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D-44	Letter, Jim Leach to Barnett & Senior Elders, 1/22/88	1239	---
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NOTE: THIS PAGE DOES NOT APPEAR IN ORIGINAL TRANSCRIPT FILES, AND IS ONLY INCLUDED FOR ORGANIZATIONAL CLARITY AND EASE OF USE.

(The following proceedings occurred on January 30, 1991)

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MR. ROHAN: You stated last night when we stopped that we would discuss the special status document, and I actually have -- I looked back at all of the discovery requests and the subpoena duces tecums in this case, and there was a subpoena duces tecum served on Mr. Motherwell prior to his November 13, 1990, deposition by Mr. Pierce, but it was limited to personal documents that were in Mr. Motherwell's possession.

Mr. Pierce states, in fact, at the deposition, "In response to the subpoena duces tecum, did you bring documents to this

these would be documents that you
your own personal documents as
documents at Community Chapel & Bible
; is that correct?" Answer, "Yes."
the witnesses will testify, and I
the question if necessary, that this
document was, in fact, not in his
session at that time, in fact was not
ument of his either, and, thus, the
unsel that they are unfairly
his action is erroneous.
on, I have a letter that I sent

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Mr. Pierce, "I
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1 along with a copy of this document addressed to
2 Mr. Johnson on January 21, 1991, which was a week
3 ago monday, so that was nine days ago, eight days
4 ago, enclosing that, and I actually enclosed it
5 based on some -- Mr. Johnson had pointed out that
6 some of the exhibits were duplicates, and when I
7 look through I notice that, in addition to that,
8 that one document was missing we had failed to
9 identify the week before.

10 So, there is no -- As far as I'm aware, there
11 were no requests for this document. Any requests
12 for production of this document were responded to
13 with answers that either the document had been
14 earlier produced or that the document was
15 available when Pastor Barnett was still on the
16 premises, and that was our objection to
17 documentary requests.

18 Pastor Barnett was on the premises from March
19 4, 1988, through almost the end of December of
20 1988 when Judge Quinn removed him. Pastor Barnett
21 had full access to all the documents in the church
22 at that time. We objected to documentary requests
23 either on the basis they had previously been
24 produced or that they had been given or that
25 Pastor Barnett was in the chapel at the time and

1 had access to them.

2 There was no motion brought to compel on that
3 ground and if they had thought that that was an
4 erroneous objection they should have brought a
5 motion to compel at that time. They chose not do
6 that. They chose to rely on serving Mr.
7 Motherwell with a request for production of
8 documents which Mr. Pierce, as we see in the
9 deposition, specifically limited to personal
10 documents in accordance with a prior discussion he
11 had with me, and I would ask at this point that
12 that document be admitted.

13 MR. JOHNSON: Your Honor, the document
14 is -- Well, first, Counsel misstates the facts
15 when he states that Pastor Barnett was on the
16 church premises from March 4 to the middle of
17 December. He was off the premises for some period
18 of time, a week or so, and then he was back on.
19 But, Your Honor has to keep in mind the context
20 that there was when he went back for approximately
21 three months, though he was supposed to be back on
22 the premises, in fact people would not give him
23 access to various parts of the facility. He had
24 tried to get keys, and things like that were kept
25 from him, and he has already also testified that

1 he did not -- that when he got back there were
2 documents that had been there before that were
3 gone. This is a document that should have been
4 produced and was not, and was not available in
5 either of the two depositions of Mr. Motherwell
6 last December and this January.

7 JUDGE DEIERLEIN: Putting aside the --

8 MR. JOHNSON: That's the problem, we
9 didn't have it when he took the deposition.

10 JUDGE DEIERLEIN: Putting aside the
11 issue of whether or not it was produced or should
12 have been produced at all, it seems strange to me
13 that anybody here, that is to say either party,
14 could claim to be surprised at the production of
15 one of the documents of the church or bible
16 training center. They were eminently familiar
17 with all documents or should have been. I find it
18 a little difficult to see where the surprise is.
19 Counsel may be surprised, I don't know; but --

20 MR. JOHNSON: A partial explanation of
21 that, the only thing -- I'll be quiet after this,
22 Your Honor. I know you want to issue a ruling.
23 The testimony is also that when Pastor Barnett did
24 really get back in control in June of 1988 that
25 the counseling records were then simply all

1 destroyed by the departing people in the
2 counseling center. That's the reason when he got
3 back in and really had full access the documents
4 were simply gone.

5 MR. ROHAN: Your Honor, they have yet to
6 point to an interrogatory, I mean a request for
7 production of documents or a subpoena duces tecum
8 with language that calls for this documents that
9 has not been objected to where they have not moved
10 to overcome that objection. So, if they're
11 surprised, they're only surprised because they
12 failed to either ask specifically for this
13 document or that they failed to move to compel if
14 they thought the grounds we had for objections
15 were improper grounds.

16 I don't believe it's incumbent upon me to
17 turn over to them, or my predecessor who I
18 thought, in fact, had turned over this document,
19 but I don't think it's incumbent upon me to turn
20 over any document where there's not an outstanding
21 request for the document that has not been
22 properly objected to.

23 JUDGE DEIERLEIN: I think I'll admit
24 this as being -- This is my understanding of the
25 foundation that it was a document of the Community

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Chapel & Bible Training Center relating to special status procedures and policies, and that no prejudice has been shown to me, and probably no demand has been made.

MR. ROHAN: So 39 is admitted, Your Honor?

JUDGE DEIERLEIN: Yes, 39 is admitted.

* * * *

DAVID MOTHERWELL, having been previously sworn on oath, resumed the stand and testified as follows:

DIRECT EXAMINATION

BY MR. ROHAN:

Q Mr. Motherwell, why don't you get out, if you would, if you could turn to Defendants Exhibit 39 and could you please read paragraph one and the small paragraph "A" underneath that out loud, please?

A Paragraph one?

Q And "A".

A "Uses of Special Status. 'Special Status' is another way of saying 'preference'. It can be used

1 in a number of ways: A) As a step before
2 disfellowshipping, an individual is restricted in
3 some way and his remaining in the church depends
4 on his keeping the conditions of the probation."

5 Q And did Donald Barnett keep the conditions of his
6 probation?

7 MR. PIERCE: Objection, Your Honor,
8 there's no showing that Mr. Barnett -- Pastor
9 Barnett was on probation. If it was to be issued
10 by a senior elder, we have no testimony that there
11 was a properly called senior elders board meeting
12 at which time such action could have been taken.

13 JUDGE DEIERLEIN: I find the form of the
14 question objectionable.

15 Q You testified earlier, I believe, that Pastor
16 Barnett was placed on probation -- excuse me,
17 placed on special status by a vote of all of the
18 elders; is that correct?

19 A I did, yes.

20 Q And you were Donald Barnett's counselor at that
21 time, also?

22 A Yes, I was.

23 Q And did you also vote on the putting him on
24 special status?

25 A I did, yes.

1 Q How did you vote?

2 A To put him on special status.

3 Q In your opinion, at that point, was he on special

4 status or not on special status?

5 A He was on special status.

6 Q And what, if anything, did he do in terms of

7 keeping the conditions of that special status?

8 A He defied it and rejected it, dismissed it.

9 Q Can you read paragraph two to this - to

10 Defendants' Exhibit 39, please?

11 A Number two, "Approvals. The handling of special

12 status is in the hands of the counselor involved.

13 Staff and volunteer counselors must report both to

14 the director of counseling and the counseling

15 center administrator when putting someone on

16 special status."

17 Q Who was the director of counseling during February

18 of 1988?

19 A I was.

20 Q Who was the counseling center administrator in

21 February of 1988?

22 A Chris Matthews.

23 Q And had both of these individuals voted to place

24 Donald Barnett on special status?

25 A Yes.

1 Q In February of 1988?
2 A Yes.
3 Q Thank you. Let's turn, if we might, to Exhibit 37
4 to your deposition -- I mean, excuse me,
5 Defendants' Exhibit 37. That is the September 25,
6 1987, memo regarding counseling from the
7 department -- to the department heads from Jack
8 Hicks. I had you read yesterday the first
9 sentence of the fourth paragraph. Could you now
10 read the second sentence of the fourth paragraph
11 on Defendants' Exhibit 37?
12 A "David will also be the primary interface with the
13 Pastor for all counseling and will be responsible
14 to the Pastor for the counsel giving an accurate
15 extension of the Pastor."
16 Q And what did you understand that to mean in terms
17 of your duty of primary interface?
18 A Well, questions that the counselors would have
19 that since Don Barnett was difficult to get a hold
20 of in depositions in Seattle, and depositions in
21 Tacoma, on vacation, and since I was his personal
22 counselor, and he would call me in regards to his
23 own problems that he was in, I had access to him
24 that was difficult if not impossible for others to
25 get, and, so, if he had a question on an

1 individual, how are they doing, he'd call me and
2 I'd ask a counselor, or if a counselor had a
3 question for him on how a particular individual
4 was doing or his understanding of that individual,
5 I'd convey that to Don Barnett.

6 Q Did these depositions and vacations take up 100%
7 of Donald Barnett's time?

8 A They didn't take up 100% of his time, but between
9 the depositions in Tacoma and Seattle, and the
10 various lawsuits, and his vacations, and his other
11 time off, writing sermons, his time was very
12 largely absorbed by that, and his own personal
13 problems that he was involved in with his wife and
14 Jerry Zwack and so forth.

15 Q Let me ask you one more question that I forgot to
16 ask. On Exhibit 39, which was the special status
17 guidelines, were the procedures in that document
18 followed by counselors at Community Chapel from
19 October of 1987 through March 4 of 1988?

20 A To my knowledge, yes.

21 Q Can you tell me what discussion there was at the
22 beginning of the elders hearings regarding
23 bringing in any live witnesses to Donald Barnett's
24 adultery?

25 A Well, we made the determination that we were going

1 to keep every option open to get the facts as
2 clear as we felt we needed to to make a
3 determination on Jerry Zwack's grievances and what
4 to do about them, and so while we didn't hold
5 ourselves that they absolutely must come,
6 witnesses must come, we gave ourselves the option
7 that if we felt it necessary that we could bring
8 them in. It was an option that we allowed
9 ourselves.

10 Q And was that option ever exercised?

11 A We didn't feel it was necessary.

12 Q And why did you feel it was not necessary to do
13 that?

14 A From Don Barnett's own admissions regarding his
15 conduct, and from his actions in response to
16 special status, and his actions and comments in
17 response to the eldership hearings themselves.

18 Q You heard the testimony of Susan Towrey Zwack in
19 front of the Court the other day?

20 A Yes, I did.

21 Q Was the information she related to the Court
22 brought up at the elders hearing?

23 A Yes, it was.

24 Q And you heard the -- Can you tell me --

25 MR. PIERCE: Your Honor, I'm going to

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object.

Q Turn to Exhibit --

MR. PIERCE: Excuse me, let me object. I move to strike that information that was provided -- may have been provided outside of the context of Pastor Barnett here which what I thought on the last ruling we had is that when Pastor Barnett and Mr. Zwack were present is where the testimony was supposed to come here, and I understood that was limited to the five people, and Ms. Zwack was not apparently present or nobody testified to her at that point in time, I don't believe, and so if we could limit it down I think that's more appropriate.

JUDGE DEIERLEIN: You may ask the question of this witness on voir dire or on cross-examination.

MR. PIERCE: Maybe I should voir dire at the present time.

VOIR DIRE EXAMINATION

BY MR. PIERCE:

Q Mr. Motherwell, was conversations regarding Ms. Towrey brought up outside the presence of Pastor

1 Barnett?

2 A I know for sure it was outside the presence of Mr.
3 Barnett.

4 MR. PIERCE: I renew my objection with
5 regard to discussions with regard to that.

6 MR. ROHAN: Your Honor, Mr. Motherwell
7 testified today -- excuse me, yesterday, that in
8 discussions he had with Donald Barnett at the time
9 the hearings were starting that Donald Barnett
10 wanted Mr. Motherwell and Mr. Burgin to be on this
11 committee, the elders hearing, so that they could
12 testify about what they actually knew from having
13 talked to Pastor Barnett, and having talked to
14 some of these women involved that they could
15 testify as to that, and that Pastor Barnett
16 realized that this would be done outside of his
17 presence, and he testified as to that yesterday.

18 Because he's testified to that, it's clear
19 that Pastor Barnett was aware that there would be
20 witnesses that would testify outside his presence.
21 He wanted Mr. Motherwell and Mr. Burgin there
22 because he felt that the evidence they gave would
23 be favorable to him.

24 So, on that basis, since Pastor Barnett knew
25 about it, as well as the fact that the legal

1 standard we're dealing with here is just cause,
2 one of the legal standards is just cause for legal
3 dismissal, in order to determine whether or not
4 there was just cause here for Pastor Barnett's
5 dismissal, we have to know what was in the elders
6 mind at the time that they took their votes and
7 the senior elders' minds. In order to know what
8 was in their minds, we have to know what was
9 stated at the hearings.

10 There is no case that has been cited by
11 Pastor Barnett that requires that he be present at
12 the hearings when this information came in.

13 If you look at a typical firing of an
14 employee for just cause, they may never, in fact,
15 confront the employee with the information they
16 have about him. An employer may chose to confront
17 the employee, but the employer does not have to
18 confront the employee with that information. All
19 that's necessary is that the information that the
20 employer had must be -- appear to a person under
21 those circumstances to be reasonable and credible.

22 Certainly the information that these
23 individuals were relating at the hearing where
24 Pastor Barnett was not present, I believe that
25 given these men that have already testified the

1 Court can determine whether or not that
2 information was reasonable and credible. But, the
3 Court can only make that determination after
4 having heard that evidence.

5 JUDGE DEIERLEIN: Whether this is
6 validly sustainable, the end result, I make no
7 finding. But, based upon the testimony of the
8 procedures as established by the testimony of Mr.
9 McKenzie, I'm going to allow the answer to stand.

10 MR. ROHAN: Thank you, Your Honor. Your
11 Honor, may I ask, just as a reminder, what Mr.
12 McKenzie has said?

13 JUDGE DEIERLEIN: Mr. McKenzie stated,
14 as I recall, among other things about the steps
15 addressing the two addresses, the rebuttals. Also
16 involved was the deliberation process by the
17 elders at which time they would indicate anything
18 else that they knew that should be considered by
19 the board. That is the way I understood his
20 testimony.

21
22

DIRECT EXAMINATION

23 BY MR. ROHAN:

24 Q Mr. Motherwell, was there a meeting or a series of
25 meetings on March 3, 1988, at John Harold's house

1 of the eldership?

2 A Yes.

3 JUDGE DEIERLEIN: John who?

4 MR. ROHAN: John Harold; he testified
5 the other day.

6 MR. PIERCE: Excuse me, Counsel, can I
7 have that date again?

8 MR. ROHAN: March 3, 1988.

9 Q (By Mr. Rohan) Could you turn to Exhibit 33,
10 please. How many votes do you recall were taken
11 while you were at John Harold's house on March 3,
12 1988?

13 A I recall two specific votes that were taken on
14 March 3.

15 Q And is Exhibit 33, which is minutes of an
16 eldership meeting on March 3, 1988, does that
17 concern one of those two votes?

18 A Yes, it does.

19 Q What was the second vote that you recall taking
20 place on March 3, 1988?

21 A The second vote was all 16 of us present, and we
22 went around the room one by one voting to take the
23 action and complete the disfellowship of Don
24 Barnett, and all 16 voted in the affirmative with
25 everybody present.

1 Q Could you turn to the next Exhibit, 34, and
2 Exhibit 34 is a letter signed by all of the elders
3 to Donald Barnett dated March 4, 1988. Does that
4 letter discuss those two votes?

5 A Yes, it does.

6 Q Could you read me the portion that discusses the
7 vote of the smaller group of elders that we saw on
8 Exhibit 33?

9 A In the second sentence, "The elders, not including
10 the senior elders, voted unanimously to put you
11 out of the church and they, then," and in addition
12 to that it says, "and they, then, made
13 recommendation to the senior elders who themselves
14 will vote and act on it."

15 Q And is there a reference in that document to the
16 second vote of all 16 to disfellowship Donald
17 Barnett?

18 A Yes, there is. It's in the one, two, third
19 paragraph where it says, "Therefore, we are forced
20 to disfellowship you because we have put others
21 out for far less than what you have been put out
22 for." And the we is signified by the 16 who
23 signed the letter on the last page, all 16.

24 MR. ROHAN: Let's turn, if we might,
25 now, to Exhibit 42, which we were in the process

1 of examining last night prior to our stopping for
2 the evening. I believe Your Honor, we were at the
3 point Mr. Motherwell had identified that he had --
4 that he was the author of Exhibit 42, and that it
5 had been delivered to Donald Barnett, and we had
6 offered it as an Exhibit and you were going to
7 make a ruling on that. We renew our offer to
8 admit Exhibit 42.

9 JUDGE DEIERLEIN: I have not read this.
10 What is the material?

11 MR. ROHAN: This is David Motherwell's
12 letter to Donald Barnett on March 4, 1988.

13 JUDGE DEIERLEIN: What is the relevancy
14 of it?

15 MR. ROHAN: Well, it discusses what
16 David Motherwell felt at the time in his capacity
17 as Donald Barnett's counselor.

18 JUDGE DEIERLEIN: Is that, in and of
19 itself, relevant or why isn't it cumulative?

20 MR. ROHAN: Well, it may very well be
21 cumulative based on the other evidence.

22 JUDGE DEIERLEIN: He has expressed his
23 own attitudes towards it and what he did by voting
24 in joining with the others. I don't know. As I
25 say, I haven't read this. So, if there's some

1 other basis, notice or something else, why that's
2 fine; but just to indicate how he felt about what
3 had transpired, I believe it's cumulative. He may
4 testify as to all of this.

5 MR. ROHAN: Thank you, Your Honor.

6 Q (By Mr. Rohan) After Donald Barnett's February 28
7 sermon defying the special status that you
8 testified about earlier, was there any point in
9 warning him at that point that he may be
10 disfellowshipped?

11 A Since he was already warned that if he would not
12 follow special status, accept the special status,
13 number one, I felt, no, there wasn't, and, number
14 two, the defiance that he manifested, and the
15 determination to do whatever he felt necessary to
16 resist the action of the eldership committee, and
17 what we felt the crises that he would stir up
18 amongst church members, I felt it was pointless to
19 warn him and that's why I said that he must be
20 disfellowshipped no later than the next church
21 service.

