed, there
3 was a requirement that you destroy your notes; is that
4 correct?
- 5 A Yes.
- 6 Q You didn't destroy your notes.
- 7 A No, I did not.
- 8 Q These three sets of documents are all ones that you
9 prepared during the course of those elders' hearings
10 up to March 4, 1988?
- 11 A I haven't looked at what you have in your hand. If
12 it's in my handwriting, yes.
- 13 Q Let's make sure we understand which documents we're
14 talking about here. In fact, there's four sets of
15 documents that have been provided to me through
16 counsel at this hearing.
- 17 A These are mine. These are not mine.
- 18 Q When you say these are not mine, you're referring to
19 one set of the four documents?
- 20 A One set is not my handwriting, these are my
21 handwriting.
- 22 Q Okay. I stand corrected.
- 23 A These may be my handwriting.
- 24 Q It's a document that up at the top says "Peterson
25 handwriting"?

1 A Yeah, I didn't write that, no. I can't tell.

2 Q You don't know if those are your notes, do you?
3 That time?

4 A No.

5 Q Would you care to look through the entire
6 see if that helps to refresh your memory and
7 those are notes you took at that time?

8 A I believe they are mine, yes.

9 THE COURT: How many sets do you

10 MR. PIERCE: There are five doc
11 were all of the documents.

12 Q (By Mr. Pierce) Mr. Peterson, did you re
13 five sets of documents here when you made
14 for this hearing?

15 A Yes.

16 Q And these five sets of documents, excuse
17 mischaracterized it as four before, were
18 documents that were prepared by you up th
19 hearings on March 4, 1988?

20 A Yes.

21 Q Did you make any other notes during that
22 Mr. Peterson, other than those five docum

23 A I made notes of interviews I took with di
24 witnesses that I spoke to during the cour
25 hearings.

1 Q How many witnesses did you interview during the course
2 of these hearings?

3 A Oh, half a dozen, maybe ten.

4 Q So, six to ten witnesses. Were you the designated
5 person to go out and see these witnesses?

6 A One of them.

7 Q Who were the other designated individuals to go out
8 and see witnesses?

9 A As I remember, Scott Hartley was.

10 Q Do you know how many individuals Scott Hartley would
11 have contacted during the pendency of these elders'
12 hearings to investigate?

13 A I don't remember.

14 Q Did he report back with regard to his investigation to
15 the elders?,

16 A Yes.

17 Q There were different phases that occurred during the
18 elders' hearing; is that right?

19 A Yes.

20 Q Could you tell us what you remember with regards to
21 when these phases occurred?

22 A Well, it's hard to know. I'll just tell you what the

24 you made. There was a period where Jerry spoke.

28 There was a period where Don spoke or responded.

- 17
- 18
- 1 There was a period where Jerry spoke a second time and
2 Don spoke a second time. There were some questions
3 and answers. There were private meetings where the
4 hearing committee deliberated and then there was a
5 final wrap-up.
- 6 Q You've told us six areas here. Jerry first, Don
7 first, Jerry second, Don second, question and answer
8 and a wrap-up; is that right?
- 9 A Deliberation and then a wrap-up. The deliberations
10 were actually quite long.
- 11 Q When did Scott Hartley report back his findings with
12 regard to what he found out in his investigation of
13 the women in these six areas?
- 14 A During the deliberations.
- 15 Q So, that would not have been when Don was present; is
16 that correct?
- 17 A Correct.
- 18 Q When did you report back to the elders the results of
19 your investigation?
- 20 A During the deliberations.
- 21 Q Who was the moderator of these meetings, as you
22 recall?
- 23 A Russ MacKenzie.
- 24 Q Were you present during the six different steps that
25 you've testified to here?

PETERSON - Cross (By Mr. Pierce)

18

1 A Yes, I was present.

2 Q Did you ever hear any discussion by the elders with
3 Don present indicating there would be outside evidence
4 brought in from the investigations of you or Scott
5 Hartley?

6 A Yes.

7 Q When was that discussion with Don present?

8 A I don't remember. It was -- I don't remember the
9 specific time.

10 Q Would you look at your notes and refresh your memory
11 from your notes as to when that occurred that you, as
12 you've testified, recalled that it was discussed with
13 Don present that there would be investigations going
14 outside where you were to investigate and Scott would
15 investigate?

