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(The following proceedings  
occurred on January 29, 1991)

~~THE COURT: Pastor Barnett, you've been~~

previously sworn, as I said yesterday. You may take  
the stand.

MR. JOHNSON: Your Honor, we would like to  
thank the Court and counsel for their indulgence  
yesterday.

THE COURT: We're going to oblige.

DONALD BARNETT, the Plaintiff herein, having  
been previously sworn on  
oath, was called as an  
adverse witness by the  
Defendants herein, was  
examined and testified as  
follows:

E X A M I N A T I O N

BY MR. ROHAN:

Q Sir, are you familiar with Issue No. 2 of Balance  
magazine?

A Yes.

Q And you wrote a portion of that issue; is that  
correct?

A Yes.

Q And you reviewed all of it before it was published; is  
that correct?

A Yes.

Q And it was true and accurate, as far as you were

1 concerned?

2 A Yes.

3 Q And could you open up to Exhibit 27, please?

4 A I need to explain, true and accurate doesn't  
5 necessarily mean I'm a perfect reader and caught  
6 everything.

7 Q I'd like to turn to Rumor 20 in Balance magazine which  
8 is Exhibit 27 which is on page 19 of the magazine and  
9 it's basically in a response to an objection that was  
10 had during an earlier point here. My understanding is  
11 that you wrote Rumor 20; is that correct?

12 A I wrote it, yes.

13 Q ~~...And you still believe it's accurate and correct?~~  
14 correct?

15 A Well, I need to say that --

16 Q I mean, the answer you wrote to Rumor 20; is that  
17 correct?

18 A Well, I do not know that I wrote every word of Reply  
19 20 because the editors highly massaged and edit. When  
20 I give them my writing, my editors go through and  
21 revise sentences and so forth to put it in good form  
22 and I can't be positive that I wrote every word, but I  
23 did write the entire article.

24 Q The entire article, you mean all of the answers to the  
25 rumors?

1 A Yes.

2 Q Okay. It's still your opinion today that the answer  
3 to Rumor 20 is correct; isn't that true?

4 A It's my interpretation of it, yes.

5 Q Why don't you read, if you would, Rumor 20 and the  
6 reply, please.

7 A The pastor of Community Chapel is accountable to no  
8 one. Untrue. I'm accountable to the bylaws, the  
9 senior elders, fellow elders, even to the  
10 congregation, and most of all to God. The senior  
11 elders watch over my ministry. They would never allow  
12 me to error substantially without requiring repentance  
13 and/or correction. I submit to them, as I do to me.  
14 I think in retrospect there are a couple of words I  
15 would change and I'm not sure if they're my words or  
16 the editor's words but in my understanding it's still  
17 all right.

18 Q Okay. I'd like you to refer to your deposition of  
19 December 13, 1988 that we have referred to before and  
20 I'd like you to read at page 167 starting with line 11  
21 over to page 168 line one.

22 A First, does Rumor 20, this was part of an article that  
23 was in Balance magazine; isn't that right? Answer:  
24 Yes. Question: And that article was reviewed by you  
25 prior to its publication; is that right: Answer: I

1 authored it and reviewed it. Question: Would you  
2 read what is Rumor 20 and the reply, please. Do you  
3 want me to re-read it?

4 Q No, you've already read it once. If you would  
5 continue on with the questions and answers.

6 MR. JOHNSON: Your Honor, I'm going to  
7 object to this because this isn't at all to my way of  
8 thinking inconsistent with what the witness just  
9 testified.

10 MR. ROHAN: I believe it is, Your Honor.  
11 He's testified that --

12 THE COURT: Nonetheless --

13 MR. JOHNSON: I'll withdraw my objection.

14 THE COURT: The objection is overruled.

15 Q (By Mr. Rohan) Could you continue to read them.

16 A Answer: I've already read it. Question: Is that  
17 still your opinion as set forth on Exhibit 8, Rumor  
18 20, and the reply to it? Answer: Yes.

19 Q That's fine, thank you, sir.

20 THE COURT: Is there anything further in  
21 that area you would like to include in that  
22 deposition?

23 MR. JOHNSON: No, Your Honor.

24 Q (By Mr. Rohan) Could you please turn over to page 21  
25 and read Rumor 37 and the reply to Rumor 37.

1 A The pastor has admitted that he has a demon of lust  
 2 and had sexual relations with ten women. Untrue. I  
 3 have never said I have a demon of lust, I do not. As  
 4 to the second charge, the rumor grows with time.  
 5 First it is too much hugging, then indiscretions, then  
 6 adultery with a woman and later the promulgator  
 7 retracted this lie about me and an unnamed someone  
 8 said something to this effect. Well, he didn't commit  
 9 adultery but I've heard other things. Now it's  
 10 adultery with ten women. I suppose next it will be  
 11 bigamy. I have never committed adultery and have no  
 12 desire to. Besides, I would fear God's judgment. The  
 13 Bible clearly and forcibly condemns this sin.

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Q And is that still your opinion today

A Yes.

MR. JOHNSON: Objection to  
 question, Your Honor. The question  
 to a long paragraph which stated many  
 I object to the form of the question

3

1 that it says is that your opinion, because there were  
2 many, many things stated and it's not clear as to what  
3 was stated in the article or the paragraph just read.  
4 It is not indicated to which statement or which  
5 opinion counsel is referring to.

6 THE COURT: I imagine he was referring to  
7 the whole answer. I don't know, but that's the way I  
8 interpreted it. Did you interpret it the same way?

9 THE WITNESS: Well, I meant that at the time  
10 I wrote this this was absolutely true. I had never  
11 committed adultery at this time and I believe that --

12 THE COURT: No, I'm asking if you understood  
13 it the same way I did and that is that you said yes  
14 it's still true as to the whole answer given.

15 THE WITNESS: Well, I didn't mean it's true  
16 I haven't committed adultery as of today.

17 THE COURT: Okay.

18 Q (By Mr. Rohan) There was a lawsuit brought against  
19 yourself as well as Community Chapel, the Tacoma  
20 satellite church, and the pastor of the Tacoma  
21 satellite church by a woman named Gabrielson; do you  
22 recall that?

23 A Yes.

24 Q And you were dismissed as a Defendant in that case; is  
25 that right?

BARNETT - Direct (By Mr. Rohan)

1 A Yes.

2 Q But Community Chapel of Burien, your church, was not  
3 dismissed as a defendant and, in fact, was found  
4 guilty by a jury in that case; is that right?

5 A They were not dismissed.

6 MR. JOHNSON: Your Honor, I'm going to  
7 object to this line of questioning. It goes into  
8 something that is not with regard to actions of Pastor  
9 Barnett. He was dismissed and has nothing to do with  
10 this litigation.

11 MR. ROHAN: Your Honor --

12 THE COURT: I don't know whether it does or  
13 does not. I'm hearing about this for the first time,  
14 that is to say there was an action of Gabrielson  
15 against Barnett, Community Chapel, the pastor of the  
16 Tacoma branch or Tacoma satellite, and the question  
17 was was he dismissed and the answer was yes.

18 MR. ROHAN: Thank you, Your Honor.

19 Q (By Mr. Rohan) A judgment was rendered by the jury  
20 against the pastor of the satellite church, the  
21 satellite church and Community Chapel; isn't that  
22 true?

23 A Well, I wasn't there for that. The church was in the  
24 hands, I believe --

25 THE COURT: I'm not understanding what you

1 are saying.

2 THE WITNESS: He's asking me details of what  
3 was rendered by the judge. I wasn't at the trial. I  
4 wasn't in charge of the church at that time, I don't  
5 believe, when it was made. I think it's an  
6 inappropriate question to ask me what the judge did  
7 when I wasn't involved in what the judge did. I  
8 wasn't there.

9 THE COURT: Do you know what the answer to  
10 the question is, however?

11 THE WITNESS: Well, I may have a hearsay is  
12 all, I don't know personally because I wasn't in  
13 charge of the church at the time.

14 Q (By Mr. Rohan) Didn't you agree to a settlement of  
15 that case, the Gabrielson case?

16 MR. JOHNSON: Your Honor, well...

17 A Well, I think more correctly Community Chapel under  
18 the elders agreed. Bob Rohan called my attorney up.  
19 I was never mentioned of having done anything sexual  
20 at all or anything like that. And I was just asked if

21 I would agree to Community Chapel who wanted to settle  
22 and I didn't -- I guess we had a certain insurance  
23 situation and it would be paid for by the insurance.

24 I reluctantly said yes. I guess it was in my best  
25 interest, according to my attorney, but I think

1 Community Chapel settled it. I just agreed not to  
2 fight it.

3 MR. ROHAN: Your Honor, at this time I would  
4 like to introduce a certified copy of the Judgment on  
5 Jury Verdict from that case in Pierce County, and the  
6 reason I would like to do that, they are certified  
7 copies, the reason I would like to do that is because  
8 the pastor's attorneys for the first time that I was  
9 aware in a responsive brief that they filed -- After  
10 we filed our trial brief they filed a responsive brief  
11 claiming that there could be no liability of Community  
12 Chapel for any of the tortious actions of Pastor  
13 Barnett.

14 And we would like to introduce this case which  
15 was the Gabrielson case involving MacDonald where the  
16 Court did find, a jury did find that Community Chapel  
17 in fact was liable for the actions of its satellite  
18 pastor, not this pastor, we're not claiming it was  
19 this pastor at all, he was dismissed and that's why I  
20 want to put that in, but that the church was found  
21 liable on several theories for that, and it goes to  
22 show that in fact the church could be held liable for  
23 the actions of Pastor Barnett which is one of the  
24 reasons why he was disfellowshipped.

25 MR. JOHNSON: Your Honor, I didn't write the

1 trial brief and I wonder whether perhaps counsel might  
2 respond to that.

3 Counsel has I will say previously objected to us  
4 going into matters of litigation. This is the end of  
5 November 1988 after I believe the first summary  
6 judgment was entered in that case and long, long after  
7 March of 1988, months and months and months, and I  
8 guess counsel argued long and loud about how  
9 litigation that occurred after March of '88, plus  
10 it --

11 THE COURT: The issue seems to be narrowed  
12 down to whether or not the church can be held liable  
13 for certain acts of the pastor, whatever they may be,  
14 and this is supposed to be evidence on that issue.

15 MR. WIGGINS: Your Honor, I realize Mr.  
16 Johnson is handling Pastor Barnett as a witness but  
17 Mr. Rohan has brought this out as something in the  
18 trial brief which I wrote, of course, and I wonder if  
19 I might respond directly to the points they're making  
20 here.

21 THE COURT: Well, if we're going to argue  
22 whether or not the pastor can involve his church in  
23 litigation, I would rather leave that to the end.

24 MR. WIGGINS: That's not my argument, Your  
25 Honor. The first time that the Defendants ever

BARNETT - Direct (By Mr. Rohan)

1 explained or gave any authority for their theory that  
2 Community Chapel could be held liable for the actions  
3 of Pastor Barnett was in their trial brief. That's  
4 the first time they cited any authority for that  
5 proposition. I filed a supplemental response that  
6 focused on that proposition.

7 Now, the focal point of it was no one at  
8 Community Chapel had the authority to supervise Pastor  
9 Barnett. The theory that they're going on is kind of  
10 a does the board have a duty to stop Pastor Barnett  
11 from taking certain actions. And I made the argument  
12 in that supplemental brief, which I believe is  
13 indisputable, that no one at Community Chapel had the

14 right to control Pastor Barnett's actions.

15 No one has claimed that today, that they had any  
16 right to control him, so there cannot be liability on  
17 the part of the board to have failed to control Pastor  
18 Barnett because they didn't have the right to control.  
19 Before there's a negligent conduct, there had to be a  
20 duty. There is no duty.

21 Now, what he is offering here is a judgment  
22 against Community Chapel on behalf of a lower church,  
23 a satellite church which was subject to the control of  
24 Community Chapel and the Board of Senior Elders. It  
25 is conceivable to me there might be liability on that

1 theory, but that has nothing to do with whether Pastor  
2 Barnett, whether failure to supervise Pastor Barnett  
3 could be the basis for liability.

4 Now, the other thing is the judgment doesn't  
5 state any theory upon which it's entered. The jury  
6 verdict has some questions and answers which I've not  
7 read, but frankly, Your Honor, a jury verdict from one  
8 case in another case is nothing but hearsay and it is  
9 inadmissible hearsay and it is an opinion by that jury  
10 in that case and apparently, I don't know anything  
11 about the Gabrielson case, but apparently it was  
12 settled, so I don't have any idea whether this theory  
13 was valid in the least. I just don't think these  
14 documents have any probative value at all.

15 MR, ROHAN: Your Honor, they are probative  
16 to demonstrate that in fact that we may all as lawyers  
17 think that one theory is correct or one theory is not  
18 correct, these people were not lawyers. All they  
19 could go on is the fact that lawsuits were filed,  
20 lawsuits were filed that alleged that Community Chapel  
21 would be liable for the actions of the pastor. They  
22 had the right to rely on that, in fact not only that  
23 but at least one Superior Court judge in Pierce  
24 County, as well as a verdict and I forget whether it  
25 was 6 or 12 individuals down there charged by the

1 judge with finding a judgment found a judgment against  
2 these people and I think it certainly goes to that.

3 MR. WIGGINS: Eight months after the action  
4 that was taken --

5 THE COURT: I will admit it. This was done  
6 eight months after, but when was the case filed?

7 MR. ROHAN: Actually I will also --

8 THE COURT: I don't know that we need to  
9 clutter up the record --

10 MR. ROHAN: I have the complaint that was  
11 filed.

12 THE COURT: -- the trial papers as long as  
13 we agree on when it was filed.

14 MR. ROHAN: April 30, 1986. I have a  
15 certified copy.

16 MR. JOHNSON: I know it was filed in '86  
17 because I see there's an '86 date on the judgment  
18 here.

19 THE COURT: Filed in '86, judgment when in  
20 '88?

21 MR. ROHAN: November 23, 1988.

22 (Defendants' Exhibit 38  
23 marked for identification.)

24 MR. JOHNSON: Your Honor, for the record, I  
25 will interpose one additional objection. That is this

4  
1 has not been introduced apparently for impeachment  
2 purposes, and we had no notice. I think if counsel  
3 intended to introduce this, it was incumbent upon him  
4 at some point prior to this to advise us of his intent  
5 and give us a chance to review the document and so  
6 forth, and it's being sprung at us in sort of an  
7 ambush type of way here at the last minute without any  
8 forewarning whatsoever.

9 THE COURT: I won't sustain an objection on  
10 that basis. For what it's worth, I'll admit it.

11 (Defendants' Exhibit No. 38  
12 received into evidence.)

13 Q (By Mr. Rohan) In addition to the Gabrielson lawsuit,  
14 there were three other lawsuits pending against  
15 Community Chapel in 1987 and through March of 1988, is  
16 that correct, at least three?

17 A Yeah, a lot more than three.

18 Q One of those was a suit by Kathy Butler, one of those  
19 was a suit by Christy Hall and one of those was a suit  
20 by Sandy Brown; is that correct?

21 A They were all combined in one suit.

22 Q And Kathy Butler, Christy Hall, and Sandy Brown were  
23 all former people that attended Community Chapel; is  
24 that right?

25 A Yes.

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1 Q And the lawsuit filed by the three of them was against  
2 both you and Community Chapel; is that correct?

3 A Yes.

4 Q And the lawsuit alleged that Community Chapel was  
5 responsible for your actions; is that correct?

6 A I don't know.

7 Q Let me show you a copy of the Complaint in Butler,  
8 Hall, and Brown.

9 MR. JOHNSON: Your Honor, if this is being  
10 used to refresh his recollection. I'll object unless  
11 it's established first that he has ever read a copy of  
12 the Complaint.

13 THE COURT: We're not to that point. He's  
14 being given a copy and asked if he recognized it.

15 Q (By Mr. Rohan) You read a copy of the Complaint filed  
16 by Butler, Hall, and Brown in 1986 or 1987, isn't that  
17 true?

18 A I believe I did, yes.

19 Q And can you turn to page 13 of that document -- and  
20 this is the Complaint of Butler, Hall, and Brown; is  
21 that correct?

