

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

<b>DONALD LEE BARNETT,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Cause No. 88-2-04148-2</b>
	)	
<b>Vs.</b>	)	
	)	
<b>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,</b>	)	<b>TRIAL TRANSCRIPT VOLUME V, pp. 729-894</b>
	)	
	)	<b>JANUARY 28<sup>th</sup>, 1991</b>
	)	
<b>Defendants.</b>	)	
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**TRIAL TRANSCRIPT, VOLUME V  
PAGES 729-894**

BE IT REMEMBERED the above-named cause of action came on for arbitration on January 28<sup>th</sup>, 1991 before the HONORABLE WALTER DEIERLEIN, JR. at Judicial Arbitration and Mediation Services, Inc. Seattle, Washington;

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

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

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USE.**

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**EXHIBIT LIST**

<b>No.</b>	<b>Description</b>	<b>Marked</b>	<b>Rec'd</b>
P-36	Two page note from Catreena Bingamen to Don Barnett	806	1498
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PETERSON - Cross (By Mr. Pierce)

1 (The following proceedings occurred on January 28, 1991)

2 (9:30 a.m.)

3 THE COURT: Are we set to proceed, Mr. Pierce?

4 MR. PIERCE: Yes, your Honor.

5 THE COURT: Mr. Peterson, you were previously  
6 sworn in this matter. You are still under oath, and Mr.  
7 Pierce will ask you further questions.

8  
9 CROSS-EXAMINATION (Continued)

10 BY MR. PIERCE:

11 Q Mr. Peterson, on Friday you talked about Don Barnett  
12 saying at one point in time that if you had a problem you  
13 were to go to the individual involved with it; do you  
14 recall that?

15 A Yes.

16 Q When did Don Barnett first say that?

17 A I don't remember when he first said it.

18 Q Was it before the hearings started?

19 A There was a time he said it before the hearings.

20 Q Have you ever told that to anybody?

21 A Not that I can remember.

22 Q Is that a biblical provision?

23 A Yes and no.

24 Q Did you teach that basic principle as part of the Bible  
25 College classes that you say you taught?

PETERSON - Cross (By Mr. Pierce)

1 A There is a time and place for doing that, yes.

2 Q Did you teach that at the Bible College?

3 A I believe I have taught on those scriptures.

4 Q Did you give sermons about that at Community Chapel and  
5 Bible Training Center?

6 A I don't believe I did.

7 Q Other people gave sermons about that though, didn't they?

8 A I think they did.

9 Q So Pastor Barnett going out and telling somebody that they  
10 should go to the person involved with their problems is not  
11 something that was new at Community Chapel and Bible  
12 Training Center that Pastor Barnett brought up just to  
13 justify himself, was it?

14 A Teaching that, no, is not new. Forbidding the other was.  
15 It had never been forbidden for people to go to the  
16 counseling center for help.

17 Q There is a basic principle involved with having two or  
18 three witnesses if there is a problem that arises; is that  
19 correct?

20 A Yes.

21 Q Is that biblical too?

22 A Yes.

23 Q As you understand the purposes of the eldership hearings,  
24 was that to resolve the differences between Pastor Barnett

25

and Jerry Zwack and to get them back together as brothe

PETERSON - Cross (By Mr. Pierce)

- 1 A That would be one of the reasons.
- 2 Q You said you worked as a counselor previously at Community  
3 Chapel and Bible Training Center; is that correct?
- 4 A Yes.
- 5 Q Do you continue to act as a counselor there?
- 6 A No, I do not.
- 7 Q As part of the counseling for individuals at Community  
8 Chapel and Bible Training Center, sometimes you would have  
9 more than one person come into a counseling session; is  
10 that correct?
- 11 A Yes.
- 12 Q Sometimes you would have members of a family who would come  
13 in, husband and wife?
- 14 A Correct.
- 15 Q And you would attempt to get those two people back together  
16 with regards to their relationship; is that correct?
- 17 A Yes.
- 18 Q At that time when you had two people that you were  
19 counseling, you didn't require that either one of those  
20 parties bring in two or three witnesses, did you?
- 21 A In most cases it was unnecessary. This is not really at  
22 all parallel with that.
- 23 Q When this matter started, it was a proceeding to try to  
24 counsel Don Barnett, Jerry Zwack, and to resolve their  
25 difference; that's what you testified to earlier, correct?

PETERSON - Cross (By Mr. Pierce)

1 MR. ROHAN: Objection. This mischaracterizes his  
2 earlier testimony.

3 THE COURT: Well, he is asking the witness if  
4 he may answer.

5 A I would say that would be a small percentage of  
6 that we were there for these hearings.

7 Q Was the reason for the hearings a trial where two  
8 witnesses would be required as required under the  
9 scriptures?

11 that Jerry Zwack made against Don Barnett.

12 Q When there was going to be an investigation, was there to  
13 be a trial where more than Jerry Zwack and Don Barnett were  
14 going to be required to have testimony from these other  
15 individuals?

16 A If the committee felt that was needed, yes.

17 Q Am I correct in calling it a trial, or would it be a better  
18 word to call it some type of hearing?

19 A I think we called it a hearing.

20 Q Was that hearing going to result in something at the end?

21 A Yes.

22 Q Was it to be disciplinary action that was going to result  
23 from that hearing?

24 A Quite possibly.

25 Q You knew that when the hearings started on January 25,

PETERSON - Cross (By Mr. Pierce)

1 1988; is that right?

2 A Such charges as serious as those were should they prove  
3 true would require some action.

4 Q There was some hearings prior to January 25, 1988; is that  
5 right?

6 MR. ROHAN: Your Honor, I'm going to object at  
7 this point. This is well beyond the original examination I  
8 made of this witness which was solely confined to what was  
9 said at the hearings, and it was admissions at the hearings  
10 and statements of other sexual misconduct by Donald  
11 Barnett. None of this cross-examination has gone into  
12 that, and now he is going to what happened before the  
13 hearings, which is clearly well beyond what this witness  
14 was asked on direct examination.

15 THE COURT: It may be beyond the scope, but I'm  
16 going to permit it anyway.

17 Q (By Mr. Pierce) Were there some meetings that were held by  
18 the elders prior to January 25, 1988?

19 A Yes, there were.

20 Q At those hearings did you discuss what was going to occur  
21 at the elders' hearings?

22 A Yes, we talked over procedures.

23 Q Knowing that some disciplinary action may be necessary at  
24 the end, as you testified to here, what was the possible  
25 disciplinary action that was discussed at the pre-January

PETERSON - Cross (By Mr. Pierce)

1 25 meeting of elders?

2 MR. ROHAN: Objection. Assumes facts not in  
3 evidence. The witness has not yet testified that any  
4 disciplinary actions --

5 THE COURT: Well, ask a preliminary question if  
6 they were discussed.

7 Q (By Mr. Pierce) Did you discuss the alternatives of what  
8 was going to happen to Pastor Barnett if the disciplinary

9 proceedings proved to be accurate?

10 A I don't believe we did.

11 Q Did you have in mind what was going to happen to Pastor  
12 Barnett if the actions of the hearings proved that  
13 disciplinary action was necessary?

14 A Yes, I did.

15 Q Did you talk with any other elders with regard to that?

16 A No, I didn't.

17 Q Did you have any prejudice against Pastor Barnett when you  
18 went into those hearings on January 25, 1988?

19 A I don't believe I did.

20 Q You did have conflicts with Pastor Barnett with regard to  
21 basic principles at Community Chapel and Bible Training  
22 Center, didn't you?

23 A Of the most minor nature. My only conflict with Pastor  
24 Barnett was he was doing things that I considered extreme  
25 damaging to our church, and I was in almost a hundred

PETERSON - Cross (By Mr. Pierce)

1 percent agreement with him on almost everything else. His  
2 personal conduct was abhorring.

3 Q Am I to understand from your testimony that everything  
4 else, other than Pastor Barnett's personal actions, were  
5 ones that you followed his direction on at Community Chapel  
6 and Bible Training Center?

7 A I would say 99 point 9 percent of the time, yes.

8 Q ~~Mr. Peterson, didn't you, contrary to Pastor Barnett's~~  
9 ~~direction, take action that was completely opposite with~~  
10 ~~what he wanted in regard to the music that was broadcast at~~  
11 ~~Community Chapel and Bible Training Center?~~

12 A ~~No, I did not.~~

13 Q ~~Did you take action with regard to Mark Martin's music~~

14 which was contrary to what Pastor Barnett wanted?

15 MR. ROHAN: Objection. This is well beyond any  
16 direct examination --

17 MR. PIERCE: May I respond, your Honor?

18 THE COURT: This is beyond the scope. I am  
19 wondering if it might be relative to credibility.

20 MR. PIERCE: It goes to prejudice.

21 THE COURT: I'll let it in.

22 A I was not the music director at Community Chapel, and  
23 therefore I had no control over Mark Martin's music.

24 Q You wrote to Pastor Barnett and indicated that his  
25 directions with regard to this was not correct, didn't you?

PETERSON - Cross (By Mr. Pierce)

1 A I wrote a letter to him that pointed out a list of problems  
2 that were going on in the church, and that was one of the  
3 issues I brought up, but I did nothing to contradict his  
4 teaching or his authority in the church. I wrote a letter.  
5 That was my response to a disagreement that I had with him.  
6 Q At fellowship and other areas of worship locations you  
7 played those tapes that Pastor Barnett had indicated that  
8 he did not want played, didn't you?  
9 A They were permitted by Jim Wagner and George Bowker, the  
10 music director.  
11 Q At the eldership hearings where Don Barnett was present and  
12 Jerry Zwack was present, was the issue of adultery of other  
13 members of Community Chapel and Bible Training Center

hearings?  
was the adultery of any  
Community Chapel and  
the eldership hearings  
Barnett was present and  
is is well beyond the  
or no.  
Barnett made certain  
of the hearings though.

14 brought up as part of the eldership  
15 A Other than the five we talked about  
16 Q I'm talking about other than women,  
17 men who would have been elders at Co  
18 Bible Training Center brought up at  
19 during the time period that Don Barn  
20 Jerry Zwack was present?  
21 MR. ROHAN: Your Honor, th  
22 scope.  
23 THE COURT: Yes. Just yes  
24 THE WITNESS: I believe Do  
25 accusations. It wasn't the subject

PETERSON - Cross (By Mr. Pierce)

1 Q (By Mr. Pierce) Did any of the elders who were at the  
2 eldership hearings make any allegations or statements about  
3 the actions of any other elders with regards to adultery  
4 during those eldership hearings. I don't want to know  
5 about before or after.

6 A Not that I remember.

7 Q You indicated that you knew Don Barnett was lying because  
8 you had information that had been provided to you; is that  
9 correct?

10 A Correct.

11 Q This was information that had been provided by an  
12 individual, is that correct?

13 A One or more.

14 Q And their versions of the facts differed from the versions  
15 of the facts that Don Barnett gave?

16 A Correct.

17 Q At the eldership hearings did you give your opinion as to  
18 what you thought should be the interpretation of those  
19 facts as came in from third parties?

20 A I wouldn't say it quite like that. I witnessed to what  
21 other people had told me.

22 Q I'm asking, did you give your opinions to the eldership  
23 group at the eldership hearings as to what you thought  
24 other people were saying.

25 MR. ROHAN: Objection. Asked and answered.

PETERSON - Cross (By Mr. Pierce)

1 THE COURT: Yes. I'll sustain the objection.  
2 His opinion of what other people were saying is immaterial.  
3 What other people did say may not be, but the form of the  
4 question is objectionable.

5 MR. PIERCE: The only reason for going into this  
6 area is because the other third parties who he went out and

~~got facts from were not present, and so -~~

8 THE COURT: That is not the basis upon which I  
9 sustained the objection.

10 Q (By Mr. Pierce) At the eldership hearings did you give  
11 your opinions about the credibility of any of the these  
12 witnesses that you interviewed?

13 A No, I did not.

14 Q You related the facts as you know it from them; is that  
15 correct?

16 A Correct.

17 Q Mr. Peterson, at the eldership hearings did you express any  
18 type of opinion as to whether or not the version of facts  
19 given by Don Barnett was correct or the version given by  
20 other parties was correct?

21 A No, I did not.

22 Q Did you say that Don Barnett was a liar?

23 A I don't believe I did. I think the facts spoke for  
24 themselves.

25 Q You indicated in your testimony that women would come to

PETERSON - Re-Direct (By Rohan)

1           you while you were a counselor and that you told them don't  
2           do anything that they were not comfortable with.

3    A       Correct.

4    Q       Did individuals go out and again have activity with Pastor  
5           Barnett after you had counseled with them?

6    A       Yes.

7    Q       And that's sexual activity that we were talking about,  
8           right?

9    A       Yes.

10   Q       Mr. Peterson, did Kristian Erickson ever testify at the  
11           elders' hearings?

12   A       I don't remember. I doubt it.

13   Q       Did Kristen Miller testify at the eldership hearings?

14   A       No.

15                       MR. PIERCE: I have nothing further.

16                       MR. ROHAN: Just one or two questions on re-  
17           direct, your Honor.

18                       THE COURT: Yes.

19

20                                       RE-DIRECT EXAMINATION

21   BY MR. ROHAN:

22   Q       You testified in answer to one of Mr. Pierce's questions  
23           that forbidding -- you talked about the scriptural  
24           provision that "forbidding the other" was not new. What  
25           were you talking about when you were referring to Pastor

PETERSON - Re-Direct (By Rohan)

1 Barnett's discussion of forbidding the other?

2 A People in our congregation had always had the right to go  
3 to counselors and elders and the pastor for help. And in  
4 his sermon he forbid people to go to the elders and the  
5 counseling center that were having problems of this nature.

6 Q This was on the same evening or the evening after that you  
7 had confronted him about Priscilla Pike's allegations?

8 A Yes, it was the same evening.

9 MR. ROHAN: No further questions.

10 MR. PIERCE: Nothing further, your Honor.

11 THE COURT: I have areas that I would like to ask  
12 questions on, and both counsel should realize that my  
13 questions are in the same status of the questions of  
14 attorneys, so they are objectionable or not depending on  
15 the same rules.

16 This is a preliminary question. I understand  
17 that David Motherwell was Pastor Barnett's counselor  
18 immediately prior to the hearings. Do you know that to be  
19 a fact or not?

20 THE WITNESS: Yes.

21 THE COURT: Was it a fact?

22 THE WITNESS: Yes.

23 THE COURT: The question I want to ask you is, in  
24 some context -- and my memory may be faulty on this -- your  
25 name and another name were also given as counselors to

...ue?  
...d Motherwell.  
...1. What area  
...were counseling  
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Pastor Barnett during this time. Is that tr  
THE WITNESS: Yes. Preceding Davi  
THE COURT: Before David Motherwel  
of time would that be?  
THE WITNESS: Scott Hartley and I  
Don Barnett for a four-month period. Barbar  
us originally and asked us to help her --  
THE COURT: I asked what period wa  
THE WITNESS: 1987.  
THE COURT: Can you fasten it down  
time?  
THE WITNESS: In the spring time.  
THE COURT: Spring of '87.  
THE WITNESS: That lasted for four  
end of that --

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THE COURT: Did you have occasion  
subject up to Pastor Barnett?  
THE WITNESS: Yes, we did.  
THE COURT: The next area of quest  
you happen to know how these 13 people, in a  
senior elders, were selected to serve as eld

PETERSON - Re-Direct (By Rohan)

1 hearing?

2 THE WITNESS: Well --

3 THE COURT: Some of them were ministers, I  
4 understand. That would not embrace the classification as  
5 elders, would it, necessarily?

6 THE WITNESS: No.

7 THE COURT: How come the 16 were selected, or how  
8 ~~did they become members of this committee?~~

9 THE WITNESS: All the elders of the church made  
10 up the committee, and it was a full eldership hearing.

11 THE COURT: I see.

12 THE WITNESS: Two counselors and ministers were  
13 also added -- John Bergin and David Motherwell -- and I  
14 believe Pastor Barnett wanted them to be a part of it  
15 because he said they had important information to add, and  
16 ~~one other individual, Chris Matthews, was added because he~~

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RE-DIRECT EXAMINATION

BY MR. ROHAN:

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MR. PIERCE: Your Honor, I will have to object to that. That is beyond the scope of the --

THE COURT: Yes. I'll sustain your objection.

Q (By Mr. Rohan) Did you discuss at the hearings what you had brought up to Pastor Barnett?

A Yes.

THE COURT: That answer will stand.

Q Can you tell me what you brought up at the hearings and was mentioned at the hearings regarding what you had earlier brought up to Pastor Barnett?

MR. PIERCE: I'll have to object as to --

THE COURT: I'll sustain the objection.

MR. ROHAN: No further questions.

THE COURT: Anything further?

MR. PIERCE: Nothing further.

THE COURT: You may step down, sir.

MR. ROHAN: I have our next witness waiting in another room, and I'll bring her right in.

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Direct (By Mr. Rohan)

1 THE COURT: What is the name, please?

2 MR. ROHAN: Mrs. A.

3

4

DIRECT EXAMINATION

5 BY MR. ROHAN:

6 Q State your name for the Court please

7 A Mrs. A.

8 Q And your residence address?

9 A 2060 Kent-Des Moines Road.

10 Q Where are you employed?

11 A Catamaran apartments.

12 Q What do you do at the Catamaran Apartments?

13 A I am a resident manager.

14 Q Do you have any children?

15 A I have three.

16 Q How old are they?

17 A 14, 13 and 8.

18 Q Are you currently a member or attending Community Chapel  
19 and Bible Training Center?

20 A I am not.

21 Q Did you formally attend Community Chapel?

22 A Yes, I did.

23 Q When did you start attending Community Chapel?

24 A 1976.

25 Q When did you cease attendance at Community Chapel?

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Direct (By Mr. Rohan)

- 1 A Roughly two years ago.
- 2 Q That would have been sometime in 1989?
- 3 A Yes.
- 4 Q When you were attending the church, did you ever work for  
5 the church?
- 6 A Yes, I did.
- 7 Q Can you tell me what jobs you had working for Community  
8 Chapel during the time you attended there?
- 9 A I had a paid position, but I started out -- I ran their day  
10 care in 1976. Then I was on the staff in the publications  
11 department and throughout there I worked there, but I was  
12 volunteer.
- 13 Q You w "Mrs. A" was a pseudonym for Catreena Bingamen e you were at the  
14 publications department?
- 15 A Oh, yes.
- 16 Q And that was in 1987?
- 17 A Yes.
- 18 Q And you were a secretary-receptionist?
- 19 A Yes, I was.
- 20 Q Did you have other jobs during the time that you were  
21 attending Community Chapel but were not jobs at Community  
22 Chapel?
- 23 A Yes.
- 24 Q Were those jobs where a good proportion of your co-workers  
25 were also members of Community Chapel?