16 MR. ROHAN: Your Honor, he's made no
17 indication that he took notes of everything that
18 happened at the hearing.

19 THE COURT: If he can find it.

20 A I don't remember exactly where it would be. I do
21 remember that in the rules of the committee or the
22 format we made it quite plain that we were going to
23 uncover every leaf, if need be, to get to the bottom
24 of these things.

25 Q (By Mr. Pierce) Excuse me, when you say that, was it

PETERSON - Cross (By Mr. Pierce)

1 discussed with Don present that there would be other
2 individuals who would come in to testify?

3 A I believe it was but we preferred not to bring anybody
4 in under those circumstances.

5 Q Why was that?

6 A These women had been through enough.

7 Q Was that brought up with Don present too?

8 A Um-hmm (Affirmative). He didn't want them to be
9 brought in and we didn't want them to be brought in.
10 We did reserve the right to bring them in if we felt
11 absolutely necessary.

12 Q Were there any guidelines that were made up during
13 that time period?

14 A There were guidelines.

15 Q Did the guidelines reserve that right to bring them
16 in?

17 A Yes.

18 Q Do you remember how it was stated, if you can recall?

19 A Something to the effect that the committee will get to
20 the bottom of every charge and accusation, something
21 like that.

22 Q Now --

23 A We'll investigate to the fullest extent every charge.

24 Q During the time period that these hearings were going
25 on, was it in the morning or the afternoons or all

PETERSON - Cross (By Mr. Pierce)

1 day?

2 A I believe we met in the afternoons.

3 Q Was there meetings of the committee in the morning, of
4 the elders in the morning before the hearings
5 commenced in the afternoon?

6 A I think occasionally, yes.

7 Q And at the time of the morning meetings of the elders,
8 was there information provided by different members of
9 the elders' group to the committee as a whole as to
10 evidence or facts that related to what Jerry or Don
11 was saying?

12 A I believe so.

13 Q You were present when these facts were brought out at
14 that time and you heard those events occurring; is
15 that correct?

16 A Um-hmm (Affirmative).

17 Q Now, when the afternoon meetings started, was there a
18 preliminary discussion period that occurred or did you
19 just start into the meeting to take testimony?

20 A I believe there was a brief introduction or a prayer.

21 Q At the end of the meeting -- Well, how did it
22 normally close?

23 A I think we had a fixed quitting time and, when that
24 hour arrived, we ended for the day.

25 Q Was there any procedural matters taken care of either

18

1 before the discussions would, the information from
2 Jerry would be provided or from Don would be provided?

3 A What do you mean by procedural matters?

4 Q Did you take care of housekeeping issues other than on
5 the very first time when the hearings were set up?

6 A Housekeeping issues as?

7 Q Was that when it was discussed that you would go out
8 and get evidence?

9 A Matters of procedure were discussed from time to time.

10 Q Was that in the morning meeting or was it in the
11 afternoon meetings?

12 A Most of it would have been in the morning meetings.

13 Q Don wasn't present in those morning meetings when you
14 discussed the procedures that were going to be used;
15 is that correct?

16 A Right.

17 Q Don wasn't present when you discussed in the morning
18 meetings about which individual would go out and
19 gather more evidence; is that correct?

20 A Correct. I might add Jerry wasn't present either.

21 Q Were there certain individuals designated by the
22 elders' committee to talk to the congregation?

23 A Yes.

24 Q Do you remember who those individuals were?

25 MR. ROHAN: Your Honor, I'm going to object.

1 This is beyond --

2 THE COURT: I didn't quite get that
3 question.

4 MR. PIERCE: I'll strike the question.

5 MR. ROHAN: Your Honor, this is beyond the
6 direct examination. I limited my examination only to
7 what was stated at the elders' hearings and only the
8 sex acts and immorality acts of Donald Barnett. He's
9 going far afield of that.

10 MR. PIERCE: I said I'd strike it, counsel.
11 I'll limit my questions as to what occurred during the
12 elders' hearings.

13 Q (By Mr. Pierce) During the elders' hearings was there
14 discussion with the elders as to individuals who would
15 tell the congregation about what was going on?

16 A Yes.

17 Q Were one or more of the elders designated to tell the
18 congregation about what was happening at the elders'
19 hearings?