22 A Yes.

23 Q And could you read where it says seventh cause of  
24 action respondeat superior, could you read page 13  
25 14 just to yourself.

1 A Yes.

2 Q Does that refresh your recollection that in fact the  
3 Butler, Hall, and Brown suit involved an allegation  
4 that Community Chapel was responsible for your actions  
5 as alleged in the Complaint?

6 MR. JOHNSON: Your Honor, I think that  
7 unfairly characterizes the previous line of questions.  
8 He's never said he had or did not have a memory with  
9 regard to that question.

10 MR. ROHAN: He said he didn't recall.

11 THE COURT: Does that refresh your  
12 recollection?

13 THE WITNESS: Well, not of what he says, it  
14 refreshes my recollection of their allegations.

15 THE COURT: That's what we're talking about.

16 THE WITNESS: He said something to the  
17 effect of, something about Community Chapel being --

18 Q (By Mr. Rohan) Isn't the allegation -- Let me  
19 rephrase it. Isn't it correct that the allegations in  
20 the Butler, Hall, and Brown Complaint are that  
21 Community Chapel was responsible for your actions?

22 A I guess that would be the conclusion. I guess I  
23 didn't look at it that way, but I guess that would  
24 have to be, that is true.

25 Q And one of the allegations of Butler, Hall, and Brown

1 in the lawsuit was improper sexual conduct of, your  
2 improper sexual conduct towards Butler, Hall, and  
3 Brown?

4 A That's the allegation, yeah.

5 Q Thank you. And as of March 4, 1988 that case had  
6 neither been settled nor dismissed; is that correct?

7 A I don't know the dates.

8 Q Do you recall at one point that the Butler, Hall, and  
9 Brown cases were settled?

10 A Yes.

11 Q And that was after you had been removed as the pastor  
12 by Judge Quinn from Community Chapel; isn't that  
13 correct?

14 MR. JOHNSON: Your Honor, I think the  
15 witness has already indicated he didn't remember the  
16 dates.

17 MR. ROHAN: I'm trying to refresh his  
18 recollection.

19 A Well, I don't remember the dates, but I would say it  
20 would have to be true because Community Chapel was the  
21 one that wanted to settle it and I was not in charge  
22 of Community Chapel at that time and my attorney asked  
23 me then -- I guess I had to agree to what they agreed  
24 to maybe because of the litigation we were in, I'm not  
25 sure. I guess that would be the reason, and I know I

1 very, very reluctantly agreed but I did agree.

2 Q Money was paid to Butler, Hall, and Brown as part of  
3 that settlement?

4 A I don't know.

5 Q Let's turn if we might to the elders' hearings. You  
6 recall that there were elders' hearings held at  
7 Community Chapel in January and February of 1987; is  
8 that right?

9 A '88, you mean?

10 Q I'm sorry, January and February of 1988. Thank you,  
11 sir.

12 A Yes.

13 Q And you testified during those hearings; is that  
14 correct?

15 A Yes.

16 Q And can you tell me one of the -- There were no names  
17 mentioned of women that you testified about; is that  
18 correct?

19 A Yes, that's correct.

20 Q Was the Butler, Hall, and Brown lawsuit discussed at  
21 the hearings?

22 A I don't think so. They might have been, they might  
23 have been brought up, but I'm quite positive that no  
24 details were brought. I don't think any details were  
25 discussed. I would say there might have been a

1 reference to those lawsuits and I think perhaps there  
2 was.

3 Q Didn't Jerry Zwack mention that the Butler, Hall, and  
4 Brown lawsuits had been filed and they involved sexual  
5 misconduct on your part?

6 A He may have. I think I remember him bringing up the  
7 fact of it but there wasn't any details mentioned.

8 Q One of the women that was discussed at the hearing  
9 that you testified to at the hearing, even though you  
10 didn't mention her name was (expunged); is that  
11 correct?

12 MR. JOHNSON: Objection, Your Honor.

13 THE COURT: What is the reason for  
14 mentioning her name?

15 MR. ROHAN: The reason I mentioned her name,  
16 Your Honor, is there's five women involved here. It's  
17 very specific as to what he did with each woman and  
18 I'd like to keep it straight. I'm happy at this point  
19 in the record to insert a pseudonym for her, as long  
20 as we establish an understanding that that's who she  
21 was so I can ask questions.

22 THE COURT: I think you can do that simply  
23 by asking if he knows who was referred to by No. 1.

24 MR. ROHAN: All right, fine, I'll do that.

25 Q (By Mr. Rohan) The women in the hearings were

BARNETT - Direct (By Mr. Rohan)

1 referred to by number; is that correct?

2 A Yes.

3 Q Do you recall which was woman No. 1?

4 A I'd have to -- I can't recall by number, I would have  
5 to recall by incident.

6 Q By incident in terms of your sexual contact with them?

7 A What we did, where we were.

8 Q Okay. All right.

9 THE COURT: Have you got anything that you  
10 could show him that identifies No. 1 that mi  
11 to his mind who it is?

12 MR. ROHAN: No.

13 Q (By Mr. Rohan) Do you recall what number (ex  
14 was?

15 A I don't recall what sequence people were bro  
16 I don't know numbers of people at this date.

17 MR. ROHAN: I don't know how I can  
18 him on that basis without going into names.  
19 there's another way, I would be happy to do s

20 MR. JOHNSON: Your Honor, the fact  
21 matter is that people that have testified hav  
22 that they didn't know who No. 1 was or No. 2  
23 No. 3 was or No. 4 was and I can't see the pu  
24 for applying names to these individuals and t  
25 witness has said he can't remember at this po

1 No. 1 was or No. 2.

2 THE COURT: I would assume that what he's  
3 trying to do is ask him questions about No. 1 and No.  
4 2. And as long as we can establish some kind of  
5 identity, some way so that he knows what the question  
6 references to.

7 MR. JOHNSON: I think the witness has  
8 indicated, Your Honor, that he testified at the  
9 hearing about various incidents and if we can refer to  
10 them about the incident in Hawaii or the incident here  
11 or the incident there.

12 THE COURT: Can you characterize --

13 MR. ROHAN: I can do that. To the extent  
14 that I need to impeach him, it's going to make it very  
15 difficult because in the depositions they're all  
16 referred to by name. So, as long as I can go back and  
17 ask him a name --

18 THE COURT: If there seems to be some  
19 confusion or misunderstanding, that may come out.

20 MR. ROHAN: Could we use initials?

21 THE COURT: I don't see anything wrong with  
22 using initials unless somebody takes offense at it.

23 MR. JOHNSON: Perhaps we could arbitrarily  
24 assign No. 1 for purposes of this hearing.

25 MR. ROHAN: That would be fine with me.

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1 MR. SHAPIRO: Use initials.

2 MR. JOHNSON: How about A, B, and C since  
3 the hearings used 1, 2 and 3?

4 MR. ROHAN: All right, (expunged) can be A,  
5 B will be --

6 MR. JOHNSON: Well, Your Honor --

7 THE COURT: Let's go off the record.

8 (Whereupon, a discussion  
9 was held off the record.)

10 THE WITNESS: May I ask a court question?  
11 You made a statement that this is public record. I  
12 understood the arbitration was not going to be public  
13 record.

14 THE COURT: Well, the transcript of the  
15 court proceedings, as far as I am concerned, are what  
16 we call a public record in that people are entitled to  
17 access to it.

18 THE WITNESS: Everything she types is public  
19 record for the newspapers?

20 THE COURT: It won't go to the newspaper

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BARNETT - Direct (By Mr. Rohan)

1 form of the question. If the question is who  
2 initiated it, that's one question. If the question is  
3 who did you state at the eldership hearings initiated  
4 it, that's another question but they are two separate  
5 questions.

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1 MR. JOHNSON: Objection, Your Honor, as to  
2 what Mr. Motherwell may or may not have told someone  
3 else outside of this witness's presence.  
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20 Q David Motherwell, did you tell David Motherwell?

21 A I don't remember talking to David about it right now.

22 Q Showing you your deposition of November 26, 1990,  
23 could you please read on page 90 starting at line 13  
24 or starting at line 11 through page 91, line 3.

25 MR. JOHNSON: Your Honor, I will object.

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First, I would ask that he not read the woman's name if he is going to read.

THE COURT: Did you ask him to read it aloud?

MR. ROHAN: Yes, Your Honor, I'll agree to substituting Lake Chelan woman.

THE COURT: Just read to yourself.

MR. JOHNSON: Your Honor, I would like to make another objection and that is that the question that counsel asked the witness previously was whether or not he told David Motherwell that he shouldn't give advice like that and the witness here has said he didn't remember doing that and that is not, as I see it, inconsistent with the answer that is given here.

15

And I don't think it impeaches, it confirms.

~~THE COURT: It seems to be the same.~~

MR. ROHAN: This is cross-examination. He's

17

entitled to do this on his own case.

18

MR. JOHNSON: But I don't think it's fair to

19

~~asked him to read it under the guidance of~~

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~~in fact it doesn't. That's all I'm~~

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impeachment wh

22

saying.

MR. ROHAN: Your Honor, I think the record

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now after he reads it whether it does or

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t doesn't work out as impeachment, then

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MR. JOHNSON: Objection, Your Honor.

THE COURT: Asked and answered.

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1 Community Chapel; is that correct?

2 A No, I was the head of the corporation but there was an  
3 individual head of each department.

4 Q But you were also head of all of the departments in  
5 addition to being head of the corporation, doesn't it  
6 say so in the --

7 A Down the chain of command I was, yes.

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20 MR. JOHNSON: Your Honor, that assumes facts  
21 not in evidence that he gave them justification. I  
22 think it would be appropriate to ask that question  
23 first.

24 MR. ROHAN: Fine, I'll be happy to ask.

25 Q (By Mr. Rohan) Isn't it true that at the elders'

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1 after the service?

2 A I know she testified of that. I do not remember that.  
3 I doubt that, because I do remember seeing her in the  
4 pew and going over to talk to her and I doubt I said  
5 that, although it's possible. But what would happen  
6 quite often, because the church is very large, if I  
7 had say a list of 10, 12 people maybe to see, if I  
8 didn't tell them ahead of time I would lose them and  
9 wouldn't be able to find them before the meetings were  
10 over. So, I would give a list of the people I would  
11 like to meet after the service to make sure before you  
12 leave to contact me sometime and I routinely did that,  
13 although I don't remember in that case with Priscilla.

14 Q Do you recall at that service meeting with Priscilla  
15 Pike after the service?

16 A What do you mean that service?

17 Q The service where you said what you just told us about  
18 about if someone is wronged you should go to the  
19 wrongdoer first?

20 A No.

21 MR. JOHNSON: I think the evidence will  
22 indicate that he said he's had many services where he  
23 has preached that and I don't think he's indicated  
24 that he remembers whether or not it happened on that  
25 occasion.

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1 A No.

2 Q Is there anything in this letter by Jerry Zwack, the  
3 December 23, 1987 letter, that states that Jerry Zwack  
4 was wrongfully removed as a teacher in the Bible  
5 College?

6 A No. I don't see anything in here that says that.

7 Q Is there anything in Exhibit 22, Jerry Zwack's  
8 December 23, 1987 letter to the elders, that states  
9 that he was wrongfully fired as an employee of  
10 Community Chapel?

11 A No.

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16 A No, not in this letter as far as I can see.

17 Q Anyone that was disfellowshipped at Community Chapel  
18 had a right to appeal; is that correct?

19 A Yes.

20 Q And as of March 4, 1988 you knew that anyone that was  
21 disfellowshipped at Community Chapel had a right to  
22 appeal; is that correct?

23 A Yes.

24 Q In September of 1988, did you send -- Oh, let me ask  
25 you this. How many people on March 4, 1988 were on

13  
1 the Board of Directors of Community Chapel?

2 A Four.

3 Q Who were the four people on the Board of Directors of  
4 Community Chapel on March 4, '88?

5 A Jack Hicks, Scott Hartley, Jack DuBois, and Don  
6 Barnett.

7 Q And Jack Hicks resigned as a member of the Board of  
8 Directors of Community Chapel sometime in March of  
9 1988?

10 A I believe he did.

11 Q As of the date that you signed the ratification of the  
12 April 1988 bylaws, Jack Hicks was no longer a member  
13 of the Board of Directors, isn't that true, that's why  
14 he didn't sign it?

15 A I think that's true.

16 Q You attempted to disfellowship Jack DuBois on  
17 September 28, 1988; is that correct?

18 MR. JOHNSON: Objection, Your Honor, counsel  
19 argued, again, loud and long that we shouldn't be  
20 allowed to go into things that happened -- What is  
21 this, six or so --

22 THE COURT: This is in September.

23 MR. ROHAN: Your Honor, this goes to his  
24 understanding of the disfellowshipping practice at  
25 Community Chapel and this case at its heart is largely

1 about what are the disfellowshipping practices at  
2 Community Chapel and Bible Training Center and I would  
3 like to demonstrate what this witness's actions were  
4 in September of 1988 regarding disfellowshipping.

5 MR. JOHNSON: Your Honor, the understanding  
6 of this witness as regard to what the  
7 disfellowshipping practices were in September of 1988  
8 is not a subject matter for this lawsuit. The  
9 understanding of disfellowship practices on March 4  
10 and before would be but not in September, months and  
11 months and months later.

12 MR. ROHAN: It's certainly evidence as to  
13 what he felt were proper disfellowshipping practices,  
14 the way he subsequently disfellowshipped others at the  
15 church.

16 MR. JOHNSON: Counsel is the one that  
17 submitted a brief that went into elaborate detail  
18 arguing that we shouldn't have talked about things  
19 that happened in 1988 ever before in an international  
20 standpoint that were attempting to prejudice the  
21 Court.

22 THE COURT: I think I'll keep that out, Mr.  
23 Rohan.

24 MR. JOHNSON: Thank you, Your Honor.

25 MR. ROHAN: Your Honor, it's an admission by

1 a party as to what the proper way is to enforce a  
2 church doctrine, not a church doctrine, but a church  
3 procedure of disfellowshipping to the extent that he  
4 afterwards -- It's similar to they want to get in the  
5 information about the April 1988 bylaw changes which  
6 is clearly after March 4 saying that, well, that's  
7 some indication of what the senior elders felt and you  
8 have allowed that information in to see if there is  
9 any evidence there of what the senior elders, the  
10 other two felt. I believe there isn't any in that  
11 case.

12 Here, similar to that. I believe that we can  
13 show what Pastor Barnett believed in September 1988  
14 and how he acted on disfellowshipping individuals at  
15 the church and I believe that will show that the way  
16 that the elders act in disfellowshipping someone was  
17 consistent with that and, thus, was proper. And he's  
18 claiming, of course, it's improper but his only  
19 actions later indicate that in fact the way we did  
20 things was entirely proper.

21 MR. JOHNSON: Well, Your Honor, they're two  
22 different things, like comparing apples and oranges.  
23 He and everybody signed these documents in May or in  
24 April, everybody signed them. And if they were signed  
25 with one particular intent, this lawsuit is simply

1 moot. If they were signed with a different intent,  
2 perhaps it isn't. But everybody, including the  
3 Defendants, signed those things.

4 Now, here we're talking about his interpretation  
5 months and months later about a policy that was in  
6 effect months and months later, and not just months  
7 and months, it's like six months later. And I simply  
8 don't see that it's probative of any issue before this  
9 Court with regard to what happened on or before March  
10 4, six months previous.

11 MR. ROHAN: It's probative to the pattern  
12 and practice of Community Chapel of how they  
13 interpreted disfellowshipping and it's probative as to  
14 what this witness through his own testimony, we don't  
15 believe this, but his own testimony is that he's the  
16 one who sort of ran the corporation, set the tone.

17 THE COURT: You may make an offer of proof  
18 right now.

19 MR. ROHAN: All right, my offer of proof  
20 would be to have the two letters written by Donald Lee  
21 Barnett, signed by him, typed but signed by him. I  
22 would have him identify those two documents. I would  
23 offer them as exhibits in this case and I would ask  
24 him about --

25 THE COURT: These are letters from Barnett.

1 MR. ROHAN: Letters from Barnett, one to  
2 Jack DuBois and one letter from Barnett to Scott  
3 Hartley who then were the only two other members of  
4 the Board of Directors of Community Chapel. I would  
5 have him identify those. I would offer them as  
6 exhibits. That's what I'd do with those documents.