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Direct (By Mr. Rohan)

1 MR. PIERCE: Your Honor, I will object. These  
2 questions are leading. He can ask questions that aren't  
3 leading of this witness.

4 MR. ROHAN: They are just preliminary, your  
5 Honor.

6 THE COURT: The answer to that question was?

7 THE WITNESS: Yes.

8 THE COURT: Did you work with other members of  
9 the --

10 THE WITNESS: At all times, yes.

11 Q (By Mr. Rohan) How much of your time during 1976 through  
12 1987 did you spend either at the church or with other  
13 church members?

14 A All of my time.

15 Q That includes all of your free time too?

16 A My life was Community Chapel.

17 Q Can you tell me what you thought of Pastor Donald Barnett  
18 prior to 1987.

19 ~~MR. PIERCE: Objection, your Honor. Opinions~~  
20 ~~before 1987 are -- well, I don't know if opinions are~~  
21 ~~important at all.~~

22 MR. ROHAN: I think they are important to  
23 establish that the witness wasn't biased --

24 THE COURT: She may answer. And rather than  
25 opinions, I would think that is immaterial, but the

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Direct (By Mr. Rohan)

1 relationship is not.  
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MRS. A. - Direct (By Mr. Rohan)

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MRS. A. - Direct (By Mr. Rohan)

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MRS. A. - Direct (By Mr. Rohan)

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MRS. A. - Direct (By Mr. Rohan)

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MRS. A. - Direct (By Mr. Rohan)

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MRS. A. - Direct (By Mr. Rohan)

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"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Direct (By Mr. Rohan)

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"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Direct (By Mr. Rohan)

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MRS. A. - Direct (By Mr. Rohan)

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"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

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

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CROSS EXAMINATION

23 BY MR. PIERCE:

24 Q Mrs. A, my name is Rod Pierce, and I represent Pastor

25 Barnett in these proceedings. I believe we have met only

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

1 once before; is that correct?

2 A I have met you, yes.

3 Q At that time you didn't tell me who were, did you?

4 A I did not.

5 Q You testified, I think it was on the first, second or third  
6 time and I can't recall, that Pastor Barnett had guns or  
7 talked about guns over at the parsonage?

8 A The second time.

9 Q The first time that you were over there with the  
10 during the day; is that correct?

11 A I believe it was.

12 Q And the second and third time was in the evening?

13 A No.

14 Q All three during the day?

15 A One time was in the evening.

16 Q Which time was in the evening?

17 A The second time.

18 Q And the first time was when he got the telephon  
19 the threat and --

20 A It was the second time.

21 Q So it was the second time that he talked about  
22 that correct?

23 A Yes.

24 Q I thought you just told us it was the first time

25 MR. ROHAN: Objection, your Honor. H

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

1 mischaracterizing this witness's testimony.

2 THE COURT: You are free to answer in any  
3 fashion.

4 THE WITNESS: He's incorrect.  
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"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

1 more detailed dates and times -- I don't know if you have  
2 that record.

3 THE COURT: Just your best estimate.

4 THE WITNESS: June.

5 Q (By Mr. Pierce) Over what period of time after June of  
6 1987 did you stop going to services at Community Chapel and  
7 Bible Training Center that were held by Pastor Barnett?

8 A (No response.)

9 Q I'll say it again. When did you stop going to services  
10 that were conducted by Pastor Barnett at Community Chapel

11 and Bible Training Center?

started missing some  
t. Actually left? I  
stayed for the  
just shortly in that

last time that you were  
l, if that is the date

when Lanny got up in  
he was in Montana.

at.

l that you put that

12 A What occurred after that is that I st  
13 meetings because I couldn't handle it  
14 started fading. I stopped going. I  
15 disfellowship, so it was after that,  
16 time.

17 Q This was March of 1988 that was the l  
18 going to services at Community Chapel  
19 that Don was disfellowshipped?

20 A The first time that Lanny got up -- w  
21 the service and said -- it was when h  
22 When was that?

23 Q It was that time period then?

24 A I could tell events. It was after th

25 THE COURT: Do I understand

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

1 time as being when Lanny got up before the congregation?

2 THE WITNESS: No. What happened --

3 THE COURT: Is that when you quit going?

4 THE WITNESS: When this transpired with Don, I no  
5 longer respected him, so --

6 THE COURT: Well, that is not what we're --

7 ~~THE WITNESS: I stopped going and I went to the~~

~~was more like~~

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~~for those certain things to see that. It~~

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that.

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MRS. A. - Cross (By Mr. Pierce)

1           didn't know what everybody was doing. I trusted him as a  
2           pastor and as knowing what was going on in this move of  
3           God.

4                        So the fear in that case was doing what was right.  
5           Wanting to be spiritual, wanting to be the right minister,  
6           and da-da-da-da-da.

7                        The second and third time was a different fear. That  
8           was in play as well though.

9   Q        I think you said that the only people that you told about  
10       this were John Bergin and David Motherwell; is that  
11       correct?

12   A        Yes. My husband knows of the first one.

13   Q        You did not talk with anyone else, male friends, female  
14       friends, about this?

15   A        No way.

16   Q        Anybody else know of this relationship that you had with  
17       Don?

18                        MR. ROHAN: Objection, your Honor. That question  
19       is impossible to answer. It calls for speculation.

20                        THE COURT: As far as she knows.

21   Q        Did anyone tell you that they knew of your relationship  
22       with Don Barnett?

23   A        I don't associate with anybody from Chapel.

24   Q        At that time. When these events were going on.

25   A        No.

MRS. A. - Cross (By Mr. Pierce)

- 1 Q You were not a full-time employee at Community Chapel and  
2 Bible Training Center; is that correct?
- 3 A Part-time.
- 4 Q How many hours a week were you working?
- 5 A At least 20.
- 6 Q Was that Monday, Tuesday, Wednesday, Thursday -- every day  
7 of the week?
- 8 A Yes.
- 9 Q Half days?
- 10 A Half days. I counseled on the other.
- 11 Q Prior to June of 1987, you did not have any type of  
12 relationship with Don Barnett; is that correct?
- 13 A We were friends, I guess. Not close friends. It was the  
14 kind of relationship of boss/employee or pastor/follower  
15 relationship.
- 16 Q How many times did Pastor Barnett come in and direct  
17 activities in the publications department?
- 18 A None before me.
- 19 THE COURT: No time before this began?
- 20 THE WITNESS: All I can say is that up to my time  
21 when I was employed, it was directly when I had time with  
22 him, so he was there to see me apparently.
- 23 Q (By Mr. Pierce) Had you ever prior to June of 1987 sat  
24 down and talked with Don Barnett, just one-on-one, the two  
25 of you?

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

- 1 A Before '87?
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MRS. A. - Cross (By Mr. Pierce)

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13 A No, not during sex.

14 Q During what period of time did you act as a counselor at  
15 Community Chapel?

16 A During that time, same period of time, probably a little  
17 before.

18 Q How long a period of time did you act as a counselor?

19 A Less than a year.

20 Q When would that have started and when would it have ended?

21 A I don't know. Winter to summer, June.

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25 A During. Shortly before and shortly after.

1 Q Six months before and six months after; would that be  
2 correct?

3 A Guessing. That would be fair to say that sometime in that  
4 time, yes.

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8 A As a volunteer on my own.

9 Q And you would counsel people with regards to their  
10 problems; is that correct?

11 A Correct.

12 Q How many hours a day did you counsel people on a volunteer  
13 basis per week?

14 A I allowed two days per week, four hours.

15 Q Did you obtain any training with regards to that?

16 A Yes, I did.

17 Q Who was your supervisor at that time in the counseling  
18 center?

19 A Jerry Zwack.

20 Q Did Jerry Zwack go over procedures for counseling?

21 A No, he did not. It was George Alberts who I trained under.

22 Q How long of a period of time did you train under George  
23 Alberts?

24 A Years.

25 Q You talked about notes that you had sent or received from

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

1 Don Barnett during this period of time in 1987; is that  
2 correct?

3 A Yes.

4 Q What type of notes did you receive from Don Barnett?

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24 Q When did you start to send notes to Don Barnett?

25 A Actually I know of one I sent before then. Actually I know

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

1 of two notes that I sent him as a member of the church.

2 Q Why did you send him notes as members of the church?

3 A Again it was a common thing to do, and I appreciated some  
4 things that he had said, ministered to me.

5 Q These would be general notes talking about appreciation for  
6 the sermons --

7 A That I loved him, cared for him, and what he had to say was  
8 so good, he ministered to me as a member of the  
9 congregation.

10 Q These would not be personal notes between you and Don as to  
11 interaction between the two of you; is that correct?

12 A It was an expression of love to my pastor is what those  
13 notes were.

14 Q But that didn't relate to your relationship on a one-on-one  
15 basis with Don, did it?

16 A No. I don't understand why the notes are such an issue,  
17 why that is such a topic. Why I'm here, I thought --

18 MR. PIERCE: Objection. There is no question  
19 pending now, your Honor.

20 THE COURT: Wait until he asks you something  
21 else.

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1 involvement with him?

2 A I don't know. Truthfully I don't remember all the notes  
3 and letters and things past. I have got tons of it, but it  
4 is all in a box at my house.

5 Q Do you recall writing letters to Don Barnett and describing  
6 him as handsome Don?

7 A Oh, sure.

8 Q Do you recall writing in your letters to Don or telling him  
9 in person: Come away with me, my beloved. I want to be  
10 with you?

11 A Those are real common terms used. I may have, but it is  
12 not like -- you have got to understand what we were --

13 Q Do you recall writing or telling Don: Loving you is all I  
14 want to do. Near to your heart is where I want to stay?

15 A That is a quote from a song that we sang during worship  
16 hours.

17 Q And you would have wrote or told that to Don?

18 A I may have.

19 Q Do you recall writing or telling Don: My beloved, my love,  
20 I'm overwhelmed by your glorious love?

21 A Those are all from a song. I could have. I don't know.

22 Q Do you recall that?

23 A No, none of these I recall. They are all "could haves"  
24 because I don't recall, but it is not I want to run off  
25 with you. That is not how that is implied.

1 Q Do you recall telling or writing to Don: I will long and  
2 wait for you to come home?

3 A No. Oh, sure. Yes. The very first time he went on  
4 vacation.

5 Q Do you recall writing or telling Don: Have a wonderful  
6 time. Wish I were with you?

7 A Yes.

8 Q Do you recall writing or telling Don: My most sweet,  
9 wonderful connection, I love you?

10 A Could have. They are not disputable. They are common  
11 vernacular, common expressions.

12 Q When you talk about connection, what did you mean by  
13 connection then?

14 A It was an experience that -- to describe it then and to  
15 describe it now because I have been out of there. You  
16 probably have heard all of this, but what happens is you  
17 worship and you open yourself to another person, and you do  
18 experience something that we called connecting or spiritual  
19 union. These are common terms for what you would  
20 emotionally experience. These expressions like -- yeah,  
21 hurry back. I was thrilled. I was chosen to minister to  
22 the pastor. The pastor loves me, and we are going to  
23 experience something in the Lord. I would testify to that  
24 as valid and upright and what I then understood as being  
25 right. And there was nothing improper -- and I see a note

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MRS. A. - Cross (By Mr. Pierce)

1 from me -- it was not considered an improper thing. We  
2 were in the book -- these are different things from the  
3 books of the Bible, expressions of love that we pulled out  
4 and we would use as expressing what we felt an openness  
5 was, and that is what I did.  
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17 Q Do you recall writing or telling Don: The love I have for  
18 you is overwhelming to my natural mind?

19 A I could have.

20 Q Do you recall writing or telling Don: I am loving you so  
21 fully, so powerfully?

22 A Could have.

23 Q Do you recall saying that?

24 A I don't recall any of these.

25 Q Do you recall writing or telling Don: Beloved, this love

- 1 will take you to realms you never knew before?
- 2 A I could have. What is your point?
- 3 Q Do you recall writing or telling Don: I won't hold  
4 anything back from you, my choice, and you have captured my  
5 heart and you are altogether desirable?
- 6 A I could have, Rod. Did you take this off one or -- you  
7 won't answer, right?
- 8 Q Do you recall writing or telling Don, referring to him as  
9 sweet darling Don, I truly love you?
- 10 A Could have.
- 11 Q Do you recall writing or telling Don: I'm so very, very  
12 sorry for hurting you?
- 13 A I did. I believe I did. I'm sure I told him that as well  
14 because he felt that I did and --
- 15 Q I'm not asking you the reason for it. I'm just asking you  
16 if these things occurred.
- 17 Do you recall writing or telling Don that I need you  
18 and your love?
- 19 A No comment.
- 20 Q No comment? I'll ask it again. Do you recall writing or  
21 telling Don that I need you and your love?
- 22 A All these quotes that you are quoting, I could have. These  
23 are real common -- you are rattling off all these things  
24 that are real common.
- 25 Q So you are saying you did do those or you don't recall?

MRS. A. - Cross (By Mr. Pierce)

1 A I could have. Chances are good. They are not wrong  
2 things.

3 Q Do you recall writing or telling Don: Don, I really need  
4 you?

5 A Could have.

6 Q Why would you say that you really need Don or could have  
7 said that?

8 A That I really need him?

9 Q Yes.

10 A All these are true. Number one, I respected him. Number

11 ~~one, I did need him. Not in improper relationships~~

12 don't want this to come across in the wrong way and it's  
13 difficult because of what the church represented. Because  
14 there is filler in there too. I do need my pastor. I do  
15 need him. Definitely at that time. It's not a wicked  
16 thing. And I needed him to make right. In here too is  
17 Don, I need you to make right. You need to repent to me  
18 certainly and to the congregation. We need you. I love  
19 you. I care, and I care about your soul and your being.  
20 Yes, I love you as a man, but not as a lover or improper.  
21 And that is why these thing that are being said -- you  
22 don't want to make them what they are not. I understand  
23 your position, but they are expressions that we real  
24 commonly used and are real right.

25 Q Do the expressions that --

MRS. A. - Cross (By Mr. Pierce)

1 THE COURT: Do you have quite a few more? We  
2 have gone long over the recess time.

3 MR. PIERCE: I have notes that I have to review,  
4 so maybe this would be a good time to take a recess.

5 THE COURT: We will have a recess at this time  
6 and be back at twenty minutes after eleven.

7 (A ten-minute break was taken.)

8 THE COURT: You may continue, sir.

9 Q (By Mr. Pierce) You indicated that the phrases that you  
10 used and the things that you were writing were common at  
11 Community Chapel; is that correct?

12 A Yes.

13 Q And these would have been things that you would have  
14 written to a person of the male sex or the female sex; is  
15 that correct?

16 A In most cases. They were expressions or words used,  
17 expressions to Jesus -- my beloved, it would be as though  
18 that person were Jesus and you would be writing and  
19 expressing it to the Lord, and you would write it to that  
20 person. So in some cases it would be vernacular for a  
21 woman or a man.

22 Q Do you recall writing or telling Don that he was huggable?

23 A Yes.

24 Q Do you recall writing or telling Don that he was cuddable?

25 A Correct.

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

- 1 Q Do you recall that?
- 2 A Could have.
- 3 Q But you don't recall it at the present time?
- 4 A It's been a long time.
- 5 Q Do you recall writing or telling Don that he was cute?
- 6 A Could have.
- 7 Q Do you recall writing or telling Don that he was a darling?
- 8 A Oh, sure.
- 9 Q Do you recall writing or telling Don that he was desirable?
- 10 A Sure, could have.
- 11 Q Do you recall writing or telling Don that you are one
- 12 wonderful hunk of purebred Christian?
- 13 A Yes. That was something that was -- it's an expression, a
- 14 fun expression, but yes.
- 15 Q You wrote that on a birthday card to Don; is that correct?
- 16 A Could have. I don't know when I wrote it.
- 17 Q Do you know when Don's birthday is?
- 18 A Yes, I think.
- 19 Q When is it?
- 20 A I think it is in May.

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MRS. A. - Cross (By Mr. Pierce)

1 of 1987?

2 MR. ROHAN: Your Honor, asked and answer. This  
3 witness has testified at length that she doesn't remember  
4 the dates.

5 THE WITNESS: I don't remember --

6 THE COURT: She doesn't know apparently.

7 Q (By Mr. Pierce) I want to refresh your memory, if I can,  
8 by showing you a document, Mrs. A, and that may refresh you  
9 as to some of the questions I asked here earlier.

10 MR. ROHAN: Your Honor, I would object to the use  
11 of these documents.

12 THE COURT: He is just showing her these. She  
13 may examine it to see if that refreshes her recollection.

14 MR. ROHAN: Your Honor, none of these documents  
15 were ever produced in discovery.

16 MR. JOHNSON: They were never part of any  
17 requested or part of the requests for production.

18 THE COURT: Pardon?

19 MR. JOHNSON: They were never a part of any  
20 requests for production.

21 Q (By Mr. Pierce) Mrs. A, earlier in your testimony I asked  
22 you if you recalled writing or telling Don that the love I  
23 have for you is overwhelming to my natural mind. Do you  
24 recall that?