20 A Yes.

21 Q Were you one of the individuals who was to tell the
22 congregation?

23 A Yes.

24 Q Did you tell the congregation what was happening at
25 the elders' hearings?

1 A I told the congregation the verdict.

2 THE COURT: What?

3 THE WITNESS: I told the congregation the
4 results of the elders' hearings.

5 Q (By Mr. Pierce) That would be on March 4, 1988?

6 A I believe we spoke twice.

7 Q You told the congregation twice on March 4?

8 A No, I believe we spoke before that, if I remember

9 right. We spoke March 4th and March 11th also.

10 Q This is an exhibit that's in these proceedings here.

11 MR. ROHAN: What's the exhibit number so I
12 can show it to the witness?

13 THE COURT: You're changing your line of
14 questioning?

15 MR. PIERCE: Are we getting close to
16 closing?

17 THE COURT: No, I just want to know because
18 I'm confused now whether or not the congregation was
19 addressed twice or once.

20 MR. PIERCE: I'll finish up with that area
21 first.

22 Q (By Mr. Pierce) Mr. Peterson, the congregation was
23 addressed by you in February once and March once; is
24 that correct?

25 A I believe so.

PETERSON - Cross (By Mr. Pierce)

19 1 MR. PIERCE: I'll move to another area.

2 THE COURT: I was never -- This is the first
3 time I realized that the elders talked to the
4 congregation twice, maybe I missed it.

5 MR. PIERCE: Mr. Peterson talked once in
6 February and once in March with regards to what was
7 happening at the elders' hearings.

8 MR. ROHAN: One of the times was after he
9 was disfellowshipped and that's why we're not going
10 into the second time.

11 THE COURT: So, once before the action was
12 taken.

13 MR. PIERCE: Once during and then once on
14 March 4th.

15 MR. JOHNSON: February 26th and then on the
16 evening of March 4th.

17 THE COURT: I was confused because I thought
18 there were two areas here.

19 Q (By Mr. Pierce) On February 26 is when you talked to
20 the congregation; is that right?

21 A Is that the date? Okay.

22 MR. ROHAN: You don't have to agree with
23 him.

24 Q (By Mr. Pierce) You don't have to, it's fine if you
25 do. At that time, you read a letter to the

PETERSON - Cross (By Mr. Pierce)

19

1 Q When you read the -- Excuse me, you did read a letter
2 to the congregation?

3 A Yes.

4 Q When you did read the letter to the congregation? Was
5 that at a morning service or an evening service?

6 A I believe it was an evening service.

7 Q Did you go over the contents of that letter with
8 anybody else prior to reading it to the congregation?

9 A Well, I believe the whole committee had written the
10 letter and was aware of what I was doing. Everything
11 was done as a group.

12 Q Would you turn to Exhibit No. 30 that's in the book
13 here. Exhibit No. 30 is on the screen, at least the
14 first page is; is that correct?

15 A Yes.

16 MR. ROHAN: Your Honor, I think this is well
17 beyond the direct examination. Again, the only thing
18 in the direct examination is what was testified to at
19 the hearing. Now we're talking about some letter and
20 things that were outside the hearing, testimony at
21 some service outside the hearings.

22 THE COURT: I thought it started out along
23 the lines of breach of confidentiality.

24 MR. PIERCE: We are in that area right now,
25 Your Honor.

PETERSON - Cross (By Mr. Pierce)

1 THE COURT: I don't know whether you are
2 going to get into what was said.

3 MR. PIERCE: I won't be long on this
4 subject.

5 THE COURT: That was not an issue.

6 MR. PIERCE: Prior witnesses have testified
7 that Mr. Peterson had talked in the sermons here and
8 he has knowledge with regards to this event and I will
9 be concluding it within a short period of time with
10 that area.

11 THE COURT: Well, I don't know what you
12 intend to ask but I recognize an objection is being
13 made and I'll assume that what we're just talking
14 about is identifying what he did tell them.

15 Q (By Mr. Pierce): Mr. Peterson, this February 24, 1988
16 letter is the letter that you read to the congregation

17 on that evening?

18 A You know, I don't remember but I'll assume that you're
19 right that you know more than I do.

20 Q Do you remember which letter you did read to the
21 congregation?

22 A No, I don't.

23 Q When you went out and did your investigation and
24 obtained the information, did you keep the names of
25 the women confidential, where you acquired your

20

1 information from?