22 Q Why was Donald Barnett disfellowshipped?

23 A Well, in my mind, he -- out of his own testimony
24 and out of the testimony of others that he had
25 personal contact with, his behavior was dangerous

1 to church members, dangerous to himself, a gross
2 violation of the scriptural precepts, the lying,
3 the cover-up, the abuse of his office, the
4 manipulation of others, and his adamant and public
5 refusal to accept the minimal corrective measures,
6 restrictive measures to remedy this, and in that
7 refusal his attempt to divide the church from the
8 eldership and mischaracterize their attempts to
9 help him, there was no greater compiling of
10 evidence to disfellowship a man in all of my
11 memory in Community Chapel.

12 Q Sir, could you please turn to Exhibit 10, which is
13 in the, I think, the other notebook, the white
14 notebook.

15 MR. PIERCE: I'm not sure. This looks
16 like Volume 1 of them.

17 MR. ROHAN: Right. Could you hand that
18 to the witness.

19 Q Could you open that to Exhibit 10, page 27?

20 A Got it.

21 Q And could you read paragraph E-2, four, the second
22 to last paragraph on the bottom of the page?

23 A Paragraph --

24 Q E-2, four, the second to last paragraph at the
25 bottom of the page.

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A E-2, oh, wait a minute.

Q Paragraph number four at the bottom of the page.

A On page 27?

Q Correct.

A "A counselor shall always seek the concurrence of the pastor or his designee in putting someone out of the church or in emergency or aggravated matters, the pastor or his designee shall be notified as soon as reasonably possible."

Q Was there any evidence that you have that indicates that there was an emergency or aggravated matter as of the time you disfellowshipped Donald Barnett?

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somebody.

MR. ROHAN: Your Honor --

JUDGE DEIERLEIN: The question, and I'm addressing the both of you, the question was whether or not an event or an occasion arose subsequent to that time or in such a period of time, and I'm not aware that he was dealing with

19 the conversations but --

20 MR. ROHAN: My first quest

21 witness, Your Honor, was was there a

22 came up immediately prior to Donald Barne

23 being disfellowshipped that Mr. Motherwel

24 discussed with both Donald Barnett and wi

25 elders, and I brought that up because Cou

MOTHERWELL - Direct (By Mr. Rohan)

1 previously objected, although I think it's a wrong
2 objection, to things that were not told to Donald
3 Barnett.

4 I'm going to ask the -- my pending question

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incident that came up.

JUDGE DEIERLEIN: Sure, permit me to

answer.

MR. PIERCE: May I voir dire, Your

Honor, with regard to it?

JUDGE DEIERLEIN: Sure.

VOIR DIRE EXAMINATION

BY MR. PIERCE:

Q Mr. Motherwell, did that communication that you
expressed to Pastor Barnett occur at a time when
you asked Pastor Barnett whether or not he had
committed any type of illegal or sinful conduct?

A That wasn't the nature of my communication with
him.

Q Did you discuss at that time any action of Pastor

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Barnett?

A Alleged actions, yes.

Q You discussed that in your communication with Pastor Barnett as to whether or not, you know, some activity had occurred with Pastor Barnett which would have been sinful or unlawful; is that correct?

A He admitted to me --

Q No, excuse me, all I'm limiting it to is whether or not you had those discussions with Pastor Barnett as to sinful or unlawful things at that time.

A Alleged by others.

Q And you communicated with Pastor Barnett at that time with regard to sinful or unlawful acts; is that correct?

A Alleged by others, that's correct.

MR. PIERCE: You did. Your Honor, I have to renew my objection. Clearly the witness has been involved in communications that would be --

JUDGE DEIERLEIN: I'm just basing it on what has been laid here as to the foundation and I would sustain the objection.

///

1 A Before.

2 Q So, you didn't find out from Pastor Barnett any
3 response or communication with regard to the
4 matter?

5 A No.

6 Q So when you talked to the elders, you would not
7 have had any information as to whether or not
8 these things were true or correct from Pastor
9 Barnett?

10 A Which things?

11 Q This incident that apparently occurred a week
12 before the March 4 --

13 A Which incident?

14 Q I don't mean to be difficult.

15 A There are several things in my mind in terms of
16 what your referring to as an incident.

17 Q Counsel was just asking you a question about the
18 incident that arose and you apparently recalled
19 it.

20 A I have in mind an incident, yes.

21 Q Well, without discussing it, that's the incident
22 that I'm talking about. That was discussed with
23 the elders before you talked with Pastor Barnett;
24 is that correct?

25 A That's right.

1 Q You did not have any information from Pastor
2 Barnett as to whether or not it was accurate; is
3 that correct?

4 A I hadn't phoned him at that point. I phoned him
5 after that.

6 Q Did you obtain any type of verification of the
7 event from Pastor Barnett?

8 MR. ROHAN: After or before, what time
9 period?

10 Q With regards to the incident before you talked
11 with the elder group.

12 A Umm --

13 Q Yes or no.

14 A No verification. I felt it was unnecessary for
15 what I did.

16 MR. PIERCE: Your Honor, I renew my
17 objection with regard to communication that would
18 have been with the elders group outside the
19 presence of Pastor Barnett, especially by somebody
20 who is in a position of confidence and who should
21 be holding these aspects as privileged. He's
22 apparently the liaison between Pastor Barnett and
23 the elders group somewhat similar to a --

24 JUDGE DEIERLEIN: Do you want to make an
25 offer of proof?

1 MR. ROHAN: The offer of proof would be
2 that Mr. Motherwell will testify that Pastor
3 Barnett approached an either 15 or 16 year old
4 girl, came up to her and touched her, and kissed
5 her, and stated that, "I wish you were 16 so that
6 I could kiss you on the lips," and that Mr.
7 Motherwell reported this to the Child Protective
8 Services, and Mr. Motherwell reported this to the
9 elders, and it was part of the evidence that they
10 considered as of the time they disfellowshipped
11 him.

12 JUDGE DEIERLEIN: When was this supposed
13 to have occurred?

14 MR. ROHAN: I believe it occurred -- it
15 was a couple of days -- it was sometime in
16 February of 1988 or March, is that correct, Mr.
17 Motherwell?

18 THE WITNESS: March.

19 MR. ROHAN: March 1988.

20 THE WITNESS: The report.

21 MR. ROHAN: The report was in March of
22 1988, and I believe it had occurred some weeks
23 before, and I actually can't remember without
24 asking the witness. But, it was a recent event,
25 is that right?

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1 MR. PIERCE: Nowhere in any of these
2 documents have I seen any reference that these
3 people relied upon this, that they made notes with
4 regard to this claimed incident.

5 JUDGE DEIERLEIN: I think I'll sustain
6 the objection.

7
8
9 DIRECT EXAMINATION

10 BY MR. ROHAN:

11 Q Did Donald Barnett ask for appeal of this
12 disfellowshipping?

13 A No.

14 Q Could you tell me why Community Chapel, since
15 March of 1988, has not chosen another pastor?

16 A Well, the first reason that comes to mind is that
17 the Community Chapel has been a defendant in a
18 lawsuit that Don Barnett filed and we have been
19 reticent to fill a vacancy such as that with this
20 lawsuit ongoing. That's probably the overriding
21 reason. The other reasons are that the hurt and
22 offense that Don Barnett caused the church that
23 the church is working through so to speak and
24 getting over his offenses with them.

25 Q And that makes it difficult to put another person

1 in a similar position?

2 A It does.

3 Q Was there ever a disfellowshipping at Community
4 Chapel that was put to a vote of the congregation?

5 A Never to my knowledge.

6 Q One final question, on March 3 and March 4 you and
7 the elders and senior elders had the authority to
8 disfellowship Don Barnett; is that right?

9 MR. PIERCE: Objection, Your Honor,
10 leading.

11 JUDGE DEIERLEIN: You may cross-examine

12 him on that at a later time.

13 A We had authority, of course.

14 MR. ROHAN: No further questions, Thank
15 you, Mr. Motherwell.

16 JUDGE DEIERLEIN: I didn't get that.
17 You had authority?

18 THE WITNESS: Yeah, the elders, senior
19 elders, and counseling, is that your question --

20 MR. ROHAN: Yes.

21 THE WITNESS: -- to disfellowship Don
22 Barnett?

23 MR. ROHAN: Yes.

24 THE WITNESS: Yes, we did.

25 ///

1 CROSS-EXAMINATION

2 BY MR. PIERCE:

3 Q Mr. Motherwell, you testified that from March 4 up
4 to the present time that you have not had a new
5 pastor at Community Chapel because of the hurt
6 that the church has suffered; is that correct?

7 A That was one of the reasons.

8 Q If Don Barnett had agreed to the special status,
9 Don Barnett would still be the pastor for the
10 Community Chapel; is that correct?

11 A Well, that's speculation. If he would have
12 submitted to the eldership, agreed to the special
13 status at that time, yes, he would have remained
14 the pastor, yes. What would happen subsequent to
15 that, it's speculation.

16 Q You have talked about the status of the church
17 without a pastor after March 4, 1988 up to the
18 present. Isn't it true, Mr. Motherwell, that

19 ~~the members of the church at the present time are~~
20 are at the church at the present time?

21 A Of the original six?

22 Q Yes.

23 A Of the original 16 -- of the original 16, I
24 believe there's only one.

25 JUDGE DEIERLEIN: I'm not sure I got

1 your first question.

2 MR. PIERCE: Since March 4, 1988, Mr.
3 Motherwell talked about the change in the church
4 here. Of the original 16 elders who were there
5 for the eldership hearing, only one of them
6 remains at the present time.

7 THE WITNESS: If I understand your
8 question correctly.

9 Q There's been a substantial decrease in the amount
10 of people that have come to the services held by
11 the elders at Community Chapel from what there was
12 prior to March 4, 1988; is that correct?

13 MR. ROHAN: Your Honor, I'm going to
14 object at this point. I think it's both beyond
15 the scope of direct examination, as well as --

16 JUDGE DEIERLEIN: I'll allow this
17 question, but not to be pursued. I assume so, and
18 I don't know why or anything, and I think that's
19 immaterial.

20 A Prior to March 4?

21 Q After -- Shortly after Pastor Barnett was
22 disfellowshipped.

23 A I believe your first question was prior to March
24 4.

25 Q I'm talking about shortly after -- in March of

1 1988 after Pastor Barnett was disfellowshipped.

2 A There's been some decrease.

3 JUDGE DEIERLEIN: Some decrease.

4 Q Mr. Motherwell, you brought up the fact that in
5 September of 1987, I guess the fall of 1987, that
6 Pastor Barnett was not available for you to be
7 able to or for individuals to contact with regards
8 to the disfellowship aspects of the church; is
9 that correct?

10 A I believe that I mentioned he was very difficult
11 for people to get a hold of.

12 Q Well, you, yourself, were difficult to get a hold
13 of in the fall of 1987, too, weren't you?

14 A I don't know.

15 Q You were involved in court proceedings at that
16 time, weren't you?

17 MR. ROHAN: Objection, Your Honor, as to
18 Mr. Motherwell's availability.

19 JUDGE DEIERLEIN: Strike that part of
20 it.

21 MR. ROHAN: It's immaterial.

22 JUDGE DEIERLEIN: The question is
23 whether he was -- Were you hard to get a hold of,
24 that's the question.

25 A Not to my knowledge, no.

1 Q You weren't at Community Chapel on a full time
2 basis, were you?
3 A Yes.
4 Q You were in court proceedings; is that correct?
5 MR. ROHAN: Your Honor, I object to
6 this.
7 JUDGE DEIERLEIN: Well, I'm not drawing
8 any inferences from it.
9 A I've been in court proceedings for -- off and on
10 for a while. I don't recall the exact dates.
11 Q Is it true, Mr. Motherwell, you were in court
12 proceedings on the days immediately -- Well,
13 there's a memo, Exhibit 37, and it says September
14 25, 1987 on it, is that right?
15 A It does.
16 Q On the days immediately before that you were in
17 court proceedings, isn't that correct, testifying?
18 A I -- I don't know. I can't answer that. I've
19 been in court proceedings sometime in '87,
20 probably. I don't know what the dates were.
21 Q Does this transcript help you recall what days
22 that you were in court here? Maybe I can point to
23 the pages for you.
24 A September 23 and 24.
25 Q Do you recall the name of that case?

1 MR. ROHAN: Your Honor, I'm going to
2 object at this point to any discussion of this.

3 JUDGE DEIERLEIN: I'll sustain it.

4 Q Did you testify in any other court proceedings in
5 1987?

6 MR. ROHAN: Your Honor, I'm going to
7 object to this, also. I do not see how any of
8 this is relevant.

9 JUDGE DEIERLEIN: I'll sustain the
10 objection.

11 Q You indicated that Pastor Barnett was difficult to
12 get a hold of because he was working on sermons;

13 is that correct?

14 A That's not the only reason I indicated.

15 Q But that's one of the reasons?

16 A Yeah, one of them.

17 Q Do you know where he worked on his sermons at?

18 A Among other places, he worked at his study on
19 sermons. He also got them on vacation, he would
20 say, and different places.

21 Q Have you been in his study?

22 A Have I?

23 Q Yes.

24 A Yes.

25 Q And do you know if there's a direct line that goes

1 to Community Chapel and Bible Training Center's
2 main offices from Pastor Barnett's home?

3 A Yeah, there's two. I believe he has two phones
4 there, to the best of my memory.

5 Q There's a private line through the phone company
6 and also a direct line to all of Community Chapel;
7 is that correct?

8 A Right.

9 Q Do you know of anybody who has had a problem
10 getting a hold of Pastor Barnett?

11 A Do I know anybody who has had problems getting a
12 hold of Pastor Barnett?

13 Q Yes.

14 A Yes.

15 Q Who?

16 A The other counselors I worked with, the
17 administrator of the counseling center. I had --

18 Q Who is that?

19 A Chris Matthews. I, at times, had difficulty,
20 Jerry Zwack.

21 Q How many days out of an average week in the fall
22 of 1987 was the pastor gone from his parsonage?

23 A How many days in an average week?

24 Q Yes.

25 A Oh, he allotted certain hours on I think it was

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Tuesdays and Thursdays which he was said to be available for calls. The percentage of time that he was unavailable, it was more than half, I would say. I mean, that's just an estimate. It was more than half.

Q So, half the time he was available to take calls from individual members of Community Chapel; is...

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that correct?

MR. ROHAN: Objection;

mischaracterizes it. The witness half.

JUDGE DEIERLEIN: He m

question.

A Well, they could -- I mean, if t availability to contact him coin availability, then perhaps they contact.

Q When were worship services norma fall of 1987?

A On Friday evening, Sunday mornin evenings.

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A Normally they were, if

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1 you said that this memo, which was dated September
2 25, was instituted because he had been in a whole
3 bunch of depositions and was hard to get a hold
4 of.

5 A I don't believe I said that.

6 Q So there hadn't been a whole bunch of depositions
7 prior to the September memo; is that correct?

8 A I don't know how many there were. He had -- From
9 that date -- Prior to that date he had depositions
10 scheduled during September, I know during October,
11 I know during November, and so as of the date of
12 that memo and then afterwards there was numerous
13 depositions that he was scheduled.

14 Q For three months prior to September 25, 1987, can
15 you tell us the number of times you were unable to
16 get a hold of Pastor Barnett because he was in
17 depositions in Seattle or in Tacoma?

18 A No, I can't tell you the number.

19 Q Do you have any estimate as to the number?

20 A Oh, no. I mean, no, it's somewhere above one, I'm
21 sure.

22 Q Now, you say you did disfellowship Don Barnett?

23 A Yes, I did.

24 Q Now, was that part of the eldership group or was
25 that you individually?

1 A It was both.

2 JUDGE DEIERLEIN: Pardon?

3 THE WITNESS: Both.

4 Q And did you communicate your disfellowship to Don
5 Barnett -- your disfellowship, not the elder
6 group's disfellowship?

7 A I did.

8 MR. ROHAN: Could you read back that
9 last question?

10 (Whereupon, the question was
11 read by the Court Reporter.)

12 Q Was that by you in person?

13 A No. It was by a letter. I endeavored to do it by
14 person. I was hindered from it.

15 Q You said, I think in your direct testimony, that
16 the disfellowship of the elders was given by you
17 on March 4; is that correct?

18 A The disfellowship?

19 Q The elders disfellowship on --

20 A March 4?

21 Q -- on March 4, and that you delivered that to Don
22 Barnett on March 4; is that correct?

23 A Yes.

24 Q Where did you see Pastor Barnett on March 4 to
25 deliver the disfellowship?

1 A The patrol officer from the church, the civil
2 standby from the Normandy Park police, and myself
3 after being hindered from getting to his house the
4 first time, we tried to go by one of his
5 supporters who was in the road. We entered his
6 house. We wanted to go to his house. I wanted to
7 go to his house and tell him that he was. He got
8 word that we were on our way, apparently, and had
9 left. So, I left the letter laid out on his
10 study.

11 Q So, you didn't deliver it to Don Barnett on March
12 4, 1988, then, is that correct?

13 A I delivered it. Yeah, I delivered it to Don
14 Barnett and put it on his study desk.

15 Q ~~Let me see if I understand -- You left it at the~~

16 house; is that correct?

17 A That's correct.

18 Q You didn't deliver it to Don Barnett, personally?

19 A He got word that we were coming and left, or I was
20 coming, I guess. I don't know.

21 Q Did you personally deliver it to Don Barnett on
22 March 4, 1988?

23 MR. ROHAN: Objection; asked and
24 answered.

25 A He was gone when I arrived at his home. I believe

1 he was downtown filing suit against us.

2 Q What time did you go over to the house with Don
3 Barnett -- I mean with the patrol officer and
4 somebody else?

5 A The first attempt was somewhere around four in the
6 afternoon. We finally got there around five.

7 JUDGE DEIERLEIN: The first around four
8 and the second about five?

9 THE WITNESS: Yeah. The second was just
10 before twilight and of course the date was March
11 4, so it was about five o'clock.

12 Q Did you have with you a letter from the senior
13 elders to --

14 JUDGE DEIERLEIN: What?

15 Q Did you have a letter with you from the senior
16 elders?

17 A I did.

18 Q And you're the person who delivered that on March
19 4?

20 A I did.

21 Q 1988?

22 A Yes.

23 Q That was not directly to Don Barnett, it was left
24 at the house; is that correct?

25 A It was left on his personal desk, yes.

1 Q Did the elders at the eldership hearings discuss
2 with Don Barnett present their authority to take
3 action?

4 A They may have.

5 Q Tell me what you recall occurring while Don
6 Barnett was present with regards to discussion by

the eldership about their authority to take
action?

A I don't recall specific conversations in that
regard. The testimony was absorbed by he
answering Jerry Zwack's grievances and all the
testimony regarding his behavior with women. That
was the lion's share of all of the conversations
while he was present.