25 A Yes.

MRS. A. - Cross (By Mr. Pierce)

1 Q And you couldn't recall at that time. Does this document  
2 refresh your memory as to your writing to Don?

3 A I remember this.

4 Q So you did write to him and tell him that the love I have  
5 for you is overwhelming to my natural mind?

6 You will have to speak up for the court reporter.

7 A Well, let me read it.

8 Q Oh, okay.

9 A (Witness reads document.)

10 THE COURT: Does that recall to your memory  
11 whether or not you said that?

12 THE WITNESS: I wrote this.

13 Q (By Mr. Pierce) Did you write to Don Barnett and say to  
14 him that the love I have for you is overwhelming to my  
15 natural mind?

16 A I probably wrote that. If it is here, I wrote it.

17 Q This first sentence, can you look at that and see if that  
18 says --

19 A It says --

20 Q No, you don't have to tell us what it says.

21 A What do you say it says?

22 Q All I want to know is do you recall saying or writing to  
23 Don Barnett, wow, the love I have for you is overwhelming  
24 to my natural mind?

25 A I wrote that, yes.

1 Q Also, did you write or tell Don Barnett, having looked at  
2 that document and refreshed your memory: My most sweet,  
3 wonderful connection, I love you?

4 A Yes.

5 Q And do you recall saying to Don Barnett or writing to Don  
6 Barnett: I'm loving you so fully, so powerfully?

7 A Yes.

8 Q Do you recall writing to Don Barnett: Beloved, this love  
9 will take you to realms you have never known before?

10 A Yes. Yes, I did write that, but there is more.

11 Q Did you also recall writing to Don Barnett: I won't hold  
12 anything back from you my choice one. You have captured my  
13 heart and you are altogether desirable?

14 A That is written here, yes.

15 Q That is you who wrote that?

16 A Oh, yes -- but let's see here. Well, if you want to pull  
17 things out of it -- you can read it. He has pulled it out  
18 of --

19 Q Mrs. A, under my examination of you I asked if you had  
20 recalled saying I need you and your love to Don Barnett,  
21 and you said you couldn't recall.

22 A Could have.

23 THE COURT: Are you going to go through this and  
24 have her identify each time?

25 MR. PIERCE: Hopefully I will be able to --

MRS. A. - Cross (By Mr. Pierce)

1 THE COURT: Well, I would never have let you ask  
2 the question to start with if this was going to happen,  
3 because it can only come in once and she has not denied any  
4 of this. She has said she doesn't remember albeit, but the  
5 next time I will not permit you to do this. This is time-  
6 consuming. I have heard what she says.

7 MR. PIERCE: I will finish up with this one, your  
8 Honor.

9 Q (By Mr. Pierce) Do you recall writing Don Barnett  
10 saying --

11 THE COURT: Show her where she said it.

12 MR. PIERCE: (Mr. Pierce shows witness letter.) I  
13 need you and your love.

14 THE WITNESS: Yes.

15 MR. ROHAN: Can I see that, Counsel?

16 MR. PIERCE: Yes.

17 MR. ROHAN: Thank you.

18 MR. PIERCE: Are you through, Counsel?

19 MR. ROHAN: I may want to talk to her about it  
20 though.

21 MR. PIERCE: Okay.

22 THE COURT: About how many such letters do you  
23 have?

24 MR. PIERCE: I have nothing more in that area.

25 THE COURT: Just for a total.

MRS. A. - Cross (By Mr. Pierce)

1 MR. PIERCE: I think there are four, your Honor.

2 THE COURT: Four letters?

3 MR. PIERCE: Yes.

4 Q (By Mr. Pierce) You wrote at least four letters to Don  
5 Barnett; is that correct?

6 A Correct.

7 Q You had indicated that you were in a funk in your

relationship with Don Barnett. You said something about a  
funk. Do you recall that?

MR. ROHAN: I think he has mischaracterized the  
witness's testimony.

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es.  
o you recall what period of time you worked at Community  
Chapel as a paid employee?

his last time, you mean, referring to this time period?

es.  
o, I don't know right off. It was less than a year.

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MRS. A. - Cross (By Mr. Pierce)

1 Q Would it be correct to say that you would have stopped  
2 working on a part-time basis for pay in approximately June  
3 of 1987?

4 A I would not have stopped -- what now?

5 Q Did you stop working for pay at Community Chapel in June of  
6 1987?

7 A I quit. I don't know the date, I'm sorry. I don't know.

8 Q Was it the summer of 1987?

9 A I'm sorry.

10 MR. ROHAN: Objection, your Honor. This has been  
11 asked and answered. She has indicated that she doesn't  
12 know.

13 Q (By Mr. Pierce) You said that Don Barnett had mentioned a  
14 gun or guns that he had in the house?

15 A Not guns, a gun.

16 Q Did you see it?

17 A No.

18 Q For the people that noticed something wrong with you, those  
19 were your co-workers and friends?

20 MR. ROHAN: Objection, your Honor, that calls for  
21 speculation.

22 THE COURT: I didn't hear the question.  
23 Something about her co-workers being threatened. What was  
24 it?

25 Q (By Mr. Pierce) Were the people that noticed something

MRS. A. - Cross (By Mr. Pierce)

1 wrong that you testified to earlier, was that your  
2 co-workers and friends?

3 MR. ROHAN: Your Honor, I'll object. It's  
4 overbroad --

5 THE COURT: I still didn't hear the question.  
6 What are you asking her?

7 Q (By Mr. Pierce) Did you testify on direct examination that  
8 people noticed something was wrong with you?

9 A Yes.

10 Q And were those your co-workers and friends?

11 MR. ROHAN: Your Honor, I'm going to object. I  
12 think the question implies that all of her friends knew  
13 about it and all of her co-workers knew about it. I think  
14 it's overbroad and calls for speculation.

15 THE COURT: The answer will stand.

16 A They knew something was wrong with me, yes.

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24 A Yes. I would say yes.

25 Q Did you ever talk to Chris Matthews with regards to Don

1 Barnett and your relationship?

2 A Not that I recall. I don't know. I don't remember to be  
3 truthful.

4 Q You indicated when you went to see John Bergin that he was  
5 in the counseling center and you were fearful because Don  
6 Barnett had come up to the counseling center; is that  
7 correct?

8 A Yes.

9 Q During that time period, the middle or the beginning of the  
10 summer of 1987, you had been working at the counseling  
11 center two days a week for approximately six months; is  
12 that right?

13 A I didn't have an office up there now.

14 Q But you were working up at the counseling center for  
15 approximately six months for two days a week; is that  
16 right?

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24 any idea that you would be having adultery on that date?

25 A No.

"Mrs. A" was a pseudonym for Catreena Bingamen

**MRS. A. - Cross (By Mr. Pierce)**

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"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

1 was either before this or right after that I went over  
2 briefly, but nothing -- it was just --

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6 A Come again?

7 Q I'm trying to find out -- this one occasion where you went  
8 over to see Don, over to the parsonage, did that occur  
9 before the first time?

10 A That is what I'm not sure. It was either before or --  
11 there was another time that I had been over there when it  
12 was just -- I had been over there when there were group  
13 activities, but it was earlier in the relationship or  
14 whatever you call it, and I really don't know.

15 Q What happened on that occasion?

16 A That is what I don't remember, but it had to be brief.

17 Q Were you delivering something from the publications  
18 department?

19 A That's right.

20 Q That occasion where you went over there was when you had a  
21 specific purpose of delivery of some items to the  
22 parsonage: is that right?

23 A Let me think, okay? No. No, not quite. I recall that,  
24 and what it was was Don called and invited me over, maybe  
25 for lunch or something, and I took a delivery with me since

1 I was going there. They hired someone else who does that,  
2 and I said, hey, I'm going, I'll take it. That is what  
3 happened that time.

4 Q Do you recall when that was?

5 A I don't. I recall that though. I don't know when.

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"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

1 Q Did you think that it might happen on that occasion?

2 A I truthfully didn't think it would on the third time.

3 Q If you wanted to tell Don Barnett on that third occasion

4 ~~that you should report him, why didn't you call him on the~~  
5- telephone and call him?

6 A Well, that is the thing that I was trying

7 was not an easy thing to do. Why didn't

8 mean, or why didn't I tell him --

9 Q Why didn't you call him on the telephone

10 you needed to say?

11 A Because I was trying to be mature. It so

12 tried to be mature and adult and go see him

13 face-to-face. Plus, I was trying to do it

14 how he said you go to the man one-on-one,

15 enough control, which obviously I was not

16 not be in control of the situation. That

17 nothing real profound there.

18 Q When did you talk to David Motherwell with

19 Barnett?

20 A I'm sorry, I don't have a date. Sometime

21 THE COURT: When was that?

22 THE WITNESS: I don't have a date

23 Sometime in there.

24 Q (By Mr. Pierce) What year?

25 A I don't know. I'm sorry I don't have the

1 Q You were working in the counseling center six months before  
2 these --

3 MR. ROHAN: Objection, your Honor. He keeps  
4 stating that she was working in the counseling center. She  
5 wasn't physically working in the counseling center. She  
6 was working for the counseling center. She has never  
7 stated that she was working in the counseling center.

8 THE COURT: Well, I don't know if that is  
9 material. I think --

10 MR. ROHAN: Well, I think he's going to make it  
11 material later on.

12 THE COURT: Whether she worked at the counseling

if that becomes material, I  
Right now, he is trying to  
s to the time when she  
ake it. Do you recall in

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wo months, three months?  
ouldn't be that long, I

ad to be closer to --

13 center or for them or whatever,  
14 want to find out more about it.  
15 narrow down the point with her a  
16 spoke with David Motherwell, I t  
17 relation to these events --

18 THE WITNESS: All after

19 THE COURT: How long a

20 THE WITNESS: Let me t

21 THE COURT: A month, t

22 THE WITNESS: No, it w  
23 don't think.

24 THE COURT: Pardon?

25 THE WITNESS: No, it h

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

1 THE COURT: Give us your best --

2 THE WITNESS: I would have looked harder, but --

3 THE COURT: You give us your best estimate of  
4 when you thought.

5 THE WITNESS: That's when it would be.

6 THE COURT: What?

7 THE WITNESS: A month after. I'm guessing. I  
8 really don't know.

9 Q (By Mr. Pierce) Was David Motherwell in charge of the  
10 counseling center at that time?

11 A Yes. I think so.

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1 THE WITNESS: Well, let's see. Let me correct  
2 that. When I first reported it -- because I need to say --  
3 I went to John, so that was after the second time because  
4 at this time -- and I didn't know what to do because it was  
5 during that time I decided I was going to confront Don and  
6 discuss with him what needed to be done, and I kind of  
7 discussed that, I believe, with John.

8 So when the third time came -- so it was after -- so  
9 it was after that is when I saw him again, after the third  
10 time.

11 THE COURT: Was that the second time?

12 THE WITNESS: Yes. The second time I saw him was  
13 after the third time.

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"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Cross (By Mr. Pierce)

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THE COURT: Who?

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THE WITNESS: Jerry Zwack. And I'm not sure. It seems like I did.

21

Then I do know of someone else, I recall sitting here, who I told.

22

23

THE COURT: I can't hear what you're saying?

24

THE WITNESS: I recall someone else I told it to.

25

Q (By Mr. Pierce) Who would the other person be?

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Re-Direct (By Mr. Rohan)

1 A Sandy Schwartzkopf.

2 MR. PIERCE: I have no further questions.

3 THE WITNESS: Because when I came back --

4 MR. PIERCE: Move to strike as non-responsive.

5 All I asked was who it was and she told me.

6 THE COURT: Who else?

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RE-DIRECT EXAMINATION

14 BY MR. ROHAN:

15 Q Did you have an office at the counseling center?

16 A No.

17 Q How often did volunteer counselors counsel outside of the  
18 counseling center?

19 A Whatever their schedule required.

20 Q Did you have a regular time period when you were at the  
21 counseling center, or did you counsel out of some other  
22 place?

23 A I counseled outside of the counseling center.

24 Q There was two notes that Counsel asked you whether it would  
25 refresh your recollection, and one of them --

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Re-Direct (By Mr. Rohan)

1 THE COURT: Are these one of the four letters?

2 MR. ROHAN: Yes, your Honor.

3 Q (By Mr. Rohan) One of them states: I have repented many  
4 times before God. Do you recall when you sent that note to  
5 Don and what the circumstances were?

6 A Yes.

7 Q Can you tell the court what the circumstances were.

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MRS. A. - Re-Direct (By Mr. Rohan)

1 that was also referred to by counsel.

2 MR. PIERCE: Excuse me, Counsel. That is a  
3 separate document that was attached. That was not referred  
4 to. That was not asked about or anything --

5 MR. ROHAN: Part of this document was used.

6 MR. PIERCE: It is two separate documents  
7 together --

8 MR. ROHAN: That are stapled together.

9 MR. PIERCE: There was nothing with regards to  
10 the second one that was asked in any way.

11 Q (By Mr. Rohan) When counsel handed you this one note, you  
12 read both notes that he handed you; is that right?

13 A Yes.

14 Q Can you tell me when you sent the second note to Pastor  
15 Don?

16 A These could be --if I recall, most of my notes were right  
17 in the beginning.

18 THE COURT: Were what?

19 THE WITNESS: I'm not sure when I sent these  
20 notes.

21 Q (By Mr. Rohan) When you state here: Let's keep our eyes  
22 on Him and not dwell on the fires --

23 MR. PIERCE: I'm going to object, your Honor.  
24 There is no testimony about that. Counsel wishes  
25 apparently to bring in the second letter --

MRS. A. - Re-Direct (By Mr. Rohan)

1 THE COURT: There was testimony about the notes.

2 You may ask.

3 Q (By Mr. Rohan) Can you tell me what you are referring to  
4 in that note about the fires?

5 A Fires is another term for -- I wrote in here let's keep our  
6 eyes on God and not on the fires, meaning things that come  
7 our way, hardships and the trials, and along that line. So  
8 that is what I was referring to. Our eyes should be on  
9 Jesus only. This is a note -- we are going to keep our  
10 eyes on God. I was in a correcting mode and doing  
11 accordingly.

12 Q This was a note where you were trying to correct Don's  
13 behavior; is that right?

14 A Yes.

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19 A Oh, yes. Everything was relative.

20 Q There is nothing in this note here that in any way states  
21 that Don is huggable or cuddable or anything like that; is  
22 that right?

23 A Correct.

24 MR. ROHAN: I don't have any other questions.

25 Thank you.

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Re-Direct (By Mr. Rohan)

1 MR. PIERCE: I think proper housekeeping would be  
2 to offer this, have this marked as an exhibit this document  
3 which counsel read from and have that marked.

4 MR. ROHAN: Your Honor, the one I did read from,  
5 which is the second letter there, should be put in as an  
6 exhibit. The first one is not one that I read from.

7 THE COURT: Well, just because you have read from  
8 it doesn't make it material. They are either material or  
9 not or admissible or not.

10 MR. ROHAN: And I would say they are not  
11 admissible.

12 THE COURT: What say you?

13 MR. PIERCE: We didn't use the second document at  
14 all to refresh the witness at all. They came in together.  
15 Counsel wished to read from this set of documents, claiming  
16 that they came in together. Let's put the whole thing in,  
17 and the Court can see the whole thing and read both of  
18 them. You can't get part of the benefits here and say  
19 let's keep out the other material.

20 MR. ROHAN: What I was doing was precisely that,  
21 your Honor, making sure that the Court was not left --

22 THE COURT: She has admitted to making these  
23 statements, but I don't know why the writing is admissible,  
24 and --

25 MR. ROHAN: I would agree with you, your Honor.

MRS. A. - Re-Direct (By Mr. Rohan)

1 THE COURT: What say you?

2 MR. PIERCE: I think this is the best evidence of  
3 what the witness was saying at that point in time without  
4 any interpretation --

5 THE COURT: She has already admitted it, what was  
6 read to her.

7 I have been pretty liberal in permitting evidence  
8 in. I'll --

9 MR. ROHAN: Your Honor, I think you should not  
10 let it in.

11 THE COURT: Why not?

12 MR. ROHAN: Because the witness has testified as  
13 to refreshing her recollection about these documents, and  
14 that is what the purpose of having them there was. All I  
15 was doing was re-examining on that point, and it seems to  
16 me that she has already testified to this and these are  
17 just not relevant to what happened here.

18 THE COURT: Well, you went beyond the refreshing  
19 ~~recollection, so I will admit it. If you will mark it~~  
20 please. I am very tentative about admitting this, frankly,  
21 but I may -- when we get down to reviewing all these --  
22 keep this out, but at this point I will admit it.

23 (Exhibit 36 marked for identification.)

24 THE COURT: Exhibit 36 offered by the Plaintiff  
25 tentatively admitted. That is a two-page note of the

"Mrs. A" was a pseudonym for Catreena Bingamen

MRS. A. - Re-Direct (By Mr. Rohan)

1 witness, Mrs. A.

2 MR. ROHAN: Your Honor, I have nothing further.

3 THE COURT: You may step down, Mrs. A.

4 MR. ROHAN: Can we break for lunch, your Honor?

5 THE COURT: Oh, it is twelve o'clock. Yes.

6 (Court recessed until 1:15 p.m.)

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HAROLD - Direct (By Mr. Shapiro)

1 (1:15 p.m.)

2 MR. SHAPIRO: Your Honor, our next witness is  
3 John Harold, who is here.

4 THE COURT: Would you please stand, sir, and  
5 raise your right hand to be sworn.

6 (Witness sworn on oath by the Court.)

7

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DIRECT EXAMINATION

9

BY MR. SHAPIRO:

10 Q Mr. Harold, will you state your full name and spell your  
11 last name.

12 A John Harold. My last name is spelled H-a-r-o-l-d.

13 Q Where do you live, sir?

14 A I live at 441 Woolen Road, Burlington, Washington.

15 Q Are you presently employed?

16 A No, sir.

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

19 A Yes, I am.

20 Q How are you familiar with that organization?

21 A I was a member participant in that church from January 1980  
22 through June of 1988.

23 Q While you were a member of that church for a little over  
24 eight years, did you hold any other positions there?

25 A Yes. I was a Bible College teacher. I began that position

HAROLD - Direct (By Mr. Shapiro)

1 in December of 1985. I was also an ordained minister and  
2 a ministerial elder.