2 A What do you mean by confidential, from the committee?

3 Q Did you share it with anybody?

4 A Yes, I did.

5 Q Did you refer to the individual women by name?

6 A In some cases, yes.

7 Q This is to the committee?

8 A Yes.

9 Q Was there a procedure with the elders' hearings to
10 just refer to women by certain numbers?

11 A During the first part of the deliberations where Jerry

12 talked I said before there were five women talked to

13 number. During the review sessions, we talked about

14 other women. Some of the women did not mind if I used

15 their name, and some of them did. Those that didn't,

16 their names were used.

17 Q These would be women in addition to the five women
18 that were identified by number?

19 A Um-hmm (Affirmative).

20 Q And the five women that were identified by number, did

21 you go out and talk to them when you went out, any of

22 them?

23 A Two of them I had already talked to and did not go and
24 talk to them again.

25 Q I just want to know if you went out and talked to any

PETERSON - Cross (By Mr. Pierce)

1 of the five women you've identified?

2 A I talked to two of them personally.

3 Q During the time period that the elders' hearings were
4 going on?

5 A I don't remember if it was during that period or
6 before.

7 Q Do you remember who were the six to ten women who you
8 did go to see?

9 A Yes.

10 Q Was any of the 1, 2, 3, 4, or 5 any of those six to
11 ten women you went out to see?

12 A No.

13 Q You indicated that you'd been separated from your wife
14 in 1986 and then you said you divorced later.

15 A Yes.

16 Q When were you divorced?

17 A 1988.

18 Q Did you say, you are still with Community Chapel and
19 Bible Training Center?

20 A I still attend, yes.

21 Q Are you still an elder in that group?

22 A No.

23 Q When did you cease becoming an elder or when did you
24 cease being an elder?

25 A I resigned in October of 1989.

PETERSON - Cross (By Mr. Pierce)

1 A The board asked me to fill a vacancy.

2 Q Who was on the board?

3 MR. ROHAN: This is well beyond the scope of
4 the direct examination.

5 THE COURT: Was this after the committee of
6 elders had concluded?

7 THE WITNESS: Yes.

8 THE COURT: Does that satisfy you?

9 MR. PIERCE: That I believe with this
10 witness that would be fine, Your Honor.

11 Q (By Mr. Pierce) Do you recall which numbered woman
12 testified when Jerry and Don were present that she
13 would be threatened to be put out of the church?

14 A Well, I believe it was No. 3 but it might be No. 4.

15 Q Do you know who number 1, 2, 3, 4, and 5 is?

16 A At the time, I did. I'm a little bit hazy right now.

17 Q Did you discuss that with the other elders in the
18 morning sessions as to who the numbers were?

19 A I believe we did.

20 Q Was there any, with regards to the morning session
21 where just the elders met, were there any other
22 procedures or formal things that would happen at those
23 sessions?

24 A I can't really remember anything regular. I believe
25 we talked about things that were happening.

1 Q Did Russ MacKenzie act as moderator for the morning
2 sessions of the elders?

3 A Well, I would think so, I can't remember.

4 Q You don't recall who was in charge of those morning
5 meetings?

6 A No.

7 Q Did you attend all of the morning meetings?

8 A Yes.

9 Q Did Russ MacKenzie attend all the morning meetings?

10 A Yes. Let me state that I don't remember regular
11 morning meetings, there were some.

12 MR. PIERCE: Would this be an appropriate
13 time to stop? I have a number of other questions for
14 this witness.

15 MR. ROHAN: Your Honor, we'd like to keep
16 going if we could with the witness. He would prefer
17 not to come back Monday.

18 THE COURT: I don't think how long the cross
19 and redirect are going to take.

20 MR. SHAPIRO: I'm not going to have much
21 redirect.

22 MR. ROHAN: None of these have gone into
23 what he has testified about. I'd like to ask the
24 question he testified about and I think we can all go
25 home.

PETERSON - Cross (By Mr. Pierce)

1 THE COURT: We're going to have to come back
2 Monday.

3 THE COURT: Is there going to be more
4 cross-examination?

5 MR. PIERCE: I think we're going to have to
6 come back on Monday then.

7 (Court was at recess.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25