Q Did Don ever bring up the issue of their authority
at the eldership hearing?

A Well, he accused them -- accused the committee of
that, among a whole list of other accusations, on
February 25.

JUDGE DEIERLEIN: February what?

THE WITNESS: February 25, if my memory
serves me.

JUDGE DEIERLEIN: He accused them of
what?

THE WITNESS: He accused them of power

1 play and being that he would --

2 JUDGE DEIERLEIN: And what?

3 THE WITNESS: He accused them of a power
4 play and he elaborated on that accusation of a
5 power play on the 25th. So, in that sense, that's
6 the best answer I can give you.

7 Q Was there any other discussion by Don Barnett at
8 the eldership hearings with regard to authority
9 other than power play?

10 A None that comes immediately to mind. It was
11 primarily his accusation on the 25th in terms of
12 in light of your question.

13 Q Was there an issue of scriptural authority raised
14 by Don Barnett?

15 A Well, he raised -- He said, "What gives you the
16 authority to hold these hearings?" in a taped
17 message delivered to the eldership committee on
18 either February 3, I think the date was, and he
19 accused them of what authority they had to hold
20 the meetings and to be his judge. So --

21 Q At the eldership hearings did you say that you
22 knew of nothing that Don had done sexually within
23 the prior six months?

24 A I didn't say that, not to my memory.

25 Q You indicated that you didn't understand there to

1 be any type of vote of the congregation with
2 regards to removing the pastor; is that correct?

3 JUDGE DEIERLEIN: I'm getting just about
4 half of what you're saying. When he answers, I
5 don't know whether it's responsive. I don't know
6 what he's talking about.

7 Q You indicated that there was no vote of the
8 congregation with regards to removal of the
9 pastor; is that correct?

10 A That's correct.

11 Q Was there any other action taken by the
12 congregation either to show their approval or
13 disapproval of Don Barnett prior to March 4, 1988?

14 A No formal action, no.

15 Q Was there a near unanimous approval of Don Barnett
16 at the February 28 service?

17 A I'd never characterize it that way. I mean the
18 answer is no.

19 Q Were you there at the February 28 --

20 A For the whole thing.

21 Q Were you there at the February 28, 1988 service?

22 A For the whole thing.

23 Q Were you there during all of the services up to
24 March 4, 1988, during the year 1988 when Don
25 Barnett was present?

1 A I can't --

2 MR. ROHAN: Objection; that's
3 speculative.

4 JUDGE DEIERLEIN: I don't know what that
5 shows. Maybe he missed some, I don't know.

6 A I may have -- most of them, almost all of them.

7 Q On February 28 was there a vote taken, formal or
8 informal, of the congregation?

9 A My recollection says, no, there was not.

10 Q Was there a show of hands at the February 28,
11 1988, worship service?

12 A I'm not remembering any. There was no count, if
13 there were, that's for sure.

14 Q Well, you don't recall that meeting at all?

15 A I don't recall, but I do recall there was no count
16 of any type, no formal count of any kind.

17 Q Prior to the eldership meetings starting, did you
18 discuss prior with Pastor Barnett whether or not
19 the eldership could disfellowship him?

20 A He discussed it with me or he discussed with me
21 that he felt he would not follow the special
22 status and that he was going to do everything he
23 could to resist that.

24 Q Special status came up during the pendency of the
25 eldership hearings; is that correct?

1 A Pardon me?
2 Q Special status came up during the pendency of the
3 eldership hearings, correct?
4 A Oh, yes.
5 Q The eldership hearings started on January 25,
6 1988?
7 A Right.
8 Q Prior to January 25, 1988, did you discuss with
9 Don Barnett that eldership hearings may result in
10 any type of disciplinary action against him?
11 A Not prior to January 25. I did not.

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n which
ior to the

12 Q Did you contemplate or have any communic
13 any other elder about disciplinary actio
14 would occur at the eldership hearings pr
15 eldership hearings?
16 A Disciplinary you ask?
17 Q Yes.
18 A I may have, disciplinary.
19 Q Who would you have discussed that with?
20 A I frequently -- I may have. If I did, i
21 have been John Burgin. It would have bee
22 Peterson. It may have been. Disciplinary
23 have.
24 Q What are the disciplinary actions that co
25 taken against Pastor Barnett as you under

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ould be
stood

1 prior to January 25, 1988?

2 A Well, the most frequently exercised discipline --

3 among the most frequently exercised disciplines

4 was special status. That wasn't the only one.

5 Q What I asked you was what were the disciplinary

6 actions which could have been taken against Pastor

7 Barnett prior to January 25, 1988, as you

8 understood them?

9 A Special status, disfellowship, one or two. Those

10 are the two that immediately come to mind.

11 Q Would you have discussed either special status or

12 disfellowship with the elders Burgin or Peterson

13 prior to January 25, 1988?

14 A I may have. I don't recall.

15 Q Was there any discussion of any type of

16 disciplinary proceedings with the -- Well, first

17 let me strike that. Prior to the eldership

18 hearings starting January 25, 1988, there was pre-

19 eldership hearing meetings; is that correct?

20 A That's correct.

21 Q How many meetings were held?

22 A Two at least. I was in contact with Don Barnett

23 and so I wasn't at every one in their entirety

24 because I was also in contact with him.

25 Q How many of the pre-eldership hearing meetings

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were you at?

A I don't remember more than one. I may have returned to one after it was already commenced or left during its, you know, meeting.

Q You were the liaison between the eldership group and Pastor Barnett; is that correct?

A That's correct.

Q And did people tell you who were at the eldership meetings what had transpired at the meetings if you were gone?

A Yeah, probably the highlights perhaps.

Q Do you recall any discussions with any of the elders either at the meetings, at the pre-eldership hearing meetings, or through conversations where they told you what had occurred with regard to disciplinary proceedings involving Pastor Barnett?

A I don't recall any specific discussions regarding disciplinary actions. That was not the focus of these preliminary meetings. It was not paramount on our minds in the preliminary meetings at all. I do recall that.

Q Was there any intent when these hearings started on January 25, 1988, to take disciplinary action against Pastor Barnett, to your knowledge?

1 A To my knowledge, no.

2 MR. PIERCE: Excuse me, Your Honor, what
3 time do we take our morning recess?

4 JUDGE DEIERLEIN: Quarter to.

5 MR. PIERCE: I'll continue on.

6 Q (By Mr. Pierce) When you talked to Pastor Barnett
7 with regards to the eldership hearings coming up,
8 you didn't talk about any potential disciplinary
9 proceedings that could occur to Pastor Barnett as
10 a result of these hearings with the elders; is
11 that correct?

12 A To my knowledge, no.

13 Q Would you say that the purpose of the hearing, as
14 you and Pastor Barnett discussed it, was to
15 resolve Jerry Zwack's differences or complaints
16 and to get Jerry Zwack and Pastor Barnett back
17 together as brothers in Community Chapel?

18 A Jerry Zwack characterized it as resolving his
19 grievances, any grievances, and that was among the
20 major focuses of the hearings, and we communicated
21 that.

22 Q I'm asking you about you and Pastor Barnett. Was
23 that the main focus was to resolve Jerry Zwack's
24 complaints and to get Don and Jerry back together
25 as brothers in Community Chapel?

1 A Among our discussions, yes, between Don and I,

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6 Q Your first conversation with Pastor Barnett with
7 regards to the fact that the eldership might wish
8 to discontinue his was after the elders put him
9 on special status; is that correct?

10 A That's correct, if I understand your question.

11 He -- Insofar as I understood your question,

12 Q So, as far as you know from your communications
13 with Pastor Barnett, he had no idea of any

14 discontinue action that might be taken by the
15 elders from you as a liaison until after the
16 senior elders had put him on special status?

17 A None that I can recall. The emphasis of that was
18 certainly after he was put on special status.

19 Q You don't recall any other communication?

20 A Prior to the special status?

21 Q That's correct.

22 A No, I don't recall any, no.

23 Q Was anybody else acting as liaison between the
24 elders group and Pastor Barnett, other than you?

25 A I don't know who he talked with in the elders
group. He talked with, I know, Jack Hicks some.
I don't know how much, but I believe I was known
as that by him and the elders.

1 Q Is it your understanding that the bylaws of
2 Community Chapel, as they existed at that time

Pastor Barnett could not be removed
without his consent?

ing of the bylaws, apart from the
fellowship, was that they said words

not be removed from his position
something like that without his

didn't say that in the disfellowship
sly. But, it said that in various

to the best of my memory.
at the eldership hearings, the

the bylaws that said Pastor Barnett
removed without his consent?

ke -- Did I discuss? I really did
the discussions on the bylaws

a bylaws expert and I -- I was
the most part in those discussions.

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12 Q Did you discuss
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15 A I did not parta
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20 to the provision

21 Barnett could no

22 A We had -- Among
23 on the bylaws, b

24 know, real sharp
25 Q Were those discu

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1 the elders with regard to the bylaws as you recall
2 prior to the special status letter or after the
3 special status letter?
4 A Oh, I could not answer that. I -- I -- I can't
5 accurately answer that.
6 Q Would that have been in the morning meetings where
7 Pastor Barnett were not present or in the
8 afternoon meetings when Jerry Zwack or Don Barnett
9 were present?
10 A I couldn't answer that because you left out
11 another section of meetings that it may have been
12 in.
13 Q Is there another section of meetings where the
14 discussions between the -- among the elders with
15 regard to the bylaws occurred?
16 A The most likely section of the meetings would be
17 when the elders went in their eldership review
18 sessions. Although, I don't recall any specific
19 conversations about bylaws. So, but that, to the
20 best of -- Since I'm not a bylaw expert, and
21 wasn't at the time for sure, so if it occurred and
22 when it occurred was likely then.
23 Q At the time of these eldership hearings, were you
24 concerned at all with regards to a provision in
25 the bylaws that Pastor Barnett could not be

1 removed?

2 A That was not my chief concern, no. My chief
3 concern was his behavior and his destruction he
4 was causing the church.

5 Q The January 25, 1988, agreement was discussed with
6 Pastor Barnett; is that correct?

7 A January 25, yes, it was.

8 Q That was signed by Pastor Barnett on January 25,

9 1988, is that correct?

10 A That's correct.

11 Q That was at the eldership hearings?

12 A He signed it on his study desk in my presence.

13 Q How long did that meeting occur?

14 A Between he and I?

15 Q Yes.

16 A Anywhere between twenty minutes and an hour, or
17 thereabouts. I don't know how long.

18 Q Did you, at any time, discuss with Pastor Barnett
19 that the elders could not take any action that had
20 any teeth?

21 A The word teeth came up in our discussions later in

the eldership meeting. I don't recall hearing
that word discussed between he and I at that time.

When did this word teeth or tooth come up between

you and Pastor Barnett during the negotiations?

1 hearings?

2 A I don't recall it coming up between myself and the

3 Pastor. I mean we had many talks. I don't have a

4 specific recollection.

5 Q If Pastor Barnett indicated that you and he had a

6 discussion where it was discussed that the elders'

7 actions that they didn't have any teeth in their

8 actions, would you deny that that conversation

9 occurred?

10 A I couldn't deny it, but I don't have any

11 recollection of it.

12 JUDGE DEIERLEIN: Okay, I think we'll

13 recess at this point. We'll be at recess now

14 until a couple minutes after eleven o'clock.

15 (A recess was taken.)

16 THE WITNESS: I wasn't finished with my

17 last answer.

18 JUDGE DEIERLEIN: If he asks another

19 question, you're home free.

20 MR. ROHAN: Your Honor, I think he would

21 like to complete his answer.

22 MR. PIERCE: I guess we could ask

23 another question and counsel can help him out at a

24 later point in time.

25 MR. ROHAN: Your Honor, I think he

1 should be able to complete his answer.

2 JUDGE DEIERLEIN: Answer to what
3 question?

4 THE WITNESS: If the Court Reporter
5 would just repeat it --

6 JUDGE DEIERLEIN: The last notes I have
7 deal with discussions of the Board of the five
8 provisions of the bylaws.

9 MR. ROHAN: I think it was about the
10 teeth.

11 JUDGE DEIERLEIN: You said you didn't
12 pay much attention to it because that was not your
13 chief concern, something like that. Did I
14 mischaracterize what you said?

15 THE WITNESS: We were on a different
16 question.

17 JUDGE DEIERLEIN: I see. Okay. Do you
18 recall what you asked him last and all I want to
19 know is what he is about to say in context.

20 MR. PIERCE: As I remember, Your Honor,
21 there had been discussions between Pastor Barnett
22 and this witness with regard to whether or not the
23 elders had any teeth with regard to what they
24 could do and he said there was discussions that
25 had occurred or at least he couldn't deny it if

1 Pastor Barnett said it had occurred. He couldn't
2 recall or couldn't say sufficiently.

3 JUDGE DEIERLEIN: You may respond to
4 that.

5 A I did not use the word teeth. I don't remember if
6 he did or not.

7 JUDGE DEIERLEIN: Okay. You may ask
8 another question, sir.

9 Q (By Mr. Pierce) Mr. Motherwell, first of all, do

10 you recall when the pastor pre-elder's hearing
11 meeting of the elders occurred?

12 A To the best of my memory, the morning of January
13 25.

14 Q When did you first see the document which became
15 know as the January 25 agreement?

16 A Well, at the latest it would have been January 25,
17 perhaps the day before, but at least the 25th.

18 Q When was the first time that you recall seeing it?

19 A I don't remember.

20 Q Did you take it over to Pastor Barnett in the
21 afternoon or after the elders meeting on January
22 25 for him to sign?

23 A No, in the morning.

24 Q Did you leave the elders hearing that occurred in
25 the morning of January 25 to go over to Pastor

1 Barnett's house?

2 A I may have.

3 Q Tell us what you recall in that matter.

4 A Well, the elders hearings were at various times in

5 the morning, and I was busy shuttling back and

6 forth between them and Don Barnett, and my focus

7 was intermediary between the two, and I don't

8 recall if the meeting had ended, if the meeting

9 was in process, if the meeting was about to begin,

10 I mean with the preliminary meetings of the

11 elders. I just obtained the documents and

12 proceeded to his house in the morning.

13 Q What documents did you take over to his house in

14 the morning of January 25, 1988?

15 JUDGE DEIERLEIN: What did you say?

16 Q What documents did you take over to his house

17 on --

18 A The January 25 agreement that he signed and the

19 list of guidelines.

20 Q Prior to January 25, 1988, had Pastor Barnett

21 agreed to go to these hearings?

22 A He felt he had no choice and, therefore, agreed.

23 MR. PIERCE: Move to strike, Your Honor.

24 All I asked is a yes or no question.

25 Q Did he agree to go to the hearings.

1 A Yes, he did.

2 MR. PIERCE: I'll live with the last
3 answer, Your Honor.

4 Q When you discussed the eldership hearings with
5 Pastor Barnett, the terms of this agreement were
6 mainly in your mind wasn't it?

7 A No. The agreement speaks for itself.

8 Q When Pastor Barnett agreed to go to the hearings
9 prior to January 25, you didn't know what the
10 terms of the January 25, 1988 agreement were, did
11 you?

12 A I wasn't the author of the agreement.

13 Q You didn't have a copy to take over and discuss
14 with Pastor Barnett prior to January 25, 1988; is
15 that correct?

16 A He and I discussed that there would be an
17 agreement coming and approximately what it would
18 say before I brought it over. He was aware that I
19 was bringing the document, an agreement, and that
20 the eldership wanted his signature on it.

21 Q And when he agreed to go to the hearings that
22 became known as the eldership hearings, it was
23 based upon what you and he had discussed without
24 the agreement having been typed up; is that
25 correct?

1 A You'd have to rephrase your -- There's too many--
2 Q When you and Pastor Barnett agreed to go to the
3 hearings, it was based upon what you had told him
4 your understanding of what the agreement would
5 say; is that correct?
6 MR. ROHAN: Speculation as to what was
7 in Pastor Barnett's mind.
8 JUDGE DEIERLEIN: Well, he may answer if
9 he can.
10 A Well, there was no certainty that he would agree
11 to the hearings until he put his John Henry or
12 John Hancock on the dotted line. We felt he
13 would, but no one was certain until he signed on
14 the dotted line.
15 Q Had he indicated to you that he would agree to go
16 to these hearings prior to January 25, 1988?
17 A He indicated that he would go to the hearings,
18 yes.
19 Q Okay.
20 A Although, we --
21 Q Prior to January 25, 1988, did you have any
22 written document, any agreement for Pastor Barnett
23 to sign which would relate to the hearings?
24 A Not to my memory.
25 Q When you discussed the matter with Pastor Barnett,

1 you told him what you understood the eldership
2 hearings would entail; is that correct?

3 A I did.

4 Q What did you tell him the eldership hearings would
5 entail?

6 A They would entail the airing of Jerry Zwack's
7 grievances regarding his liaisons and misconduct
8 with women. That's what I told him that they
9 would entail.

10 Q And you recommended to Pastor Barnett that he sign
11 an agreement to have the eldership hearings
12 because if he didn't it would appear he was
13 abusing his office and being in charge of his own
14 hearings; is that correct?

15 A I did, yes.

16 Q But you didn't talk to him about what would happen
17 as a result of these hearings, did you?

18 MR. ROHAN: I object. There's no way
19 anybody can know what would happen in the future,
20 at that time.

21 JUDGE DEIERLEIN: This is what he
22 discussed with Pastor Barnett, not what he
23 thought.

24 A There was a discussion as -- well, yeah, there was
25 some discussion as to the results, yes.

1 Q What were the discussions with Pastor Barnett with
2 regards to what would result from the elders
3 hearings?

4 A He was concerned that if Jerry would give these
5 grievances -- air these grievances to the
6 eldership and put the matter in their hands, that
7 Jerry would take it no further from there. That
8 was his concern. And, so, we discussed that. he
9 wanted to know what I thought and so on.

10 Q What did you discuss would happen as a result of
11 the elders hearing Jerry Zwack's complaints?

12 A That if those grievances were left in the hands of
13 the eldership to dispose of it that Jerry Zwack
14 would not -- we believed he would not take it to a
15 broader audience.

16 Q So your discussions with Pastor Barnett were to
17 the effect that this would allow for an airing of
18 Jerry Zwack's complaints which were to result
19 from -- which would result in avoiding publication
20 of that to a greater audience; is that correct?

21 A If the hearings were not held, Jerry promised to
22 take it to a broader audience. So, Don Barnett's

23 concern was let's hold the hearings to prevent or
24 that it be taken to a broader audience and that
25 the elders come to their, you know, decision on

1 what to do with the information.