7 THE COURT: What do the letters -- Why is  
8 this material? What does it show?

9 MR. ROHAN: The letters purport to  
10 disfellowship Jack DuBois and Scott Hartley.

11 THE COURT: Simply by the letters?

12 MR. ROHAN: The letters themselves state  
13 that this is a letter disfellowshipping you and gives  
14 the reason why he is disfellowshipping Scott Hartley  
15 and Jack DuBois.

16 MR. JOHNSON: Your Honor, I might further  
17 state that one of the letters which was handed me for  
18 the first time 15 minutes ago was not one of the  
19 exhibits counsel indicated prior to these proceedings  
20 beginning that he was going to introduce.

21 MR. ROHAN: That's correct and we did not in  
22 fact have a copy of this letter until yesterday when  
23 we got it from Mr. DuBois's wife.

24 MR. JOHNSON: Mr. DuBois is one of the  
25 Defendants and he had the document so counsel's

1 clients had the documents.

2 MR. ROHAN: And he's been ill since last  
3 month and unavailable to us.

4 THE COURT: Tentatively I sustain the  
5 objection.

6 Q (By Mr. Rohan) As of March 4, 1988, Scott Hartley and  
7 Jack DuBois and Jack Hicks indicated to you that they  
8 no longer wished you to be pastor or have any of your  
9 other offices at Community Chapel; is that true?

10 A Yes.

11 THE COURT: Other than these letters that  
12 they signed?

13 MR. JOHNSON: The question, Your Honor, was  
14 as of March 4.

15 MR. ROHAN: That they indicated they no  
16 longer wished him to be the pastor.

17 THE COURT: They signed these two letters at  
18 any rate issued March 3 and 4.

19 MR. ROHAN: Right.

20 THE COURT: Other than that?

21 MR. ROHAN: Maybe I misphrased my question,  
22 let me ask it again.

23 Q (By Mr. Rohan) As of March 4, 1988, Jack Hicks, Jack  
24 DuBois, and Scott Hartley indicated that they no  
25 longer wished you to be their pastor or have any

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?

BARNETT - Direct (By Mr. Rohan)

14  
1 MR. JOHNSON: Your Honor, I'll object to  
2 that. Again, Counsel is saying all the way through  
3 1988. If we want to open up things that happened  
4 between this Plaintiff and the Defendants through  
5 1988, we were happy to do that. I'll object to things  
6 that happened after March 4 based on the Court's prior  
7 ruling.

8 THE COURT: I'm not sure what you are  
9 getting at, Mr. Rohan. I'm aware of the letters that  
10 these people signed. By their letters that these  
11 people signed, they indicated quite clearly that they  
12 were terminating him. Now, if there were other  
13 contacts between these people and Pastor Barnett, then  
14 I might be receptive if I knew how that bore on this  
15 case.

16 If what you are trying to show is that because  
17 they took the action they did Pastor Barnett was going  
18 to retaliate by disfellowshipping them, then I don't  
19 see that there's any relevancy to the question because  
20 I'm aware that they did one thing to him and he did  
21 something else to them.

22 MR. ROHAN: Let me ask it this way, Your  
23 Honor, and I think this will meet everybody's  
24 objection.

25 Q (By Mr. Rohan) Did Scott Hartley say anything to you

1 after March 4, 1988 that indicated that he wanted you  
2 to be the pastor again?

3 MR. JOHNSON: I'll object, whether or not  
4 Scott Hartley --

5 THE COURT: Well, he may answer yes or no.  
6 A If he wanted me to be his pastor, no.

7 Q (By Mr. Rohan) And did Jack DuBois after March 4,  
8 1988 indicate to you in any way that he wanted you to  
9 be the pastor again?

10 MR. JOHNSON: Same objection.

11 A No.

12 Q (By Mr. Rohan) Did Jack Hicks indicate to you in any  
13 way after March 4, 1988 that he wanted you to be his  
14 pastor again?

15 A No.

16 MR. ROHAN: I have no further questions.

17 THE COURT: I have a couple of questions.

18 MR. JOHNSON: Sure, Your Honor.

19 THE COURT: Reference has been made to  
20 Balance No. 2 and I'm probably overlooking something  
21 that's quite obvious here, but I don't know when this  
22 was published. When did this come out?

23 THE WITNESS: Oh, I think maybe somewhere  
24 maybe about, I'm guessing about 1981, in there  
25 somewhere.

1 MR. ROHAN: Your Honor, there's a copyright  
2 date on the second page at the bottom that says 1983  
3 in that gray box at the bottom that says Balance  
4 Copyright 1983.

5 THE COURT: Okay. Showing you a copy of  
6 this, what counsel has referred to down here, does  
7 that indicate when this was published?

8 THE WITNESS: Yes, that would be true. I  
9 couldn't remember but I knew it was before connections  
10 but I didn't know how far before, so 1983 that's  
11 undoubtedly the date.

12 THE COURT: So, your answer to the question  
13 would be sometime in 1983?

14 THE WITNESS: Yes.

15 THE COURT: Now, this other question may be  
16 objectionable because I'm not sure that this has ever  
17 been touched upon by this witness and if you feel that  
18 it is objectionable I'll hear you.

19 Aside from the senior elders, I'm not talking  
20 about senior elders, how were the other elders  
21 appointed, elected, designated or how did they become  
22 elders?

23 THE WITNESS: Well, originally I appointed  
24 them. And then subsequently, if my memory is correct  
25 the bylaws state that future elders would be

1 determined by the eldership, senior elder board  
2 meeting with the pastor's concurrence, I think that's  
3 what it says. And then senior elders were taken, I'm  
4 not positive about the pastor's concurrence on the  
5 elders but I think so, and then the senior eldership  
6 must be taken from the eldership.

7 THE COURT: I'm not talking about the senior  
8 elders.

9 THE WITNESS: Okay. The first ones were  
10 appointed by me and subsequently the senior elder  
11 board with the pastor's consent I believe appointed  
12 other elders.

13 THE COURT: In other words, all of the  
14 elders after the original elders were appointed by the  
15 senior elders.

16 THE WITNESS: The senior elder board with my  
17 ratification, I believe.

18 CROSS-EXAMINATION

19 BY MR. JOHNSON:

20 Q Pastor Barnett, there was a series of questions about  
21 the suggestion that you indicated you made in a number  
22 of sermons to your congregation that if they have a  
23 problem with one of their brethren that they go to  
24 that brethren and try to solve the problem. Is that a  
25 position that is unique to you or is that position in



BARNETT - Cross (By Mr. Johnson)

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DELETED MATERIAL FILED UNDER SEAL

BARNETT - Cross (By Mr. Johnson)

1           you were named; is that true?

2       A       Yes.

3       Q       Was it also indicated in the eldership hearing that  
4           there were suits pending against some of the senior  
5           elders and elders?

6       A       Yes.

7       Q       Including criminal suits against some of the elders?

8       A       Yes.

9                               MR. ROHAN: Your Honor, I would object.  
10           This is clearly beyond the scope of cross-examination.

11                              MR. JOHNSON: Your Honor --

12                              THE COURT: The answer will stay.

13       Q       (By Mr. Johnson) Including suits involving alleged  
14           sexual misbehavior by elders in the eldership hearing  
15           that the church was being used for?

16       A       Yes, counselor and ministerial malpractice for sexual  
17           reasons.

18       Q       And were these suits, the existence of these suits  
19           known to the other elders prior to the hearings?

20       A       Yes.

21

22

23

24

25

DELETED MATERIAL FILED UNDER SEAL

1 MR. ROHAN: Your Honor, I object. That's  
2 already been excluded by the Court.

3 THE COURT: Which senior elders, the ones  
4 we're talking about here?

5 MR. JOHNSON: Jacks Hicks and Scott Hartley.

6 MR. ROHAN: Your Honor, this has already  
7 been excluded. You excluded that at the beginning of  
8 the lawsuit.

9 THE COURT: I'm trying to think of  
0 relevancy.

1 MR. JOHNSON: Your Honor, we're talking  
2 about what went on, not what went on outside the  
3 hearing but what went on in the hearing, and there's

4 ~~testimony that occurred in the hearing and hearing resulted in~~  
5 action and I think it's fair to point out other  
6 testimony that the elders all heard, the 16 who voted,  
7 the ten who voted, the three that voted, all these  
8 votes that Mr. MacKenzie and the others testified  
9 occurred that were based on the testimony that  
0 occurred there. I think it's fair not to introduce  
1 evidence of what happened outside the hearing but

2 ~~testimony that occurred in the hearing~~

3 MR. ROHAN: Your Honor --

4 THE COURT: Why do you believe that it's  
5 material.

1 MR. JOHNSON: Well, I think it goes to the  
2 state of mind of what they knew and didn't know when  
3 they made their votes and the fact that they were  
4 aware that other lawsuits had been filed, the same  
5 things they were accusing him of, and that they were  
6 aware that there was another sexual activity of other  
7 elders and senior elders that had been brought up too.  
8 They had all these things in their mind and I think  
9 that's fair for us to bring out.

10 MR. ROHAN: Your Honor, I don't think that  
11 anybody, first of all, I don't think that establishes  
12 it's relevant, because what's relevant to the state of  
13 mind, all they did is they disfellowshipped Donald  
14 Barnett, what's relevant is the reasons why they

15 ~~in as to anybody else at the hearings because it's not~~  
relevant.

Second of all, we have rehashed this now I think  
for the third or fourth time we've gone into this  
thing. Your Honor has been consistent every time that  
this has been brought up to Your Honor. Judge Quinn  
also was consistent in not allowing this to be subject  
of discovery. You have not allowed this to be the  
subject of discovery. It's clearly brought in this  
case merely to bias and prejudice this Court, and I

1 believe it should be excluded on the grounds that it's  
2 not relevant and rehashes and doesn't have anything to  
3 do with the state of mind of these individuals when  
4 they voted to disfellowship Donald Barnett.

5 MR. JOHNSON: Your Honor, it seems to me,  
6 ~~number one, there has never been a ruling by Judge Quinn on this issue. I know there~~

7 ruling by Judge Quinn on this issue. I know there was  
8 a ruling that was a proposed order that was prepared  
9 by counsel that Judge Quinn struck a huge section of  
10 the language that was covered by what counsel said,  
11 but the Judge never entered an order that include it.

12 Beyond that, this is totally separate and apart  
13 from introducing evidence of their sexual misconduct.  
14 This is evidence that was testified to in the hearing  
15 and it does, have, it goes to their good faith, Your  
16 Honor, when they concluded the hearings and held the  
17 vote, when they decided we don't need to take any live  
18 testimony, we'll send some emissaries out to  
19 investigate, let the police go out and investigate and  
20 come back and report. When they made those decisions  
21 to change the game plan for these hearings and they  
22 made the decision on the 3rd presumably to deep six  
23 the pastor, it seems to me it goes to the issue of,  
24 one, good faith, and, two, what were their true  
25 motives?

1           And counsel brought out from each of these  
2           witness, no, we hadn't prejudged, no, we didn't bear  
3           him any ill will and so forth, and I think it goes to  
4           that issue whether or not people that made these  
5           decisions had a reason or a motive to get rid of the  
6           pastor beyond what they're claiming here and I think  
7           it's very, very relevant to that and it's limited to  
8           simply what happened in the hearing and to nothing  
9           more.

10           MR. ROHAN: Your Honor, there is no --

11           THE COURT: I'll deny -- I'll sustain the  
12           objection. Wait just a minute, gentlemen.

13           MR. JOHNSON: We have no further questions.  
14           May we have an exception to your ruling, Your Honor?

15           THE COURT: Yes.

16           MR. JOHNSON: One final question.

17           Q       (By Mr. Johnson) When you went to Vancouver with  
18           Kristen Miller, Kristian Erickson, and Sue Towery,  
19           were you ever alone in the hotel room with Sue Towery?

20           A       No.

21           MR. JOHNSON: That's all I have.

22           MR. ROHAN: We have no questions, Your  
23           Honor.

24           THE COURT: I was intent on something else  
25           and I missed the import of your question.

MOTHERWELL - Direct (By Mr. Rohan)

16 1 MR. JOHNSON: Ms. Towery. I renamed her,  
2 she was Ms. Towery at the time, she's Mrs. Zwack now.

3 THE COURT: All right, I'm with you now.

4 MR. JOHNSON: I think we're done with this  
5 witness and he indicates, as I, a need to take a brief  
6 respite but perhaps counsel can proceed with their  
7 next witness.

8 MR. ROHAN: I would call David Motherwell  
9 to the stand.

10 DAVID MOTHERWELL,

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

11  
12  
13 DIRECT EXAMINATION

14 BY MR. ROHAN:

15 Q State your name.

16 A David Motherwell.

17 Q Your address?

18 A 15208 24th Avenue SW, Seattle 98166.

19 Q Are you currently employed?

20 A Yes.

21 Q Where are you employed?

22 A At Community Chapel.

23 Q What is your position at Community Chapel?

24 A I'm a minister, elder, counselor.

25 Q Are you also on the Board of Senior Elders of

16

- 1 Community Chapel?
- 2 A Yes, I am.
- 3 Q When did you first join Community Chapel and Bible  
4 Training Center?
- 5 A It was in early 1974.
- 6 Q How old were you at that time?
- 7 A Twenty-one.
- 8 Q Did you attend Bible College at Community Chapel?
- 9 A Yes, I did.
- 10 Q For how many years did you attend Bible College?
- 11 A About five years.
- 12 Q Did you ever attend a ministerial training course?
- 13 A Yes, I did.
- 14 Q How were you chosen for that course?
- 15 A To the best of my memory, we were chosen by either  
16 Donald Barnett or his wife or both.
- 17 Q And who taught that ministerial training course?
- 18 A Donald Barnett did.
- 19 Q And after that course, then you became a minister; is  
20 that right?
- 21 A Not directly or not necessarily. It was preliminary  
22 training for those that were candidates for the  
23 ministry, so to speak, at Don's judgment, Don's  
24 determination.
- 25 Q When were you chosen to be a minister?

MOTHERWELL - Direct (By Mr. Rohan)

6  
7  
1 A Well, I began volunteer counseling in 1977.

2 Q Who chose you to be a volunteer counselor?

3 A Donald Barnett did.

4 Q Were you later chosen to be a minister by Donald  
5 Barnett?

6 A I was hired as a full-time counselor in 1984 and I was  
7 licensed into the ministry January 1, 1986.

8 Q At one point in 1987 did you become the head of the  
9 Counseling Center?

10 A I became the director of Counseling in September of  
11 1987.

12 Q What did you understand your duties to be as director  
13 of Counseling in September of 1987?

14 A I was a supervisor of the counselors and they could  
15 come to me and ask questions regarding the various  
16 counseling cases that they were involved in. I would  
17 give them advice if they needed advice or direction.  
18 I was helping them in that way.

19 Q In the fall of 1987 did you become Donald Barnett's  
20 counselor?

21 A Yes.

22 Q Who chose you as Donald Barnett's counselor?

23 A He did.

24 Q Did you speak frequently with Donald Barnett after  
25 that, just the two of you?

MOTHERWELL - Direct (By Mr. Rohan)

- 1 A Yes.
- 2 Q You're familiar with the elders' hearings at Community  
3 Chapel?
- 4 A Yes, I am.
- 5 Q And you're familiar -- Did you receive a copy of the  
6 letter from Jerry Zwack of December 23, 1987?
- 7 A Yes, I did.
- 8 Q And that is exhibit --
- 9 MR. WIGGINS: I think it's 22.
- 10 Q (By Mr. Rohan) Showing you Exhibit 22 which is a  
11 December 23, 1987 letter signed by Jerry Zwack, did  
12 you receive a copy of that letter?
- 13 A Yes, I did.
- 14 Q That was on or about December 23 or 24, 1987?
- 15 A Yes, it was.,
- 16 Q Did you have a conversation with Donald Barnett about  
17 this letter after you received it?
- 18 A It was either, it was hours either side of the time I  
19 received the letter.
- 20 Q And this is a telephone conversation you had with Don  
21 Barnett?
- 22 A Yes, it was.
- 23 Q Can you tell me what Donald Barnett said to you in the  
24 conversation and what you said to him in the  
25 conversation?