3 Q Were you a counselor?

4 A Yes, sir.

5 Q How long were you a counselor?

6 A I was a counselor from June of '86 until June of '88.

7 Q Are you still with Community Chapel and Bible Training  
8 Center?

9 A No, I am not.

10 Q Are you worshipping at any church?

11 A No, not currently.

12 Q If I use the term "eldership hearings," are you familiar  
13 with that term?

14 A Yes, I am.

15 Q How are you familiar with that term?

16 A I was a committee member in those meetings as a ministerial  
17 elder in the church.

18 Q Can you describe how many people were in the committee.

19 A There were 16 people in the committee, three that were  
20 designated as senior elders, ten who were administrative or  
21 ministerial elders in the church, and then three other  
22 individuals who were designated as ministers in the church.

23 Q Based on your recollection, what was the purpose of these  
24 eldership hearings?

25 A The purpose of the eldership meetings was to address the

HAROLD - Direct (By Mr. Shapiro)

1           grievances that Jerry Zwack had brought to the elders  
2           concerning the activities of Donald Barnett.

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1           these lawsuits, the church was a defendant?

2   A       Yes.

3   Q       Now when the hearings were ongoing and when Don Barnett and  
4           Jerry Zwack were present, did the subjects of coercion and  
5           misuse of pastoral authority come up?

6   A       Yes.

7   Q       Tell me what was brought up regarding coercion,

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(Mr. Wiggins enters the room.)

22   Q       To the best of your knowledge, was Mr. Zwack complaining in  
23           an effort to regain his job or something else?

24   A       No. In fact, he pretty much stated that he wasn't  
25           interested in getting his job back. In fact, Don had

HAROLD - Direct (By Mr. Shapiro)

1           apparently given him that option prior to him writing the  
2           letter to the elders and he has refused. So he wasn't  
3           seeking his job back. He was seeking redress for the  
4           grievances themselves; in other words, the misuse of  
5           pastoral authority. That was his chief concern. He used  
6           his dismissal as evidence of that misuse.

7   Q       Why did he cite his dismissal as a misuse of the pastoral  
8           authority, as you recall?

9                   MR. JOHNSON: Objection, your Honor, as to why  
10           Jerry Zwack did something. If counsel wants to ask what  
11           Jerry Zwack may have said, that is another thing.

12                   THE COURT: Well, the question is improper in  
13           form.

14   Q       (By Mr. Shapiro) Did Jerry Zwack say why he cited his loss  
15           of job as an example of misuse of pastoral authority?

16   A       Yes. He felt that it was an attempt to cover up his  
17           activities with these women and to deny Jerry a forum with  
18           the counseling center and with the church as a whole for  
19           discussing these things or getting himself involved in the  
20           investigation of the these things. And so he felt that  
21           that was the reason he was dismissed from the Bible College  
22           class and dismissed from his position.

23   Q       Because he might bring these things to light?

24   A       Right. That he might expose Don Barnett to other members  
25           of the congregation.

HAROLD - Direct (By Mr. Shapiro)

1 Q When you were present and Don Barnett and Jerry Zwack were  
2 present, did Don Barnett make any admissions regarding  
3 misuse of pastoral authority?

4  
5 the question because it uses the term "misuse of pastora  
6 authority" in sort of a general way, and I guess what I  
7 saying, your Honor, is that I think the question is vagu  
8 Unless pastor Barnett specifically used those words, wha  
9 the question is asking is really --

10 THE COURT: Revise it to say to the charge of  
11 pastoral authority.

12 Q (By Mr. Shapiro) Did Pastor Barnett make any admission  
13 regarding the charge of misuse of pastoral authority?  
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HAROLD - Direct (By Mr. Shapiro)

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ur Honor, I'll object to the form  
esn't refer to discussions by  
discussions that he is referring  
rings and I assume they are  
y to that occurred while Donald  
hearings, but the question  
should be included in the

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MR. JOHNSON: You  
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Barnett was present in the  
doesn't --

THE COURT: That

1 question.

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Q During the hearings when Donald Barnett was present, did he discuss anything about the quality of his ability to recall events or details?

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A During the meetings, yes. He said --

16

Q ~~this is Don Barnett?~~

remembering

17

A Donald Barnett said this he had difficulty with remembering specific events and chronology, and in particular he said that he knew his chronology wasn't correct but he said it didn't matter that it wasn't correct, that accuracy didn't have anything to do with whether or not he was a liar.

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Q Now, you stated earlier in the testimony that you were a counselor for a period of time?

24

25

A Yes.

HAROLD - Direct (By Mr. Shapiro)

- 1 Q What was the time period again?
- 2 A From June of '86 to June of '88.
- 3 Q And in general what were your duties as a counselor at
- 4 Community Chapel?
- 5 A Well, we were to counsel -- I specifically counseled in the
- 6 adult area, so it was single and married couples,
- 7 individuals, in regard to connections, finances sometimes,
- 8 and in a wide variety of ways. In some circumstances, if
- 9 situations warranted it, I had to disfellowship people from
- 10 the church.
- 11 Q So disfellowshipment was also part of your potential
- 12 responsibilities?
- 13 A Yes, sir.
- 14 Q What were the circumstances under which you could
- 15 disfellowship someone as a counselor?
- 16 A The general circumstances were if someone was unwilling to
- 17 conform to counseling and they continued in that for a time
- 18 period. Then we could recommend that they be
- 19 disfellowshipped. There was also the possibility of
- 20 disfellowshipping someone without getting pre-approval from
- 21 anybody in an emergency or aggravated situation.
- 22 Q I want to focus on the second type that you just discussed.
- 23 Did you ever disfellowship anyone without getting pre-
- 24 approval because you thought it was an emergency or
- 25 aggravated situation?

HAROLD - Direct (By Mr. Shapiro)

1 A Yes. In conjunction with Wayne Snoey in one particular

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19 Q Was  
20 prior  
21 A Yes.  
22 Q Did  
23 util  
24 A No.  
25 Q Did

expectation that he would complain since  
as the first time I had done this, but it  
time that Wayne Snoey had done it, and it  
occurred, not regularly, but it was not

hearings in the situation with Donald  
a point in time in your mind where that  
an emergency or aggravated situation?  
refused, utterly refused to --

SON: Your Honor, I think I am going to  
or not something arose in this person's  
is no testimony that this person was  
counselor, and there is no testimony that  
of disfellowshipped anybody or  
astor Barnett, and certainly there is no

T: Well, that part of it is true, but he  
situation he believed to be an aggravated  
whether it actually was or wasn't remains to

You may continue.

the question?

situation regarding Don Barnett which  
the hearings -- I believe you testified

2 A No. We had no exp  
3 this was -- this w  
4 was not the first  
5 was something that  
6 uncommon.

7 Q With regard to the  
8 Barnett, is there  
9 situation arose to

10 A Yes. When Don had

11 MR. JOHN

12 object to whether  
13 mind, since there  
14 actually Don's coun  
15 this person himsel  
16 disfellowshipped Pa  
17 testimony that --

18 THE COURT

19 can explain what si  
20 situation, and whet  
21 be seen.

22 Q (By Mr. Shapiro) Y

23 A Would you repeat th

24 Q With regard to the  
25 was the subject of

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Q Now, I want to focus your attention to September 25, 1987. After that period of time, in non-emergency or aggravated situations, what was the procedure that you understood was to be followed for counselor disfellowshipments?

A All the counselors received a memo from Don Barnett stating that David Motherwell would be the individual that we would go to in order for approval on all disfellowships, and so

1 from September 25th on I went strictly to David Motherwell.

2 Q The memo was from Donald Barnett?

3 A Yes. It might have been pastor Jack Hicks' office, but it  
4 was from Donald Barnett in its intent.

5 Q And you learned that subsequently?

6 A What?

7 Q That it was from Donald Barnett's office?

8 A I would have to look at the --

9 Q Would looking at the document refresh your recollection?

10 A Yes, it would. Thank you.

11 (Exhibit 37 marked for identification.)

12 Q I will show you what has been marked as Defendants' Exhibit  
13 37. Is that the memorandum of September 25, 1987, that you  
14 are referring to?

15 A Yes.

16 Q Is that memorandum the source of your understanding for  
17 going to David Motherwell to get prior approval for  
18 disfellowshipments by counselors?

19 A Yes.

20 Q Who is it addressed to?

21 A It is addressed to department heads, but then it was  
22 circulated by the department heads to each of the  
23 counselors in the counseling ministry.

24 Q Who is it from?

25 A From Jack Hicks. He was the vice president of the

HAROLD - Direct (By Mr. Shapiro)

1 corporation, and so since it is a two-fold memorandum --  
2 one is where Jerry Zwack is being laid off and Chris is  
3 being replaced as the administrative head -- the second  
4 part is where David Motherwell is taking over for the one

BARNETT - Direct (By Mr. Rohan)

- 1 position in Community Chapel; isn't that right?
- 2 A By reason of the disfellowship letter?
- 3 Q ~~Well, did they tell you something that on March 4 or~~
- 4 March 3 that indicated they wanted you to still be the
- 5 pastor?
- 6 A You mean by letter?
- 7 Q By letter or any other way. At any time on March 3 or
- 8 March 4, 1988 did Scott Hartley --
- 9 A Before they disfellowshipped me?
- 10 Q Before or after.
- 11 A Before or after.
- 12 Q Right. On March 4th, did Scott Hartley indicate in
- 13 any way to you that he wanted you to still be his
- 14 pastor?
- 15 A Did he want me to be, no.
- 16 Q Okay. And Jack DuBois didn't want you to be his
- 17 pastor either, did he?
- 18 A No.
- 19 Q And Jack Hicks didn't want you to be his pastor
- 20 anymore either, did he?
- 21 A That's correct.
- 22 Q In fact, all the way through the end of 1988 neither
- 23 Jack Hicks nor Jack DuBois nor Scott Hartley ever gave
- 24 you any indication that they wanted you to be their
- 25 pastor again; isn't that true?

HAROLD - Direct (By Mr. Shapiro)

1           disfellowships.

2   A       Yes.  In the first sentence, it says at the end that David  
3       Motherwell will have oversight for counselor consultations  
4       regarding disfellowship.  The next sentence says --

5   Q       This is the fourth paragraph?

6   A       Yes.  It says that David will also be the primary -- excuse  
7       me.  Just there at the end where it says counselor  
8       consultations regarding disfellowships, that David would  
9       have oversight over those.

10  Q       Was there anybody else that you knew of after this time  
11       that was supposed to have counselor consultation oversight?

12  A       No.

13  Q       Pursuant to this directive in this memo, did you  
14       disfellowship anyone with the prior approval of only David  
15       Motherwell?

16  A       Yes.  Approximately eight to ten individuals.

17  Q       During what time span did you disfellowship people by going  
18       only through David Motherwell to get pre-approval?

19  A       Well, from after September 25th up until mid-February was  
20       the last time I personally disfellowshipped anyone.

21  Q       You said there were eight to ten individuals?

22  A       I believe so.

23  Q       Did anyone ever raise a point or complain that the  
24       procedure you were utilizing was out of step with standard  
25       procedure?

1 A No, not at all.

2 MR. JOHNSON: Objection, your Honor, as to  
3 whether other people complained. If the pastor complained  
4 or didn't complain, that would be relevant, but whether or  
5 not other people did or not is irrelevant.

6 THE COURT: As to any other people, the answer  
7 will stand.

8 Q (By Mr. Shapiro) I'll get to Counsel's next point. Did  
9 Pastor Barnett ever complain that the eight to ten people  
10 that you had disfellowshipped were, in fact, improperly  
11 disfellowshipped?

12 A No. I never heard any indication from him, personally or  
13 publicly from statements he made in the pulpit, that there  
14 was anything wrong with the method we used.

15 Q Do you know if he was aware that some of the people you  
16 disfellowshipped had been disfellowshipped?

17 A Yes. He commented one time from the pulpit that he was  
18 saddened to read a certain individual's name in the  
19 bulletin -- which is where names of disfellowshipped people  
20 were published -- and he indicated that it was the first  
21 time he had seen that name. He didn't know that they were  
22 being disfellowshipped. But his sadness was that they had  
23 been disfellowshipped. He showed no displeasure at the  
24 procedure or that it was in any way unusual.

25 Q Turning back to the hearings, when was the first time that

1 the subject of disfellowshipment came up?

2 A That would have been on Monday, the 29th of February, 1988.

3 Q And from that point through March 3, were there any  
4 meetings held by the committee of 16?

5 A Yes. We had meetings every day that week.

6 Q Were there any votes taken on March 3 regarding  
7 disfellowshipment?

8 A Yes.

9 Q Tell us about them.

10 A There were three votes taken. One of them was the senior  
11 elders voting to disfellowship Don. One of them was the  
12 group of ten non-senior elders, but who were called elders

voting to disfellowship Don. Then the other vote was all

16 members of the committee, which included the senior

elders, the elders, and the other three who were listed as  
ministers, all voting to disfellowship Don.

How did the group of 16 show its unanimity in voting to  
disfellowship Don?

It was by the raising of hands. All 16 raised their hands.

And the reason for that vote was to make absolutely certain  
that everybody was in agreement on disfellowshipping Don  
and to do it in front of everybody so that everybody in the  
committee meeting knew that everybody else was in  
concurrence.

Why did you take three separate votes if you had all 16

13

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17 Q

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19 A

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23

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25 Q

voting to disfellowship?

A I explained why we took the vote of 16, and that was specifically so that everybody in the committee meetings. all 16, would know that all of the other members were in concurrence with this. We wanted to make that very clear and very definite so nobody would be confused about it.

The vote of the ten elders was to, in a sense, separate the elders from those who were not elders and to separate ourselves from the senior elders, which I will explain in a second. It was just to show that the eldership, those actually called or designated elders in the church, were in concurrence with disfellowship, and in fact recommending and saying this is the action we need to take, we must take.

Then the other vote with the senior elders, that was separated because they had, to our understanding, the legal responsibility to the corporation, and so we wanted them to be able to have their own vote so that it would be a legal vote that fit within the articles of incorporation.

Q That was for the senior elders, even though they had voted as committee members?

A Yes.

MR. JOHNSON: Objection to the form of that question, your Honor. Counsel said even though they voted as committee members, and I think that assumes facts not in

HAROLD - Direct (By Mr. Shapiro)

1 evidence and also calls for a legal conclusion. So I will  
2 object to the form of the question.

3 (By Mr. Shapiro) Yes, Mr. Johnson, we just ask you to re-  
4 sponse to the question. Counsel is concerned, did the senior elders who

show of  
n that vote?  
ten elders who  
ers. So they

5 16 was taken -- and I think you mentioned a  
6 hands -- did they show their vote of hands i  
7 A Yes. The 16 included the senior elders, the  
8 were non-senior elders, and the three minist  
9 were very definitely included in that vote.

written, the  
f all of the  
vote in there  
o uncertain

10 Q Did that vote of 16 get put into writing?  
11 A Not in a direct sense. The letter that was  
12 disfellowshipment letter, is a compilation o  
13 votes that were taken, and we included every  
14 so that Donald Barnett would understand in n  
15 terms that everybody was in agreement.

beyond the  
ion. I request  
be stricken.

16 MR. JOHNSON: Your Honor, this is  
17 question. It is non-responsive to the quest  
18 that that portion of the witness's testimony  
19 It was a simple yes or no question.

of why it

20 THE COURT: It is his explanation  
21 happened. I'll allow that.

mpiling all

22 Q (By Mr. Shapiro) What was the purpose of co  
23 three votes in this March 4 letter?

re 16  
s being allowed

24 MR. JOHNSON: Your Honor, there wer  
25 individuals in this room, and this witness is

HAROLD - Direct (By Mr. Shapiro)

1 to testify what the combined purpose of the 16 was, and I  
2 think that is improper. Sixteen people possibly had 16  
3 purposes. I think this witness can testify as to what his  
4 purpose was, and I think he can testify to the things that

were said, but for him to say what the purpose of the  
hearings or the meetings of all 16 people was is improper.  
I think he should be allowed to testify as to only what his  
purpose was or what others said.

THE COURT: I think as an attendee and a  
participant in the proceedings he can testify what the  
purpose was. You may answer.

We specifically stated what the purpose of the vote was  
before we took the vote. In other words, we stated the  
reason so that everybody would understand why we took it.  
So when I say that was the reason we took it, then that was  
the stated reason why we were taking it.

Let me turn your attention to Exhibit 34 which has been  
admitted. Take a look at that exhibit, if you would, and  
tell me if you recognize it.

Yes. This is the letter that we wrote to make the official  
notification to Don Barnett that he had been  
disfellowshipped and the reasoning for the  
disfellowshipping.

Is that the letter that memorializes the vote of the 16?

Yes. We all signed this to show that this is why we had

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12 A

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17 Q

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20 A

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24 Q

25 A

HAROLD - Direct (By Mr. Shapiro)

1           decided to disfellowship and everyone signed it to show  
2           they were in concurrence with the reasons and with the vote  
3           itself.

4   Q       There is a portion in the second paragraph that states that  
5           the elders, not including the senior elders -- do you see  
6           that, the second paragraph?

7   A       Yes.

8   Q       To the best of your knowledge why was that language  
9           excluding the senior elders in the second paragraph put in  
10          there?

11  A       As I explained before, this letter was a compilation of all  
12          of the votes that were taken at the time, and we wrote it  
13          this way so that Don would see that everyone had voted in  
14          their capacity as a committee member -- that was the group  
15          of 16. The non-senior elders had voted as elders to  
16          disfellowship him. And that the senior elders had voted.  
17          It was just to compile all of those votes so that all the  
18          bases were covered when this was read so Don would  
19          understand completely that everybody from all their hats,  
20          shall we say, that they were in concurrence with this.