2 Q Did you discuss with Don Barnett prior to January

3 25, 1988, what the elders would do or could do?

4 A That was not ever the focus of our conversations.

5 It was -- His concern was Jerry Zwack and what

6 Jerry would do if the hearings didn't commence.

7 That was his overriding fear and focus.

8 Q Did anyone communicate to Don Barnett prior to

9 January 25, 1988, to your knowledge, that these

10 eldership hearings could result in special status

11 or disfellowshipping to him?

12 A Not to my memory, no. Prior to January 25, no,

13 not to my memory.

14 Q You got up at the eldership hearings -- excuse me,

15 got up and spoke to the congregation on March 4,

16 1988; is that correct?

17 A I did.

18 Q And you told them that you were going to be

19 speaking as Don Barnett's counselor; is that

20 correct?

21 A I was his counselor.

22 O You told the congregation you would be speaking to

23 them as his counselor; is that correct?

24 A I'm not aware of precisely what I said. I may

25 have said that.

1 Q Mr. Motherwell, I have a document which I think
2 were your notes that you made up for the comments
3 for the March 4, 1988, service. Maybe you can
4 review the first line and see if you recall from
5 that that your note would indicate that's what you
6 would be doing or did at the service on March 4,
7 getting up and talking to the congregation as Don
8 Barnett's counselor.

9 A That's what it says.

10 Q Is that -- These notes are ones that you would
11 have prepared for using at the service; is that
12 correct?

13 A Well, its been so long ago, first of all, I don't
14 recall exactly. Second of all, there were some
15 notes that had some handwritten inserts and these
16 don't have any, and whether it was at this service
17 these handwritten inserts were in there or another
18 file, I don't know. But, there is none in this
19 one.

20 Q I'm not asking you to identify it for us. I just
21 wanted to refresh your memory that these notes
22 were prepared for purposes of that sermon.

23 A Now, I don't know because there was -- John Burgin
24 inserted a few statements and I don't know if it
25 was this service, or the other service, or one of

1 the other services, and so I can't say for certain
2 that those are the notes.

3 Q This one says David Motherwell's comments --

4 MR. ROHAN: Objection, Your Honor, to
5 him reading from a document that's not admitted as
6 evidence.

7 JUDGE DEIERLEIN: He can identify it.
8 Is that what it says?

9 Q David Motherwell's comments for Friday p.m.
10 service, March 4, 1988; is that correct?

11 A That's what that says.

12 Q One, Reverend, is your document number 02-10-10?

13

~~JUDGE BEIRDAWAY: Is that in your document?~~

14

question. I don't even know what you're referring
15 to here. What about this?

15

16

16 Q Mr. Motherwell, when you got up to talk at that
17 service on March 4, 1988, that was following your

17

and taking over

18

going to Pastor Barnett's house a

19

the letter; is that correct?

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A That's correct.

21

Q And you wanted to tell the congre

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happening; is that correct?

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A That's correct.

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JUDGE DEIERLEIN: Oh, I know what
exonerate means.

MR. PIERCE: Well, I want to know what
his understanding is.

JUDGE DEIERLEIN: Well, I think he uses
the language the same as all the rest.

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1 A Prior to March 28 or after March 28 they, in my
2 mind, were, absolutely.
3 Q You mean February 28?
4 A February, I'm sorry.
5 Q Prior to February 28, or between February 15 and
6 February 28, they were not as serious to justify
7 disfellowship; is that correct?
8 A Frankly, no, that's not correct. They were --
9 They were, in most cases, to justify
10 disfellowship. We were going to give the man a
11 last of the last of the last second chances to see
12 if there was a slimmest hope of correction or
13 repentance or change. We were going to give him
14 the last desperate gasp of hope of allowance to
15 see if something could be done to help him.
16 Q What corrections were proposed by the eldership
17 with regards to the other charges which justified
18 removal of Pastor Barnett?
19 A Well, you'd have to ask the rest of the elders. I
20 had discussions with him on what was outside
21 issues outside of his -- his offenses outside of
22 strictly the special status issues.
23 Q If he had agreed to the special status, would
24 there have been corrective measures necessary with
25 regard to other charges which justified

1 disfellowship?

2 MR. ROHAN: Your Honor, this is
3 hypothetical and I think we're wandering pretty
4 far afield with this, but I haven't objected up to
5 now.

6 JUDGE DEIERLEIN: He may answer.

7 A Your question is if he would have submitted to the
8 special status would there have been other
9 charges, disfellowshippable charges, is that what
10 your question is?

11 Q Would there have been other corrective actions
12 necessary with regard to the charges which you
13 believe justified his disfellowship?

14 A There may have been.

15 Q Did you discuss that with the elders or senior
16 elders?

17 A I discussed offenses that he was committing
18 outside of the parameters of the special status,
19 yes, I did.

20 Q The senior elders put him on special status; is
21 that correct?

22 A Well, not quite. The entire eldership joined in
23 that action.

24 Q The senior elders called you to come talk to them
25 with regards to special status; is that correct?

1 A That's correct.

2 Q You went and talked to them with regard to special
3 status?

4 A That's correct.

5 Q Did you discuss with them that there should be
6 other corrective action besides just the area of
7 the special status without being alone with women,
8 going on vacation with women?

9 A I discussed offenses outside of his offenses with
10 women, either it was there or in that area, yes.

11 Q Did you indicate to the senior elders that you
12 felt there should be corrective action required
13 with regards to these other charges that required
14 disfellowship?

15 A I may have.

16 Q Do you recall?

17 A I recall many conversations regarding his
18 attitude, his switching the issue, blaming his
19 wife, all of that.

20 Q Excuse me, I'm limiting it to the time when you
21 went and talked to the senior elders with regard
22 to the special status.

23 A I may have.

24 Q Do you recall talking to them with regards to
25 that?

1 A I may have.

2 Q Do you recall anything at the present date of what
3 you would have said at that time?

4 A Specifically, no. I can give you the gist of what
5 my presence was there for. I did, I believe, in
6 direct.

7 Q Did Don Barnett at the hearings, at the elders
8 hearings, indicate that he had repented to God for
9 his sins?

10 A He may have said that.

11 Q Do you recall that?

12 A In his characterization of sins and repentance, as
13 I said, he may have said that, yeah.

14 Q Did he say he repented to the church?

15 A In the eldership hearings?

16 Q Yes.

17 A No, I don't remember that. In the eldership
18 hearings, you're talking about when he was there?
19 No, I don't remember that.

20 Q Did you talk with Don Barnett, prior to the
21 eldership hearings starting, about this being an
22 opportunity for Don to repent for his actions?

23 A I think I did.

24 Q And during?

25 A To the eldership, yeah, I think I did.

1 Q You testified that after March 4, 1988, there was
2 no pastor at Community Chapel and Bible Training
3 Center, correct?

4 A I believe I did, yes.

5 Q The only way that a person could be
6 disfellowshipped after March 4, 1988 was through a
7 counselor; is that correct?

8 A That's not correct.

9 JUDGE DEIERLEIN: Pardon?

10 THE WITNESS: Not correct.

11 Q Was it through a counselor or a person acting as a
12 counselor?

13 A Counselor and elder, I think that maybe probably
14 covers it pretty close.

15 Q Showing you that you had already opened here, Mr. Motherwell --

16 already opened here, Mr. Motherwell --
17 MR. ROHAN: Which deposition is that
18 Counsel?

19 A November 1990.

20 Q November 13, 1990, at page 37, at line 10 thro
21 16 a question was asked, "Would it be correct
22 say that as of June 1, 1988, the only procedur
23 that you knew of for removing a person from
24 Community Chapel and Bible Training Center wou
25 have been through an individual acting as a

1 counselor or congregant?" And you answered at
2 that time, "That's roughly accurate, as far as I
3 understand your question."

4 Was that a correct reading of the question
5 and answer in that deposition?

6 A That's what this says.

7 Q And was that answer of yours true and correct at
8 the time you gave it in the deposition?

9 A It's in context with the rest of that page.

10 Q I just want to know was that answer you gave true
11 and correct at that time?

12 A As far as it was asked and qualified there, yes.

13 Q Was anyone else at the elders hearing acting as a
14 counselor for Don Barnett other than you?

15 A You could say that in terms of their -- You could
16 say that in terms of this action to disfellowship.

17 Q The action to disfellowship wasn't discussed among
18 anyone on January 25, 1988, was it?

19 A No. I'm sorry, no, I'm not listening to your
20 question.

21 Q On January 25, 1988 --

22 A Right.

23 Q -- who else besides you was acting as a counselor
24 for Don Barnett?

25 A No one.

1 Q Did that change at any time during the eldership
2 hearings up to March 4, 1988?

3 A In terms of anyone else labeled as his counselor,
4 no, that did not. I was his counselor through

5 March 4.

6 Q Excuse me, my question was not whether anybody
7 else was labeled. My question was, was anyone
8 else acting as a counselor for Don Barnett after
9 the commencement of the eldership hearings on
10 January 25, 1988?

11 A Well, in terms of counselors can and do
12 disfellowship, then do you characterize the whole
13 group -- you could characterize the whole group as
14 doing what a counselor would do because the whole
15 group disfellowshipped him. And, so, you could
16 characterize each individual as doing something
17 that a counselor would do in their actions to
18 disfellowship him.

19 MR. PIERCE: Your Honor, I move to
20 strike. My question was not whether or not you
21 would characterize. I want to know if anyone was
22 acting as his counselor after January 25, 1988.

23 JUDGE DEIERLEIN: To the best of your
24 ability, was anybody acting as counselor besides
25 yourself?

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THE WITNESS: Aside from what I just got through saying, no.

MR. PIERCE: Your Honor, I move to strike the previous material.

JUDGE DEIERLEIN: I don't know where you're headed, either. I don't understand his answer and I don't understand your question. What are you aiming at?

MR. PIERCE: My question is the foundation for other material.

JUDGE DEIERLEIN: Well, let's focus on that, then, that may be of significance. I don't know what significance to put on it right now, quite frankly.

Q Who else was acting as a counselor for Don Barnett

after January 25, 1988, in your opinion?

A In my opinion, each individual member of the committee did what a counselor would do in the role of counselor disfellowshipping a congregant.

Q Did you talk with Don Barnett during the pend

of the eldership hearings with regards to any the other people, any of the other elders that were there acting as a counselor for him?

A No.

Q You testified on direct examination that you

1 became a minister at Community Chapel and Bible
2 Training Center; is that correct?
3 A I was given a minister's license January 1, 1986.
4 Q And would it be correct that you would not act
5 differently as a minister than as a counselor?
6 MR. ROHAN: Your Honor, that's vague and
7 ambiguous.
8 JUDGE DEIERLEIN: In what area, Mr.
9 Pierce?
10 Q Can you answer that?
11 JUDGE DEIERLEIN: In what area?
12 MR. PIERCE: All I'm doing is setting a
13 foundation with regards to the ministerial role
14 that Mr. Motherwell had.
15 JUDGE DEIERLEIN: Well, ask him that
16 because we're getting bogged down in semantics
17 here, and I don't know where you're headed, and I
18 don't know what he's trying to answer or trying to
19 say, that's the problem I'm having.
20 Q Were you -- Were your actions as counselor for Don
21 Barnett in a means of ministering to him?
22 A I was in the counseling ministry.
23 Q What's the counseling ministry?
24 A Counseling people, they tell you their problems,
25 you give them your input and solutions;

1 counseling.

2 Q And that's part of your actions as minister at
3 Community Chapel and Bible Training Center?

4 A That's part of my actions as a counselor. I was
5 called a counselor. I was never referred to -- he
6 never referred to me as his minister. He referred
7 to me in every case as his counselor and I
8 regarded myself as his counselor.

9 Q Did you consider Don Barnett disfellowshipped as
10 of February 29, 1988?

11 A I did.

12 Q But you didn't take any action to disfellowship
13 him at that time; is that correct?

14 A I told the group of 16 that we should as a group
15 move immediately to disfellowship him and if they
16 wouldn't I would.

17 JUDGE DEIERLEIN: When you say February
18 29, I don't know whether that was a mistake or
19 whether you meant after February 28.

20 MR. PIERCE: February 29, it was a leap
21 year.

22 JUDGE DEIERLEIN: Was it? But the
23 significance is that it was after the 28th date?

24 MR. PIERCE: Yes, Your Honor.

25 Q (By Mr. Pierce) Disfellowship, as you understood

1 it at Community Chapel, required the approval of
2 the pastor prior to March 4; is that correct?
3 A No.
4 JUDGE DEIERLEIN: Did you say no?
5 THE WITNESS: I did say no.
6 Q Showing you what is your December 9, 1988,
7 deposition, Mr. Motherwell, at page 78, at lines
8 15 to 20, can you read those questions that are
9 there?
10 A Line fifteen, question, "Does disfellowship
11 require approval of the pastor?" Answer: "Prior
12 to March 4, 1988, yes." Question: "Did the
13 procedures for disfellowship also include appeal
14 of disfellowship?" "Yes." By Mr. Rohan,
15 "Objection --
16 Q You've gone beyond the area I asked for. Now, Mr.
17 Motherwell, was your answer true and correct at
18 the time you gave it in the deposition in December
19 of 1988?
20 A It was an incomplete answer.
21 Q When that question was asked and that answer was
22 given, was your answer true and correct?
23 A It was a true and yet incomplete answer.
24 Q And you were sworn prior to this deposition in
25 December of 1988; is that correct?

1 A Yes.

2 Q I think on your direct examination Mr. Rohan had
3 asked whether or not Don Barnett had appealed the
4 disfellowship.

5 A I believe he did.

6 Q And you said, no, he hadn't.

7 A That's right.

8 Q Would the appeal go to you?

9 A It may. I -- I don't know who he would send an
10 appeal to.

11 Q When a person is disfellowshipped, is the appeal
12 made to the counselor who disfellowships him?

13 A I've had congregants that I've disfellowshipped
14 appeal to me to be reinstated, yes, I have.

15 Q Is that the procedure that's set up at Community
16 Chapel for appeal of disfellowship?

17 A You -- You're asking me -- I don't know what
18 you're asking me. I mean, I'm sure there are
19 other procedures, but I've had people I've
20 disfellowshipped appeal to me for reinstatement.

21 Q On March 4, 1988, you were in charge of the

~~counseling center; is that correct?~~

~~by the direction of counseling.~~

~~You were familiar with the procedures for~~

disfellowship at that time; is that correct?

1 A Yes.

2 Q Were you familiar with the procedures at Community
3 Chapel and Bible Training Center with regards to
4 appeals?

5 A Familiar, yes.

6 Q What was the procedure that was set up at
7 Community Chapel and Bible Training Center with
8 regards to appeals?

9 A The practice?

10 Q I asked you what the procedure is, excuse me.

11 A Well, I can tell you the way the procedure was
12 acted out.

13 Q Well, first let's talk about what the procedure is
14 and then you may be able to testify as to how it
15 was acted out. Let's concentrate on what the
16 procedure is.

17 A Well, you're asking me to recall. I believe
18 you're leading me to tell you what I know the
19 bylaws to say about appeal.

20 Q Do you know what the bylaws say with regard to
21 appeal?

22 A Not exactly I don't, but I can give you a rough
23 thing that's in my mind.

24 Q Since March 4, 1988, have you acted to amend the
25 bylaws at all?

1 A Oh, boy, since March 4?
2 Q -- 1988, have you acted to amend the bylaws?
3 A Including March 4, including the date of March 4,
4 yes.
5 Q You're not a senior elder; is that correct?
6 A Now I am, yes.
7 Q Have you, as a senior elder, taken any steps to
8 amend the bylaws at Community Chapel and Bible
9 Training Center?
10 A I have not signed any new bylaws, no.
11 Q When you became a member of the Board of
12 Directors, did you review the bylaws for Community
13 Chapel and Bible Training Center?
14 A I didn't review them at all, at that time.
15 Q You've read the provisions with regards to
16 disfellowship and appeals, is that correct, that
17 are set forth in the bylaws?
18 A I probably have, yeah.
19 Q And are you familiar with what the procedures are
20 for appeal from disfellowship as set out in the
21 bylaws of Community Chapel and Bible Training
22 Center as it existed at that time?
23 A I can't quote you what they say. I'm vaguely
24 familiar with them. I have the gist in my mind.
25 Q Tell us what the procedures are that you

1 understand were for appeals of disfellowship as
2 set forth --

3 MR. ROHAN: Your Honor, I object. He
4 said he had the gist of the understanding.

5 A My understanding is that a disfellowshipped person
6 can appeal I believe it's to the senior elders if
7 he wants.

8 Q The appeal procedures do not set forth that they
9 contact you as the counselor; is that correct?

10 A I don't know if they do or not. I'm just telling
11 you what happens. That's what people do. If I
12 disfellowship them, I'm the last people they
13 contact unless they pick up the phone and say, "I
14 want to get back in the church, how do I do it,"
15 if I disfellowshipped them. It's just practice.

16 Q The practice of what you're talking about is
17 reinstatement for a person; is that correct?

18 A Yeah, appeal of -- That's what reinstatement is,
19 the appeal of disfellowship, overturning the
20 disfellowship.

21 Q Would you agree that special status is notice to
22 an individual that their behavior, beliefs, or
23 directions have been contrary to normally accepted
24 or allowed beliefs or actions at the church?

25 A Please repeat your question.

1 Q Sure. Would you agree that special status is a
2 notice to the individual that their behavior,
3 beliefs or directions have been contrary to
4 normally accepted or allowed beliefs or actions at
5 the church?

6 A I'm sorry, I'm fading. One more time, please.

7 Q Would you agree that special status is notice to
8 the individual that their behavior or beliefs or
9 directions have been contrary to normally accepted
10 or allowed beliefs and actions of the church?

11 A Yes.

12 Q Who determines -- Prior to March 4, 1988, who
13 determined the allowed beliefs at Community Chapel
14 and Bible Training Center?

15 A ~~The church has determined allowed beliefs on an~~
16 ongoing basis.

(Discussion off the record.)

18 MR. ROHAN: Exhibit 10 is right in front
19 of him, if you're looking for Exhibit 10.

20 THE WITNESS: Page 16, Exhibit 10, I
21 guess.

22 Q (By Mr. Pierce) Looking at article one, section
23 A-2, would you agree that provisions of the bylaws
24 of Community Chapel as of March 4 provided that
25 the pastor would be the spiritual overseer of the

1 church?

2 A You just quoted what this says.

3 Q You agree that that's what it provides; is that
4 correct?

5 A That's what this says.

6 Q At paragraph three, it provides that the pastor
7 will be in charge of all services of Community
8 Chapel and Bible Training Center; is that correct?