1 MR. PIERCE: I'm going to object at the  
2 present time as to anything this witness would say  
3 with regards to communication between Donald Barnett  
4 and this witness. This witness in deposition has  
5 testified that counselor/counselee communications are  
6 part of the ministerial privilege that exists. The  
7 witness has now testified that he is a minister here  
8 and, if necessary, I will offer through his deposition  
9 facts that he has stated in his deposition with  
10 regards to ministerial privilege, if the Court thinks  
11 that is necessary. But those communications are  
12 privileged communications that exist here and I'm  
13 going to object to any communication by this witness  
14 with regards to those.

15 MR. ROHAN: Your Honor, this witness has  
16 testified extensively at his deposition.

17 THE COURT: First, let me ask, did he  
18 testify in his deposition that there was some  
19 priest-penitent privilege that exists?

20 MR. ROHAN: As far as my memory is, not as  
21 far as his conversations with Donald Barnett. That's  
22 my recollection.

23 THE COURT: This comes on me as a surprise  
24 because I didn't realize the issue of privilege would  
25 be coming up in this case. I haven't reviewed my

Colloquy

17  
1 notes on privilege, at least the religious official  
2 privilege for a long time and I could be educated on  
3 that.

4 MR. PIERCE: May I voir dire the witness,  
5 Your Honor? Actually I don't need to voir dire, I can  
6 actually state part of his deposition which is here  
7 and he's a party Defendant.

8 THE COURT: Cite it so counsel can see it.

9 MR. PIERCE: I have indicated to counsel  
10 it's at page 43 of his deposition where he indicates,  
11 the question goes. This is at page 43 of the  
12 December 10, 1988 deposition of Mr. Motherwell which I  
13 have the original of, Your Honor, and which I'll  
14 figure out at the break how to open this thing up, but  
15 I have a copy which we can use.

16 At line 10, Mr. Motherwell was asked the  
17 question: And the privilege of communication

Colloquy

1           We will not waive that privilege of any  
2           communication that occurred between Donald Barnett and  
3           Mr. Motherwell. We believe those are covered. I  
4           think that Mr. Motherwell identifies that as being a  
5           privileged communication that existed there and, as  
6           such, we're going to stand on our rights to maintain  
7           that.

8           MR. ROHAN: Your Honor, there's nothing that  
9           he quoted that said in any way the conversation that  
10          David Motherwell had on or about December 23, 1987  
11          were part of any ministerial privilege and there's  
12          nothing in the deposition that he just read that in  
13          any way even relates to these conversations in  
14          December of 1987.

15          THE COURT: What does it say?

16          MR. ROHAN: Well, this is what he read right  
17          here, this part right here on page 43, and it doesn't  
18          say anything about the conversations that David  
19          Motherwell had with the pastor on December 23 or  
20          December 24, 1987 which is the issue here.

21          MR. PIERCE: Your Honor, there's a second  
22          passage I would like to read.

23          THE COURT: You people do a lot of talking  
24          and it bothers me when I try to think. I have trouble  
25          thinking.

Colloquy

1 MR. PIERCE: May I read this second passage  
2 for you because that also puts it in a second light.

3 THE COURT: We're within five minutes of the  
4 hour. I'm going to recess and I'd like to have you  
5 people come up with some authority for or against this  
6 privilege. Now, let me just set the stage.

7 There is such a thing as confidentiality. Now  
8 listen to this because I'm going to hold you to this.  
9 There's such a thing as confidentiality which the law  
10 does not recognize. You can be very confidential with  
11 me or with a counselor or with anyone else and the law  
12 will still require you to testify as to matters that  
13 transpire between us.

14 The law does recognize certain specific  
15 privileges. Now, we call them privileges. That means  
16 that the transaction between two people may not be  
17 disclosed without the permission usually of the other  
18 person. Those privileges exist between husband and  
19 wife, between physician and patient, between lawyer  
20 and client, between priest and penitent, as we call  
21 them, but that's the religious privilege. These  
22 privileges are very technical and very closely drawn  
23 and I frankly do not know whether it would apply  
24 between this man as a counselor and the counselee,  
25 regardless of what he thinks.

Colloquy

1 I'm not sure I understand exactly why it should  
2 apply. I don't know what a counselor does that would  
3 bring the person within the rule of this privilege  
4 that I'm thinking of. I don't know the limitation of  
5 the privilege and I don't know its application  
6 particularly here, so we will return at 1:15 and I'll  
7 hear both of you and I want the results of what you've  
8 been able to discover between now and then.

9 MR. PIERCE: Your Honor, may I --

10 THE COURT: As a matter of fact, I even  
11 debated with myself as to whether or not to ask if  
12 this area of testimony be postponed until some later  
13 time when we have had more of an opportunity to  
14 research the matter because quite frankly we don't  
15 have a very complete research library here and I doubt  
16 whether I'll find anything more than evidence rules on  
17 the subject and maybe some reference to some cases or  
18 comments on it, but that's what I'd like to hear, not  
19 whether this man is feeling that what he says is,  
20 quote, confidential, which I don't regard as being  
21 legally significant.

22 MR. PIERCE: May I just obtain some  
23 additional facts through voir dire prior to the noon  
24 hour?

25 THE COURT: No, tell me what the background

Colloquy

1 is.

2 MR. PIERCE: All I wanted to do is ask with  
3 regard to the license that he has with the State of  
4 Washington either as a minister or a counselor.  
5 That's the short area. Then I would provide to the  
6 Court the additional reference from Mr. Motherwell's  
7 deposition as to ministerial privilege.

8 THE COURT: Well, I know what he said.

9 MR. PIERCE: There is more.

10 THE COURT: I don't know what his license  
11 would have to do with it.

12 MR. PIERCE: There's two different  
13 privileges that exist, Your Honor. One is a  
14 counselor/counselee privilege that's through the State

15 and the other is a ministerial privilege.

16 THE COURT: Find out what you can on either  
17 one or both.

18 MR. ROHAN: He wants to question the  
19 witness.

20 MR. PIERCE: May I voir dire for that  
21 purpose?

22 THE COURT: He said he was a licensed  
23 minister. I didn't hear about being a licensed  
24 counselor.

25 MR. PIERCE: That's all I'm going to ask

Colloquy

1 about right now.

2 THE COURT: Are you a licensed counselor?

3 THE WITNESS: No.

4 MR. PIERCE: Your Honor, should I give the  
5 Court the other reference from Mr. Motherwell's  
6 deposition with regards to his ministerial privilege  
7 and ask if the Court should wish me to do that at the  
8 present time?

9 MR. ROHAN: Shouldn't we wait until we come  
10 back after lunch?

11 THE COURT: I don't know what you're talking  
12 about.

13 MR. PIERCE: There's other portions of the  
14 deposition where Mr. Motherwell asserts and states the  
15 privilege that existed.

16 THE COURT: Let me ask you this. What  
17 happened at the deposition? Did he assert a  
18 privilege?

19 MR. PIERCE: No, we did not waive the  
20 privilege and we announced we would not waive the  
21 privilege with regards to it.

22 THE COURT: I don't know whether that's  
23 effective or not and whether he started out with the  
24 privilege, but let me know. We're now at recess.

25 (Luncheon recess taken.)

1 MR. ROHAN: Your Honor, could I ask the  
2 witness a few questions that, I think without getting  
3 into any matters that might even conceivably be  
4 privileged, to lay a foundation for my questions?

5 THE COURT: Yes. As a matter of fact, you  
6 probably have checked it out during the noon hour.  
7 I'm supposed to go through a certain procedure to  
8 determine whether or not there was privilege. Part of  
9 that has to do with the foundation.

10 Q (By Mr. Rohan) Mr. Motherwell, you had a  
11 conversation, telephone conversation with Donald  
12 Barnett on December 23 or December 24, 1987; is that  
13 right?

14 A Yes.

15 Q I want you to listen very carefully to my questions  
16 and answer just those questions so we don't get into  
17 any matters that the Court might find were  
18 inappropriate.

19 During this conversation, were there any  
20 confessions made to you by Donald Barnett, without  
21 telling me what the nature of them might be?

22 MR. PIERCE: Your Honor, I'm going to object  
23 to the leading form of these questions. I'm sure that  
24 counsel during the noon hour --

25 THE COURT: He may answer. Any confession?

MOTHERWELL - Direct (By Mr. Rohan)

18  
19  
1 THE WITNESS: No, there wasn't.

2 Q (By Mr. Rohan) Was there any request or discussion by  
3 you during that conversation of any penitence?

4 A Request from me?

5 Q Request from Donald Barnett or discussion between the  
6 two of you regarding penitence?

7 A No.

8 Q Was there any discussion between the two of you  
9 regarding any action that anyone might consider to be  
10 a sin?

11 A The best that I'm able to understand your question,  
12 the answer is no.

13 Q The conversation that you had with Donald Barnett on  
14 that date, is it true to state that part of that  
15 conversation involved discussions of Donald Barnett  
16 with other individuals?

17 A Yes.

18 Q Other males?

19 A Yes, it did.

20 Q Who were elders of the church?

21 A Yes, they were.

22 Q And it had to do with other people that had received  
23 the letter which is the December 23, 1987 letter; is  
24 that right?

25 A That's right.

MOTHERWELL - Voir Dire (By Mr. Pierce)

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MR. PIERCE: Your Honor, I have to continue to object. This is a line of questioning about did we discuss and or did you discuss and just asking every single fact that he thinks occurred during this conversation and he can lead him and get a yes or no answer continuously if he follows this procedure.

MR. ROHAN: Your Honor, I'm just trying to get subject matter areas to show that there's no subject matter area that involved a confession.

THE COURT: You'll get a chance to come back

Was there any discussion during this I think I've laid an adequate

COURT: You may inquire. This is voir dire.

MR. PIERCE: Mr. Motherwell, with your a counselor with individual members

you as a minister of Community?

I'm never considered as a counselor, I was at that

u, I'm

25

11 and voir dire.  
12 Q (By Mr. Rohan) W  
13 conversation --  
14 foundation.  
15 THE COU  
16 considered voir d  
17 MR. PIE  
18 communication as

19  
20 ministerial function of  
21 Chapel?  
22 THE WITNESS:  
23 minister, I'm considere  
time and am currently

MR. PIERCE: I'm not talking about you

19 1 talking about the communication. Did you consider the  
2 communication to be one to you as a minister?

3 THE WITNESS: No, communication to me as a  
4 counselor.

5 MR. PIERCE: Your understanding of the  
6 ministerial privilege, would that cover communications  
7 between you and a counselee?

8 MR. ROHAN: Your Honor, I'm going to object  
9 to his understanding of the privilege. You've already  
10 indicated I believe that his understanding of  
11 privilege is irrelevant.

12 THE COURT: Do you consider it?

13 THE WITNESS: Repeat the question. Do I  
14 consider communication between myself and a counselee  
15 as privileged?

16 THE COURT: Yes.

17 THE WITNESS: Depends on the nature of the  
18 communications.

19 MR. PIERCE: Your Honor, this is the  
20 December 9, 1988 deposition of Mr. Motherwell, at page  
21 46.

22 Mr. Motherwell, I'm going to show you the  
23 deposition. At line 10 through line 15, was there a

24 ~~question asked -- First -- on December 9, 1988, did you~~

25

have your deposition taken?

19 1

THE WITNESS: Yes.

2

MR. PIERCE: Were you sworn by the court reporter at that time?

3

4

THE WITNESS: Yes.

5

MR. PIERCE: Was the question posed to you at that time and the answer given as follows: "Now, just so I remember your testimony, was it that the ministerial privilege covered both the communications between two ministers with regards to an individual or a case and it also covers the communication between a counselee and a counselor?" And the answer was "Correct". Is this a correct reading of that testimony at that time?

10

11

12

13

14

THE WITNESS: It is.

15

MR. PIERCE: Was your answer true and correct at the time that you gave it then?

16

17

THE WITNESS: Insofar as it's stated here, yes.

18

19

MR. PIERCE: At Community Chapel and Bible Training Center, what is the function of a minister?

20

21

THE WITNESS: We are not regarded as or called ministers, we're called, I've been called a counselor not a minister by those that see me in that capacity.

22

23

24

25

MR. PIERCE: Did you consider communications

19 1 from Donald Barnett as a counselee to be included in  
2 the ministerial area of which you were helping him?

3 THE WITNESS: If it was confessions of sin  
4 perhaps, but we had several other relationships  
5 ongoing, he and I.

6 MR. PIERCE: Any discussion by Donald  
7 Barnett with regard to matters involving sin would be  
8 covered by the ministerial privilege is your  
9 understanding; is that correct?

10 MR. ROHAN: Your Honor, that calls for a  
11 legal conclusion.

12 THE COURT: He may answer as to his notion.

13 THE WITNESS: Not necessarily.

14 MR. PIERCE: Earlier you said that issues  
15 with regard to sin, if that was discussed, that would  
16 be covered by the ministerial privilege; correct?

17 MR. ROHAN: Your Honor, I believe he is  
18 mischaracterizing his earlier testimony.

19 THE COURT: He may answer.

20 THE WITNESS: I don't believe I said that.  
21 I said perhaps it could.

22 MR. PIERCE: Why would it not be covered by  
23 the ministerial privilege?

24 THE WITNESS: Well, we could have a  
25 discussion on sin in general or a discussion on sin

19 1 that others know about or sins that others know about  
2 or several various types of discussions on sin.

3 MR. PIERCE: Did you have any conversations  
4 with Donald Barnett with regard to matters that would  
5 have been matters of adultery?

6 THE COURT: We're talking now about this  
7 particular occasion, the telephone conversation.

8 THE WITNESS: No.

9 MR. PIERCE: Mr. Motherwell, would it be a  
10 tenet or belief of the members of Community Chapel and  
11 Bible Training Center that communications by a  
12 counselee to a counselor were meant to be kept  
13 confidential?

14 THE WITNESS: Insofar as there's not a need  
15 for others to know, we don't make a practice of  
16 divulging the conversations between a counselee and a  
17 counselor to anyone indiscriminately.

18 MR. PIERCE: You maintain the  
19 confidentiality of those communications as a basic  
20 principle and belief of Community Chapel and Bible  
21 Training Center; is that correct?

22 THE WITNESS: In certain cases that's true,  
23 instances.

24 MR. PIERCE: Mr. Motherwell, as part of your  
25 work as a minister -- Let me ask you. Your work as a

MOTHERWELL - Voir Dire (By Mr. Pierce)

1 counselor for members of Community Chapel and Bible  
2 Training Center would be the same as your work as a  
3 minister for those individuals; is that correct?

4 THE WITNESS: I never characterized my work  
5 as that. I never label myself as a minister or  
6 characterize my work as such and neither do others.

7 MR. PIERCE: Do you minister to members of  
8 Community Chapel?

9 THE WITNESS: Yes, in the counseling  
10 ministry.

11 MR. PIERCE: And as part of your ministry  
12 function, that would include counselor/counselee  
13 communication to you; is that correct?

14 THE WITNESS: Yes.

15 MR. PIERCE: Would you agree, Mr.  
16 Motherwell, that all of the counseling at Community  
17 Chapel and Bible Training Center involved Biblical  
18 counseling in some form?

19 THE WITNESS: In the absolute broadest sense  
20 you could characterize it that way. Well, on second  
21 thought, I think that would be an unfair  
22 characterization that they were all.

23 MR. PIERCE: Would you agree that all your  
24 counseling had a Biblical foundation?

25 THE WITNESS: Biblical background

MOTHERWELL - Voir Dire (By Mr. Pierce)

1 foundation, you could say that. You counsel people on  
2 job choices or mundane areas of finance or something  
3 like that. We never strayed from Biblical principles.

4 MR. PIERCE: Would you agree that  
5 ministerial counseling at Community Chapel and Bible  
6 Training Center was to help the congregants to  
7 overcome their struggle with sin?

8 THE WITNESS: Often, yes.

9 MR. PIERCE: And did you deal with any  
10

11

12 Barnett?

13 MR. ROHMAN: Your Honor, I'm going to object.

14 THE COURT: We're talking now about the  
15 telephone conversation on the 23rd or 24th of  
16 December.

17 THE WITNESS: No. It was not at all the  
18 focus of our conversation.

19 MR. PIERCE: When you were working in the  
20 Counseling Center, what time period was that, Mr.  
21 Motherwell?

22 THE WITNESS: The Counseling Center began in  
23 the late spring of '86. I moved my office from my  
24 home to there in probably June or July of '86, through  
25 the time that we closed it. I think that was in July  
of '88.