21  Q       Did you have a hand in working on this letter?

22  A       Yes. I believe I typed this onto my computer, my word  
23          processor.

24  Q       Who handwrote it?

25  A       Russell MacKenzie handwrote it, and together we did some

HAROLD - Direct (By Mr. Shapiro)

1 editing, and then I did the typing and corrected the  
2 spelling and et cetera.

3 Q Now, there is a term in the second paragraph which says,  
4 the elders, not including the senior elders, voted  
5 unanimously to put you out and made that recommendation to  
6 the senior elders. Was this letter a recommendation by the  
7 group of 16 or was it evidence of action of disfellowship?

8 MR. JOHNSON: Objection, your Honor, as to what  
9 the letter was or was not. The letter speaks for itself.  
10 It has its own language.

11 THE COURT: He may answer.

12 Q Go ahead. You may answer.

13 A ~~We were not using the word recommendation in a soft form;~~

14 in other words, that maybe if you want to act on this you  
15 can. This is what we wanted to see done, what we had  
16 decided as elders to do, and that the recommendation to the  
17 senior elders was stated that way because they were the  
18 ones who, as members of the Board of Directors, had the  
19 legal right to change bylaws and to remove someone from the  
20 Board of Directors. And so we phrased it in that way  
21 because we didn't want to say that we had legal rights, law  
22 type legal rights. We felt we had scriptural rights to do  
23 it, but we didn't want to say that we had legal rights so  
24 that that would be a point of contention.

25 Q But in terms of the group of 16, what was your

1 understanding that the group of 16 was doing with this  
2 letter?

3 A Well, the group of 16 was disfellowshipping Don Barnett  
4 from Community Chapel and removing him as pastor of that  
5 church, and that is why all the people read this before  
6 they signed it and then signed it.

7 MR. SHAPIRO: Thank you. I have nothing further.  
8 I'm sure Mr. Johnson will want to ask you some questions.

9

10

CROSS-EXAMINATION

11 BY MR. JOHNSON:

12 Q What you just recently said here has got me intrigued. You  
13 said the senior elders -- you wanted to make clear that the  
14 senior elders had the right to change the bylaws and then  
15 remove the pastor, and you did it to show not that you had  
16 the legal right but that you had the scriptural right.

17 A Yes, sir. It was our understanding from lawyers that had  
18 been brought in and talked to the group that since we were  
19 not named as members of the Board of Directors of the  
20 nonprofit organization of Community Chapel that we could  
21 not be participants in changing the bylaws from a legal  
22 standpoint, and so we didn't want to give the impression  
23 that we did have that legal right to make that change.

24 Q Were there more than one lawyer or just one lawyer that  
25 came in?

1 A I believe we spoke to only one lawyer, although he  
2 apparently when we talked to him said that he had talked to  
3 someone else or others.

4 Q Is this Jim Leach?

5 A Yes, sir.

6 Q He advised you that since you guys were not part of the  
7 Board of Directors you couldn't change bylaws?

8 A I believe that he stated that to us, yes.

9 Q And told you that the bylaws would be changed and then  
10 Pastor Barnett could be disfellowshipped?

11 MR. SHAPIRO: I'm going to object to the form of  
12 the question. It mischaracterizes the witness's testimony.

13 MR. JOHNSON: Well, let me ask it a different  
14 way. I withdraw the question.

15 Q (By Mr. Johnson) Let's back up to March 3rd. Well, I  
16 guess that is the day we are on. Did the senior elders  
17 take a vote, just the three of them?

18 A Yes.

19 Q This was one of three votes that was taken?

20 A Yes.

21 Q Three people, three senior elders, voted?

22 A Yes.

23 Q And then the ten elders voted?

24 A I'm not certain exactly which one took place --

25 Q I don't mean to characterize them -- but one of the votes

HAROLD - Cross (Mr. Johnson)

- 1           was the three senior elders?
- 2   A       Yes.
- 3   Q       Another vote was the ten elders?
- 4   A       Yes.
- 5   Q       And then the final vote of all 16, the three senior elders,  
6           the ten elders, and the other three people who were there?
- 7   A       A third vote. I wouldn't say a final vote.
- 8   Q       Okay. I mean a third vote. You were present?
- 9   A       I was not present for the voting of the three senior  
10          elders. They stated to us as a group that they had voted.
- 11   Q       Well, was anybody present other than the three senior  
12          elders when they voted?
- 13   A       I do not know.
- 14   Q       I guess what I'm trying to get at is, did you just come  
15          late to the meeting?
- 16   A       No, but we were not together 24 hours and so they met prior  
17          to that meeting. I think that particular meeting began at  
18          like 10 a.m. and so they had taken that vote.
- 19   Q       Had they taken the vote the day before?
- 20   A       They did not state that they had.
- 21   Q       So you don't know when the senior elders voted?
- 22   A       They told us --
- 23   Q       Who told you what?
- 24   A       All three of them were present, Jack DuBois, Jack Hicks and  
25          Scott Hartley, and I believe it was Jack Hicks who

they had taken the vote. Scott Hartley was  
did it and so was Jack DuBois, if I remember

took a vote or not is something you can't  
fy to; isn't that fair to say?

took one individually, I can only say what  
they did vote in the group.

e group?

ny that they took their own individual vote  
told by them, not what you saw?

s correct.

st have occurred before?

APIRO: I'll object to the form of the

Was it your understanding that the vote  
ers had occurred prior to this vote where

tain of the exact time because I'm fuzzy  
ey may have said that they had taken it

a meeting, but I don't recall precisely.

said they took it the day before?

ave remembered that. I do not believe

ey took it the day before, but they may

would have remembered that.

1 explained that th  
2 there when he sa  
3 correctly.

4 Q So, whether they  
5 personally testi

6 A To say that they  
7 they told me. TH

8 Q They voted in the

9 A Yes, sir.

10 Q And your testimon  
11 is what you were

12 A I believe that is

13 Q And that vote mus

14 MR. SHAP

15 question.

16 Q (By Mr. Johnson)  
17 of the senior eld

18 all 16 had voted?

19 A Yes. I'm not cer  
20 on my memory. Th

21 that morning in a

22 Q Or they may have

23 A I think I would h

24 they said that th

25 have. I think I

HAROLD - Cross (Mr. Johnson)

1 Q Is it possible they didn't say when they had taken it?

2 A That is possible too.

3 Q Was it your understanding that when they said they had  
4 taken a vote that they were saying that they as members of  
5 the board of senior elders had voted as senior elders; is  
6 that fair to say?

7 A Yes.

8 Q And they apparently had had a meeting at some point prior  
9 to that and had taken this vote?

10 A Yes.

11 Q Did they indicate whether or not Pastor Barnett was present  
12 at that meeting?

13 A No, they did not indicate that.

14 Q And the meeting that they had apparently was not a meeting  
15 of the eldership, the group of 16; is that fair to say?

16 A Right. I believe that is true.

17 Q Because you would have been at such a meeting, wouldn't  
18 you?

19 A Yes, sir.

20 Q When the lawyer spoke, did he tell those present, the  
21 eldership, that a change of bylaws would be necessary  
22 before the senior elders took the final vote to  
23 disfellowship?

24 MR. SHAPIRO: Object to the form of the question.

25 It misstates this witness's testimony.

HAROLD - Cross (Mr. Johnson)

1 MR. JOHNSON: I didn't ask anything with regard  
2 to what the witness testified. I'm just asking what  
3 happened.

4 THE COURT: Did the lawyer say that?

5 THE WITNESS: I believe that he had said that.  
6 He probably was confirming what had been told to the group  
7 by Scott Hartley who had been in contact with the lawyer  
8 prior to us having the meeting.

9 Q (By Mr. Johnson) That was the understanding of the entire  
10 group, that you would have to amend the bylaws before you  
11 could disfellowship the pastor; isn't that fair to say?

12 A Yes. From a legal standpoint to remove him as pastor of  
13 the church it would have to be amended.

14 Q Okay. And that was what you had been advised was the  
15 lawyer's advice?

16 A Yes. And then I do believe that Jim Leach confirmed that.

17 Q He came and said that is my advice to all of you in person,  
18 right?

19 A Yes.

20 Q Now, these votes that were taken -- what was your function  
21 as elders in these eldership hearings? Was it essentially  
22 to act as a factfinding group to determine what the facts  
23 were?

24 A It was to determine what the facts were and then take  
25 appropriate actions.

HAROLD - Cross (Mr. Johnson)

1 Q But first you determined what the facts were?

2 A Yes, sir.

3 Q And then you decided on some action?

4 A Yes, sir.

5 Q So in a way you would be acting like a jury?

6 A We did not consider ourselves to be in a court of law or  
7 performing some legal duty. We were -- from a scriptural  
8 basis Paul admonishes: Why should one brother go to court  
9 against another? Is there not a wise man among you who can  
10 decide an issue between brethren?

11 So we were gathered as brethren to hear both sides of  
12 an issue and judge from that.

13 Q And as wise men?

14 A And as wise men.

15 Q Was there any reason why you didn't take those votes with a  
16 secret ballot, that everybody had to vote openly in front  
17 of everyone else?

18 A I think we discussed it at some point, and the consensus  
19 was that nobody wanted to take secret ballots, that they  
20 wanted to be free and open with their vote so that they  
21 could also be free and open in discussing how they felt.

22 Q Can't you sometimes be a little more free if don't have to  
23 be open, by a secret ballot?

24 MR. SHAPIRO: Object to the form of the question.  
25 It calls for speculation.

1 THE COURT: He may answer.

2 A I suppose some people in some situations can, but everyone  
3 that was in that meeting was more than free to express  
4 themselves as evidenced by how often and how frequently  
5 they did express themselves, both positive and negative.

6 Q Nobody suggested that secret ballots would be appropriate?

7 A I previously stated that it had been discussed and that the  
8 consensus was that we didn't want secret ballots. It was  
9 brought up as an issue -- do we want secret ballots -- and  
10 the decision was no, and no one objected to that.

11 Q When was it brought up about do we want secret ballots, do  
12 you remember?

13 A I can't say that I do. We had, prior to the meetings in  
14 which Jerry Zwack and Donald Barnett were present, we had  
15 meetings in advance to determine the protocol of the  
16 meetings, and then we had the meetings after Don Barnett  
17 and Jerry Zwack had made their presentations, and I don't  
18 know for sure when that was stated. It may have been  
19 brought up before the meetings with Jerry Zwack and Donald  
20 Barnett as part of a protocol on determining how we would  
21 decide on each of the grievances in issue.

22 Q Was there a protocol that was actually adopted by the  
23 group?

24 A We drew up guidelines so that we could have a clear  
25 perception of how we would approach these things, what our

HAROLD - Cross (Mr. Johnson)

1 attitudes would be, how we would address the issues, et  
2 cetera.

3 Q Mr. Harold, there is in front of you a book, and one of the  
4 books is numbered from about 16 and up. In that book would  
5 you turn to Exhibit Number 23.

6 A Yes. This is the guidelines.

7 MR. SHAPIRO: Your Honor, I would object. This  
8 is well beyond the scope of direct. I didn't get into this  
9 document. I didn't talk about guidelines.

10 THE COURT: I'm going to permit this kind of  
11 questioning for a while.

12 Q (By Mr. Johnson) These are the guidelines that were  
13 adopted?

14 A Yes, sir. It's a two-page paper with 11 paragraphs. On  
15 the first page are the guidelines we adopted, and the  
16 second page was added by, I believe, Russell MacKenzie just  
17 as something that -- a methodology for determining whether  
18 something was true or not true. so it wasn't exactly the  
19 guidelines. It was just a piece of paper that he had from  
20 -- he taught logic classes. It may have been something  
21 like that so that people could decide that. So just the  
22 first page was essentially the guidelines. The second page  
23 was, as it says, the elders may use the following  
24 guidelines to help distinguish facts, et cetera.

25 Q So that is something that Russ MacKenzie added?

HAROLD - Cross (Mr. Johnson)

1 A Yes. And it was just purely informational and it was clear  
2 that when he brought that to us that we could use or not  
3 use it.

4 Q He taught logic?

5 A He taught a logic class in our Bible College, yes. Some  
6 others had also taught it also.

7 Q I direct your attention to Exhibit 35.

8 MR. SHAPIRO: I'm going to renew my objection,  
9 your Honor. This also was not inquired into on direct.  
10 It's well beyond the scope. This is now a draft of some  
11 guidelines that was not inquired into.

12 MR. JOHNSON: Your Honor, this witness has been  
13 allowed to testify about the results of the hearing and the  
14 votes they took and so forth, and it seems to me the  
15 process that led up to taking the votes that counsel  
16 brought up on direct is certainly included within --

17 COURT: I'm not sure I understand what  
18 significance to give to the draft guidelines.

19 MR. JOHNSON: Well, there were changes between  
20 the draft and --

21 THE COURT: Well, I know there were, and that is  
22 why I don't know what to think about them.

23 MR. JOHNSON: I think the changes may --

24 THE COURT: May give some meaning to the ultimate  
25 --

1 MR. JOHNSON: To interpret the guidelines.  
2 That's all I'm saying.

3 THE COURT: May not too.

4 MR. JOHNSON: Well, if I can't tie it up --

5 THE COURT: That is why I'm not sustaining an  
6 objection. I'm raising a concern.

7 Q (By Mr. Johnson) Well, let me just ask, did you discuss  
8 that exhibit before the hearings started, or do you recall?

9 A The rough draft?

10 Q Yes.

11 A I am not certain that as a group we discussed it. This was  
12 also typed in on my word processor, and it is possible that  
13 Russ MacKenzie and myself had done some editing on this to  
14 remove what we considered redundancies, and in other words

15 what was originally proposed were the points that had been  
16 brought up in the meeting where all of us were deciding

17 what the guideline would be, and they were typed in pretty  
18 much as they were decided upon, and the job of editing was  
19 put to Russ MacKenzie and myself to take what was written  
20 and put it in a more readable format, more useful for  
21 everyone concerned.

22 Q When the idea of a secret ballot was proposed, who proposed  
23 it?

24 A I couldn't tell you that.

25 Q Is it possible that it was proposed by Jack Hicks?

1 A Since I can't tell you, it is, of course, possible.

2 Q Do you know how it was proposed?

3 A Well, we had an entire meeting in there and it was brought  
4 up as an issue. We had a number of issues that were  
5 brought up and that was just one of them.

6 Q Was there a meeting where the procedures and so forth were  
7 a central item of discussion?

8 A Yes. I said before the meetings where Don Barnett and  
9 Jerry Zwack were present that the elders had meetings to  
10 decide what protocol to follow, what kind of guidelines,  
11 and we wanted to be prepared for these meetings rather than  
12 go into the meetings and then have to interrupt on a  
13 variety of points as to how we wanted to proceed.

14 In other words, we wanted to have a relatively  
15 established procedure, somewhat flexible, but guidelines so  
16 we would not be interrupted in the meetings themselves with  
17 determining these things.

18 Q Isn't it fair to say that at some point a number of days  
19 after the hearings started and after Pastor Barnett had  
20 testified that there came a time when there was another  
21 discussion of whether or not the procedures should be  
22 changed, modified, amended; isn't that fair to say?

23 MR. SHAPIRO: Objection. This is well beyond the  
24 scope of direct.

25 THE COURT: You may answer yes or no.

1 THE WITNESS: May I qualify it also?

2 THE COURT: Are you unable to flatly say yes or  
3 no?

4 THE WITNESS: Well, he used the term "guidelines"  
5 as though these were the specific issues that were  
6 discussed, and they were not. Jack Hicks called a meeting  
7 where he wanted to see a change in approach or perhaps  
8 attitude, you might say. But he didn't go through these  
9 guidelines and say I want to change these guidelines.

10 Q (By Mr. Johnson) Did he hand to everybody there a set of  
11 new rules of protocol and rules of deliberation that would  
12 be the written rules to control the taking of testimony and  
13 the deliberation, including the use of a secret ballot?

14 MR. SHAPIRO: Same objection. We have gone from  
15 the guidelines that I never mentioned to now things that  
16 were never even adopted as being areas of inquiry. That is  
17 well beyond the scope of direct.

18 THE COURT: He may answer the question.

19 A I do not recall him passing out anything. I took notes of  
20 that meeting, and I have probably six or eight pages of  
21 those notes.

22 Q Take a look at that and see if that refreshes your  
23 recollection as to what happened.

24 A Number eight I do remember having read before, but it may  
25 be something that was shown to me. This probably was

1 passed out in a meeting. It is very possible. Like I say,  
2 I don't recall him doing it. It is certainly not anything  
3 that we accepted as a group.

4 Q You used the term protocol, and I asked you to read that  
5 and review it and tell me whether or not that was passed  
6 out.

7 A I have a copy of this in my own files, so obviously it was  
8 passed out. I do not recall when.

9 Q Or by whom?

10 A No. Again, it wasn't anything that we adopted.

11 Q You do have a copy of this in your file?

12 A I do have a copy of the first page. I'm not certain -- I'd  
13 have to look at the second page. I think it was three  
14 pages there.

15 MR. JOHNSON: The record should reflect that  
16 counsel has provided us with what were purported to be all  
17 of this person's notes, and this item was not one of those  
18 provided. I can't assess at this time to what extent we  
19 have been prejudiced by that.

20 Q (By Mr. Johnson) Sir, did Mr. Hicks at that meeting that  
21 he called read to the elders a letter? I'm sorry. Did Mr.  
22 MacKenzie read to the elders a letter?