9 A That's what this says.

10 Q ~~And paragraph four provides that the pastor has~~
11 prerogative to administer and lead as Pastor
12 Barnett felt the Holy Spirit lead him prior to

that says, but it's close.

or has prerogative to

s the Holy Spirit shall lead
says.

ferred to in there as of

o your disfellowshipping

t; is that correct?

it provides that the pastor

question and advise any and

rch including its governing

14 A That's not quite what

15 Q Well, it says the past
16 administer and lead --

17 A -- services as he feel
18 him, that's what that

19 Q And the him that's ref
20 March 4, 1988, prior t

21 him, was Pastor Barnet

22 A That's right.

23 Q At section five there,

24 has the authority to q

25 all members of the chu

1 body as he feels lead; is that correct?

2 A Number five says that.

3 Q Skipping over to page 17 at paragraph B-2, it

4 provides that the original pastor, having

5 established the original church by the direction

6 of God and with the support of the congregation

7 shall have oversight of the same until the pastor

8 agrees to change; is that correct?

9 A That's what that says.

10 Q That original pastor is Donald Barnett; is that

11 correct?

12 A I believe so, right.

13 Q And would you agree that he is the one who

14 determines what the beliefs were to be at

15 Community Chapel and Bible Training Center,

16 according to the bylaws?

17 A According to those bylaws, as of that date, that's

18 what they say.

19 Q Did you discuss this provision that Donald Barnett

20 was to have the oversight of the church until the

21 pastor agreed to change when you had your

22 eldership review hearings?

23 A No.

24 Q Did you discuss the provisions of the bylaws at

25 all with regards to the pastor's authority at

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(After a lunch break, the following proceedings were had.)

THE COURT: We are now on the record.

MR. SHAPIRO: If I might leave --

THE COURT: Yes, you and Mr. Wiggins may be excused.

MR. SHAPIRO: Thank you.

CROSS EXAMINATION (Continued)

BY MR. PIERCE:

Q Mr. Motherwell, with regards to special status that the elders wished for Donald Barnett to be put on, you told Donald Barnett if he didn't go along with the special status, that he would be disfellowshipped; is that correct?

A I said that that would be the end.

Q What did you mean, "the end"?

A The end of his ministry. What I mean, I meant the end of his ministry and the end of his fellowship in the church.

Q Would that occur by being disfellowshipped?

A Yes.

Q Did you tell him that?

A I said that that would be the end.

Q Did you tell him that he would be disfellowshipped if

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1 he didn't go along with special status?

2 A I can't remember if I used those words. I do remember
3 saying that would be the end. He had no question, he

4 never asked me what the end was. He knew what the end

5 was.

6 Q ~~And the disfellowshipping, as you recall, was on~~

7 February 15th; is that correct?

8 A Disfellowship?

9 Q Special status letter, excuse me.

10 A Yes.

11 Q Between February 15th, 1988 and March 4th, 1988

12 Donald Barnett, to your knowledge, take any step

13 which would have violated that special status p

14 that the senior elders put him on?

15 A Absolutely. He refused the special status.

16 Q Did he take any action that was prohibited in the

17 special status letter, between February 15th, 19

18 March 4th, 1988?

19 A Between February 15th and March 4th, 1988, to our

20 knowledge, yes, he did.

21 Q What, to your knowledge, did Donald Barnett do, in

22 your presence, where you were able to observe it,

23 which would have violated that, or did violate the

24 provisions of the special status?

25 A It wasn't done in my presence.

1 Q So you don't have any actual knowledge that it
2 occurred?

3 A With my own eyeballs I did not see him violate it. He
4 refused it.

5 Q Did Pastor Barnett know you were going to be giving
6 evidence at the elders' hearings?

7 A Oh, yes.

8 Q Prior to January 25th, 1988 did you tell Pastor
9 Barnett that you would be providing evidence at the
10 elders' hearings?

11 A He knew that I had evidence and we discussed me
12 providing evidence and we discussed John Bergin
13 providing evidence. That was one of the reasons I was
14 selected, because I had evidence.

15 Q This is prior to January 25th, 1988?

16 A Yes.

17 Q Did you explain to him what evidence that you would be
18 providing to the elders group?

19 A Not in detail, no.

20 Q Did you give him a summary of what evidence you would
21 be providing to him?

22 A Yes. Well, in part, yes.

23 Q What was the summary that you said you would be
24 telling the elders group at the elders' hearings?

25 A Well, in part, this is it in total as the evidence.

1 regarding the Lake Chelan woman, for instance.

2 Q Is that what you told him, Don Barnett, that you would
3 be testifying to?

4 A He and I had a discussion about it.

5 Q Prior to January 25th, 1988, did you tell Pastor

6 Barnett that you would be telling the elders group

7 with regards to the Lake Chelan woman?

8 A He told me that I would.

9 Q And did you talk to Donald Barnett, that your
10 testimony would somehow relate to the grievances of
11 Jerry Zwack?

12 A I didn't feel I needed to say that. I mean if there
13 ever was an assumption between us, that had to have
14 been one of the most assumed things that existed
15 between the two of us.

16 Q Did you have any information that the Lake Chelan
17 woman would be brought up at the elders' hearings?

18 A Did I have information that she'd been brought up?

19 Q Yes.

20 A Yes, I did.

21 Q Other than from the letter of Jerry Zwack?

22 A Yes.

23 Q Who told you that this information would be brought up
24 at the elders' hearing, if it wasn't from the Jerry
25 Zwack letter?

1 A Jerry Zwack and Don Barnett.

2 Q And prior to the hearings did you obtain this

3 information from Jerry Zwack, as to what testimony

4 would occur at the elders' hearings?

5 A In a very broad, he didn't give me his nine-hour

6 discourse, he just gave me his broad gist of what he

7 would say.

8 Q Did this occur with the other elders present?

9 A Some, perhaps, you know, some of the meetings.

10 Q Some of the pre-elders' hearings meetings Jerry Zwack

11 was present and was able to give a summary of what

12 facts he would testify to at the hearing; is that

13 correct?

14 A Yeah, a rough summary at one of them, perhaps.

15 Q Did the elders talk at any of these pre-elders'

16 hearings about what they would do as a result of

17 Jerry's testimony, if what he had told them in the

18 summary form was true?

19 MR. ROHAN: Your Honor, I'm going to object.

20 Counsel is now taking what the witness said, it was

21 some elders he had a meeting with, and turning it into

22 all the elders were present at this meeting. There's

23 no testimony as to that.

24 Q At the meeting where some of the elders were present.

25 THE COURT: Yes, just some.

1 A You have to repeat your question, please.

2 Q This is one of the pre-elders' meetings that we're
3 talking about; is that correct?

4 A Right.

5 Q At that time did the elders discuss what disciplinary
6 action would be taken against Don Barnett if this
7 evidence, information that came from Jerry Zwack in
8 summary form, was accurate?

9 A All right, that's a different question, I think. You
10 asked now what discipline would be taken if this
11 information was accurate?

12 Q Just want to know what discussions there were with the
13 elders group with regards to this material.

14 A That Jerry Zwack was about to give?

15 Q That Jerry Zwack had provided, in summary form, to
16 this meeting.

17 A Well, I recall no specific discussions regarding the
18 material that Jerry Zwack would bring, other than it
19 was about women, and Don Barnett's problem with women,
20 and he had a lot of testimony to give, and that we'd
21 have to wait and hear it, and outside of that --

22 Q You testified earlier that you got information about
23 the Lake Chelan woman from Jerry Zwack prior to the
24 hearing, at one of the pre-elders' hearings, meetings.

25 A No, I said from Jerry Zwack. It may have been in a

1 meeting, it may have just been from Jerry Zwack.

2 Q Did you discuss the evidence that you understood would
3 be coming at the hearing with Don Barnett prior to
4 January 25th, 1988?

5 A It was never a focus of our discussions. It was
6 briefly referred to at various times, when I discussed
7 with Don Barnett. It was never, he felt like he knew
8 a lot of evidence.

9 Q Did you tell Don Barnett, prior to January 25th, 1988,
10 that it would be the end for him if he didn't
11 participate in the elders' hearings?

12 A No. January 1 of --

13 Q January 25th.

14 A No. I said that prior to February 28th, and not about
15 the elders' hearings about special status

1 purposes of this meeting?

2 MR. ROHAN: Objection, vague and ambiguous as
3 to "representative".

4 A Which meeting?

5 Q For the elders' meetings.

6 A I was used that way, yes.

7 Q You're a senior elder at the present time; is that
8 correct?

9 A Yes.

10 Q You're an elder at the present time?

11 A Yes.

12 Q Was that distinction between elder and senior elder
13 removed at some point in time?

14 A It was.

15 Q Maybe you can correct me, are you both of those?

16 MR. ROHAN: I'm going to object to this line
17 of questioning. I think all of this took place after
18 March 4th.

19 THE COURT: I don't think it even applies to
20 our question here, does it?

21 Q When you talked with the senior elders with regards to
22 the special status, did you consider those
23 communications with them privileged?

24 MR. ROHAN: I'm going to object --

25 THE COURT: Yes, you better describe what you

1 mean by "privileged".

2 MR. PIERCE: Your Honor, this witness
3 previously testified that there was --

4 THE COURT: I can't help it, I think it's an
5 improper question. You tell him what you mean and
6 then I'll require him to answer. It's an improper
7 question to a lay person. I don't think many lawyers
8 could properly define what privilege, what they meant
9 by a privilege.

10 MR. PIERCE: Your Honor, maybe I can just
11 talk about a point of procedure here. There's a
12 number of depositions by the defendants here, and
13 maybe rather than taking the time to read those
14 portions into the hearings here, we may save the
15 portions of Mr. Motherwell's, and just do them on
16 rebuttal.

17 Would that be, or would you like me to do the
18 process of interrupting each time I want to --

19 THE COURT: I would like you to say, didn't
20 you on such a day say so and so and so.

21 MR. PIERCE: That's impeachment, Your Honor.
22 I'm thinking about the direct evidence, and I was
23 thinking it would be better to do it all at once, at
24 least faster.

25 MR. ROHAN: Your Honor, I don't believe he's

1 allowed to use a deposition as testimony, if the
2 witness is available. This witness is certainly
3 available.

4 THE COURT: He was asking if it would be
5 expedient to do it that way.

6 MR. JOHNSON: He's a party, Your Honor, he's
7 not a witness.

8 THE COURT: Okay, well, let's get back to --

9 MR. PIERCE: I'll save it to the end and do
10 it in rebuttal, Your Honor.

11 Q (By Mr. Pierce) Did you talk with the senior elders
12 with regards to alternatives to special status?

13 A Only to my memory, the conversation was --

14 Q I didn't ask what the conversation was. I wanted to
15 know whether you discussed or not.

16 The conversation was whether or not to put him on

17 special status, and there was no question. Special

18 status was -- I don't know.

19 Q I'll show you the deposition.

20 MR. ROHAN: What deposition are you referring
21 to, Counsel?

22 Q I'll show you your deposition of December 9, 1988, Mr.
23 Motherwell, and Lines six to 10, did the following
24 question --

25 MR. ROHAN: What page, Counsel?

1 MR. PIERCE: Page 64. I'm sorry.

2 MR. ROHAN: What lines again, please?

3 MR. PIERCE: Lines six to 10.

4 Q The following questions and answered occurred: "Was
5 there any discussion of alternatives to the special
6 status that was imposed upon Don Barnett", and the
7 answer, "Again, that was privileged information, but
8 yes, there was alternatives discussed." Is that the
9 correct --

10 A That's fine.

11 Q -- question and answer from the deposition?

12 A That's what that says.

13 Q Was your answer true and correct at that time?

14 A Well, that was closer to the event than I am now, and
15 as far as I know, then, that was what I felt was true,
16 yes.

17 Q What were the alternatives that you discussed with the
18 senior elders, to special status?

19 A Doing nothing and just seeing if we could, as a group,
20 persuade Don Barnett to stop what he was doing, and we
21 thought, folly, don't do it.

22 Q I assume one alternative for special status is that
23 you can talk with the individual involved, and see if
24 you can have them change their habits; is that
25 correct?

1 A That's among, right.

2 Q You didn't do that with Don Barnett, did you?

3 A Did I?

4 Q No, you went and talked with Don Barnett and said it
5 was the end if he didn't take the special status,
6 didn't you?

7 A I did.

8 Q You didn't talk to him about alternatives, did you?

9 A The special status was already voted on and agreed to
10 by the three senior elders and the group of 16.

11 Q When you talked to the "senior elders", did you talk
12 to them about using alternatives, rather than special
13 status?

14 A I already answered that, I believe. It was a
15 discussion as to whether or not we do nothing and, or
16 to put him on special status as the senior elders
17 drafted.

18 Q You had used alternatives other than special status
19 when you want somebody to change their habits; is that
20 correct?

21 A I know of no formal alternatives, other than just as I
22 have already stated to you.

23 Q Did you discuss special status for the first time on
24 February 15th, 1988?

25 A It was either then or very very close to then.

1 Q By "close to then", would that mean that you discussed
2 it maybe a day or two prior?

3 A Maybe, but I'm not sure.

4 Q Did you go and talk to Don Barnett after your first
5 discussion of special status with either the elders or
6 the senior elders?

7 A Repeat the question.

8 Q Did you go and talk to Don Barnett prior to February
9 15th, 1988, with regards to special status?

10 A They were the authors of the letter, and they were
11 also sending the February 15th letter to him, and he
12 needed to get the letter from them, to explain the
13 special status, before anybody discussed it with him.

14 Q In other words, before the special status letter comes
15 out, you would not talk with Don Barnett with regards
16 to it?

17 A No, he needs the letter first.

18 Q The letter put him on special status, didn't it?

19 A Yes.

20 Q If he gets the letter, what opportunity is there for
21 you to speak to him with regards to alternatives to
22 special status?

23 A The only alternative I mentioned is as to whether or
24 not he would go on special status, that's the only
25 alternative, either on or off.

1 Q In your deposition of December 9, 1987 at page 64,
2 lines 11 to 15, weren't the following questions asked
3 and answer given: "What alternatives are there for
4 special status, Answer, "If the person can be
5 persuaded to the behavioral or belief requirements
6 that would make special status unnecessary."

7 A You read that correctly.

8 Q And that was your answer at that time?

9 A Yes.

10 Q And that answer was true and correct at that time?

11 A At that time, yeah.

12 Q Did you believe yourself that alternatives were
13 available or could be used to change behavioral action
14 of Don Barnett?

15 A After his demeanor at the hearings and his speech of
16 February 3rd, I believed that we just needed, the
17 senior elders needed to pursue what they initiated,
18 and the rest of the eldership needed to join in with
19 them, and he needed to be on special status.

20 Q Did you know that Don had indicated that he had had no
21 sexual problems at the hearings, and that he may have
22 corrected those problems?

23 A Oh, he said that, but no one believed that. He said
24 that --

25 Q I'm sorry, there's no question right now.

1 A -- many times.

2 Q Did you believe that Pastor Barnett had been speaking
3 false doctrine from the pulpit for a period of time
4 prior to the elders' hearings?

5 MR. ROHAN: I'm going to object, Your Honor,
6 to the term "false doctrine". I think that's pretty
7 vague.

8 THE COURT: I don't have that letter of
9 Zwack's before me. Was that one of the accusations,
10 one of the grievances?

11 MR. ROHAN: I don't believe so, Your Honor.

12 THE COURT: Was it?

13 MR. PIERCE: I don't believe so, Your Honor.

14 MR. ROHAN: It's irrelevant to this entire
15 case, Your Honor.

16 THE COURT: What is the relevancy?

17 MR. PIERCE: Your Honor, I believe this
18 witness will say and testified at his deposition that
19 that was the reason that he was put out of the church,
20 in his opinion, and that's his testimony. All I'm
21 asking is a foundation question right now.

22 THE COURT: Yes or no.

23 A The question was did I believe that he was preaching
24 false doctrine.

25 Q From the pulpit for a period of time prior to the

1 elders' hearings.

2 A I believe that contained in his preaching were
3 restings of the scripture and falsehoods, yes.

4 Q Was the fact that Don Barnett was speaking false
5 doctrines from the pulpit the reason that you thought
6 he was a risk to the corporation?

7 A No.

8 MR. ROHAN: What is the date and page
9 reference, Counsel?

10 Q This is from your deposition of December 9, 1988, page
11 52, lines 14 to 23. Were the following questions and
12 answer given at that time: Question, "Now, you said
13 there was a consensus of the elders that Don Barnett
14 was a risk to the corporation, church, ministry,
15 congregation". Answer, "Correct".

16 Question, "Did you agree that Don Barnett was
17 a risk to the corporation?" Answer, "Absolutely".

18 Question "Why" Answer, "He was preaching

from the pulpit."
correct reading of this deposition?

ays.
answer given to that question at
questions that was propounded to

is?
incomplete.

19 false doctrine fro

20 Is that a

21 A That's what that s

22 Q Was that a correct

23 the time to those

24 you, Mr. Motherwell

25 A It was enormously

1 Q Were your answers at that time accurate to the
2 questions given?
3 A Well, accurate, but very incomplete.
4 Q When you went into these hearings on January 25th,
5 1988, you already had in your own mind that Don
6 Barnett was preaching false doctrine from the pulpit;
7 isn't that correct?
8 A January 25th?
9 Q 1988?
10 A That wasn't in my mind, I mean that wasn't centered in
11 my mind, no.
12 Q Earlier in your testimony you said that --
13 A You didn't give me a date.
14 Q -- prior to the elders' meetings you believed that Don
15 Barnett was preaching false doctrines from the pulpit,
16 and you said yes.
17 A I thought you said prior to March 4th. I did.
18 Q Did you, on January 25th, believe that Don Barnett had
19 been preaching false doctrines from the pulpit?
20 A I didn't give it, that was not the issue in my head
21 prior to January 25th.
22 Q Did you have any intent to remove Don Barnett from his
23 position as a pastor when you went into those elders'
24 hearings as his representative on January 25th, 1988?
25 A No, I wanted him helped and saved and corrected and

1 mended. I wanted him helped.

2 Q You understood the exclusive eldership review hearings
3 to be a time when the testimony of Jerry Zwack and Don
4 Barnett would be reviewed; is that correct?

5 A That's a partial definition. That's not the complete
6 definition of the eldership review sessions. It was a
7 lot more than that.

8 Q Do you know if Don Barnett had any questions with
9 Scott Hartley prior to the beginning of the January
10 25th, 1988 elders' hearings?