20

1 objection by counsel in there as follows? Question:  
2 "When you were working in the Counseling Center, did  
3 you have an understanding as to the area of  
4 confidentiality of conversations that occurred between  
5 you and a congregant?" The answer was: "I had an  
6 understanding as to what confidentiality was."  
7 Question: "Could you tell us what that was?" Mr.  
8 Rohan objects, calls for legal conclusion.

9 MR. ROHAN: And I would object now on that  
10 basis.

11 MR. PIERCE: And your answer was at line 8:  
12 "Well, I'm not a legal expert, simply that discussions  
13 between myself and a counselee were confidential  
14 except in certain circumstances."

15 MR. ROHAN: Your Honor, could I ask that the  
16 rest of that page, that he read the rest of that page?

17 MR. PIERCE: I will get to the remainder of  
18 that page.

19 MR. ROHAN: I'd like to get to that now.

20 THE COURT: Let's spin this along. I don't  
21 know where we're going, frankly. I don't know where  
22 we're going or why, frankly.

23 MR. PIERCE: I'll let counsel inquire if he  
24 wishes with regards to any remaining portion.

25 THE COURT: Now, would either counsel or any

Colloquy

1 counsel care to make any comment on the problem that  
2 I've just opened up?

3 MR. WIGGINS: Might I, Your Honor?

4 THE COURT: Yes. You are arguing for the  
5 privilege.

6 MR. WIGGINS: That's correct. Your Honor,  
7 throughout these proceedings, we have argued that the  
8 proceedings regarding these hearings that what went on  
9 with counselors were confidential. What this witness  
10 has said in the past, particularly in this deposition,  
11 was that counseling information was confidential.

12 Now, you quite properly pointed out before lunch  
13 that there's a difference between a promise of  
14 confidentiality and the statutory privilege. Mr.  
15 Rohan asked some foundation questions about the  
16 statutory privilege. However, where a church has a  
17 doctrine of confidentiality and the litigation is  
18 totally among church members, as this litigation is,  
19 that doctrine of confidentiality of the church should  
20 and must be honored by the Court under the  
21 Constitution unless there are compelling circumstances  
22 for overriding and opening up the confidentiality.

23 THE COURT: Says what, Mr. Wiggins?

24 MR. WIGGINS: Well, Your Honor, it is a  
25 sincerely held religious belief, it is a sincerely

## Colloquy

1 held religious practice at Community Chapel that these  
2 counseling sessions are confidential. The witness  
3 said so in the second deposition that was read. We  
4 can put on more evidence about the confidentiality.  
5 He pled confidentiality in an earlier deposition in  
6 1988.

7 Now, generally when you have a bona fide  
8 sincerely held religious belief or practice,  
9 particularly a practice, the Court can't infringe on  
10 that in the absence of compelling circumstances. We  
11 briefed that, the connection with the whole issue  
12 about getting into the merits of removing a pastor.  
13 We briefed all that in the First Amendment and the  
14 state constitutional problems. There isn't any  
15 compelling circumstance like this. This litigation is  
16 totally among these church members, so what we're  
17 arguing for here is broader than the privilege.

18 I agree the statutory privilege goes to  
19 confessional matters and certainly we've had gobs,  
20 that's not a legal term, lots of testimony about  
21 admissions by Pastor Barnett during these hearings of  
22 sin, confessional matters to ministers. We already  
23 have violated the privilege over and over. It's a  
24 matter we tried to stay out of.

25 But now we've raised it with respect to Mr.

Colloquy

1 Motherwell, a counselor, and whether or not this is  
2 confessional in nature, this telephone conversation.  
3 It is. He himself has said it is a communication  
4 between him and Barnett when he is playing the role of  
5 counselor in this telephone conversation, all of these  
6 conversations, and so we are making not only a  
7 statutory privilege objection but a Constitutional  
8 objection as well, that you cannot go into this,  
9 particularly since this is between the members of the  
10 church. Thank you.

11 MR. ROHAN: Your Honor, if you'd look at the  
12 statute which I see you have in front of you, RCW  
13 5.60.060 subset 3, that has several qualifications  
14 before a minister/parishioner privilege will be, a  
15 communication will be privileged.

16 First, the person has to be making a confession.  
17 Here there is no evidence whatsoever that Donald  
18 Barnett on December 23 or December 24 was making a  
19 confession.

20 Second of all, the confession has to be made in  
21 his or her professional character. That means that  
22 the minister has to be acting in his or her  
23 professional character as a minister. Here there is  
24 no indication that David Motherwell was acting as  
25 Donald Barnett's minister during that conversation.

## Colloquy

1 Third, it has to be in the course of discipline  
2 enjoined by the church. There is no indication as of  
3 December 23 or December 24 that Donald Barnett was  
4 being subject to any discipline. In fact, the subject  
5 of the disciplining of Donald Barnett occurred ~~approximately~~ ~~some~~

6 after that, certainly not exactly at the time of the  
7 Jerry Zwack letter, so it doesn't meet any of the  
8 statutory grounds for this.

9 In addition, there's case law on this and I have,  
10 this is the first time I've ever brought an ALR volume  
11 to court, but I have one here. The case law on this  
12 is fairly clear under an annotation in 71 ALR 3rd, 794  
13 which discusses these requirements, states that it  
14 must be, at page 805, in the course of discipline and  
15 cites an Arkansas case for that prospect.

16 It also states in quoting from a Michigan case  
17 that it must be in regard to church discipline. On  
18 the other hand, considering the discipline referred to  
19 in the statute providing that a clergyman or other  
20 minister of any religion shall not be allowed to  
21 disclose a confession made to him in the course of  
22 discipline enjoined by the rules or practice of the  
23 religious body to which he belongs.

24 And then it goes on to discuss the Court's  
25 holding that the discipline enjoined must be something

## Colloquy

1 with regard to the church's discipline. Here there  
2 was no discipline of the church on December 23 or  
3 December 24. It didn't happen until the following  
4 month.

5 In regard to the Constitutional -- Oh, there's  
6 another item here. If the conversation, numerous  
7 conversations of David Motherwell were inquired into  
8 by his counsel in his deposition on November, excuse  
9 me, by Pastor Barnett's counsel on November 13, 1990  
10 and I could read them but I don't think it would do  
11 the Court well here, but there are numerous  
12 conversations between Donald Barnett and David  
13 Motherwell when only the two of them were there they  
14 in fact asked about. I didn't object to and I believe  
15 that in fact if there was any privilege they would  
16 have waived it during those depositions.

17 THE COURT: Where does that come out?

18 MR. ROHAN: That came out in the  
19 deposition --

20 THE COURT: No, I'm not talking about the  
21 deposition, in the testimony or evidence submitted by  
22 Plaintiff.

23 MR. ROHAN: I was only referring to the  
24 deposition, but I believe if they waived it before  
25 they got here today that in fact it has been waived.

## Colloquy

2 1 In addition, there's no Constitutional argument  
2 which allows you to invoke a privilege where the  
3 statutory privilege doesn't exist. It simply is not  
4 right. You asked counsel what his authority for that  
5 was and counsel could not come up with any authority  
6 other than this generalized view of this  
7 Constitutional privilege which does not give a  
8 specific evidentiary privilege and should not be  
9 allowed. So, on those grounds, Your Honor, I would  
10 ask that the testimony be allowed in.

11 THE COURT: Listen to how I feel about it  
12 and you may comment. I'll call on each of you.

13 I'm aware that a number of areas we're dealing  
14 with here have been regarded by the church and by the  
15 participants as, quote, confidential, quote. Just  
16 what status that enjoys with the law I'm not sure, but  
17 I have never seen evidence kept out of a judicial  
18 proceeding on the basis that it was confidential. It  
19 must be subject to some kind of privilege that permits  
20 this confidential disclosure protection.

21 Now, I don't know what this witness is going to  
22 testify to as to the conversations over the telephone  
23 with Pastor Barnett, but I'm prepared to refuse to  
24 admit any admissions or confessions or statements, or  
25 characterize them what you want, verbal utterances by

**PAGE 993 OMMITTED IN SCANNING**

Colloquy

1 were done, you invited our comment, so when you are  
2 finished.

3 THE WITNESS: You may go ahead.

4 MR. WIGGINS: All right, thank you.

5 Your Honor, regarding crime, criminal action, did  
6 you say --

7 THE COURT: Maybe I didn't define it.

8 MR. WIGGINS: -- things which are or are not  
9 criminal? I didn't quite understand. Let me explain  
10 what I'm saying.

11 THE COURT: I said crimes or sins.

12 MR. WIGGINS: All right, sins, because when  
13 we talk about confessions in the course of discipline  
14 enjoined by the church, the discipline that we're  
15 talking about is not a disciplinary proceeding.  
16 That's not what we're talking about. That's not what  
17 the statute is talking about.

18 THE COURT: Quite honestly I don't know what  
19 that term is in the statute for.

20 MR. WIGGINS: I submit I think what that  
21 means is a church discipline in the sense of a rule or  
22 regulation or practice of the church. For example,  
23 the discipline of confession is a discipline within  
24 the meaning of the statute in the Roman Catholic  
25 Church, it's not we're slapping your hand for this, it

1 is a church discipline.

2 THE COURT: That's right. And that  
3 clarifies it to me. That's the way I understood it

4 ~~but I didn't have the knowledge at that time to know the same way~~

5 MR. WIGGINS: I feel that way, I don't know  
6 if it's right, but that's what I think that means.

7 THE COURT: And as I regard counseling would  
8 be within the discipline of this church.

9 MR. WIGGINS: I quite agree. So, what we  
10 are saying is that Mr. Motherwell, if I understand the  
11 ruling, Mr. Motherwell will not be permitted to say  
12 that during the hearings, whether Pastor Barnett was  
13 present or not, he cannot say, oh, by the way, Pastor  
14 Barnett admitted to me that he did X, Y, or Z, if he  
15 learned that in the counseling relationship.

16 THE COURT: That's right.

17 Q (By Mr. Rohan) Mr. Motherwell, getting back to the  
18 telephone conversation that you had with Donald  
19 Barnett on December 23 or 24, 1987, can you tell me  
20 what you and he stated during that conversation,  
21 subject to the Court's ruling?

22 A He was extremely concerned that this letter was  
23 hand-delivered to each of the elders.

24 Q By the letter, you are referring to the --

25 A December 23 letter from Jerry Zwack to the elders.

- 1           And he stated that the reasons for his concern were  
2           that the non-voting elders would read this and he  
3           mentioned at least two by name, Ron Myrick and Jerry  
4           Slaminski, and that they had no business knowing this  
5           and that they weren't voting elders and had no  
6           authority so to speak to inquire. And his other  
7           concern was what Jerry would do if Jerry's requests  
8           and grievances in this letter were not dealt with.
- 9    Q       Did he indicate to you that he had read the letter?
- 10   A       Yes, he did.
- 11   Q       Did you have any other conversations with him on that  
12           date about the letter?
- 13   A       Well, he mentioned that he was leaving town and that  
14           he was going to try to keep the other elders from  
15           reading the letter, and I believe he asked me if I  
16           heard from them to ask them to not read the letter and  
17           I said, no, I feel like they should read the letter.
- 18   Q       Prior to the elders' hearings starting on January 25,  
19           1988, did anyone keep Donald Barnett apprised of what  
20           was transpiring?
- 21   A       I did.
- 22   Q       And had you been asked to do that by somebody?
- 23   A       By Don Barnett.
- 24   Q       Did you and Donald Barnett discuss who would be on the  
25           elders' committee?

MOTHERWELL - Direct (By Mr. Rohan)

- 1 A Yes, we did.
- 2 Q Did he recommend that certain people be on the  
3 committee?
- 4 A Yes, he did.
- 5 Q Who did he recommend be on the committee?
- 6 A He recommended that the senior elders be on the  
7 committee and that myself and John Bergin and Lanny  
8 Peterson be on the committee.
- 9 Q Did he tell you why he wanted you and John Bergin to  
10 be on the committee?
- 11 A Yes, he did.
- 12 Q What did he tell you as to why he wanted you to be on  
13 the committee?
- 14 A Because he knew that we knew the information contained  
15 in the grieyances of Jerry Zwack and he knew that in  
16 his absence that John and I could keep accurate track  
17 of that information and the discussion of it, also  
18 that he wanted me there to testify as to what. if

1 Barnett was doing with respect to those grievances.  
2 In other words, I could say in my opinion he was  
3 improving or failing or just I could give my  
4 assessment of how he was doing.

5 Q (By Mr. Rohan) And that's what Donald Barnett asked  
6 you to do; is that right?

7 A Yes.

8 Q Was there any discussion at that time or up to and  
9 including January 25, 1988 with you and Donald Barnett  
10 where there was any discussion of testimony being  
11 taken at the hearings where Donald Barnett was not  
12 present or would not be present?

13 A There was.

14 Q What was said by you or Donald Barnett about that?

15 A That he knew there would be testimony given while he  
16 wasn't present and he knew who it would come from.

17 that it would come from those individuals  
18 requested to be there and that he understood  
19 was to happen in the course of the hearing

20 Q And by those individuals, he was referring  
21 Motherwell, yourself, and John Bergin?

22 A Myself and John Bergin, as well as Lanny Peterson and  
23 Scott Hartley.

24 Q And Lanny Peterson and Scott Hartley had been  
25 counselors of Donald Barnett?

1 A That's correct.

2 Q If you could look at Exhibit 15, please, a copy of  
3 which is on the board and I'll show you -- Looking at  
4 Exhibit 15, a copy of which is on the board, did you  
5 discuss Exhibit 15 with Donald Barnett?

6 A Yes, I did.

7 Q Did Donald Barnett write anything on Exhibit 15?

8 A When I brought it over to his house, he read it and  
9 discussed with me the agreements briefly and then he  
10 picked up his pen and inserted "and Jerry", and then  
11 he signed it and then I dated it.

12 Q You dated it in his presence?

13 A Yes.

14 Q What did he and you discuss about Exhibit 15 as to  
15 what it meant?

16 A Well, what we discussed was what would happen or could  
17 happen if he didn't sign it and that he was afraid  
18 that Jerry would take his grievances to a broader  
19 audience, either the church or the media or both, and  
20 that the reason that he inserted "and Jerry" was so  
21 that if Jerry would give these grievances to the  
22 eldership committee that whatever disposition that the  
23 eldership committee decided to do with those  
24 grievances that Jerry would not take it to a broader  
25 audience such as the entire church or the media.

1 Q In the beginning of Exhibit 15, it states that it is  
2 necessary to protect Don from accusations of conflict  
3 of interest and misusing his pastoral authority to  
4 exercise unfair control over those hearings to his  
5 personal advantage. Why was that inserted in the  
6 agreement?

7 A Well, it was a fear, and many felt a founded fear,  
8 that he would try to rig the hearings or control them  
9 or control the deliberations or decisions and that we  
10 wanted to protect him from conflict of interest, the  
11 appearance of conflict of interest, the appearance or  
12 the actual abuse of his position in a matter that  
13 involved judgment regarding his own life and behavior.

14 Q Prior to the hearings starting, were there also  
15 written guidelines that you went over with Donald  
16 Barnett?

17 A Yes.

18 Q Showing you what's been marked Exhibit 23, did you  
19 discuss those guidelines with Donald Barnett?

20 A Briefly, I did, yes.

21 Q Were there any particular guidelines that he was --  
22 Were there any guidelines that he was particularly  
23 interested in?

24 A Well, there were a few that he made note of, and the  
25 one that he, to my memory, made the most note of was

1 No. 10, although he made note of others as well.

2 Q What in particular about No. 10 did Donald Barnett  
3 discuss with you?

4 A Well, he was extremely concerned that he be treated  
5 with respect and concern, that the airing of these  
6 grievances would cause others to lose respect for him,  
7 and he was concerned that he would be interrupted in  
8 his discourse or his speech in the hearings and so he  
9 was concerned that he have ample opportunity to  
10 explain himself and defend himself without  
11 interruption, and that he be dealt with carefully and  
12 respectfully.