23 MR. SHAPIRO: I am going to object, your Honor.  
24 This is the fourth document that was never inquired into.

25 MR. JOHNSON: I'll withdraw the question, your

HAROLD - Cross (Mr. Johnson)

1 Honor.

2 MR. SHAPIRO: This is so far afield.

3 MR. JOHNSON: I will withdraw the question.

4 Q (By Mr. Johnson) Mr. Harold, would you turn to Exhibit  
5 Number 10 in the other book. I think it's in the other  
6 book, the big thick one. I think specifically I would like  
7 to direct your attention to page 27, and I would ask that  
8 you read at the bottom of page 7, and you can read this to  
9 yourself if you would like --

10 A Which page?

11 Q On page 27 of Exhibit 10 at paragraph E-4, beginning with  
12 the words, "The counselor shall always seek the concurrence  
13 of pastor." It's a short paragraph, and if you would just  
14 read that, I will ask you a question.

15 A (Witness complies.)

16 THE COURT: Is this in the section for  
17 disfellowship?

18 MR. JOHNSON: Yes, your Honor.

19 A Okay.

20 Q Now, you indicated that you were familiar with the policies  
21 of disfellowship in an emergency situation.

22 All right, now, when you were with Wayne Shoey,  
23 when you did it with Wayne Shoey, did you seek the  
24 concurrence of anybody, or did you and Wayne Shoey just  
25 do it?

HAROLD - Cross (Mr. Johnson)

1 A Wayne Snoey and I just did it.

2 Q And then you notified somebody afterwards, or did you?

3 A Disfellowship papers were written up, signed by myself and  
4 Wayne Snoey as I recall. Where they went from there, I  
5 don't remember offhand.

6 Q Now, if this individual -- incidentally, who was the person  
7 that you and Wayne Snoey disfellowshipped?

8 MR. SHAPIRO: Objection, your Honor. I just ask  
9 why that is relevant. That is a third party --

10 THE COURT: Well, I think it may be a test of  
11 credibility.

12 MR. JOHNSON: Well, I'm just trying to make it  
13 easy to refer to this in the next two or three questions.  
14 I'll withdraw the question.

15 Q (By Mr. Johnson) With regard to that particular  
16 individual, whatever his name is -- let's call him "X". As  
17 you understood the disfellowship policy at Community  
18 Chapel, if a week later when Pastor Barnett read it in the  
19 bulletin he disagreed with that, isn't it fair to say that  
20 he would have had the authority, as you understood the  
21 disfellowship practices, to undo that, to set aside the  
22 disfellowship of that individual?

23 MR. SHAPIRO: Objection, your Honor. Unless  
24 counsel is pointing to this document or the name that has  
25 already been placed in evidence --

HAROLD - Cross (Mr. Johnson)

1 THE COURT: He is referring to Exhibit 10, page  
2 27.

3 MR. JOHNSON: Specifically I'm referring to that  
4 and any other disfellowship policies that this individual  
5 was aware of, and he has indicated that he was aware of  
6 disfellowship policies of Community Chapel.

7 A Would you restate the question, please?

8 Q If a week after you and Wayne Snoey had disfellowshipped  
9 this individual on an emergency basis, if Pastor Barnett  
10 had been advised then that this individual had been  
11 disfellowshipped, isn't it fair to say, under your  
12 understanding of the disfellowship policies and written  
13 documents of the church, that Pastor Barnett would have had  
14 the authority to set aside the disfellowship and reinstate  
15 this person as a member of the church; isn't that fair to  
16 say?

17 A Yes.

18 Q Now, with regard to Exhibit Number 37, the memo from Jack  
19 Hicks to department heads that you have testified about,  
20 what brought that about? According to the memo or  
21 according to your understanding of things at that point in  
22 time, what created the occasion for that memo to be  
23 circulated?

24 A It was my understanding that Don Barnett was under such  
25 duress for a variety of reasons and in a state of mind that

1 he was having difficulty sleeping, he was not feeling well  
2 rested, and he didn't feel he had time to prepare for  
3 sermons and et cetera, and that he did not have the time or  
4 he didn't feel up to dealing with talking to counselors  
5 about disfellowship situations. In other words, his state  
6 of mind and/or state of health was such that he did not  
7 want to have to deal with these matters anymore.

8 Q Is that based on other things that you had heard about that  
9 same point in time?

10 A Yes. That is pulling things together that he had said  
11 about himself from the pulpit and perhaps other situations  
12 where he expressed how worn out, how tired, how he was  
13 having difficulty with rest, et cetera.

14 Q Is it fair to say that the memo itself says that Jerry  
15 Zwack has been laid off essentially?

16 A Yes.

17 Q First and second paragraphs talk about reducing staff  
18 level. We are losing Jerry Zwack.

19 A Yes.

20 Q Isn't it fair to say that as a result of the loss of Jerry  
21 Zwack this memo sought to advise people in the church of  
22 that fact and who thereafter was going to have Jerry  
23 Zwack's previous responsibilities?

24 A No, that is not a fair characterization. Jerry Zwack did  
25 not have oversight over counseling and spiritual matters

HAROLD - Cross (Mr. Johnson)

1 for the department. He had oversight over the uniform  
2 counseling standards -- as it says here, counseling  
3 development, counseling appeals, he was involved in that,  
4 but I don't think he had oversight of the volunteer  
5 counselors. I think David Motherwell had that all along.

6 So, this was to inform that essentially Jerry Zwack's  
7 position was being filled by Chris Matthews from an  
8 administrative end, and it was to inform us that the  
9 spiritual oversight of counseling was changing hands from  
10 Donald Barnett to David Motherwell.

11 Q So, prior to this, Jerry Zwack didn't have any of the  
12 authority and positions that David Motherwell was being  
13 given in paragraph four of this memo, this Exhibit 37?

14 A I just said that Jerry Zwack did have authority over  
15 uniform counseling standards and to some degree counselor  
16 development, and he was involved in counselor appeals, but  
17 he did not have oversight over all counseling and spiritual  
18 matters. Jerry Zwack was also not -- he was a counselor  
19 consultant for disfellowships, but he didn't have exactly  
20 the authority to approve that. At that point in time or  
21 prior to this, Don Barnett had taken that authority for a  
22 time period in the summer, and prior to that it was Jack  
23 Hicks.

24 Q During the period of time that Don had taken it, did, for  
25 instance, Jerry Zwack have the authority to make final --

1 did he have authority to approve disfellowships in Don's  
2 absence, or do you know?

3 A During which time period? During the summer when Don had  
4 taken it back over?

5 Q Right.

6 A I am not certain on that. I did not personally have to  
7 disfellowship anybody during that summer that I recall, and  
8 so procedures that weren't strictly outlined like in  
9 memoranda like this I don't know that I had an active  
10 knowledge on. It might have been from there -- typically  
11 in Donald Barnett's absence it was the structure as such  
12 that Jack Hicks was the next person to talk to.

13 Q But you never got a memo or anything suggesting that Jerry  
14 Zwack had any authority to do emergency disfellowships or  
15 to approve emergency disfellowships?

16 A Well, emergency disfellowships required nobody's approval,  
17 and as a counselor he could have done that. But  
18 disfellowships in general, he did not have the yea or nay  
19 on them, no.

20 Q What happened when Don withdraw his authority from Jack  
21 Hicks? What was the status? Who could approved  
22 disfellowships then? You mentioned at some point there was  
23 a period when --

24 A Well, there was another memoranda that Don had sent out  
25 that he would be taking over, that all disfellowships had

1 to come through him.

2 Q Would Jerry Zwack, for instance, have any authority after  
3 that memo?

4 A The counselor consultant position wasn't precisely a  
5 position of authority. It was an advisory position. He  
6 was a counselor consultant -- David Motherwell was, and  
7 Barbara Barnett was and I don't believe anybody else was --  
8 who you went and talked to. In other words, they were an  
9 intermediary before going to get final approval from Don  
10 Barnett. It wasn't that often that he was, as far as I  
11 understood, that he was directly consulted. That was kind  
12 of the last step. Sometimes he was directly consulted and  
13 sometimes it was recommended by the counselor and sent to  
14 him for signature as the final approval.

15 Q When the vote was taken on March 3, the vote of 16, was the  
16 vote based on the information that the 16 people had  
17 received during the hearings?

18 A This is the vote for disfellowship?

19 Q Yes.

20 A The information received during the hearings -- now by  
21 information I'm including not only the words that Jerry  
22 Zwack spoke and the words that Don Barnett spoke, but the  
23 actions and attitude in those meeting laid a foundation.

24 Q The actions and attitude of whom?

25 A Of Don Barnett, his response to the allegations, the way he

HAROLD - Cross (Mr. Johnson)

1 spoke to and about the elders in that meeting and the  
2 committee members. He said many things that were unkind,  
3 and he was very unhappy with the way things with going, and  
4 so that attitude laid a foundation for the special status  
5 that the senior elders put him on and the rest of the  
6 committee members agreed to at a later date. That laid the  
7 foundation for that. And so his response then to the  
8 special status was also part of the information from which  
9 we made our final determination.

10 Q Wasn't there a lot of information given to the people,  
11 those 16 people, when Don wasn't present? Without going  
12 into what it was, wasn't there a lot of information given  
13 to the members present by other members present, things  
14 that he had been told --

15 A Yes. Some was somewhat detailed. We have avoided names to  
16 protect the individuals from being embarrassed in front of  
17 a large number of people, but there was a significant

erry Zwack had  
11, Danny  
ted some things  
n women also.  
s to other

18 amount of information to corroborate what J  
19 said given by Scott Hartley, David Motherwe  
20 Peterson, John Bergin. I may have interjec  
21 also because I had some knowledge of certain  
22 So yes, there was corroboration from members  
23 members.

24 Q But no names were used; is that fair to say?

25 A I think the references were often to woman r

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wasn't there?

A That's correct.

Q Or when Don Barnett wasn't there?

A That's correct.

Q Did there come a time when they came back and were given a chance, either one of them, to rebut that information or cross-examine whoever had testified or what?

A No, and the reason that there wasn't any opportunity is the

last insurance, Jerry Zuck and Donald Barnett, were both

present. Donald Barnett came untraced.

1 Q What meeting was that?

2 A I think the date on it is the third of February of 1988.

3 Q Early in February?

4 A Yes, sir.

5 Q Was it shortly after that that Jack Hicks called a meeting  
6 and tried to work out some new procedures?

7 A I have those notes. I believe his meeting was actually the  
8 second of February, so it was prior to that final meeting  
9 with Donald Barnett.

10 Q Prior to the meeting on March 3 when you voted to -- when  
11 at least two of these votes were held and perhaps the third  
12 one prior to it, the senior elders vote -- was there  
13 discussion by the elders of simply leaving the church?

14 THE COURT: Who leaving the church?

15 MR. JOHNSON: The senior elders leaving the  
16 church with any members who wanted to follow them and go  
17 with them.

18 A Not that I recall. There was no talk of trying to split  
19 the church or take people out of the church. In fact, that  
20 was the farthest thing from our thinking. The whole  
21 purpose of our meetings was to see if we couldn't help Don  
22 get over the problems that he was in in order to stabilize  
23 and keep the church together. We were experiencing at the  
24 time a high attrition rate, so we wanted to stabilize the  
25 situation as much as possible.

HAROLD - Cross (Mr. Johnson)

1 Q Do you have your notes from March 1, 1988?

2 A Probably here, yes.

3 Q Could you take a look --

4 THE COURT: Notes of?

5 MR. JOHNSON: This witness's own personal notes  
6 that he took during the hearing.

7 THE COURT: At any time during the hearing?

8 MR. JOHNSON: I'm directing his attention to the  
9 notes just to refresh his recollection, notes of March 1.  
10 You can look at your own or you can look at my copy.

11 THE WITNESS: Okay.

12 Q Would you look at page two and review that, and then I  
13 would like to ask you if your recollection is refreshed.

14 A (Witness complies.) Yes.

15 Q I would ask again: Was there discussion of the eldership  
16 simply resigning and letting Pastor Barnett run the church?

17 A Yes. That is not the question you asked before. You asked  
18 before if there was discussion of the elders resigning and  
19 taking church members with them, and there was no  
20 discussion of that. There was a suggestion -- and I think  
21 it was Scott Hartley. In fact that is what the note says.  
22 I think it had S.H. on it for Scott Hartley. His  
23 suggestion was that the elders resign and leave the entire  
24 church to Donald Barnett. So, no, there was no discussion  
25 of taking people out of the church, but there was

1 discussion of elders resigning.

2 Q I believe you indicated that you don't know the chronology  
3 in which the votes were taken?

4 A I don't recall precisely, no.

5 Q I believe you indicated that Pastor Barnett said that  
6 because he couldn't remember chronology accuracy it doesn't  
7 have anything to do with whether or not he was a liar?

8 A Yes, that is a quote that I have in my notes.

9 Q Would that be similar with regard to whether or not you can  
10 remember the chronology of the votes and the way they were  
11 taken? You do remember that votes were taken, and the  
12 chronology is simply not important, is it, in your mind?

13 A I didn't say that the chronology was not important. I said  
14 I couldn't remember the chronology, and I made no statement  
15 as to what that chronology was, so I have not been  
16 inaccurate.

17 Q So the fact that you can't remember the chronology doesn't  
18 have anything to do with the truth of what you are saying,  
19 does it?

20 A The truth of what I am saying is that votes were taken.

21 Q Two votes?

22 A Three to my knowledge.

23 Q Now we know the first one at least occurred, the senior  
24 elders vote, occurred first don't we?

25 MR. SHAPIRO: Objection. It mischaracterizes

HAROLD - Cross (Mr. Johnson)

1 this witness's testimony. That is not what he said.

2 Q Do we know whether the senior elders vote was taken first,  
3 second or third?

4 A I was not able to tell you precisely when it was taken. I

5 ~~said I don't recall them taking it with me being present~~

6 that it may have been taken prior to that. I don't know.

7 Q But so it is possible that it was taken after that meeting  
8 and you were told about it some other time?

9 A I suppose that exists as a possibility. I don't believe  
10 so.

11 Q My memory was -- and just correct me if I am wrong because  
12 I'm not trying to play tricks -- my memory was that you  
13 indicated that at this meeting they advised you that they  
14 had previously taken a vote.

15 A I did say that, yes. I believe that that is what occurred  
16 and so from that you can infer that they took it prior to  
17 the meeting.

18 Q Is that a fair inference?

19 A It's not an unfair inference.

20 Q Okay. I'll settle for that.

21 MR. JOHNSON: Your Honor, it's now twenty to  
22 three. Is this time for an afternoon break?

23 THE COURT: Anytime you wish to have one.

24 Let me ask a couple of questions just to orient  
25 myself. No particular significance should be assigned to

1           these questions. I understand that you were one of the  
2           elders at the time.

3           THE WITNESS: Yes.

4           THE COURT: Were you a minister at that time too?

5           THE WITNESS: Yes. The way it was structured was  
6           that I was an ordained minister and a ministerial elder in  
7           the church.

8           THE COURT: Now, was that your main profession or  
9           occupation at that time?

10          THE WITNESS: Yes. It was my sole occupation at  
11          that time.

12          THE COURT: And what is it now?

13          THE WITNESS: I'm a full-time student at Western  
14          Washington University.

15          THE COURT: Thank you. Let's recess now until  
16          five minutes to the hour.

17                               (A ten-minute break was taken.)

18 Q       (By Mr. Johnson) Mr. Harold, I have just a few more  
19       questions.

20               When these hearings started in late January into early  
21       February, and testimony was being taken first from Jerry  
22       Zwack and then Pastor Barnett, were the hearings held  
23       during the morning, the afternoon, throughout the day, or

24       how would you characterize that?

25 A       We generally had a morning and afternoon session.

HAROLD - Re-Direct (By Mr. Shapiro)

1 Q Was Pastor Barnett present during the morning session?

2 A In the meetings involving the testimony of Pastor Barnett  
3 and Jerry Zwack, yes.

4 Q During that period of time, did you have meetings where  
5 only the elders were present interspersed between the  
6 meetings where Pastor Barnett and Mr. Zwack were present?

7 A Yes. When there were questions raised -- once when there  
8 was a question raised regarding relevancy, we met for about

9 an hour when Jerry and Don were not there to decide whether

~~or not we would continue to accept what Jerry had to say.~~

1 whether we felt it was relevant to the decision or not.

2 Q Was this a separate meeting held the next day?

3 A No. That particular meeting was held and we adjourned the  
4 meeting that involved Jerry Zwack and Donald Barnett with  
5 their understanding that we were going to meet as a  
6 committee and discuss the relevancy issue.

7 Q They simply left the room for a while while you guys kicked  
8 it around?

9 A Right. We probably took a break and then came back and met  
0 for a while.

1 MR. JOHNSON: That is all I have. Thank you.  
2

3 RE-DIRECT EXAMINATION

4 BY MR. SHAPIRO:

5 Q I have a few questions on re-direct, your Honor.

1 Mr. Harold, Mr. Johnson asked you for the reasons or  
2 the material that formed the basis for the decision to  
3 disfellowship. Did Donald Barnett's actions on February 28  
4 factor in it at all?

5 A That was the Sunday when he returned, I believe, from  
6 Kalispell and heard of the Friday meeting, and at that  
7 point he got up and spoke before the assembly for quite a  
8 length of time, and his attitude and actions in that  
9 response were part of the reason for disfellowshipping him  
10 because of the attitudes that he manifested and the types  
11 of things that he said.

12 Q What was it about the attitude first that played a part?

~~MR. JOHNSON: Your Honor, I object to things~~  
14 that may have gone on in other people's minds. The witness  
15 has indicated that there was a vote of 16 people, and this  
16 witness can certainly testify as to what he based his vote  
17 on, but I don't think he can testify as to what others  
18 based their vote on, unless after they voted they expressed  
19 their reasons to him.

20 THE COURT: The objection is overruled. The  
21 question is what was there about the attitude that --

22 MR. SHAPIRO: That played a part in being a  
23 factor?

~~MR. JOHNSON: It is being argued.~~

25

MR. SHAPIRO: For the disfellowship.