11 A I'm positive he did.

12 Q With regards to these elder hearings?

13 A I have no idea.

14 Q Did you communicate to Scott Hartley that Don Barnett
15 wanted him present?

16 A I don't remember.

17 Q Did you communicate to Scott Hartley that he was
18 supposed to go out and investigate on behalf of Don
19 Barnett?

20 A Did I indicate -- wait, repeat the question. He was a
21 senior elder, so --

22 Q Did you indicate to Scott Hartley that Don Barnett
23 wanted him to go out and investigate and bring in
24 facts for purposes of this hearing?

25 A To that question, I don't remember. I do recall him

1 requesting that Scott be there, because he was a
2 senior elder.

3 Q And did you talk to Scott Hartley?

4 A Oh, many times.

5 Q About the elders' hearings?

6 A Yes.

7 Q About Don Barnett requesting them?

8 A Yes.

9 Q Did you tell Scott Hartley that Don Barnett wanted him
10 to go out and investigate and bring back facts for the
11 elders' meetings?

12 A I don't recall that.

13 Q How did Scott Hartley get that information, that he
14 was supposed to go out and obtain information at the
15 request of Don Barnett to bring in for any further
16 review hearings?

17 A I don't know.

18 Q Correct me if I'm wrong, I thought you said in your
19 direct testimony that Don Barnett knew that Scott
20 Hartley was going to be bringing evidence in because
21 he had requested him to come to these proceedings?

22 A No, I said John Bergin and myself. I don't believe I
23 mentioned Scott Hartley.

24 Q So you didn't provide any information to Don Barnett
25 that either Scott Hartley and Lanny Peterson would be

1 providing any evidence at the elders' hearings; is
2 that correct?

3 A Did I provide information -- your questions, you know,
4 are sometimes like -- (indicating)

5 Q I'll say it again.

6 A Like the side of an aircraft carrier.

7 Q Did you tell Don Barnett that Scott Hartley and Lanny
8 Peterson would be bringing evidence in to the elders'
9 hearings?

10 A I don't remember saying that I said to Don Barnett
11 that Scott Hartley and Lanny Peterson would. Don
12 Barnett said to me that he knew that I would and John
13 Bergin would.

14 Q You didn't say anything about any other evidence being
15 provided by either Peterson or Hartley to Don Barnett
16 ~~enter do the elders' hearings standing: is that~~
17 correct?

18 A He --

19 Q I'm just asking if you --

20 A Well, I don't recall a specific statement made between
21 us regarding this very question, but --

22 Q Thank you. Does Exhibit 39, Mr. Motherwell, the
23 Special Status Procedures and Policies which the court
24 has admitted as an exhibit here, you were familiar
25 with this starting October of 1987?

1 A Yes.

2 Q Did you ever ask how these procedures applied to the
3 pastor of Community Chapel, who could not be removed?

4 A No.

5 Q Did you ever ask or communicate with Don Barnett with
6 regards to the Special Status Procedures and Policies
7 as it applied to him?

8 A No.

9 Q Counsel asked you about Paragraph 1-B on page one of
10 Exhibit 39, and it talks about as a means for the
11 church government to discipline a member.

12 A Yes.

13 Q What was your understanding of the provisions and the
14 bylaws for the church government to discipline Don
15 Barnett?

16 A There's nothing in the bylaws that prohibit the
17 discipline of Don Barnett, to my knowledge.

18 Q The bylaws do provide that he cannot be removed from
19 his position, doesn't it?

20 MR. ROHAN: Your Honor, this is
21 argumentative.

22 THE COURT: We just keep going around and
23 around. I know what they provide. I don't know what
24 you want to get from this witness. If you tell me,
25 I'll let you go.

1 MR. PIERCE: Your Honor understands my point,
2 and that's as far as I'm going with regards to that
3 matter.

4 Q I believe you gave a definition for disfellowshipping
5 in your direct examination which indicated that
6 disfellowshipping at Community Chapel is the biblical
7 removal at Community Chapel of a member; is that
8 correct?

9 A That's not all I said, but I said that.

10 Q Well, maybe I wasn't able to write it all down. Can
11 you tell me, what is disfellowship at Community
12 Chapel?

13 A It's the expulsion of the member from fellowship with
14 the church or interface with the church or anything to
15 do, if he's employed or she's employed, he's no longer
16 employed or holds an office, they no longer hold an
17 office, they're disfellowshipped and removed from the
18 church and all the church entails or is or includes or
19 is identified as connected with the church.

20 Q Disfellowship is basically biblical; is that correct?

21 A Yeah. Yes.

22 Q Did you believe that the -- did you ever write a
23 letter to Don Barnett that his ministry was over?

24 A I wrote a letter in August of 1987 that I believe, if
25 I could quote it, that said --

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Q All I want to know is if you did write a letter to him, that's all I'm asking.

MR. ROHAN: Your Honor, I think he should be allowed to answer that question, finish his answer.

THE COURT: In substance or in form did you indicate that you thought his ministry was over?

THE WITNESS: It said that, well, I'd have to have the letter, but it said that the form of his ministry was over, yes.

Q That was in August of 1987?

A Yes, form, the ministry as he knew it.

Q There's no further questions. Thank you very much.

In August of 1987 when you wrote to him that his ministry was over, did you mean that he would no longer be the pastor of Community Chapel?

A I did not say that, to my memory.

Turning to your deposition of November 13th, 1990, page 95, lines three through 11, were the following questions and answers given at that time: Question, "In August of '87 when you wrote to him that his

~~ministry was over, did you mean that he would no longer be the pastor of Community Chapel?~~

22 longer be the pastor of Community Chapel

23 Training Center? Answer, "I didn't speci

24 Question, "That's not what I'm a

25 that what you meant?" Answer, "Well, if

and Bible
fy."
asking. Is
that was

1 included in his ministry, yes. I just wrote that your
2 ministry is ending. He made no objections to that
3 statement that I wrote. I can't recall exactly what I
4 wrote, but it was that essence."

5 Is that a true and correct reading?

6 A That's what that says.

7 Q Was that answer that you gave at that time accurate?

8 A Yes.

9 Q When you started these eldership hearings on January
10 25th, 1988, did you believe that his ministry was over
11 at that time?

12 A No, because this says is ending, it didn't say it had
13 ended, it says ending.

14 Q On January 25th, 1988 did you believe that Don
15 Barnett's ministry had ended?

16 A I said no.

17 Q At the time of the eldership hearings it was the
18 intention of this eldership committee to ask for
19 witnesses to corroborate the testimony of Zwack or

20 ~~or Barnett's in that, correct?~~

21 A It was the option that they held, if they deemed it
22 needed.

23 Q Is that because there's a biblical provision that
24 provides for what should happen under those
25 circumstances?

1 A The correlation between the two is not, between what
2 you're saying, was not made.

3 Q Are you familiar --

4 A Matthew 18:15?

5 Q Yes, you are familiar with that, aren't you? Can you
6 tell us what it says without looking at a bible?

7 A No, I don't know if I can or not. I mean I don't want
8 to misquote in this setting. I can paraphrase it from
9 the pulpit, but not --

10 Q Matthew 18:16 says, "If he does not listen, take one
11 or two others along with you, so that every fact may
12 be established on the testimony of two or three
13 witnesses"; is that basically correct?

14 A That's fine.

15 Q Is that basically correct?

16 A Yes. Do you want me to read it?

17 MR. ROHAN: Could you state what edition of
18 the bible this is?

19 THE WITNESS: This is the Saint Joseph
20 Edition, New American Bible. I don't know if I have
21 ever seen one of these.

22 Q Well, go ahead and take a look at that provision and
23 see if that's basically the same provision you
24 understand from the bible.

25 A "If your brother sins against you, go tell him his

1 fault between you and him alone. If he listens, you
2 have won over your brother. If he doesn't listen,
3 take two others along with you, so that every fact may
4 be established on the testimony of two or three
5 witnesses."

6 Q Is this provision with regards to two or three
7 witnesses the way you understand that Matthew 18:16 to
8 provide?

9 A Which provision?

10 MR. ROHAN: Your Honor, I object, if he's
11 asking him what the bible says and doesn't say. I
12 find this very offensive.

13 MR. PIERCE: That's fine, I'll strike that
14 question.

15 Q Mr. Motherwell, did the problem to bring in
16 corroborating witnesses, or the option to do that, was
17 that based upon Matthew 18:15-16?

18 A No, it was based on whatever the elders thought was
19 necessary to solve the problem.

20 Q Do you have Exhibit 29 in front of you, Mr.
21 Motherwell?

22 MR. ROHAN: Which Exhibit Number are you
23 referring to?

24 MR. PIERCE: Exhibit 29.

25 THE COURT: That is what, the letter from --

1 THE WITNESS: The eldership to Don Barnett.

2 THE COURT: Dated?

3 THE WITNESS: February 24th.

4 Q That page six of that document bears your signature;
5 is that correct?

6 A Yes.

7 Q On page one of the first or second full paragraph
8 there are, that starts out "For the purpose of this
9 letter, we will answer questions one and two together,
10 the answer to these questions is that scripture does
11 make us judges over you"; is that correct?

12 A Yes.

13 Q There's more that's there, but that's correct; isn't
14 it?

15 A That's what that says.

16 Q Part of that scriptural basis is set forth following
17 numbers one, two, three, four, five, six that continue
18 on as sub-parts thereof; is that correct? This is
19 your letter that you signed.

20 A I did not write this letter. I signed it.

21 Q Are you familiar with it?

22 A I'm not intimately familiar with it, no.

23 Q Let's go to page three, Mr. Motherwell.

24 A Okay.

25 Q Do you see Paragraph C there?

1 A Yes.

2 Q Can you read us what that first sentence of that
3 provides?

4 A First Timothy 5:19 through 21, "Against an elder
5 receive not an accusation, but before two or three
6 witnesses then sin rebuke before, that all others may
7 fear --

8 Q I just wanted the first sentence.

9 A I'll read the rest, if you like.

10 Q No. This was the position of the elders in February
11 of 1988?

12 A The whole context was, yes.

13 Q In your testimony you indicated at the meetings of the
14 elders, that you indicated to them if they didn't act,
15 you intended to send a letter to Don Barnett, do you
16 recall that testimony?

17 A Yes.

18 Q You never sent that letter to Don Barnett, did you?

19 A They acted.

20 Q You never sent the letter, though; is that correct?

21 A Yeah.

22 Q Now you, individually, didn't disfellowship Don
23 Barnett, did you?

24 A Yes, I did.

25 Q You, as part of this eldership committee claimed to

1 have disfellowshipped Don Barnett, correct?

2 A That's also correct.

3 Q But individually, you did not?

4 A I just got through saying, yes, I did, individually.

5 Q Let's turn to your deposition.

6 MR. ROHAN: Which deposition are you
7 referring to?

8 MR. PIERCE: November 13th, 1990.

9 MR. ROHAN: What page?

10 THE WITNESS: About 110 or so, something like
11 that.

12 Q Are you familiar with this deposition, Mr. Motherwell?

13 A I think I am.

14 Q You have had an opportunity to review this deposition
15 before your testimony here today?

16 A Yes.

17 MR. ROHAN: What page?

18 MR. PIERCE: We are at page 113, lines six to
19 14.

20 Q Did the following questions and answers occur at the
21 time of your deposition on November 13th, 1990, Mr.
22 Motherwell? At line six, starting with the question,
23 "All I'm asking is, as his counselor, did you
24 disfellowship him?" Answer, "As part of the unit I
25 did."

1 Question, "But individually, as his
2 counselor, did you?" Answer, "I didn't need to,
3 because the unit did. If the unit hadn't, I would
4 have."

5 Question, "So the unit did, and therefore
6 you, individually, as his counselor did not
7 disfellowship him? Answer, "No, because the unit
8 did."

9 Is that a correct reading of the deposition?

10 A Yes, that is.

11 Q Were your answers given at that time true and correct?

12 A Well, so the unit did.

13 Q All I'm asking --

14 A Well, let me repeat it.

15 Q The question before you, Mr. Motherwell, is --

16 THE COURT: Let him answer and we'll see
17 whether that answer is --

18 A So the unit did, and therefore you, as his counselor,
19 did not disfellowship him, I answered no.

20 Q All I'm asking you is were your answers given at that
21 time true and correct?

22 A Yes.

23 MR. PIERCE: Just one moment, Your Honor.

24 (Pause in proceedings.)

25 MR. PIERCE: Nothing further, Your Honor.

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MR. ROHAN: I have a few questions, Your Honor.

RE-DIRECT EXAMINATION

BY MR. ROHAN:

On January 25th, 1987 did you believe you had authority to disfellowship Don Barnett?

6 Q

Yes.

7

8 A

Did you ever have a conversation with Donald Barnett at any time in 1988 to the effect that the elders did

9 Q

10

not --

Did you ever tell Donald Barnett at any time between January 1 and March 4th, 1988 that the elders did not have authority to discipline?

A No.

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4 MR. PIERCE: Objection. I don't recall that
5 testimony ever occurring in such a fashion, Your
6 Honor. I think it misrepresents what testimony did
7 occur.

8 THE COURT: Well, that's not grounds for an
9 objection, that you don't remember it.

10 MR. PIERCE: I object that I was present when
11 Don Barnett testified and that testimony didn't occur.
12 It mischaracterizes the prior witness's testimony and
13 it's not accurate.

14 MR. ROHAN: Your Honor, I believe that the
15 witness was asked about --

16 THE COURT: Which witness?
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1 Q Can you tell me what authority that you believe the
2 elders had to disfellowship Donald Barnett?

3 MR. PIERCE: Asked and answered on direct,
4 Your Honor.

5 MR. ROHAN: I believe that was gone into in
6 cross-examination.

7 THE COURT: You may answer.

8 A We had the authority, from his January 25th agreement
9 that he signed, we had authority based on his prior
10 statements in years past of being accountable to the
11 church, to the elders, et cetera. We had the

clearly. We had

disfellowshipping

hearings whether or

by 15th and before

special status that

that.

hearings between,

Barnett had violated

placed upon?

his violating the

12 authority of the scriptures, very

13 authority from the bylaws, the d

14 section of the bylaws.

15 Q Was it discussed at the elders' m

16 not Donald Barnett, after Februar

17 March 4th, 1988, was defying the

18 he had been placed on?

19 THE COURT: I didn't get

20 Q Was it discussed at the elders' m

21 after February 15th, that Donald

22 the special status he had been pl

23 A Yes, it was.

24 Q What was discussed as to terms of

25 special status?

1 A Well, the overriding thing was that he defied and
2 rejected the special status. That was, of course,
3 discussed at length, but in addition to that, in his
4 panicky hurry up, when he kept looking at his watch on
5 Thursday the 25th, when he came back and berated the
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10 Q Counsel discussed with you at length whether or not
11 you had proposed alternatives to Donald Barnett about
12 special status, or got him to change his behavior.

13 Were there individuals who, in 1987 and 1988,
14 that were testified to at the elders' hearings, that
15 went to Donald Barnett and asked him, begged him,
16 pleaded with him to change his behavior towards woman?

17 A Yes.

18 Q Who were those --

19 MR. PIERCE: You Honor, I object, if this is
20 outside the presence of Donald Barnett and Jerry
21 Zwack.

22 THE COURT: He can answer.

23 A I'm sure I don't know all of them. I know Jerry
24 Zwack, certainly, Russell McKenzie, certainly, Lanny
25 Peterson, certainly, and I don't know if there were

1 others. I know of those, I know for positive those
2 three.

3 Q Did you take any actions with Don Barnett in that
4 regard?

5 A My conversations with Don Barnett --

6 Q Be mindful of the Court's admonition not to talk about
7 any activity that you and Don had. All I'm asking is
8 conversations that you may have had with Don Barnett,
9 where you talked to him about changing his behavior.

10 A I had conversations with Don Barnett about changing
11 his behavior, yes.

12 Q That was prior to February 10th, 1988?

13 A Yes.

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THE COURT: Are we talking about this letter
of 1987?

THE WITNESS: Yes. Is that he said that his
ministry was to feed the newborn, and that as he had
in his mind what his ministry was and wasn't, I

1 perceived that ending, I didn't perceive it had ended,
2 I perceived it ending, is what I said in the
3 deposition.

4 Q The newborn meaning that people that were --

5 A New in the faith.

6 Q That was because Community Chapel at that point was an
7 established church?

8 A That's a large part of it, yes.

9 MR. ROHAN: No further questions. Thank you.

10 ****

11 THE COURT: Let me ask a couple of questions
12 here. You spoke in answer to one of Mr. Pierce's
13 questions about Pastor Barnett's accusing the
14 committee of a power play, and trying to take action
15 against him. If I remember the testimony it was that
16 he sent a tape; is that right?

17 THE WITNESS: Yes.

18 THE COURT: When did the tape come, before
19 the elders' hearing?

20 THE WITNESS: I think it was on February 3rd.

21 THE COURT: The third?

22 THE WITNESS: Right close to that.

23 THE COURT: How did it occur that he sent a

tape, how come he wasn't there personally? My
computation of things is that you hadn't gotten to the

24

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1 deliberations stage or had you, the review stage?

2 THE WITNESS: I think you're right. I'm not
3 precisely sure as to what definitive point the review
4 stage started. I think it started when he said he had
5 nothing further to say, and when Jerry Zwack --

6 THE COURT: About when was that?

7 THE WITNESS: It was about that date, I
8 believe.

9 THE COURT: How did this tape come in, or how
10 did that happen?

11 THE WITNESS: Well, he, to my memory, he went
12 to Jack Hicks' office and the other senior elders,
13 Scott Hartley, Jack DuBois, Jack Hicks, Don Barnett,
14 and I was invited somewhere in that meeting to come
15 down as well, and he spoke to them, and it was a tape
16 playing. The tape recorded his conversation and the
17 tape was taken back to the eldership hearings, and
18 this is the reply.

19 THE COURT: Was it his tape or was it the
20 elders' tape or whose tape was it?

21 THE WITNESS: I'm assuming it was his tape,
22 and that he wanted it taped, and the tape brought back
23 to the hearing.

24 THE COURT: It was right before him; is that
25 the idea?

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A There was so many offenses of this character, and it was a pattern that was consistent and unbroken, of this kind of offense, not of the, not just of the act, but of the cover-up, the lying, the, all of the changing the characterization of the act, there was

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1 Q Who provided that evidence?

2 A It was one of three people, I believe, Scott Hartley,
3 Lanny Peterson or John Bergin, although it could have

4 ~~been someone else, but they provided the bulk of this~~
5 kind of evidence.

6 Q Nothing stood out in your mind as to who it was that
7 provided this information?

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20 Q When there was a question about false doctrines,
21 Counsel asked you whether lying was going to be
22 permitted now, was going to be one of the false
23 doctrines and you said yes; is that correct?