13 Q Were there any other guidelines in particular that he  
14 discussed with you?

15 A Well, I believe he discussed Guideline 8 briefly and  
16 that he wanted, as Jerry spoke, for the elders to be  
17 able to inquire as to qualifying statements or he  
18 didn't want Jerry to just be able to ramble on things  
19 unqualified and so he was concerned there was an  
20 allowance for proper interjection in there and I think  
21 that's what that speaks to.

22 Q Was there any other one in particular that he  
23 discussed with you?

24 A The only other one that comes to mind probably is No.  
25 9.

1 Q What about that one did he discuss with you?

2 A Just simply that he understood that there would be  
3 deliberations and discussions on this big broad  
4 subject of his behavior without him or Jerry there and  
5 may have discussed others briefly but these were his  
6 chief concerns to my memory.

7 Q Did he indicate at the end of your conversation  
8 whether he agreed or disagreed as a whole with the  
9 guidelines?

10 A His indication was that he agreed. He was at this  
11 time on this date much more concerned about what would  
12 happen if he didn't cooperate with the hearings than  
13 if they went forth.

14 THE COURT: Did I hear you say you were  
15 concerned or he was concerned?

16 THE WITNESS: He was concerned if the  
17 hearings didn't happen.

18 Q (By Mr. Rohan) Did he tell you why he was concerned  
19 if the hearings didn't happen?

20 A Well, he considered Jerry Zwack's promise that he take  
21 it to a broader audience, the material to a broader  
22 audience as something that Jerry would follow up on.

23 Q Let's move if we could now to the time of the hearings  
24 themselves. You were present at the hearings when  
25 both Jerry Zwack and when Donald Barnett testified at

1 the hearings?

2 A Yes, I was.

3 Q Can you tell the Court instances -- Well, could you  
4 tell the Court instances that were told at the  
5 hearings by either Jerry Zwack or Donald Barnett as to  
6 any evidence of Donald Barnett having sexual relations  
7 with women, coercing women, lying?

8 A I can, yes.

9 Q Could you please explain those.

10 MR. PIERCE: Your Honor, could we limit this  
11 to information that's not cumulative with regards to

other witnesses? We don't have to rehash if somebody  
has said it before.

THE COURT: Can you phrase the question

incorporating what has just gone on with Pastor  
Barnett? In other words, in addition.

Q (By Mr. Rohan) Okay, let me ask you that. Can you  
tell me was anything -- Actually, if I grab my other  
notebook I can do this in a little more organized  
manner. You were here this morning when Pastor

Barnett testified as to several women that were  
referred to by code names; is that right?

A Yes.

Q And one of the women we refer as the Lake Chelan  
woman.

1 A Yes.

2 Q And you were familiar during the hearings with who the  
3 identity of the Lake Chelan woman was, were you not?

4 A I sure was.

5 Q Can you tell me what was said by Jerry Zwack at the  
6 hearing about the Lake Chelan woman that Pastor  
7 Barnett did not tell this morning?

8 A Yes. I can also --

9 Q If you could answer that question.

10 A The Lake Chelan woman, Jerry Zwack -- this is what  
11 Jerry Zwack testified to -- the Lake Chelan woman --

12 MR. PIERCE: Your Honor, I would object as  
13 to what Jerry Zwack said. He has been listed as a  
14 witness, he can come in and testify. This is hearsay.

15 THE COURT: He may testify as to what  
16 occurred at the hearings.

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MOTHERWELL - Direct (By Mr. Rohan)

1 communication had to occur from Mrs. Barnett to Mr.  
2 Zwack and, Your Honor, I thought we had a basic rule  
3 they were keeping that type of information out of  
4 these proceedings.

5 MR. ROHAN: Your Honor, Pastor Barnett did  
6 in his direct examination --

7 THE COURT: You may answer.  
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MOTHERWELL - Direct (By Mr. Rohan)

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MOTHERWELL - Direct (By Mr. Rohan)

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MOTHERWELL - Direct (By Mr. Rohan)

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1 to the elders' hearing and the unidentified women in  
2 there, we have plenty of elders who have indicated  
3 they didn't know, unless this witness testifies he  
4 told anybody who they were at that time, which I don't  
5 think he would testify to, because other people  
6 testified that they do not know who these people were  
7 with regards to it.

8 MR. ROHAN: Your Honor, I'm meeting his  
9 prior objection. Counsel complained earlier that this  
10 testimony was repetitive and there's a way to short  
11 circuit this being repetitive.

12 THE COURT: The question, if I recall it, is  
13 that one of the women who testified here at this trial  
14 was a woman who was later identified as the Community  
15 Chapel employee?

16 MR. ROHAN: That's right.

17 THE COURT: Is that true?

18 MR. ROHAN: Yes.

19 THE COURT: And the objection is made.

20 MR. PIERCE: That's right.

21 THE COURT: I'll overrule the objection.

22 Q (By Mr. Rohan) And do you recall the testimony that  
23 she gave in front of this hearing?

24 A Yes.

25 Q Is what she testified to at these hearings what Jerry

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1 renew my objection to strike that material with  
2 relationship to identification of the individuals at  
3 the eldership hearing.

4 THE COURT: She was not identified as a  
5 witness.

6 Q (By Mr. Rohan) Mr. Motherwell, did you and Donald  
7 Barnett ever have a discussion as to what Jerry  
8 Zwack's grievances were?

9 A Yes, we did.

10 Q What did you and Donald Barnett talk about what Jerry  
11 Zwack's grievances were and when was that discussion?

12 A This discussion was actually discussions that occurred  
13 between the time that Jerry wrote this letter on the  
14 23rd and the commencement of the eldership hearings on  
15 the 25th of January and he would ask me --

16 Q By "he", you mean --

17 A Don Barnett, if part of Jerry's grievances were or  
18 what was behind this was that Jerry got laid off from  
19 his job at the Counseling Center and removed from his  
20 Bible College class. He would ask me that from time  
21 to time and I would say that I didn't believe that  
22 that was central to Jerry's grievances that he wanted  
23 to discuss at these hearings, that what was central,  
24 not that it wasn't an issue, but Jerry in his  
25 discussions with me made no mention that that was an

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1 don't want to return".

2 He also was asked by Russ MacKenzie, Mark Yokers,  
3 Greg Thiel, and another individual or two on the  
4 morning of the 29th of February to come back to the  
5 hearings and he said "no".

6 Q And he never in fact was at any of the hearings during  
7 the week of February 29; is that right?

8 A No.

9 Q Did you learn sometime in the middle of February 1988  
10 that three of the senior elders placed Donald Barnett  
11 on special status?

12 A Yes.

13 Q How did you learn that?

14 A They called me into Jack Hicks' office and I can't  
15 remember the specific date but it was very close to  
16 February 15th to ask my input, ask for my input on  
17 placing him on special status.

18 Q What was your input?

19 A That it was entirely appropriate and an action that  
20 would serve to really help Don and help the church. I  
21 had no objection to it.

22 (Defendants' Exhibits 39-41  
23 marked for identification.)

(Short break taken.)

24

25 MR. ROHAN: Your Honor, we have a witness

1 here that is going to testify that said she listened  
2 to and typed the transcript of the March 6th sermon by  
3 Pastor Barnett and I'd like to put her on for a minute  
4 as a witness just to identify the March 6th sermon.  
5 That was the one we heard on the recordings that was  
6 really scratchy, really hard to hear, and she made a  
7 transcript of that tape. We'd like to get that into  
8 evidence. We have already admitted the February 28  
9 tape and the transcript. She will testify that she  
10 did the typing of the transcript and they have already  
11 been provided a copy of the transcript.

12 MR. JOHNSON: We have a copy of the  
13 transcript. We've never had the occasion to be  
14 informed of this witness or seen a certification from  
15 her or have been told that she was going to testify.

16 THE COURT: Well, unless you are surprised  
17 by the date.

18 MR. JOHNSON: I'm not sure that we have a  
19 copy of the tape.

20 MR. ROHAN: Yes, you have a copy of the  
21 tape. I gave you a copy of the tape. I gave you that  
22 tape as well as the 3/4 tape, the 2/28 tape and the  
23 2/26 tape.

24 THE COURT: Is she here now?

25 MR. ROHAN: Yes, she's here now. She's

8 1 actually been here all day, I keep forgetting to bring  
2 her in.

3 THE COURT: I'll permit you to withdraw this  
4 witness and put on another witness.

5 MR. JOHNSON: One other thing in a similar  
6 vein. Counsel is moving quicker than we had thought.  
7 They're suggesting they may finish up tomorrow. And  
8 if that's the case, it's possible that tomorrow or the  
9 next day the witness Sandy Baxter that we discussed  
10 earlier in this case, our rebuttal witness may be on  
11 tomorrow or the next day. And I had tried to reach  
12 her --

13 THE COURT: It will either be tomorrow or  
14 the next day?

15 MR. JOHNSON: Yes. And we want to make her  
16 available for counsel to confer with for a period of  
17 time prior to her testifying. Counsel asked if I  
18 could have her down here this evening and tried at  
19 lunch time to reach her and I just reached her now by  
20 phone and she has two children and baby sitting is  
21 kind of an up in the air thing for her when they're  
22 not in school. She said it would be a lot more  
23 convenient for her to simply on the day that she  
24 testifies come down ahead of time and talk to them in  
25 person together with perhaps if they would like to

Colloquy

1 telephone her and talk to her over the phone in a  
2 conference call that could perhaps be arranged that  
3 would work as well, but it may be difficult for her to  
4 come down this evening and see counsel in his office.

5 THE COURT: Let me go over this. You people  
6 think that you might be finished by tomorrow?

7 MR. SHAPIRO: There is a possibility we  
8 could finish sometime in the afternoon, yes. A lot of  
9 it depends on the length of this cross-examination and  
10 the \*\*

11 MR. JOHNSON: If they finished tomorrow  
12 afternoon, not tomorrow morning, my guess is she  
13 probably would not be on tomorrow, she would be on the  
14 next day.

15 MR. SHAPIRO: In that regard, Your Honor, as  
16 the Court will recall, the Court reserved its judgment  
17 on our motion in limine with regard to Ms. Baxter and  
18 allowing us to talk with her by ourselves and then, if  
19 we thought it necessary, to renew the motion. I'd  
20 like to meet with this woman, find out what she  
21 supposedly is going to testify to. If she had been  
22 recorded initially as a witness, I would have called  
23 her and met with her on my own and I'd like the  
24 opportunity to do that tonight. I understand it's  
25 difficult for her.

Colloquy

1 THE COURT: How about tomorrow morning?

2 MR. SHAPIRO: Tomorrow morning? I'm  
3 examining a witness tomorrow morning.

4 MR. JOHNSON: Over the lunch hour perhaps?  
5 Just sometime when she doesn't have to get a baby

sitter. 6

MR. SHAPIRO: I'm willing to do it over the 7  
lunch hour. 8

THE COURT: Okay, tomorrow lunch hour. 9  
How's that? 10

MR. JOHNSON: That would be fine, Your 11  
Honor. I don't remember saying that -- You know, in 12  
a typical deposition, they would be entitled to talk 13  
to her and depose her with me present and I would like 14  
to be present when they talk to her unless she has an 15  
objection to it. 16

MR. SHAPIRO: Your Honor, this is a third 17  
party witness, she's not a party. I think I'm 18  
entitled to try to talk to her on my own which I would 19  
have done if they had identified her in due course. I 20  
wouldn't necessarily have taken her deposition. I 21  
would have called her and tried to set up a meeting, 22  
as I've done with a number of other witnesses without 23  
counsel being present which I believe is my right. 24

MR. JOHNSON: But I'm being asked to bring 25

Colloquy

1 her down. I'll give him the phone number and he can  
2 call her tonight or tomorrow or whatever and I'll give  
3 him the address if he wants to go out to her house and  
4 he can go out alone, but it seems to me if I'm going  
5 to make the arrangements to have her transported down  
6 here and so forth that if this was in a deposition I  
7 would have an opportunity to sit in on the  
8 conversation. I certainly can't keep him from going  
9 out --

10 THE COURT: This isn't quite a deposition  
11 situation.

12 MR. JOHNSON: I understand that, Your Honor,  
13 but I don't make it a practice of going out and  
14 arranging a private conversation for opposing counsel.  
15 I'm happy to make arrangements to bring her down here  
16 but that's when it does start to approach a deposition  
17 character as opposed to counsel simply wants to go out  
18 to her house and try to talk to her as we tried to  
19 talk to Mrs. A and she wouldn't.

20 THE COURT: Do you suppose that you can  
21 steel yourself to sitting through his questioning  
22 without saying anything?

23 MR. JOHNSON: Other than to say hello to the  
24 lady and, Your Honor, who I have never met personally,  
25 I will be happy to do what my wife says I can't do

WILSON - Direct (By Mr. Rohan)

1 which is to sit down and keep quiet.

2 THE COURT: Okay, you can bring her down and  
3 you can sit in the same room or the same area. If you  
4 want to see her alone, why get her number and call  
5 her.

6 MR. SHAPIRO: I would like to have her  
7 number, I have yet to get her number.

8 THE COURT: Get it this afternoon.

9 MARILYN WILSON,

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

10  
11  
12 E X A M I N A T I O N

13 BY MR. ROHAN:

14 Q Could you state your name, please.

15 A I'm Marilyn Wilson.

16 Q And your residence address?

17 A 2017 Jones Circle SE.

18 Q Can you tell me when you first became a member of the  
19 Community Chapel and Bible Training Center?

20 A November of '79.

21 Q Did you ever stop being a member or have you continued  
22 to be a member?

23 A No, I have continued.

24 Q Are you familiar with the voice of Pastor Donald  
25 Barnett?

WILSON - Direct (By Mr. Rohan)

1 A Yes, I am.

2 Q Handing you what's been marked as Exhibit 41 which is  
3 identified as a tape of March 6, 1988 of Donald  
4 Barnett and I'm sorry it's out of order, it's because  
5 I marked them myself, but I'll introduce 40 next.

6 THE COURT: Tape of sermon?

7 MR. ROHAN: March 6, 1988.

8 Q (By Mr. Rohan) Did you listen to those two tapes  
9 that were there?

10 A Yes, I did.

11 Q Did you recognize the voice of the speaker?

12 A Yes, I did.

13 Q Who was the speaker of the tape?

14 A Don Barnett.

15 Q And handing you what's been marked as Defendants'  
16 Exhibit 40, did you transcribe Donald Barnett's  
17 comments on that tape?

18 A Yes, I did.

19 Q Is Exhibit 40 a copy of your typed transcript?

20 A It looks like it is.

21 MR. ROHAN: Your Honor, I would move for the  
22 admission of both Defendants' Exhibits 40 and 41.

23 MR. JOHNSON: Questions on voir dire, Your  
24 Honor?

25 THE COURT: Yeah.

Voir Dire

1 MR. JOHNSON: Ma'am, can I ask you when you  
2 listened to the tape, Exhibit No. 40 or 41?

3 THE WITNESS: I really can't recall. It's  
4 been in the last month, I think. I don't know an  
5 exact date.

6 MR. JOHNSON: Have you ever had an occasion  
7 to listen to a tape purporting to be a tape of the  
8 service on 3/6/88 previously?

9 THE WITNESS: Yes, I have.

10 MR. JOHNSON: And do you know whether or not  
11 the tape when you listened to it before was a true and

sermon, the entire

12 correct rendition of the entire  
13 service?

14 is. There is another  
15 s copied onto this one,  
16 eliminated so I couldn't

17 THE WITNESS: Yes, it  
18 tape that didn't -- When it was  
19 the very first few words were e  
20 understand what they were.

21 t was on the other

22 MR. JOHNSON: But that  
23 tape?

24 on the duplicate tape,

25 THE WITNESS: It was c  
which is a normal thing.

object. There's  
of the words. And as  
start begins with  
church, saying -- who

MR. JOHNSON: I would  
another tape that does have all  
this transcript shows, the very  
about seven dot, dot, dot, dot,

Voir Dire

1 had bewitched you. That's not the way the service  
2 began almost certainly and this witness has indicated  
3 there's another tape that does have the start of the  
4 service, so I object to using a partial tape or the  
5 transcript of a partial tape given the existence,  
6 apparently, or the one-time existence of a true and  
7 correct copy of the entire sermon. We're taking parts  
8 of the service and transcribing them and not taking  
9 the full service and this purports to be a transcript  
10 of the full service which it is, of course, not.