1 THE WITNESS: His attitude was that the committee  
2 was totally wrong, not of God, inspired by demons, trying  
3 to control him, trying to manipulate him, receiving  
4 accusations without checking anything out, which we were  
5 not being allowed to check out anything -- he didn't want  
6 us to meet and talk about these things. He abrogated our  
7 agreement.

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attitude toward  
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n your mind played  
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were contradictory  
ne meetings.

8 Q What agreement are you talking about?  
9 A Our agreement that he signed, the one right  
10 here. He in numerous times in the meeting  
11 exercise authority over them, and he didn't  
12 hearings to continue until they were conc  
13 satisfaction of the elders.

14 So that attitude and the way he port  
15 trying to do, that we were trying to expo  
16 when in fact we had been very, very caref  
17 specific information and to do as little  
18 as possible -- so it was just his adamant  
19 us who had a purpose to try and help him  
20 difficulties that he was in.

21 Q You mentioned also that the words played a  
22 factor. What was it that was said that in  
23 a part or was a factor in the disfellowsh

24 A Many of the things that he said in there w  
25 to statements that he had made to us in th

HAROLD - Re-Direct (By Mr. Shapiro)

1 Q Such as? Give us an example.

2 A I would have to review my notes to get real specific.

3 Q Rather than the specific instance, the subject area where  
4 there were contradictions.

5 A In his admissions of initiating and the --

6 Q These were admissions made at the hearings?  
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21 Q Mr. Johnson also asked you a question about a person being  
22 -- I believed he said Mr. X -- being disfellowshipped and  
23 whether or not you believed Donald Barnett had the power to  
24 overturn Mr. X's disfellowshipment. In any  
25 disfellowshipment, was there always a right to appeal?

HAROLD - Re-Direct (By Mr. Shapiro)

- 1 A Yes.
- 2 Q And that was to any of the senior elders?
- 3 A I believe it was to any senior elders that the appeal could  
4 be made.
- 5 Q So the overturning of a disfellowshipping was not an  
6 unusual procedure, was it?
- 7 A I think it was an unusual action, but it was a procedure  
8 that was established. It didn't happen -- it was a very,  
9 very rare occurrence.
- 10 Q But the procedure had been in place for some time?
- 11 A Yes.
- 12 Q And he pointed you to a section of Exhibit 10, I believe.  
13 Is that at page 27, number three?
- 14 A Yes.
- 15 Q Towards the bottom third of the page?
- 16 A Yes.
- 17 Q He also asked you some questions about whether or not you  
18 were advised by -- first of all, is disfellowshipment an  
19 internal religious procedure or is it a legal procedure  
20 based on your understanding?
- 21 A It's a scriptural or internal religious procedure. It was  
22 a scriptural thing that we did.
- 23 Q Mr. Johnson asked you whether or not the lawyer had advised  
24 you whether the senior elders had to vote to disfellowship  
25 Donald Barnett. Maybe we can clear up some confusion here.

HAROLD - Re-Cross (By Mr. Johnson)

1 Was that disfellowshipment or removal from the board that  
2 the lawyer talked about?

3 A Mr. Leach's advice to us was about removal from the board.  
4 Disfellowshipping was not a legal issue that we would take  
5 to him and ask him about. That was a scriptural thing that  
6 was in our opinion within the hands of the church  
7 eldership, the leadership, to decide on a disfellowship,  
8 and the issue that we got information from him about was  
9 the legal removal of Don Barnett from the Board of  
10 Directors.

11 Q The secular part of it?

12 A Right. Strictly the secular part of it.

13 Q ~~Did the group of 16 vote to disfellowship Donald Barnett?~~

Yes, sir, they did.

Was this followed up by a letter confirming that vote?

Right. That's the letter where all 16 signed.

That's the March 4 letter?

Yes, sir.

MR. SHAPIRO: I have nothing further.

RE-CROSS EXAMINATION

JOHNSON:

Now, it is true to say, is it not, that on cross-  
examination you stated that Mr. Leach said that you would  
have to amend the articles and the bylaws before you could

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HAROLD - Re-Cross (By Mr. Johnson)

1           disfellowship Pastor Barnett under these bylaws; isn't that  
2           true? Isn't that what you said?

3   A       In that section of questions, you asked a number of  
4           questions about that and you interchanged disfellowship and  
5           removal from the board a couple of times, and in the  
6           process I concurred that it was disfellowshipping, and in  
7           retrospect I did not intend to say that it was  
8           disfellowshipping that we got his advisement on.

9                        What we got his advisement on was the removal from the  
10           board which then would allow the elders to vote, the senior  
11           elders to remove him as pastor, but the disfellowshipment  
12           was not something that I felt was contingent in my own mind  
13           upon the legal removal from the board.

14   Q       So disfellowshipment isn't talked about and controlled by  
15           the corporate bylaws of the church?

16   A       I didn't say that.

17   Q       Do you believe that it is?

18                       MR. SHAPIRO: Objection. This calls for a legal  
19           conclusion, your Honor.

20                       MR. JOHNSON: Your Honor, this witness has  
21           been --

22                       THE COURT: He can tell what he believes and has  
23           been told by legal counsel.

24                       MR. SHAPIRO: I would object to the question,  
25           your Honor, if counsel is stating that that is the only

HAROLD - Re-Cross (By Mr. Johnson)

1 thing that controls whether or not someone can be  
2 disfellowshipped. He's staring at an agreement --

3 THE COURT: Restate the question.

4 MR. SHAPIRO: And he has already testified to  
5 what Pastor Barnett said.

6 Q (By Mr. Johnson) Isn't it fair to say that the bylaws of  
7 Community Chapel and Bible Training Center set the  
8 procedures for disfellowshipment at the Community Chapel  
9 and Bible Training Center?

10 A Yes. They set the procedure.

11 Q Pastor Barnett, you say, in his address to the congregation  
12 on the 28th accused the elders of making accusations  
13 without checking out the facts?

14 A Receiving accusations without checking out the facts is  
15 what I said.

16 Q Did any of the people who supposedly were the alleged  
17 victims of any activity of Donald Barnett brought before  
18 the group of elders to tell directly to the group of elders  
19 what happened?

20 A No, because --

21 Q I don't want the reason. I just want to know what  
22 happened. No. Is that fair to say?

23 A State the question again, so I can consider it exactly as  
24 you have stated it.

25 Q Were there any people who allegedly were accusing Pastor

HAROLD - Re-Cross (By Mr. Johnson)

1 Barnett of the activities testified to at the hearings --  
2 were there any people brought before the hearings who had  
3 been the alleged victims of any of this activity?

4 A If you are referring to sexual activity, no. Jerry Zwack  
5 was present who was, as it were, a victim of what he termed  
6 misuse of pastoral authority, so he was before us, yes.

7 Q Other than Jerry Zwack, there was no one else?

8 A No, sir.

9 Q Was there any other direct witnesses, eye witnesses, to any  
10 of the acts, other than Jerry Zwack, any of the acts of  
11 sexual misconduct?

12 A No.

13 Q You said that there were some guidelines, and I direct your  
14 attention to the exhibit that I believe is open here.

15 MR. SHAPIRO: I'm going to object. This is  
16 beyond the scope of redirect, I didn't ask anything about  
17 guidelines.

18 MR. JOHNSON: The question was raised with regard  
19 to what Donald Barnett said in that hearing, and the  
20 witness indicated that Donald Barnett said that they had  
21 accused him of things, and the witness said that they  
22 didn't say anything specific. I just want to go over the  
23 issue of confidentiality that was part of the conduct, and  
24 what they then went and told the church that Donald Barnett  
25 said that he was responding to. They brought it up when --

HAROLD - Further Re-Direct (By Shapiro)

1 THE COURT: Okay. You may.

2 Q (By Mr. Johnson) Was there a guideline that said that  
3 things that transpired in the hearing would be kept  
4 confidential?

5 A Yes.

6 Q Did Donald Barnett admit acts of sexual misconduct?

7 A Yes.

8 Q Did the eldership tell the congregation that Donald Barnett  
9 had admitted acts of sexual misconduct?

10 A I do not recall exactly what was said at that meeting. I

pe of that meeting to be able to 11 would have to review the ta

12 answer that accurately.

on't have anything further.

13 MR. JOHNSON: I d

ave two or three questions, your

14 MR. SHAPIRO: I h

15 Honor.

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FACT EXAMINATION

17 FURTHER RE-DIRE

r not there were any direct eye  
e senior elders. Why wasn't

18 BY MR. SHAPIRO:

meeting in which Don Barnett  
earlier he came unglued. He  
tated, angry, and from there he  
ty we had to do this, and he

19 Q Counsel asked you whether o  
20 witnesses brought before th  
21 that done?

22 A The meetings -- at the last  
23 was a participant -- I said  
24 was very unnerved, very agi  
25 wanted to know what authori

1 wanted to stop the meetings, he wanted us to put this all  
2 away and not -- he didn't think we were right in doing it,  
3 and so as a result that became the focal issue. He made it  
4 the focal issue, and we as a result were not given an  
5 opportunity to do what we had set out to do which was to  
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10 contrary to what he had agreed to and he was trying to  
11 control and manipulate the hearings themselves, and so we  
12 had to deal with that issue before we could go and begin  
13 talking to witnesses to get direct information.

14 Q Did some of the representatives of the group of 16 contact  
15 some of these victims?

16 A Yes. I believe Scott Hartley and Lanny Peterson did.  
17 Perhaps David Motherwell also. But Scott Hartley and Lanny  
18 I know for sure did.

19 Q Was this information related to the group of 16?

20 A Yes.

21 Q Was there any --

22 A What they related was that the individuals they talked to  
23 were willing to come.

24 MR. SHAPIRO: Thank you. I have nothing further

FURTHER RE-CROSS EXAMINATION

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BY MR. JOHNSON:

Q I take it that your testimony is that originally there was a plan to call a lot of other witnesses? That was originally part of the plan of the eldership?

A We gave ourselves a general guideline to investigate grievances and allegations to our satisfaction, yes.

Q So that was part of the plan?

A To investigate further, yes.

Q And call other witnesses?

A Yes, as necessary.

Q And what exactly did Donald Barnett do that prevented you from doing that?

A As I said, he changed the focus by demanding or claiming

letters and made statements like what gives you the authority to do this, to which we had to respond to his complaints about the meetings, and we did write a letter response to some of his complaints, if I recall.

And there was part of a tape that was played at the meeting with Jack Hicks -- I believe it was on the 2nd of February, prior to our last meeting with Don -- and then again many of the points of it were reiterated on that 1 meeting with Don.

Q Other than the terms of demand, did you ever see him as to

HAROLD - Further Re-Cross (By Johnson)

- 1           what the source was for your authority, did he take any  
2           other steps to prevent you from receiving other evidence?
- 3   A       I believe he ordered us to go back to work and end the  
4           meetings.
- 5   Q       Did the meetings then stop?
- 6   A       No, they did not.
- 7   Q       So that didn't prevent you from doing anything?
- 8   A       His order?
- 9   Q       Yes.
- 10   A       No, it did not, because we went by this agreement that was  
11           made that he wouldn't have the right to stop that meeting.  
12           He agreed that he wouldn't stop them.
- 13   Q       That came after his demand that you advise him of what the  
14           source of your authority was, didn't it?
- 15   A       What came after?
- 16   Q       The demand that you go back to work.
- 17   A       I believe so.
- 18   Q       So, if the second thing didn't stop you, the first thing  
19           must not have stopped you either from investigating  
20           further?
- 21   A       The first thing?
- 22   Q       The first thing being his demand that you advise that the  
23           board tell him what the source of your authority was.
- 24   A       No, that didn't stop us.
- 25   Q       So neither one of those things stopped you from doing what

HAROLD - Further Re-Cross (By Johnson)

1       you initially intended to do, did it?

2 | A       No. ~~But he did change the focal point so that we had to~~  
3       expend a significant amount of our time and energy to  
4       dealing with his response to our position of authority,  
5       what we thought it was, and a number of different issues  
6       that he brought up.

7 | Q       And you responded to that in a letter?

8 | A       Yes. We responded to some of his questions in a letter.

9 | Q       I'll direct your attention to Exhibit 29. Is this the  
10       letter that you indicated was your response?

11 | A       Yes, sir.

12 | Q       And the demand that he made that you account for the source  
13       of your authority, when did that come, this first action  
14       that he took that you said frustrated your efforts to take  
15       evidence?

16 | A       It was in the early part of February.

17 | Q       And this letter is about three weeks later, right?

18 | A       Yes. In fact, we state in this letter that on Wednesday,  
19       February 3rd, you spoke, et cetera.

20 | Q       ~~Twenty-one days, exactly three weeks before?~~

21 | A       Yes.

22 | Q       What took three weeks to write this letter?

23 | A       Well, committee work is often slow, and we had 16 members  
24       of the committee that were discussing these issues. We did  
25       not have eight hours a day to work on them. All of us had

1           our other jobs to perform. I was teaching Bible College  
2           myself so sometimes I wasn't available in the morning, or  
3           at other times some of the others weren't always available,  
4           so it took some time to deal with all of these issues and  
5           to do the proper research from the scriptural grounds since  
6           he asked for that.

7   Q       But you did gather at this period of time and listen to  
8           Lanny and Scott report about what others had told them?

9   A       At times there was information given, yes.

10   Q       So isn't it fair to say that after this meeting on February  
11           3 referred to in the first sentence of Exhibit 29 where  
12           Pastor Don got together with the senior elders -- he got  
13           together with the senior elders and they made a tape  
14           recording, right? You can read the first paragraph of  
15           Exhibit 29 if it will help.

16   A       Yes.

17   Q       And that tape recording, isn't it fair to say, ruffled a  
18           few feathers among the eldership?

19                   MR. SHAPIRO: Objection, your Honor. It's  
20           argumentative, vague, ambiguous.

21                   THE COURT: Which meeting are you talking about?

22                   MR. JOHNSON: I think the evidence was, your  
23           Honor, that the plaintiff got together with the three  
24           senior elders on the morning of February 3rd and spoke to  
25           them, just the three elders. That was tape recorded and

HAROLD - Further Re-Cross (By Johnson)

1 then played that afternoon to the eldership at a point in  
2 time when Pastor Barnett was not present.

3 Q Is that your understanding of what happened?

4 A That a tape recording was made of a morning meeting and  
5 that we heard it later?

6 Q Yes.

7 A Yes.

8 Q My question is: When that tape was played to the  
9 eldership, isn't it a fair characterization to say that

10 those were some members of the eldership who were  
11 dismayed?

12 That is a very vague term. I would not say it was feather  
13 ruffling. I think there was a distinct degree of dismay

14 that this agreement that had been signed on the 25th was

15 now -- and he had freely and openly signed it -- was now

16 being thrown aside as though he had never made the

17 agreement. So we were dismayed.

18 Were people angry?

19 Well, I don't recall anybody. They may have been. I was

20 certainly not angry. I was dismayed.

21 But you weren't angry at Pastor Barnett for --

22 No, sir. I've never been angry at Don Barnett.

23 Is it fair to say then that as a result of the dismay felt

24 by the members of the eldership on February 3rd when they

5 heard this tape that they decided to change the previous

HAROLD - Further Re-Direct (By Shapiro)

1 plan of taking live testimony and settle in fact in the  
2 future for the testimony of Lanny Peterson and Scott  
3 Hartley with regard to these matters that you were  
4 investigating?

5 MR. SHAPIRO: Objection. It mischaracterizes  
6 this witness's prior testimony. They reserved the right to  
7 investigate, not --

8 THE COURT: That is a general characterization.  
9 You may answer.

10 A Would you restate it, please.

11 (Reporter reads back previous question.)

12 A I do not recall any change that we made that we weren't

13 ~~going to investigate this ever anymore, in other words,~~  
14 ~~!!!~~

14 with live witnesses, and take only the word of Lanny  
15 Peterson and Scott Hartley. I don't think we ever decided  
16 that that I know of.

17 Q It was still your intention after then to take additional  
18 live testimony then?

19 A Yes.

20 Q Did this ever happen?

21 A No, not prior to disfellowshipping.

22 MR. JOHNSON: No further questions.

23

24 FURTHER RE-DIRECT EXAMINATION

25 BY MR. SHAPIRO:

HAROLD - Further Re-Direct (By Shapiro)

1 Q Why didn't it happen?

2 A As I said before, Don Barnett changed the focus to the  
3 general category of the grievance of misuse of pastoral  
4 authority, and by abrogating the agreement and by the  
5 attitudes that he had shown us, he aggravated the whole  
6 situation to where that became somewhat of a focal point,  
7 and that was being shown to us and spoken to us and written  
8 to us directly.

9 So that was the focal point that we were turned to  
10 because there was a barrage of notes and letters and tapes

11 and things that -- he wanted to know why and et cetera  
12 we were turned to some degree or we stepped out of the  
13 direction we were headed and had to go in this other  
14 direction at that point in time, and I had in my own  
15 mind that we would get back to the rest of it.

16 I had every hope that we could resolve his questions  
17 in an amicable way and a positive way that would allow  
18 to continue with what our original purpose was.

19 Q Did you need extra witnesses in your mind as a result

20 ~~of using the agreement and the guidelines that were in the~~

21 A In order to find out, as it were, the truth of  
22 a specific sexual incident, we would have needed  
23 witnesses, but the general characterization of  
24 the grievance was misuse of pastoral authority, and  
25 when we went on we didn't need any further witnesses

HAROLD - Further Re-Cross (By Johnson)

1 witnesses to his display of misuse of pastoral authority  
2 toward us and in church services, et cetera.

3 Q So you were living proof of the misuse of pastoral  
4 authority?

5 A Unfortunately, yes.

6 MR. SHAPIRO: All right. Nothing further.  
7

8 FURTHER RE-CROSS EXAMINATION

9 BY MR. JOHNSON:

10 Q You say there was a barrage of notes and tapes. The letter  
11 on February 24, 1988, where you responded to his barrage  
12 refers to the tape recording, the one tape. Can you tell  
13 us about the other tapes and notes that the eldership was  
14 barraged with by Pastor Barnett?