24 A I don't know what Counsel, how Counsel characterized
25 that.

1 Q I'll ask you another question then. Was Pastor
2 Barnett providing any false doctrines in his sermons
3 that lying was going to be permitted at Community
4 Chapel?

5 A In February, I'd have to see a calendar, but it was
6 about the sixth or so, the fifth or sixth, he preached
7 a mind-blowing sermon on if a person was buried, if
8 you killed a guy in the woods -- I'm paraphrasing it.
9 If you killed a guy in the woods and you buried him,
10 did you owe anybody an answer, and he said, no, you
11 could, in essence, lie about it, and it freaked the
12 church out, people were appalled and aghast, many
13 were, and so people flooded the counseling center
14 saying the man is justifying lying, and there were
15 transcripts of that, that were made.

16 Q That was February 6th, you say?

17 A I don't know the date. It was a weekend around the
18 1st of February, somewhere in there, a camp meeting,
19 it was a camp meeting sermon.

20 Q What's a camp meeting sermon?

21 A It's a camp meeting. There's camp meetings in the
22 summer and camp meetings during the winter.

23 Q This is somewhere other than Community Chapel?

24 A No, right there at Community Chapel, right where we
25 always have our church services.

1 Q Were you present at the time that Pastor Barnett
2 talked?
3 A For part of it, yes, maybe all of it.
4 Q Do you remember the references that Pastor Barnett was
5 using at that time?
6 A Scriptural reference?
7 Q No, the references of examples that --
8 A Well, I can get the tape, I mean this is on tape.
9 Q You don't recall, then?
10 A Not at this time, no.
11 Q Previously, prior to 1988, Pastor Barnett had spoke
12 with regards to the issue of lying, hadn't he?
13 A He may have, I'm sure.
14 Q ~~Do you recall any references of Pastor Barnett in his~~

15 prior sermons talking about the necessity and using,
16 the necessity of lying and using as an example Allies
17 lying about when the invasion of Normandy would occur
18 and the issue of whether or not it was proper to do
19 something like that, do you recall that?

20 A Yeah, vaguely, yeah.

21 Q So this was not something new that Pastor Barnett had
22 brought up in 1988, was it?

23 A No, this is, what he brought up in '88 was an
24 unbelievably new radical, new case on lying, a total
25 different premise.

1 Q Your authority to act as a senior elder came because
2 you were elected to the Board of Senior Elders; is
3 that correct?

4 A That's right.

5 Q How were you elected to the Board of Senior Elders?

6 A By vote.

7 Q The vote was by whom?

8 MR. ROHAN: Objection, foundation.

9 THE COURT: We're talking about him, as a
10 senior elder?

11 MR. PIERCE: Him as a senior elder, yes, Your
12 Honor.

13 THE COURT: When did he become a senior
14 elder?

15 MR. ROHAN: Your Honor, this is way beyond
16 the scope of redirect.

17 THE COURT: Let's get it.

18 Q (By Mr. Pierce) When did he become a senior elder?

19 A I think it was April of 1989.

20 MR. PIERCE: This goes to the issue of our
21 standing argument, Your Honor. It will be very short
22 for me to ask some questions that relate to it.

23 MR. ROHAN: This standing argument, they did
24 not bring this up on their direct, I mean on their
25 cross. This is re-direct on their part, re-cross on

1 their part. This is going beyond --

2 THE COURT: I'll try and maintain some order
3 in it.

4 MR. PIERCE: I guess we could call him when
5 we bring on our case, if that's okay with Your Honor.

6 THE COURT: Some later time?

7 MR. PIERCE: So we'll reserve that issue for

~~Mr. Motherwell, all to be called at that time if that is all right.~~

Your Honor.

8 MR. ROHAN: Your Honor, they have not listed
9 witness.

10 MR. PIERCE: I'll make it very short.

11 THE COURT: I have responded to him.

12 MR. PIERCE: Actually, Your Honor, I believe,
13 Counsel, in his examination asked him his
14 status at the church, and the basis for his status at
15 the church, and the basis for his status at
16 the church would be based upon
17 his authority under the bylaws in the corporation,
18 which goes to our standing argument.

19 THE COURT: Well, you can do that, you can
20 do your case.

21 MR. PIERCE: Thank you, Your Honor. We have
22 nothing further at the present time.

23 ****

24 THE COURT: Let me go back to an area that

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1 you testified to. You said that you disfellowshipped
2 pastor individually and as a member of the group. Did
3 you mean that by this letter signed by the --

4 THE WITNESS: Sixteen.

5 THE COURT: By the 16, that that constituted
6 not only your group activity, but also your individual
7 activity; is that what you mean, or did you do
8 something else, as an individual?

9 THE WITNESS: Besides signing that letter --

10 THE COURT: Yes.

11 THE WITNESS: -- I went to his house to see
12 him and tell him he was disfellowshipped, and he had
13 left. It was the second attempt to go to his house.

1 THE COURT: Okay, that will be admitted,
2 then. I have still not read it. I will before long.

3 MR. ROHAN: Can I ask the witness a question
4 about it, Your Honor?

5 THE COURT: I'm trying to see where it
6 indicates that he is disfellowshipped. "It is now
7 imperative that you be removed from fellowship from
8 this church, as well as all churches that fear God",
9 and so forth and so on. "The result is that I have
10 personally recommended this action to the senior
11 elders and to the entire board as an act of --

12 Have you read this letter recently?

13 THE WITNESS: Yes, I have.

14 THE COURT: It appears, Mr. Motherwell, that
15 the part of the letter that could be construed as your
16 placing or your disfellowshipping Pastor Barnett, all
17 appears on the second page, am I correct on that; is
18 there anything on the first page that you believe
19 notifies him that you, as counselor, are
20 disfellowshipping --

21 THE WITNESS: I believe you're right, Your
22 Honor.

23 THE COURT: So we're zeroed down now to the
24 second page; is that correct?

25 THE WITNESS: I believe you're right, yes.

1 THE COURT: I see two references there that
2 may be construed that way. The top paragraph at the
3 second paragraph sentences within that.

4 THE WITNESS: Yes.

5 THE COURT: Is that correct?

6 THE WITNESS: Yes, that's correct.

7 THE COURT: I have nothing further.

8 MR. ROHAN: I have nothing further. That's
9 what I was going to point out, those two sentences
10 also, Your Honor.

11 ****

12 FURTHER RE-CROSS EXAMINATION

13 BY MR. PIERCE:

14 Q This is what you refer to as your disfellowship
15 letter?

16 A Yes.

17 Q Anywhere in this letter does it say I disfellowship
18 you?

19 A It says "I am absolutely certain that you must be
20 separated from the ministry to save your soul". I'll
21 read it. "I wrote this letter to you in '87, you
22 tearfully agreed with. I also reiterated this in my
23 letter of February 2nd, in which I stated God would
24 not allow you use your office as pastor, as a
25 personal" --

1 Q All I want to know is the terms that were used by you
2 to disfellowship.

3 A "It is now imperative that you be removed from
4 fellowship from this church, as well as all churches
5 that fear God. I have personally recommended this
6 action, as well, to the senior elders."

7 Q No, it doesn't say "as well" does it, it doesn't say
8 you're doing it. It says as a result of the problems
9 that have occurred you're going to recommend it to the
10 senior elders; isn't that what it says?

11 A No, it says "is now imperative that you be removed
12 from fellowship from this church as well as all
13 churches that fear God".

14 Q And to do that you made the recommendation to the
15 senior elders; is that correct?

16 A In addition to doing it, yes.

17 THE COURT: Anything further?

18 MR. PIERCE: Nothing further, Your Honor.

19 THE COURT: You may step down. I assume that
20 you'll be with us in future sessions?

21 THE WITNESS: Yes.

22 MR. PIERCE: Take the afternoon break, Your
23 Honor.

24 THE COURT: Yes, we'll be at recess now until
25 five minutes after the hour.

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(A break was taken.)

MR. WIGGINS: We would like to thank the defendants for letting us put on Mrs. Baxter out of order.

Mr. Shapiro and I have agreed that we will not ask, we have asked Mrs. Baxter to be careful in giving her answers, not to volunteer any information about Mrs. A's relationship with other men than Pastor Barnett, and we'll be careful not to ask questions that impinge into that area.

THE COURT: I understand that you're not waiving your previously made objection to this witness.

MR. SHAPIRO: That's correct, Your Honor.

THE COURT: You may proceed.

MR. WIGGINS: Would you swear the witness, please.

SANDY L. BAXTER

having been called as a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. WIGGINS:

Q Would you state your name, please.

A Sandy Lee Baxter.

Q Mrs. Baxter, I would like to ask you a few background

1 questions before we get to the subject of your
2 testimony. What is your marital status?

3 A Divorced.

4 Q What is your address?

5 A 18504 - 38th Avenue South, Seattle.

6 Q Do you regularly attend church?

7 A Yes.

8 Q Where do you attend church?

9 A Church of Agape.

10 Q Is that the church that Pastor Barnett is the pastor
11 in now?

12 A Yes, it is.

13 Q Were you previously attending Community Chapel?

14 A Yes, I was.

15 Q And during the time period 1987 to 1988 what church
16 were you attending, or I should say 1987, what church
17 were you attending?

18 A Community Chapel.

19 Q When did you leave Community Chapel?

20 A After the church split.

21 Q On or about March of 1988?

22 A Yes.

23 Q Thank you. Now, I'd just like to briefly ask you
24 about the first discussions that you had with Pastor

25 ~~Barnett about testifying in these proceedings. I only.~~

1 have one question, really.

2 Did Pastor Barnett first approach you about
3 testifying or did you first approach him?

4 A I approached him.

5 Q Did you volunteer to testify at that time?

6 A Yes.

7 Q Now, I'd like to ask you some questions about a woman
8 named Mrs. A. Do you know Mrs. A?

9 A Yes, I do.

10 Q When did you first meet Mrs. A?

11 A First met her, probably several months after I first
12 came to church in 1980.

13 Q First came to Community Chapel in 1980, would that be?

14 A Yes, what did I say.

15 Q You said "church". I just wanted to be sure we knew
16 what church we were talking about.

17 Now, I'd like to focus on the period May and
18 June of 1987, if I could. How would you characterize
19 your relationship with Mrs. A at that time?

20 A We were very close friends.

21 Q Could you describe to us what activities you engaged
22 in with Mrs. A during that time period, just
23 generally?

24 A Well, we were friends. We talked on the phone, we
25 talked at church, we worshipped at church together. I

1 babysat her daughter.

2 Q How far from Mrs. A did you live?

3 A What time?

4 Q In May to June 1987, how far away did you live from

d by then.

live closer to her?

partment building, just

who were close in age?

gnant at the same time, we

s, and our children are one

now?

They will be eight in

re pregnant eight years ago

re you close friends at

ontinue at least through

disagreements with Mrs. A

c Community Chapel?

5 her?

6 A Several miles. We had moved

7 Q Prior to that time, did you

8 A Yes, we lived in the same a

9 right down the hall.

10 Q Now, did you have children

11 A Yes. Mrs. A and I were pre

12 went through our pregnancies

13 day apart.

14 Q How old are those children

15 A Eight. Well, almost eight.

16 March.

17 Q Did you, at the time you were

18 and Mrs. A was pregnant, were

19 that time?

20 A Yes.

21 Q Did that close friendship co

22 May and June of 1987?

23 A Yes.

24 Q Did you have any doctrinal d

25 with respect to doctrines at

1 A Yes, I did.

2 Q Could you tell us what that was?

3 A Probably --

4 MR. SHAPIRO: Your Honor, if I could just
5 interject. I would object to the question to the
6 extent it may invite a violation.

7 THE COURT: I don't know where we're headed
8 here.

9 MR. WIGGINS: Well, I would say I don't want
10 any testimony about any relationship that Mrs. A had
11 with anyone. I'm asking a question about doctrine.

12 THE COURT: I don't know where we're headed,
13 but --

14 MR. WIGGINS: Your Honor, I think it will
15 relate to the relationship that Mrs. A had with Pastor
16 Barnett.

17 A Mrs. A was like an older sister to me, and I looked up
18 to her spiritually. Mrs. A was a part of the
19 progressive part of our church, as they called
20 themselves, and Mrs. A told me one time that anything
21 goes except intercourse, and when she started talking
22 this way, our relationship started severing.

23 Q Now, are you talking in the framework of spiritual
24 connections?

25 A Yes, I am.

Thank you. Yes. I'd like to ask you about
Barnett and Mrs. A. Did you

Barnett and Mrs. A had a

spiritual connection with

ly how many conversations

ating to the connection.

Mrs. A and Pastor Barnett?

to 50.

the period May to June

you any dissatisfaction

th Pastor Barnett?

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s right after bible

invited to go with Don

clined to go with him,

ple to go with him, and

nd so he asked Mrs. A,

the first one to be

2 connection between Pastor Bar

3 come to learn that Pastor Bar

4 spiritual connection?

5 A Yes.

6 Q And did you discuss that spir

7 Mrs. A?

8 A Yes, I did.

9 Q Could you tell us approximate

10 that you had with Mrs. A rela

11 or the relationship between M

12 A At least 20, I would say 20 t

13 Q All right, thank you. During

14 1987 did Mrs. A express to yo

15 regarding her relationship wi

16 A Yes, she did.

17 Q What was that?

18 A During that time period we ha

19 bible college banquet. It wa

20 college let out. Mrs. A was

21 Barnett after his wife had de

22 and Don had asked several peo

23 they all already had dates, a

24 and she was upset she was not

25 invited.

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I was also at that banquet and Don sat at the head table. There was a lot of people at that table, and Don paid attention to the other women at the table, and Mrs. A was upset about that.

Q Did she express to you any other disagreement or any other dissatisfaction with her relationship with Pastor Barnett, other than the example you had given us regarding the banquet?

A Well, Don had asked her to go on vacation with him and his wife and a group of other people, and he was talking to some other person about a vacation, and Mrs. A was nearby, and Mrs. A said to him, "That's my vacation, Don", and she was upset about that. Then,

~~As far as my knowledge, they never did go on vacation and~~

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Mrs. A was upset about that. She felt that gyped.

Q I see. During the course of Mrs. A's relationship with Pastor Barnett, did she describe to you changes in that relationship?

A At the beginning she talked about how the spirit of God was moving, and the wonderful things that were happening. Later on she started talking about how wonderful Don was and how he was so romantic to her, but just that he was being romantic to her, but just that nature, that he's a romantic type of person.

1 One of the examples she gave to me was they
2 went on a walk at the beach one day, and when she got
3 to Don's house he was wearing a suit, or, you know, a
4 jacket and slacks, and she was in jeans. She told me
5 that she liked to shock him, and so she knew he did
6 not like jeans on women, and so she wore the jeans
7 just to shock him.

8 Anyway the romantic she was talking about
9 he's so romantic, he's so wonderful, that kind of
10 thing, where instead of talking about the Lord she was
11 talking about Don Barnett. The relationship, the
12 focus had shifted.

13 Q I see. Did Mrs. A say anything to you about things
14 that she liked to do to Don Barnett?

15 A Well, she said she liked to surprise him and shock
16 him, and do things to tease him.

17 Q I see. All right, thank you. At any time during your
18 relationship with Mrs. A and any of your conversations
19 with Mrs. A, did she express any fear of Pastor
20 Barnett?

21 A Never.

22 Q Did there come a time in approximately June 1987 when
23 you detected or, when you detected that Mrs. A seemed
24 depressed for any reason?

25 A No.

1 Q Did Mrs. A ever tell you that she was depressed over
2 her relationship with Pastor Baneot?

3 A No.

4 Q Now, I'd like to move to the winter of 1987. We have
5 talked about May and June of 1987. The winter of 1987
6 is the time period I'd like to focus on. At that time
7 had your relationship with Mrs. A changed?

8 A Somewhat. We weren't seeing each other quite as
9 often, but we were still close, fairly close.

10 Q During this time period, the winter of 1987, and by
11 that I mean November, December of 1987 and perhaps
12 January of 1987 --

13 A Right, just before the split.

14 Q Yes, shortly before the division of the church, did
15 you receive a telephone call from Mrs. A?

16 A Yes.

17 Q What did she say?

18 A She invited me to go out with her.

19 Q And did you go out with her?

20 A Yes, I did.

21 Q Where did you go?

22 A To Plush Pippins Restaurant.

23 THE COURT: I didn't get that.

24 THE WITNESS: Plush Pippins Restaurant. It's
25 a pie restaurant down by Southcenter.

1 Q Did you go for dinner, lunch, what was the occasion?

2 A We just went out for pie and coffee.

3 Q How long were you there with Mrs. A?

4 A Probably about an hour and a half.

5 Q Now, at that time did Mrs. A express any fear of
6 Pastor Barnett?

7 A No, she did not.

8 Q What did she say to you about Pastor Barnett during
9 that conversation?

10 A She said she was angry with him and she wanted to get
11 him back, and she said that she was forcing the
12 counseling center and the elders to have meetings

13 about the pastor.

14 Q Do you recall any specific words that Mrs. A -- well,
15 let me ask this: do you recall any specific words that
16 Mrs. A used during this conversation with respect to
17 Pastor Barnett?

18 A Well, she said she wanted to get him back.

19 Q Those words, "get him back"?

20 A Yes.

21 MR. WIGGINS: Thank you, Your Honor. I have
22 no further questions.

23 *****

24 CROSS EXAMINATION

25 BY MR. SHAPIRO:

1 Q Hi, Mrs. Baxter. We met over the noon hour. Do you
2 mind if I sit when I question you? It's just easier
3 for me.

4 A That's fine.

5 Q ~~What is your church? I don't have a formal question. You're a member of~~

6 of the Church of Agape, and have been so since the
7 church division?

8 A Yes.

9 Q You go to at least three services a week, right?

10 A Well, some weeks I go to two services, because on a
11 Friday night I'm in youth service. I help with the
12 children.

13 Q So not only are you a congregant, but you also help
14 out in other ways; isn't that right?

15 A Uh-huh.

16 Q You help with the youth service, you conduct that?

17 A I'm not the leader. I'm just one of the helpers.

18 Q You also help with the tape ministry; isn't that true?

19 A Yes, I do.

20 Q Do you go to a prayer meeting or a prayer service?

21 meeting.

22 Q It's fair to say that most, if not all, of your

23 life is centered around the church and the

24 who either belong there or did belong there?

25 majority.

20 Q You also

21 A Prayer

22 Q Is it f

23 social

24 people

25 A A large

1 Q Now, Donald Barnett was your pastor from 1980?

2 A Yes.

3 Q Okay, and he still remains your pastor. When we met
4 today, did you not indicate that you love your pastor?

5 A Yes, I do, I love my pastor. I love all the people in
6 my church.

7 Q And love is a word that is, I don't want to say, I
8 don't want to belittle it, but you use it a lot, and
9 the people in your church use it a lot; isn't that
10 right?