11 MR. ROHAN: Your Honor, could I ask a  
12 question on follow-up? Oh, I'm sorry, counsel.

13 MR. JOHNSON: So, that's one comment. And  
14 just reading through or looking at it, it appears that  
15 down on the first page, the last paragraph of the  
16 first page, and God said dot, dot, dot, dot, dot and  
17 it appears that there's something missing there. And  
18 then there's other places where there are dots in here  
19 in numerous places.

20 I see on page 2 several places, page 3 several  
21 places, a number of places on page 5, page 6, page 7,  
22 a number of places where there are dots indicating  
23 apparently missing material. We sort of joked about  
24 the missing 18 minutes when we were talking about  
25 these before, but this does seem to be only a partial

1 tape of a service and it does appear from the  
2 witness's testimony that she had previously heard a  
3 tape that was essentially a full tape and I really  
4 object to tapes coming in that are only partially  
5 there, especially when a full tape either exists or at  
6 one time existed.

7 Q (By Mr. Rohan) Mrs. Wilson, can you tell me the tape  
8 that's here that you listened to from which you typed  
9 Exhibit 40, did that have more information on it than  
10 the other tape you referred to?

11 A No. The reason is that when you copy a tape the first  
12 few parts of the tape sometimes can get lost. It's a  
13 matter of seconds. It's not inches, it's not 18  
14 minutes. And I copied another transcript that had

15 I would have been there that needed to be a...  
16 de so I could do this accurately for you and...  
17 need that his words were slightly different only in...  
18 t he was talking about the Apostle Paul before the...  
19 nch and I couldn't understand enough of the words...  
20 make it into a legible sentence, so I gave what I  
21 ld. But as far as the beginning of the service,  
22 t's the beginning of what we received.  
23 y. And when you used dots, counsel has referred to  
24 se various dots that you've used in the transcript,  
25 t does that mean when you use dots?

1 A I used the dots because under these circumstances Don  
2 was talking, I'm sure, I think he was in a bowling  
3 alley and I don't know whether he was right up against  
4 a mike or not, but there was a distance and it wasn't  
5 a real good recording. And sometimes he would speak  
6 really fast and the words would run together. And so  
7 whenever they would run together, I'd have to leave  
8 out the word that was missing, whatever the missing  
9 word was. If you were to listen to the tape yourself,  
10 ~~it would be a judgment that you would have to make~~  
11 also.

12 Q Okay. You didn't add, you didn't put anything in his  
13 mouth here that he didn't say.

14 A No, that's why I was putting in the dots because I  
15 didn't want to put words in his mouth.

16 Q So, if Pastor Barnett himself were to listen to the  
17 tape and he were to know what that word was, then he  
18 wherever there was a dot he could put in the missing  
19 word; is that right?

20 A Right.

21 MR. ROHAN: Your Honor, based on that and  
22 based on her testimony, I believe she's testified that  
23 laid enough foundation for the document. Clearly  
24 she's identified these are the words of the pastor.  
25 The fact pastor, as we all know and I don't mean to

Colloquy

1 say this improperly, but the pastor does have a slight  
2 speech impediment. The fact that the witness cannot,  
3 given the quality of the tape and given the speech  
4 impediment, understand a word, she's done the correct  
5 thing. She hasn't made up a word to put in there,  
6 she's just left it blank. If they want to fill in  
7 what the word is based on himself listening to the  
8 tape, they're welcome to do that and go over it.

9 THE COURT: Tell me specifically why are  
10 these two exhibits, why are these exhibits material?

11 MR. ROHAN: They're material because they  
12 give Pastor Barnett's statements immediately after the  
13 March 4 meeting as to what happened at that meeting  
14 and also what happened at the elders' hearings. It's  
15 as contemporaneous as we have of any type from his  
16 mouth of what happened during the elders' hearings and  
17 as of March 4th.

18 THE COURT: And part of this sermon relates  
19 to what had actually gone on at the hearings?

20 MR. ROHAN: That's correct, and on March 4,  
21 1988. Yes, Your Honor.

22 MR. SHAPIRO: When he was disfellowshipped.

23 MR. ROHAN: When the senior elders met with  
24 him.

25

MR. JOHNSON: He was not at the meeting

Colloquy

1 where he was disfellowshipped.

2 MR. ROHAN: Well, he was at the beginning of  
3 that meeting. He chose to not participate.

4 THE COURT: The meeting at the house, what  
5 happened there.

6 MR. ROHAN: Right, as well as the elders'  
7 hearings themselves.

8 MR. JOHNSON: If I could ask this witness  
9 perhaps a couple more questions.

10 How did the first tape that you heard begin?

11 THE WITNESS: Basically it was just the  
12 logistics of seating the people and getting located in  
13 the bowling alley and people in the room were talking  
14 so I only recorded what the pastor actually said. I  
15 didn't repeat the other conversations in the room.

16 MR. JOHNSON: Were there other conversations  
17 prior to that?

18 THE WITNESS: Just what you do when you're  
19 getting started and coming up to the microphone or  
20 whatever.

21 MR. JOHNSON: Other speakers though?

22 THE WITNESS: No, no.

23 MR. JOHNSON: The only person who spoke on  
24 the tape was Pastor Barnett?

25 THE WITNESS: Oh, no. There were others and

Colloquy

1 I mentioned their names back here, Stu Hanson and Ron  
2 Lowrie, Dan O'Brien spoke. I just briefly mentioned  
3 that they inserted something. I understood this to  
4 be --

5 MR. JOHNSON: Where are you referring to?

6 THE WITNESS: Oh, I just had it. Well, page  
7 34, Stu Hanson, Dan O'Brien. I put it in brackets.

8 MR. JOHNSON: So, you didn't type out  
9 everything they said.

10 THE WITNESS: I put it in brackets what the  
11 gist of what they said.

12 MR. JOHNSON: Your Honor, it's her summary  
13 of what a portion of the hearing was.

14 THE WITNESS: My understanding was I was  
15 typing what Don's comments were, Don's rebuttal.

16 MR. ROHAN: We're willing to strike the gist  
17 of what two other people stated at that service, but  
18 certainly everything else that Pastor Barnett said is  
19 verbatim of what he said. I'm happy to strike the  
20 comments of Mr. Hanson and Mr. O'Brien, but everything  
21 else is exactly what Pastor Barnett said and it ought  
22 to be admissible, it is admissible and ought to be  
23 admitted on that basis.

24 MR. JOHNSON: Your Honor, part of what  
25 Pastor Barnett is alleged to have said in here is said

Colloquy

1 in response to things others said and there's no way  
2 to make sense of that portion of what Pastor Barnett  
3 said, certainly not a way to make fair sense of what  
4 Pastor Barnett said unless you have a chance to read  
5 the full text of what was said that he's responding  
6 to. I just wish we had the full tape, the first tape.

7 THE COURT: Where is the first tape?

8 THE WITNESS: It's the original master. I  
9 don't release that.

10 THE COURT: It's in the tape library?

11 THE WITNESS: Right, and it's not something  
12 you release, you make a copy of it.

13 MR. JOHNSON: It seems like it could be  
14 listened to.

15 MR. ROHAN: Can we make a copy of the entire  
16 master?

17 THE WITNESS: I can try to make another one.  
18 If I could say, these people's names like Stu Hanson  
19 and Dan O'Brien, they were conversations relating to  
20 some kind of logistics going on in the room with  
21 seating people and this kind of stuff, it had nothing  
22 to do with what he was discussing with the body. They  
23 interrupted him to take care of business.

24 MR. ROHAN: Your Honor, I think we should  
25 admit the transcript and then, as to the full tape, if



Colloquy

1 MR. ROHAN: I did, Your Honor, and I would  
2 like to use it also as substantive evidence.

3 MR. JOHNSON: He played it, Your Honor, you  
4 heard it. It was live or off the tape.

5 MR. ROHAN: I can use that as rebuttal, I  
6 can't use that as evidence of what in fact happened.  
7 I would like to use that as evidence of what in fact  
8 happened and I can if it's admitted as what he  
9 actually said.

10 MR. JOHNSON: Well, it was played and once  
11 it was played I don't think he denied that he said it.  
12 He admitted that that was his voice and I recall his  
13 testimony. He didn't say it was Dan O'Brien's voice.

14 I'm just looking here, just turning to page 38  
15 and I see that there's an indication there of  
16 questions from the floor. Don, did you say these  
17 things to Jack in front of the elders? Yes, well, the  
18 senior elders, see, that's just all in brackets and we

19 don't have any way to know and that's material.

20 They're talking about what did you say to the  
21 elders, the senior elders, the morning they went down  
22 to file and there's no way to make any sense at all of  
23 that colloquy and that colloquy is about the morning  
24 they went down to file, March 4, the center of this  
25 lawsuit and there's no way to make sense out of that

Colloquy

1 the way it's typed and I've never been told or heard  
2 or have been given a copy --

3 THE COURT: Is that accurate typing from the  
4 tape?

5 THE WITNESS: Yes, it is.

6 MR. JOHNSON: I don't know.

7 MR. ROHAN: She states that it is.

8 MR. JOHNSON: I remember, Your Honor, for  
9 instance hearing portions of the tape where there was  
10 laughter or applause or whatever, but I don't see that  
11 referred to on here and so I don't think that's  
12 accurate.

13 THE COURT: That's the reason for having the  
14 tape.

15 MR. JOHNSON: And this doesn't appear to be  
16 accurate because the way this is typed it's not a  
17 question and answer, it's questions, questions,  
18 questions but then it doesn't really go into what

no answer. I  
think immaterial  
whatever counsel  
nt in terms of  
I object.

20 from the floor or indicate there was  
21 just think it's confusing. It's  
22 with all this other stuff and I think  
23 could get out of here that's relevant  
24 their case has already gotten in and

doesn't

25

THE COURT: I'm concerned that it

Colloquy

1 appear to be a full transcript of the tape. Now,  
2 maybe it is, I don't know.

3 THE WITNESS: Sir, I didn't know laughter  
4 was necessary to include in there.

5 THE COURT: No, I'm not talking about  
6 laughter.

7 THE WITNESS: But as far as statements like  
8 this, Don made many statements but didn't complete  
9 them. And as I would type along, there would be many  
10 incomplete sentences. Because of the excitement, I  
11 think, there was a chopping or a changing of subjects.  
12 And I typed this the way I heard it, whether it made  
13 sense or not. I did go back and listen to it fully  
14 after I had my transcript made and I listened to the  
15 full transcript and read it along word for word to see  
16 if it followed and it tracked.

17 THE COURT: I'm going to admit both of these  
18 and recognize that there may be much of these tapes  
19 and the sermon that are not particularly relevant to  
20 the inquiry that we're making here. Just because  
21 they're his words doesn't make them relevant. But as  
22 to portions of them, they may be relevant.

23 MR. JOHNSON: Your Honor, one final comment.  
24 As I recall, and counsel can correct me, but I'm  
25 looking at the transcript of Pastor Barnett's

MOTHERWELL - Direct (By Mr. Rohan)

1 testimony, the court reporter couldn't understand the  
2 tape when it was played. And so after it was played,  
3 the portions that were played we played it over again  
4 and gave the court reporter a copy of the transcript  
5 and let her take it down, so those portions all appear  
6 in writing in the record of proceedings here, the  
7 transcript of these proceedings and those were the  
8 portions that were played and counsel asked and those  
9 were identified and the accuracy of those was verified  
10 when pastor said, yes. So, I think this is above and  
11 beyond that. I think it's irrelevant and we would  
12 strongly object to its admissibility simply because  
13 it's not the best evidence, there's a better tape

14 somewhere.

15 THE COURT: Well, they will be adm

16 MR. ROHAN: I have no further ques

17 this witness.

18 MR. JOHNSON: I don't have anything

19 THE COURT: You may be excused.

20 DAVID MOTHERWELL,

recalled as a witness  
the Defendants, have  
duly sworn on oath  
examined and testi  
follows:

21  
22  
23 DIRECT EXAMINATION (Continued)

1 39, can you identify what that document is?

2 A It is entitled "Special Status Procedures and  
3 Policies". I see the date is October of 1987.

4 Q When you were the director of counseling, were there  
5 written guidelines for special status?

6 A This is, this document was prepared and circulated  
7 while I was director of counseling, yes.

8 Q Are these the final procedure and policies that were  
9 in effect at Community Chapel on or about October of  
10 1987 for special status?

11 A They would be, yes.

12 Q And you reviewed that, is that correct, at that time?

13 A Yes, I did.

14 Q Did anybody else review it, as far as you know?

15 A Well, I know that Chris Mathews reviewed it, I'm  
16 certain that Jack Hicks reviewed it, and I'm certain  
17 as I can be that Don Barnett reviewed it.

18 Q Did you have this distributed to the other counselors  
19 at Community Chapel?

20 A It was, yes.

21 MR. ROHAN: Your Honor, I'd move the  
22 admission of Exhibit 39.

23 MR. PIERCE: Your Honor, I have to object to  
24 this exhibit. This exhibit was not one of the listed  
25 documents provided, identified as part of the

Colloquy

12

1

documents to be used in these proceedings. Counsel should have had it available because Mr. Motherwell, since at least 1987 apparently would have had this document available to him being the director of counseling.

6

Second, this document was not produced, as Mr.

7

~~Johnson, told me that his office usually objects~~

8

the trial. It comes as a surprise, was not one of the listed documents, does not meet the requirements of Local Rule 16 or the pretrial procedures in this matter here. We are and would be prejudiced because we would not have had an opportunity, as I took Mr. Motherwell's deposition, to ask Mr. Motherwell

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13

~~position prior to these proceedings~~

ments had been provided to me, it would have been available to do discovery.

Let me ask you this. Is Pastor Barnett familiar with this document?

Your Honor, I have not had a chance to ask him, this just came in.

Your Honor, we gave this to him and the document was handed to them two weeks ago yesterday and this document was identified that day but it was identified two

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~~questions in his depo~~

here. If those documents would have been available

THE COURT:

Barnett familiar with this document?

MR. PIERCE:

chance to ask him, this just came in.

MR. ROHAN:

two weeks ago. This document was identified two weeks ago. We were given the documents two weeks ago but it was not identified that

Colloquy

1 days later, so they've had this document for  
2 approximately two weeks.

3 As far as I'm aware, this document was also in  
4 their possession previously along with, if you will  
5 notice it is very similar, it's the special status  
6 procedures they introduced into evidence of the  
7 disfellowshipping procedures that are set up in the  
8 exact same format as this document. As far as I'm  
9 aware, they had them prior to that time and I'm  
10 surprised they're saying they didn't have this  
11 document.

12 MR. PIERCE: Well, I am surprised, Your  
13 Honor, because I issued a subpoena duces tecum to this  
14 witness. He did not produce this document at this  
15 deposition. I am certainly surprised.

16 THE COURT: You may be surprised but are you  
17 prejudiced in any way? I don't know where this came  
18 from.

19 MR. PIERCE: It's difficult to do discovery,  
20 Your Honor, unless you have the document in front of  
21 you when you're subpoenaed for a deposition. I cannot  
22 ask that question and find out about this document at  
23 a discovery proceeding in which this document should

24 have been admitted to the record.  
25 MR. ROHAN: Your Honor, he served a subpoena

Colloquy

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duces tecum on Mr. Motherwell, as the Court is aware,  
for a party, which Mr. Motherwell is a party. A  
subpoena duces tecum is improper. We agreed that any

~~s that Mr. Motherwell had personally that were~~  
ch documents but personally would be produced.  
not a document that Mr. Motherwell had  
ly, it was a document of the church and he did  
uce it at his deposition and it was not called  
nd that. And I believe that this document was  
him by Mr. Leach.

ad a telephone conference with Mr. Johnson  
brought up to him the fact that the document  
now admitted I think as an exhibit, it's the  
wshipping guidelines, I did not believe was  
en to me. He said Mr. Leach gave it to him  
a document that is very similar to this one  
lieve that Mr. Leach also gave him this

MR. PIERCE: I do have to respond to that  
Your Honor. This subpoena duces tecum that I  
ed I believe was served upon Mr. Motherwell  
ne Defendants in this action created the new  
by adding Mr. Motherwell as a member of the  
Senior Elders. He was served when he was an  
al and that subpoena duces tecum on him was

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Colloquy

1 proper at that point in time. It wasn't an improper  
2 service of a subpoena duces tecum as I recall it and  
3 he's represented by counsel.