15 A In sermons that he preached in subsequent services he  
16 addressed himself to issues that those who were in the  
17 meetings recognized were quite directly related to the  
18 subject matter of the meetings and his objections to the  
19 meetings, so that was part of it and that represented a  
20 significant amount of time because he typically preached or  
21 spoke in three services a week, and normally he spoke for a  
22 minimum of an hour in each service -- in fact in the  
23 morning service for two hours or more. So there was that  
24 and --

25 Q My question was just about the notes and tapes.

HAROLD - Further Re-Cross (By Johnson)

1 A Well, all of those services were taped, sir.

2 Q Did he send tapes to the eldership?

3 A I know he did send some tapes to us, but I don't recall  
4 which ones and when.

5 Q He did send some tape recordings to the eldership?

6 A Yes, sir, but like I say, I'm not certain of when. I even  
7 have copies of them at home. They were copies that are  
8 available through their lending library.

9 Q These are tapes sent to the eldership by Pastor Barnett  
10 during the hearings?

11 A That is what I just said. I don't recall the timeframe of  
12 the tapes being sent.

13 Q We have copies of your various notes here. Did you provide  
14 those to Counsel?

15 A Yes.

16 Q Did you also provide the tapes of Donald Lee Barnett to the  
17 eldership hearings that you have at home?

18 A No, I didn't. They were public tapes, so I was under the  
19 impression that I didn't have to give everything that was  
20 public knowledge or available to anybody.

21 Q If you were asked by the Judge to return tomorrow, could  
22 you bring those with you?

23 MR. SHAPIRO: Your Honor, this witness lives in  
24 Burlington. These are public tapes. There is now showing  
25 of any relevance. These are sermon tapes.

HAROLD - Further Re-Cross (By Johnson)

1 MR. JOHNSON: The witness has clearly designated  
2 these as tapes, not of sermons, but tapes sent by Pastor  
3 Barnett to the eldership hearings. That was a specific  
4 question, and the witness has indicated that he has them,  
5 and I have requested copies of various tapes before from  
6 Counsel, and Counsel has indicated that he has given me all  
7 that they have. It now appears that this witness has --

8 THE COURT: Just a minute.

9 MR. SHAPIRO: Counsel is inferring that we have  
10 withheld something. We don't have any tapes.

11 THE COURT: I'll hear him and then I'll hear you.

12 MR. JOHNSON: If my client, your Honor, has sent  
13 tapes -- and I have never heard this before -- if my client  
14 sent tapes to the eldership hearing, I think those would be  
15 significant, and I have never heard of them before, and  
16 this witness says he has them, and I am just asking the  
17 witness if he would provide us with copies. I don't need  
18 this witness to come and testify. Just let us have the  
19 tapes.

20 THE COURT: What tapes are we talking about?

21 THE WITNESS: They would be sermon tapes recorded  
22 at the church facility and were included as part of the  
23 church library of tapes.

24 THE COURT: Were there other tapes that he had  
25 sent to the meeting, other than the sermon tapes?

HAROLD - Further Re-Cross (By Johnson)

1 THE WITNESS: Just the one in Jack Hicks' office  
2 that is referred to in this letter, but he did not send  
3 that as a copy to all of the people.

4 THE COURT: I don't know anything about this one  
5 that refers to Jack Hicks.

6 MR. JOHNSON: Your Honor, I thought I designated  
7 that I was referring only to -- not the sermon tapes, but  
8 to other tapes, and the witness apparently misunderstood  
9 me.

10 THE COURT: Apparently he didn't receive any  
11 other than sermon tapes.

12 MR. SHAPIRO: Nothing further, your Honor.

13 MR. JOHNSON: Oh, I was not quite done yet. I

anything further on that issue, your Honor.

Johnson) Well, you did say a barrage of notes and  
we dealt with the tapes, that there apparently  
specific tapes other than the tapes of sermons  
attached.

send written notes to the eldership, if you

specific time frame?

all any during that specific time frame. I  
of the letters that he wrote came afterwards,  
social status.

14 don't have a

15 Q (By Mr. Johnson)

16 tapes. Now

17 weren't any

18 that he prece

19 Did he

20 remember?

21 A During that

22 Q Yes.

23 A I don't recall

24 think most of

25 after the sp

HAROLD - Further Re-Cross (By Johnson)

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However, in regard to the pastoral authority issue, no, I don't think in my mind we felt we needed outside

~~14. In re-crosses, I don't think I've asked the witness who were present at the~~

~~15 meeting who were witnesses to the various things that~~

~~16 Bennett said and did.~~

~~17 MR. JOHNSON: That is all I have. Thank you.~~

18 much.

19 MR. SHAPIRO: Nothing further.

20 THE COURT: I'm not quite sure I understand

21 the state of your testimony. You say -- let's deal with

22 the easy one first. You say with respect to the abuse of

23 pastoral authority that you felt no further evidence was

24 required because all of you were witnesses to at least

25 of it. Is that right?

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HAROLD - Further Re-Cross (By Johnson)

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THE WITNESS: Yes, sir. The actions towards the eldership.

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THE COURT: You felt that none of that was sufficient standing in and of itself?

THE WITNESS: I'm sorry?

THE COURT: You felt that none of that was sufficient standing in and of itself to sport?

THE WITNESS: To me it was sufficient, at least

HAROLD - Further Re-Cross (By Johnson)

1 for those witnesses, but not everyone in the group had  
2 spoken to each of these witnesses or heard from them in  
3 regardd to the sexual activities.  
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18 THE COURT: I have no further questions.

19 MR. SHAPIRO: Nothing further.

20 MR. JOHNSON: Nothing further.

21 THE COURT: You may step down.

22 MR. ROHAN: We call Donald Barnett as our next  
23 witness.

24 THE COURT: I think you were sworn at the  
25 beginning of the case, sir. You are still under oath. You

HAROLD - Further Re-Cross (By Johnson)

1 may take the stand.

2 PASTOR BARNETT: Your Honor, I have a statement I  
3 have to make.

4 THE COURT: You have to speak through your  
5 lawyer.

6  
7 THE COURT: Yes.

8 (Mr. Johnson confers with Pastor Barnett)

9 MR. JOHNSON: Your Honor, Pastor Barnett --  
10 should have mentioned this early on in the hearings --  
11 through the depositions earlier this month and in December.  
12 Pastor Barnett has been under treatment of a doctor, and  
13 has been violating his doctor's advice by sitting through  
14 essentially a full day of things.

15 Counsel was nice enough during the depositions to  
16 limit it just to afternoon depositions, and the pastor  
17 indicated to me that he has begun to feel faint and his  
18 back is really throbbing. We almost served a subpoena  
19 duces tecum on Counsel for his chair because Mr. Bohan

20 allowed us to use his desk chair throughout the  
21 depositions, six or seven depositions. Pastor indicated to  
22 me just a couple of minutes ago that he was feeling faint  
23 and he was afraid he was going to pass out.  
24 I hate to interrupt things here, and I guess I will  
25 just have to leave it up --

HAROLD - Further Re-Cross (By Johnson)

1 THE COURT: Well, do I understand that he would  
2 feel better tomorrow morning?

3 MR. JOHNSON: Yes. And there have been a couple  
4 of other times. The other day he asked if he could go out  
5 and lay down, and he did lay down on the floor of one of  
6 the waiting rooms for a period of time --

7 THE COURT: Because it's such a short time to  
8 recess time, maybe we can set him over until tomorrow  
9 morning.

10 MR. JOHNSON: We would gratefully appreciate  
11 that.

12 THE COURT: In the meantime, let's go through  
13 these exhibits.

14 MR. JOHNSON: That would be fine.

15 MR. ROHAN: Your Honor, aren't we going to 4:30  
16 today?

17 THE COURT: Four.

18 I could go through my notes and try to recall or  
19 try to identify what action was taken on each one of these,  
20 but maybe we can start in and see where we get just looking  
21 at them.

22 Exhibit 11, Articles of Faith, April of '88. I  
23 forget what action I took, but I think I admitted that as  
24 material to the plaintiff's counterclaim or affirmative  
25 defense, whatever that was.

HAROLD - Further Re-Cross (By Johnson)

1                   What say you as to that? Should I look that up?

2                   MR. ROHAN: I believe you admitted it, and I  
3 believe you admitted it for a limited purpose to show --

4                   MR. WIGGINS: Your Honor, what is indicated in my  
5 notes is that it was admitted to show what was done.

6                   THE COURT: That is what I thought I did.

7                   Number 12, Minutes of Senior Elders' Meeting and  
8 the Steering Committee. That was that sheaf of papers  
9 about an inch thick that has various notes and whatever.

10                  MR. JOHNSON: I think it was admitted for the  
11 limited purpose of showing --

12                  MR. ROHAN: Who attended the meeting.

13                  MR. JOHNSON: Who attended the meeting, and it  
14 may have been further admitted with respect to the December  
15 meeting to show -- you wanted to show that something was  
16 passed that resulted in the bylaws.

17                  MR. ROHAN: Right. The December 1987 meeting.

18                  MR. WIGGINS: Your Honor, I have it admitted to  
19 show that Barnett was present and that the board  
20 memorialized their meeting in written minutes.

21                  THE COURT: Just how complete a memorialization  
22 that is, I have no idea. I don't know that either of you  
23 focused on anything other than the fact that Barnett was at  
24 most of the meetings and you had that one meeting.

25                  MR. ROHAN: That's correct, your Honor.

HAROLD - Further Re-Cross (By Johnson)

1 THE COURT: So I'll admit that for that purpose,  
2 to show Barnett was present -- and what meeting was that?

3 MR. ROHAN: I believe it was December of 1987.  
4 It was a meeting where they discussed eliminating the  
5 satellite church provisions from the bylaws.

6 THE COURT: Oh, yes. Although that was also  
7 covered by something else.

8 Number 13, disfellowship procedures and policies.

9 MR. ROHAN: That was admitted.

10 THE COURT: That should be admitted.

11 Number 14, memo, changes in disfellowship, July  
12 30, 1987 --

13 MR. ROHAN: That was admitted.

14 THE COURT: That was the one where Hicks was  
15 taken off, wasn't it?

16 MR. ROHAN: That was admitted.

17 THE COURT: That will be admitted.

18 Number 15 was admitted. That's the agreement.

19 MR. ROHAN: 16 through 21, the Barnett  
20 Declarations were all admitted.

21 MR. WIGGINS: I have nothing on that, but I think  
22 that's fair, that it was admitted.

23 THE COURT: Do you have a quarrel with that, 15  
24 through 21?

25 MR. JOHNSON: No, we don't, your Honor.

HAROLD - Further Re-Cross (By Johnson)

1 THE COURT: Who proposed 21?

2 MR. ROHAN: 21 was another declaration, and that  
3 was all -- all the declarations were admitted.

4 THE COURT: That was a defendants' exhibit?

5 MR. ROHAN: Yes.

6 ~~THE COURT: 22 was the letter from Awank to the~~  
7 senior elders.

8 MR. SHAPIRO: It was admitted during Russ  
9 MacKenzie.

10 THE COURT: That was the letter of grievances.

11 MR. WIGGINS: Admitted as notice of the  
12 complaint.

13 THE COURT: That seems to me that it was  
14 admitted.

15 MR. JOHNSON: But with the limitation that it was  
16 admitted as to notice of the complaint --

17 THE COURT: As notice of the grievances and as  
18 referred to later on.

19 Number 23, guidelines.

20 MR. ROHAN: Admitted.

21 MR. JOHNSON: Admitted.

22 THE COURT: That's the one we talked about today.  
23 That was admitted.

24 Number 24 was the letter from the three senior  
25 elders to Don -- and I don't remember what that was about.

HAROLD - Further Re-Cross (By Johnson)

1 MR. SHAPIRO: That was the special status letter.

2 THE COURT: Special status, yes.

3 MR. SHAPIRO: That was admitted.

4 MR. JOHNSON: It was admitted also as to notice  
5 and admissions.

6 THE COURT: That should be admitted generally, I  
7 think. Not limited to any specific --

8 MR. JOHNSON: But not as to the truth of matters  
9 asserted therein.

10 THE COURT: No, but of what they have done.  
11 Number 25, temporary restraining order of Judge  
12 Bates, was admitted.

13 MR. ROHAN: Correct.

14 THE COURT: Number 26, memo from Barnett to  
15 Erickson attaching the bylaws for revision.

16 MR. JOHNSON: Admitted.

17 MR. ROHAN: Admitted.

18 THE COURT: The newspaper "Balance" was admitted.

19 MR. SHAPIRO: Yes, it was admitted.

20 MR. WIGGINS: I believe it was.

21 MR. ROHAN: Yes.

22 THE COURT: Number 28 was this note that was  
23 handed from Barnett to Russell MacKenzie.

24 MR. SHAPIRO: That was admitted.

25 MR. JOHNSON: Admitted.

HAROLD - Further Re-Cross (By Johnson)

1 THE COURT: And that was admitted.  
2 Number 29 and 30 were admitted.  
3 MR. JOHNSON: But I think they were limited as to  
4 notice and not as to the truth of the matters set out  
5 therein.  
6 MR. SHAPIRO: I don't believe so, your Honor.  
7 They were admitted through the author, and therefore there  
8 was no limitation on their use.  
9 THE COURT: Of what they did and the action  
10 taken.  
11 MR. SHAPIRO: Russ MacKenzie testified that he  
12 wrote them and they were admitted through him because he  
13 could verify it.  
14 MR. JOHNSON: But admitted as to what they did  
15 and the action taken?  
16 THE COURT: Yes.  
17 Who proposed 30? The defendant?

ss when Counsel said it was  
we have consistently objected  
asserted in the document  
at's a valid objection to the  
hese documents are being  
ve notice. They took various

remains a statement made:

18 MR. KOHAN: Yes.  
19 MR. WIGGINS: I guess  
20 admitted without limitation, w  
21 to the truth of the matters as  
22 itself. And I still think tha  
23 contents of the documents. TH  
24 admitted for the fact they gav  
25 steps. But the document itself

HAROLD - Further Re-Cross (By Johnson)

1 outside of that. Whether or not the witness is on the  
2 stand is immaterial in terms of the definition of hearsay  
3 under the evidence rule. It is hearsay admitted for a  
4 purpose, but it is not admitted to prove the truth of the  
5 matter asserted.

6 And I'll tell you why I bring this up. I do not want  
7 statements in any of these exhibits to be pointed to in  
8 some subsequent proceeding or here as evidence of the truth  
9 of the matters asserted in the letter. These letters are  
10 largely -- they include lots of conclusions that they have  
11 reached. They include lots of charges of misconduct. It's  
12 true with this letter and it's true with all the letters  
13 that they wrote -- because of the repeated acts of sexual  
14 misconduct that you have committed, blah, blah, blah.  
15 These letters are not admitted as to the truth of those  
16 assertions in the letter.

17 THE COURT: Well, let me put it this way.  
18 Without getting into a debate over what are findings and  
19 what are not findings, I am going to admit them for the  
20 basis claimed by the authors and the committee as grounds  
21 for doing what they did.

22 MR. WIGGINS: Oh, all right.

23 MR. JOHNSON: But not as themselves evidence to  
24 support that. They do set out the grounds -- we are doing  
25 this because we believe this, this, and this.

HAROLD - Further Re-Cross (By Johnson)

1 MR. SHAPIRO: It is evidence as to what they knew  
2 or what they believed at the time. We had the maker on the  
3 stand. You can cross-examine him about his knowledge and  
4 the foundation of that knowledge. That document is not  
5 hearsay because they had an opportunity to examine and  
6 cross-examine the maker. Under the scenario, every piece  
7 of paper could never come into evidence, and that is not  
8 what the hearsay rule says. They had an opportunity to  
9 cross-examine Russ MacKenzie --

10 THE COURT: Are you satisfied that I am going to  
11 admit them as being the basis upon which and reasons given  
12 by the group of 16 and group of 12 for doing what they did?

13 MR. SHAPIRO: That's fine.

14 MR. WIGGINS: Certainly there is evidence of  
15 that.

16 MR. SHAPIRO: Evidence of their state of mind and  
17 what they knew.

18 MR. WIGGINS: Okay.

19 THE COURT: 31 is the written transcript of the  
20 sermon and 32 is the tape.

21 MR. SHAPIRO: They were both admitted.

22 MR. JOHNSON: I think they were both admitted  
23 subject to your Honor giving me some --

24 THE COURT: Now, I have the tape.

25 MR. JOHNSON: I have what I have been advised is

HAROLD - Further Re-Cross (By Johnson)

1 a true and accurate copy of the tape, and tonight or  
2 tomorrow night I will --

3 THE COURT: The membership meeting of 3/3/88  
4 signed by ten.

5 MR. SHAPIRO: That was admitted.

6 MR. WIGGINS: My notes indicate -- and I think  
7 this is verbatim -- that it was admitted for what it  
8 purports to be.

9 THE COURT: I forget what that was.

10 MR. SHAPIRO: Meeting of the elders is what it  
11 says.

12 THE COURT: That was just a one-paragraph little  
13 note, wasn't it?

14 MR. SHAPIRO: Just like that.

15 THE COURT: Yes.

16 MR. SHAPIRO: With 16 present, ten voted.

17 THE COURT: Okay. Well, we have concluded  
18 talking about the exhibits, and it is now four o'clock.

19 MR. WIGGINS: You have 35 on this list. Have I  
20 missed something?

21 MR. JOHNSON: That has been admitted.

22 MR. WIGGINS: Okay.

23 MR. SHAPIRO: And there is 36 and 37.

24 THE COURT: They were both admitted. 36  
25 tentatively. I don't know what to do about this note from

HAROLD - Further Re-Cross (By Johnson)

1 Mrs. A, but I will hear what you people have to say at the  
2 conclusion.

3 MR. SHAPIRO: But 37 was clearly admitted?

4 THE COURT: Yes.

5 (COURT WAS ADJOURNED AT 4:00 P.M.)  
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