4 MR. ROHAN: No. At the time that he was --

5 THE COURT: Wait just a minute. Regardless  
6 of whether it was listed as a possible witness or by  
7 whom, it appears to me that we're really in a strange  
8 position to object to actual documents of the church  
9 which all parties here are familiar with.

10 MR. JOHNSON: Your Honor, counsel suggested  
11 that I had received this document from Mr. Leach. Mr.  
12 Leach was the attorney back in 1988 for a period of  
13 time. And it's true that I did receive at a

~~14 deposition for which I was asked to produce documents. We have~~  
15 searched diligently through all of the documents we  
16 ever got from anybody with regard to any single  
17 document at all that had anything to do with special  
18 status and simply have never, never seen it.

19 Now, it is hard to depose one of the principal  
20 witnesses in the case with regard to what is obviously  
21 a central issue in the case, special status, and  
22 Pastor Barnett advises me now that this is not a  
23 document that he has seen, that it's very hard to take  
24 depositions. We have taken two depositions of Mr.  
25 ~~no Matherall in the last three months and didn't have~~

13 1 this available to talk to him about special status and  
2 I think we should have.

3 THE COURT: Do I understand that Pastor  
4 Barnett is not familiar with the special status  
5 procedures?

6 MR. JOHNSON: He is familiar with special  
7 status and with some procedures of special status, but  
8 he's not familiar with this document. I haven't gone  
9 over step by step by step to see to what degree this  
10 document is something that was --

11 THE COURT: Let's go to something else. I  
12 will rule on this thing in the morning.

13 MR. ROHAN: Your Honor, I have another  
14 witness who will testify he discussed it with Pastor  
15 Barnett.

16 THE COURT: If you can point to any better  
17 reason than you've given, any different reason than  
18 you've given after having examined this tonight I'll  
19 listen to that. Otherwise, let's go to something  
20 else.

21 Q (By Mr. Rohan) Who at Community Chapel, if anyone at  
22 Well, who at Community Chapel was permitted to place  
23 an individual on special status?

24 A The practice was very common and consistently that a  
25 counselor or an elder, senior elder would place

1 individuals on special status as they deemed  
2 necessary.

3 Q And what is special status?

4 A Special status is a status, the reason it's called  
5 special, it was a status created or documented as a  
6 step in lieu of disfellowship that amounted to, I  
7 should say in lieu of but you could say in lieu of,  
8 just a step, just inches in front of disfellowship.  
9 It amounts to a probation, that the status of the  
10 individual is monitored very closely with specifics  
11 and, if the terms of the special status were breached  
12 or the person refused the special status, that they  
13 were then disfellowshipped because, as I said, this  
14 was a last step attempt to correct or change the  
15 person's actions or behaviors that were deemed  
16 improper.

17 Q And special status was in effect at Community Chapel  
18 both during 1987 and 1988; is that right?

19 A Yes.

20 Q And had been introduced and used at Community Chapel  
21 during the time when you were both a volunteer and a  
22 paid counselor at Community Chapel?

23 A Yes.

24 Q Whose approval, if anyone, was necessary before an  
25 individual at Community Chapel was placed on special.

1 status?

2 A The counselors could simply place a person, or elders,  
3 depending, could simply place a person on special  
4 status if they felt for sure that it was warranted.  
5 Customarily, it was discussed with another counselor  
6 or the director of counseling although not always but  
7 that was done as practice.

8 Q Were senior elders considered counselors for purposes  
9 of special status?

10 A All the senior elders had a responsibility to the  
11 church as overseers, and from time to time each of  
12 them was a counselor. They were never not considered  
13 counselors, to my knowledge.

14 Q The senior elders explained to you they had placed  
15 Donald Barnett on special status; is that right?

16 A Yes, they did.

17 Q That was on or about February 15, 1988?

18 A That's right.

19 Q Did the senior elders, one or more of them, later come  
20 to the elders and explain to them that they had placed  
21 Donald Barnett on special status?

22 A They all did.

23 Q All the senior elders did. Was any vote taken at that  
24 time of the elders regarding Donald Barnett's special  
25 status?

MOTHERWELL - Direct (By Mr. Rohan)

13 1 A Yes, there was.

2 Q What was the vote for?

3 A The vote was for, to cast in with the senior elders in  
4 support, affirmation joining with the action, to join  
5 with the action of the senior elders in placing Donald  
14 6 Barnett on special status and the vote was unanimous.

7 Q Was Donald Barnett informed of that vote?

8 A Yes.

9 Q After Donald Barnett was placed on special status, did  
10 you meet with him and discuss special status with him?

11 A Yes, I did discuss this with him.

12 Q Mindful of the Court's previous admonition about your  
13 private conversations with Donald Barnett, was this a  
14 private conversation you had with Donald Barnett?

15 A Yes, it was.

16 Q Could you tell me what you and Donald Barnett talked  
17 about in terms of his going or not going on special  
18 status?

19 A Well, he was, I can't think of exactly the right word,  
20 extremely agitated.

21 MR. PIERCE: Your Honor, if he is going to  
22

1 testimony, that is to say you cannot discuss any  
2 admission or confession or statement or indication  
3 that the pastor is expressing his participation in any  
4 sin or crime.

5 A He expressed his feelings and concerns to me regarding  
6 the special status and I replied back to him. And his  
7 feelings and concerns were, his feelings were one of  
8 terrific agitation and he said that the eldership was  
9 in great wickedness and, if necessary, he would split  
10 the church over this and he was in terrific distress  
11 as to how to respond to this special status.

12 My reply was, although it was difficult to reply  
13 to him because he was so agitated, my reply was it was  
14 reasonable, that the eldership was very serious about  
15 this and would follow through on it and that he needed  
16 to submit to it and, if he didn't submit to it, it  
17 would be the end.

18 Q (By Mr. Rohan) The end of what?

19 A Well, since the practice always was if the person  
20 broke a special status or defied a special status it  
21 resulted in disfellowship, every one I know of did, it  
22 would be the end of his ministry and his status in the  
23 church.

24 Q Did you tell him that he could lose his ministry at  
25 Community Chapel?

MOTHERWELL - Direct (By Mr. Rohan)

- 4
- 1 A On more than one occasion, yes.
- 2 Q Let's see, I want to go back in time for a minute to
- 3 during the eldership hearings. Did Jerry Zwack refer
- 4 to the five women who were testified about this
- 5 morning by number?
- 6 A Yes, he did.
- 7 Q And did Donald Barnett also refer to them by number?
- 8 A Yes, he did.
- 9 Q Did he refer to them in the same order in which Jerry
- 10 Zwack had testified to them about?
- 11 A Yes, they each referred to them. Don Barnett
- 12 referred -- Here's how it happened. They each gave
- 13 elaborate testimony about each of these five women and
- 14 many details and many quotes, each of them did about
- 15 the five. Don Barnett's response to Jerry was he
- 16 responded in locked step to Jerry's admonitions. And
- 17 so in other words with Jerry's prior testimony in this
- 18 order, Don Barnett gave his answer in the same order.
- 19 Q And during the exclusive eldership review sessions
- 20 that took place, did individuals discuss what Don and
- 21 Jerry had stated about these women?
- 22 A Yes, quite a bit.
- 23 Q Did they refer to these women by these numbers, one
- 24 through five?
- 25 A They did.

14 1 Q Was there any, to your knowledge, was there any  
2 confusion that anybody exhibited during the exclusive  
3 eldership review sessions as to which incident was  
4 attached to which number?

5 A No, at that point it was almost second nature to  
6 identify who the women were. It was talked at such  
7 length by Jerry and then by Don and in the same order  
8 that there was never, to my knowledge, any mention of  
9 confusion as to who was who.

10 Q All right. Can you tell me what is disfellowshipping  
11 at Community Chapel?

12 A Well, it's a Biblical removal of the person from  
13 fellowship at the church or with church members in any  
14 way at all. It's removal from the church body in  
15 total.

16 Q And what does that mean if someone was employed by  
17 Community Chapel at the time they were  
18 disfellowshipped?

19 A That their employment with Community Chapel would  
20 terminate coincidentally with the disfellowship.

21 Q What if someone had a volunteer position as counselor  
22 or elder or other unpaid position at Community Chapel?

23 A Any involvement with the church, paid, volunteer,  
24 ministry, would terminate coincidentally with the  
25 disfellowship.

1 Q While you were at Community Chapel and Bible Training  
2 Center as counselor, were people disfellowshipped?

3 A Oh, yes.

4 Q Who had the power to disfellowship someone in 1987 and  
5 through March 4 of 1988 at Community Chapel?

6 A The counselors disfellowshipped, the elders  
7 disfellowshipped, the ex-pastor had the power to  
8 disfellowship, although I don't believe he did, but  
9 any of those.

10 Q What about the senior elders, did they have that  
11 power?

12 A They were elders, of course, yes.

13 Q Were all 16 of the individuals at the elders' hearings  
14 either counselors, senior elders, or elders?

15 A Yes.

16 Q Could you tell me in practice in terms of  
17 disfellowshipping, did counselors that  
18 disfellowshipped individuals seek concurrence from  
19 anybody?

20 A In practice, there arose from time to time emergency  
21 situations and the counselors from time to time would  
22 disfellowship on the spot. Also at this time there  
23 was --

24 MR. PIERCE: I object and move to strike as  
25 unresponsive to the question. The question was did

1 the counselor seek concurrence.

2 MR. ROHAN: No. The answer could be  
3 sometimes they did and sometimes they didn't.

4 MR. PIERCE: That's not what this witness  
5 testified.

6 THE COURT: What did you testify?

7 THE WITNESS: Just now?

8 THE COURT: Yes.

9 THE WITNESS: Well, that not always was  
10 there concurrence sought or deemed necessary.

11 Q (By Mr. Rohan) Did that change from time to time?

12 A Yes, it did.

13 Q Can you tell me, let's take as of September of --  
14 Well, let me refer you to -- Showing you what's been  
15 marked as Exhibit 37, are you familiar with that  
16 document?

17 A Yes, I am.

18 Q And that's a September 25, 1987 memo to department  
19 heads from Jack Hicks?

20 A Yes, it is.

21 Q Regarding counseling matters. On or about that time  
22 or let me say from that time forward, from the date of  
23 this memo forward, who at Community Chapel was to  
24 concur in disfellowshippings?

25 A Well it says in -- I can read what it says here in

1 the fourth paragraph.

2 Q Why don't you do that.

3 A David Motherwell will have oversight of all counseling  
4 and spiritual matters for the department including  
5 uniform counseling standards, counselor development,  
6 counseling appeals, oversight of volunteer counselors,  
7 and counselor consultation regarding disfellowship.

8 Q What does that mean, counselor consultation regarding  
9 disfellowship?

10 A It means that if and when a counseling situation arose  
11 that the counselor involved thought that disfellowship  
12 was necessary that they would or could consult with me  
13 on that.

14 Q And were they to consult with anybody else?

15 A As a custom,, they didn't consult anyone else.

16 Q You disfellowshipped at least one individual after the  
17 date of this memo; is that correct?

18 A Yes, I did.

19 Q And you didn't seek anybody's concurrence, did you?

20 A No.

21 Q You had disfellowshipped at least three individuals  
22 prior to the date of this memo; is that correct?

23 A At least, yes.

24 Q Well, let me ask you this. At least three of the  
25 individuals you disfellowshipped prior to this memo

15

1 you also didn't seek anybody's concurrence; is that  
2 correct?

3 A That's right.

4 Q What happened on February 28th, 1988 in regards to the  
5 elders' hearings?

6 A What happened?

7 Q What happened on that day?

8 A On February 28?

9 Q Yes, sir.

10 A It was a Sunday and there was a church service and the  
11 church was unusually full and Don Barnett was present  
12 and spoke for at least an hour and a half regarding  
13 the service two nights before, the eldership hearings,  
14 his response to that service on Friday the 26th and  
15 what he thought about the eldership and many other  
16 things.

17 Q And in that service, he stated that he would not  
18 accept special status; is that right?

19 A That's right.

20 Q What was your reaction to his statement of that in  
21 that sermon?

22 A Well, my reaction was terrific distress. His attitude  
23 was one of malicious defiance of the eldership, their  
24 attempts to help him, their attempts to work with him  
25 and be patient and correct him and understand him and

1           forbear him and all the rest and his characterization  
2           of the hearings, his characterization of their  
3           handling of them, his characterization of all that had  
4           transpired over the previous six weeks just disturbed  
5           me, distressed me, appalled me. It was shocking. I  
6           don't know what else to say.

7    Q       Okay. And you had this reaction even though prior to  
8           that time he had told you privately he was not going  
9           to follow the special status?

10   A       He didn't definitively say that he was or wasn't, he  
11           said he didn't think he was and I pled with him to and  
12           I was, of course, distressed at his response to me and  
13           his response to the committee on the 25th of February.  
14           But at this sermon that he preached, he pitted, he  
15           made an attempt to split the church is the impression  
16           that I got. He put the church people in the middle of  
17           of this issue of him and the eldership and he  
18           demanded, so to speak, that they take sides and gave  
19           them a malicious mischaracterization of what had  
20           happened.

21   Q       Did the elders meet again the following day and  
22           discuss Donald Barnett's response the day before the  
23           28th?

24   A       Yes, the 29th.

25   Q       And you were present there?

16

1 A I was.

2 Q And you've already told us that a group of the elders  
3 went and asked Donald Barnett to come to the hearings  
4 and discuss it with them and he refused. What was  
5 discussed on the 29th at the elders' hearings?

6 A Well, all I could tell you, I was so -- On the  
7 evening of the 28th, I in deciphering through this  
8 sermon, if you could call it that that he preached on  
9 the 28th, and coming to whatever conclusions that I  
10 thought, I felt like there was absolutely no choice,  
11 that he must be disfellowshipped and removed from the  
12 church before the next church service.

13 And so I came to the eldership meeting on the  
14 29th wanting to open it up with that issue that he  
15 must be disfellowshipped for that defiant and  
16 schismatic sermon or whatever, all the rest that had  
17 happened prior to that and everything else. It wasn't  
18 just that. That we as elders and overseers of the  
19 flock, the eldership as the overseers of the flock,  
20 had no conscionable alternative other than to move to  
21 remove him from the church as soon as possible. And I  
22 said that, I had prepared a letter to send to him  
23 removing him, disfellowshipping him that I would send  
24 to him as a group if we didn't move to do it soon.

25 Q Were there discussions over the next several days

- 16
- 1 between the 29th of February and up to and including  
2 March 3rd regarding the possible disfellowshipment of  
3 Donald Barnett?
- 4 A Each day there were, yes. There was the remainder of  
5 that day on the 29th and on the 1st and on the 2nd and  
6 the eldership hearings now centered around the issue  
7 of disfellowshipping Donald Barnett.
- 8 Q Did you at one point during that week prepare a letter  
9 to be delivered later in the week to Donald Barnett?
- 10 A Yes, I did.
- 11 (Defendants' Exhibit No. 42  
12 marked for identification.)
- 13 Q You prepared two letters that week or at least drafted  
14 two letters that week; is that correct?
- 15 A Yes.
- 16 Q And the first letter was one you had at the elders'  
17 hearings on the 29th?
- 18 A That's right.
- 19 Q Can you tell me, is the document that is in front of  
20 you marked as Defendants' Exhibit 42, is that the  
21 second letter that you drafted?
- 22 A That is.
- 23 Q And that's your signature on page 2; is that right?
- 24 A That's right.
- 25 Q And you drafted this letter and it was delivered to

MOTHERWELL - Direct (By Mr. Rohan)

1 Donald Barnett on March 4; is that correct?

2 A It was, yes.

3 MR. ROHAN: I'd move for the admission of  
4 42.

5 THE COURT: Before I rule on that, I think  
6 we're going to recess.

7 (Court was at recess.)

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