11 A Yes.

12 Q In fact, you have, in the past, written letters to
13 people who are friends, men and women, expressing your
14 love for them; isn't that right?

15 A Yes.

16 Q And when you were friends with Mrs. A, she had a habit
17 of sending a lot of letters, cards and letters to
18 people expressing her love for her female and male
19 friends; isn't that right?

20 A Yes.

21 Q She wrote you letters that said that she loved you and
22 that she cared for you?

23 A Yes.

24 Q And you thought that was a nice gesture?

25 A Uh-huh.

1 Q She also did the same thing to her male friends; isn't
2 that right?

3 A To my knowledge, yes. My husband received some.

4 Q That wasn't anything that you took offense by, was it?

5 A No, not at all.

6 Q Now, you contacted Donald Barnett and told him that
7 you had some information that might be helpful at this
8 trial?

9 A Yes, I did.

10 Q Now, in the past several months or past six or eight
11 months, Donald Barnett has expressed to you and others

nt the outcome of

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who are church members; how importa

Agape, hasn't he?

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A Well, I wouldn't put it that way.

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gotten from what he has said from

h back, and he has

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you know, we would like to have ou

in financial ways,

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it is not the most important thing

help him out that

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Q But it is important, he has expres

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A It would be nice to have our churc

20

expressed it that way many times.

21

Q Has he expressed the need for help

22

has he?

23

A Well, yes, for attorney fees.

24

Q He has asked that the congregation

25

way; isn't that right?

1 A Yes.

2 Q Now, Mr. Wiggins asked you some questions about Mrs.

3 A, and you said you were a good friend of hers. Would

~~you describe Mrs. A as upbeat, vivacious, bubbly?~~

A I don't know what you mean by upbeat.

Q Let me use the word bubbly, because I think that's
the word you used over the noon hour.

A Yes, she's bubbly and vivacious.

Q Wouldn't you also say that based on your knowledge of
her she's pretty thick-skinned, she's a pretty tough
customer, wouldn't you say?

A I wouldn't say thick-skinned. She's very strong-
willed, she's able to take care of herself.

Q She can stand on her own two feet?

A Yes.

Q Not a weak person?

A No, not at all.

Q Not a person who blubbers, falls apart?

A No.

Q Now, Mr. Wiggins asked you questions about your
conversations with Mrs. A. At no time during those
conversations was there any statement by Mrs. A that
she had had sex with Donald Barnett, was there?

A No, she never stated that she had had sex with him.

Q As a result of that is it fair to say that you do not

1 have any knowledge about any details about any sex
2 acts, because you don't know if any happened; is that
3 right?

4 A She alluded to things, but she never actually came out
5 and said it.

6 Q She never told you they had sex, correct?

7 A No, she just alluded to it.

8 Q How many hours a week do you spend at the Church of
9 the Agape?

10 A Is that including youth service?

11 Q Sure, include the youth service.

12 A ~~Probably nine maybe 10 including youth service.~~

13 THE COURT: I didn't get that.

14 THE WITNESS: Nine or 10 hours a week.

15 Q Thank you, I have nothing further.

16 MR. WIGGINS: I have no further questions.
17 Excuse me, one moment. I do have one question, Your
18 Honor.

19 *****

20 RE-DIRECT EXAMINATION

21 BY MR. WIGGINS:

22 Q I think you testified, Miss Baxter, that Mrs. A is a,
23 let's see if I can get this, a strong willed person,
24 not a weak person, a person who doesn't blubber; is
25 that correct?

1 A Yes.

2 Q Now, did you ever see her after she had been with
3 Pastor Barnett in a funk or depressed, in that state?

4 A No. I babysat her daughter when she worked at
5 Community Chapel, and Mrs. A was always up and happy,
6 and she would never seem depressed to me.

7 Sometimes when she came and she stayed to
8 talk for awhile she was, this was earlier, earlier in
9 this part of our relationship, during --

10 MR. SHAPIRO: Your Honor, I would object --

11 A (continuing) -- the time that --

12 MR. SHAPIRO: Pardon me, Mrs. Baxter. I
13 would object. The question was did she appear to be
14 funk. The answer was no and the witness has continued
15 on.

16 THE COURT: Wait for another question.

17 THE WITNESS: I'm sorry.

18 Q I'll ask another question. Miss Baxter, you indicated
19 you babysat when she worked at Community Chapel; is
20 that correct?

21 A Yes.

22 Q Did she have any other babysitter than you for the
23 days she worked at Community Chapel?

24 A Once in a while LeeAnn Obely (phonetic) babysat for
25 her, but oftentimes I babysat LeeAnne's daughter,

1 also.

2 Q I see, and so when she came from work at Community
3 Chapel she came, if you were babysitting, she came to
4 your apartment; is that correct?

5 A My home, yes.

6 Q On any of those occasions when she came to pick up the
7 children, did she appear to be in a funk or depressed
8 mood?

9 A No.

10 MR. WIGGINS: Thank you, I have no further
11 questions.

12 MR. SHAPIRO: Nothing more, Your Honor.

13 THE COURT: You may step down. Miss Baxter,
14 you are not permitted to relate anything that happened
15 at this trial or any questions that were asked or the
16 testimony that you gave, except as to the attorneys
17 involved, okay.

18 THE WITNESS: Okay.

19 MR. WIGGINS: I was going to ask Your Honor
20 if Miss Baxter can be excused from any further
21 attendance.

22 MR. SHAPIRO: That's fine.

23 THE COURT: Gentlemen, could I abide you for
24 about two minutes?

25 (Pause in proceedings.)

1 ****

2 THOMAS D. BERRY,

having been called on behalf
of the plaintiff, testified as
follows:

3
4 DIRECT EXAMINATION

5 BY MR. ROHAN:

6 Q State your name, please.

7 A Thomas Duane Berry.

8 Q Your residence address?

9 A 19754 - 26th Avenue South, Seattle, Washington.

10 Q Were you at one point a regular member, an attendee at
11 Community Chapel and Bible Training Center?

12 A Yes, I was.

13 Q When did you first join Community Chapel?

14 A August of '76.

15 Q Did you meet a woman there at one point that you dated
16 and later married?

17 A Yes.

18 Q Who was that?

19 A Theresa Ann Semingson.

20 Q You met her at Community Chapel; is that right?

21 A Yes.

22 Q And you married her?

23 A Uh-huh.

24 Q What year did you marry her?

25 A In 1979.

1 Q And did you attend bible college at Community Chapel?

2 A Yes.

3 Q What year or years did you attend?

4 A From '76 to, I got a Bachelor's Degree in '81, then I
5 went back for about a year or two, part of a Master's
6 program, so --.

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JACK HICKS,

having been called on behalf
of the defendant, testified as
follows:

DIRECT EXAMINATION

BY MR. ROHAN:

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ou held at Community
y of 1988?
committee member,
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Q Would you state your name, please
THE COURT: Let's go a
Q Okay. State your name, please,
A Jack Hicks.
Q And your residence address?
A 18804 - 39th Avenue South, Seattle
Q And your current occupation?
A I'm self-employed.
Q You were a member of Community CH
Training Center; is that right?
A I was.
Q Can you tell me when you first jo
Community Chapel?
A In late 1967.
THE COURT: Was that '67
THE WITNESS: 1967.
Q Can you tell me what positions yo
Chapel from 1967 through February
A I held the position of steering c
which later became an eldership,

1 known as a senior elder; in other words, a member of
2 the Board of Directors. I was also a counselor.

3 I was, beginning in about 1978, I was
4 vice-president of the corporation, vice-president and
5 general manager of the corporation, which included
6 being the church bible college business manager.

7 Later I was also the assistant director of
8 the Christian school, and then later the director of
9 the Christian school, and did I mention bible college
10 business manager?

11 Q Yes, you did.

12 A I was also a deacon, a member of the deacon board, as
13 well as chairman of the deacon board.

14 Q You were employed by Community Chapel from 1978
15 through at least March 4th of 1988; is that right?

16 A I was.

17 Q That was full-time employment?

18 A Yes.

19 Q Did Community Chapel have liability insurance in the
20 beginning of 1987?

21 A Yes, we did.

22 Q Did something happen in 1987 that caused Community
23 Chapel to lose its liability insurance?

24 A Yes.

25 Q Can you tell us what happened?

1 A There were lawsuits which were brought against the
2 church, which represented a potential liability for
3 our insurance carriers, and as that process, the
4 proceeding of those cases went forward, we were
5 notified by the insurance companies that our coverage
6 was being dropped.

7 They didn't want to have, they considered us
8 a very high risk, an unacceptably high risk, and they
9 totally, they just abandoned and cancelled on the
10 shop, our liability coverage, and eventually, later,
11 even our fire insurance coverage, and the coverage on
12 our automobiles, every form of coverage eventually was
13 cancelled on us.

14 Q Did the insurance company tell you which lawsuits had
15 caused them to do this?

16 MR. JOHNSON: Objection, Your Honor. That
17 would be hearsay.

18 THE COURT: No, I'll admit it. What reason
19 did they assign?

20 THE WITNESS: They assigned the alleged
21 liability of the church in the Gabrielson versus
22 Community Chapel and Don Barnett and Jack McDonald
23 case, and also the so-called Butler, Hall and Brown
24 case versus, I think it was Don Barnett and Community
25 Chapel.

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Q And the Butler, Hall, you read the Complaint in the Butler, Hall and Brown case; is that right?

A I did.

Q That was a case, the Butler, Hall and Brown were three former female parishioners of Community Chapel; is that right?

A They were.

Q They made allegations against Donald Barnett, and also Community Chapel, as the employer of Donald Barnett?

MR. JOHNSON: Your Honor, this is about as leading a question as I think I have ever seen. I'd object.

THE COURT: Sustained.

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1 A I'm not familiar with an incident like that.

2 Q All right. Did Community Chapel have liability
3 insurance as of March 4th, 1988?

4 A It was my understanding that no, we did not.

5 Q I'm going to ask you to look at --

6 Counsel, would you mind getting the exhibits

~~7 out for the witness. Do you know where those are?~~

8 through whatever?

9 MR. JOHNSON: We don't have your --

10 MR. ROHAN: In front of the witness. I
11 wondered if they got put over there.

12 THE COURT: These are the official ones, so
13 if you want to use them, go right ahead. The February
14 10th minutes.

15 (Remarks made off the record.)

16 MR. ROHAN: Let's mark this.

17 (Exhibit No. 43 was marked.)

18 Q Showing you what's been marked as Defendant's Exhibit
19 43, have you seen that document before?

20 A I have.

21 Q That's minutes of a meeting that you were present at
22 in February of 1988?

23 A It's a record of a meeting that I had, yes.

24 Q It's entitled Senior Elders' Meeting. Was this the
25 record of an actual senior elders' meeting?

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MR. JOHNSON: Objection, Your Honor, as to --
well, withdraw the objection.

A Not technically at all. I could not call it a senior
elders' meeting. Certainly Don Barnett, the fourth
member, was not present. Also, the matters being
discussed were not ones that required the action of
the Board of Senior Elders.

This was simply a collective decision of the
three of us, which we each individually had the
authority on our own. without the other or without a

...d we felt that it was appropriate to
...sion.

...t 24 in the book in front of you,

RT: What's 24?

N: It's the letter putting Pastor
...l status of February 15th, 1988 by
...

...that was written as a result of the
...had with Jack DuBois and Scott
...ry 10th, 1988?

...ose of this letter?

T: Which one, the --

N: The February 15th.

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record that decis

Q Turning to Exhibi
please.

THE COUR
MR. ROHA

Barnett on specia
the senior elders

Q Is this a letter
meeting that you
Hartley on Februa

A It is.

Q What was the purp
THE COUR
MR. ROHA

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THE COURT: Exhibit 24?

MR. ROHAN: Yes, Your Honor.

Q What was the purpose of Exhibit 24?

A The purpose was to announce to Pastor Barnett his special status. That was it.

Q What authority did you believe you had to place Donald Barnett on special status?

A There were quite a number of people that did possess the authority to put someone on special status, and this clearly included all of the senior elders, any and all of the senior elders, some of the elders and certain counselors.

MR. JOHNSON: Your Honor, I'd object, move to strike as not responsive. The question was what authority did you have, and he indicated who had authority, but not what the authority was.

A I'm sorry, did I misunderstand the question?

THE COURT: Repeat the question.

MR. ROHAN: I think actually that is responsive, Your Honor.

THE COURT: Wait just a minute.

MR. ROHAN: I'll ask it again, Your Honor.

Q What authority did you believe you had to place Donald Barnett on special status, what was the source of your authority to place Donald Barnett on special status?

1 A It was a long-standing policy at the church that
2 senior elders, amongst others, could disfellowship
3 people as the need required and was appropriate, and
4 also thereby were authorized to take any lesser levels
5 of action.

6 Q And special status was a lesser level of action?

7 A Yes.

8 Q What evidence did the three senior elders rely on in
9 placing Donald Barnett on special status?

10 A We relied on his testimony.

11 Q Whose testimony is that?

12 A Don Barnett's testimony.

13 Q Which testimony?

14 A Before the hearing committee, the number of sessions
15 that Don presented, his admissions and other evidence.

16 THE COURT: You're talking now about the
17 eldership board hearing?

18 THE WITNESS: Yes.

19 Q Why did you, the three of you, place him on special
20 status, instead of going to the group of 16 elders to
21 place Don on special status at that time?

22 A Well, I had had the desire to keep the matter of
23 special status as private as possible. I was more
24 than aware that this would be potentially an
25 embarrassing matter for the pastor.

1 Pastor's effectiveness in his position, not
2 only with the, let's say the working staff at the
3 chapel, depended upon a measure, a high level of
4 respect for the pastor, as well as the congregation,
5 his reception of his sermons and his counsel, and his
6 whole standing in their eyes, and I did not want to
7 damage that, and we attempted, therefore, to keep this
8 a private matter.

9 Q Did you draft Exhibit 24?

10 A I did.

11 Q Could you read the third paragraph of Exhibit 24,
12 please, on the first page.

13 A That is the paragraph that begins with "based solely"?

14 Q Yes, sir.

15 A The entire paragraph?

16 Q Please.

17 A "Based solely upon your admissions before the hearing
18 as to the frequency and the relatively large number of
19 women with which you have participated in various
20 degrees of sexual misconduct, we firmly believe that
21 senior elder board intervention is necessary for the
22 future protection of the women of our church, women in
23 our church. We believe that before God and his word
24 that we are charged to institute protective measures.
25 We see clearly that we have scriptural authority for

1 this."

2 "Also, you have publicly stated, in print
3 paren two, that you hold yourself accountable to the
4 senior elders and acknowledge their authority to
5 require correction of you."

6 "Further, our church Articles of
7 Incorporation and the laws of the state of Washington
8 authorize the board of directors and require them to
9 reasonably protect the corporation from liability
10 arising out of tortious acts of employees."

11 Q Were you also relying on these sources of authority
12 when you disfellowshipped Pastor Barnett?

13 A I was.

14 Q There is a discussion in the second paragraph, the
15 last sentence talks about this letter is not an elder
16 committee hearing matter, but a senior elder corporate
17 Board of Directors matter. Do you see that sentence
18 at the bottom of the second paragraph?

19 A Yes.

20 Q Can you explain what you meant by that?

21 A Well, I meant that I felt that it was appropriate that
22 any corrective action or the special status come from
23 the Board of Senior Elders because -- do you want me
24 to expand on that?

25 Q Please.

1 A Because the Board of Senior Elders were charged with
2 hearing appeals of, you know, disciplinary actions,

3 ~~and I think that is the fact and was split~~

4 an action of one of the Board of Senior Elders, the
5 officers could have, you know, upon appeal, could have
6 overturned the matter, and we wanted to make it very
7 plain that the entire remainder of the board was
8 solidly behind this, that there was not a division,
9 that there was solidarity on this action.

10 Q You listed in that letter certain restrictions on
11 Donald Barnett; is that correct?

12 A I did.

13 Q Can you tell me what effect those restrictions would
14 have at that time on Donald Barnett's duties to
15 perform as pastor, and his other corporate duties?

16 A I don't believe that they would have had any effect at
17 all.

18 Q Now, item number three, restriction number three on
19 page two states that he could not counsel any woman
20 alone.

21 Did you not feel that his inability not to
22 counsel any women alone was a restriction on one of
23 his duties as pastor or other corporate offices?

24 A No.

25 Q Why is that, why did you not feel that way?

1 A Well, first of all counseling women alone was never
2 part of his job description. We certainly had more,
3 an adequate number of counselors, including women
4 counselors, whatever the matter. He was not the only
5 counselor available to counsel a woman.

6 Also, there were numerous ways, other kind of
7 opportunities to privately counsel them, if there was
8 some need for that, such as, you know, the telephone,
9 or one thing that was done often by many counselors
10 was say after a service, large blocks of pews would
11 have been vacated by that period of time, still
12 there's a number of people in the area, and they would
13 just sit down with somebody in a pew and talk to them.
14 It would be entirely private.

15 I have had conversations myself. No problem
16 with privacy, still in a public place. You have to
17 understand that our sanctuary was an immense, immense
18 facility. It was larger than any theater. It seated
19 2,000 people. It was very easy to get off in one
20 corner of the pews and have nobody within dozens of
21 feet of you.

22 Q There's the third paragraph from the bottom on that
23 page talks about some letters from an attorney. Do
24 you see that.

25 A Which paragraph is that?

1 Q The third paragraph from the bottom on page two.

2 A All right.

3 Q Did you have a discussion with an attorney prior to
4 February 15th concerning any responsibility that you
5 might have in this matter?

6 A I did.

7 Q And that attorney was Jim Leach?

8 A That's correct.

9 Q Can you tell me the discussions you had with Mr. Leach
10 regarding any responsibility you had in regard to
11 Donald Barnett?

12 MR. JOHNSON: Your Honor, this is hearsay.

13 THE COURT: Yes, just give the general nature
14 of the conversation, not what he said, but what was
15 discussed.

16 A The potential liability of the Board of Directors of
17 the corporation, if we took no action, if we knew of
18 accusations or actual tortious acts of an employee,
19 someone in the corporation, and we took no action, no
20 reasonable action to bring it to an end, that we would
21 be --

22 MR. JOHNSON: Objection.

COURT: You can't testify as to what he

WITNESS: Okay. Your Honor, I'd like to

23 THE CO

24 told you.

25 THE WI

1 mark this as an exhibit at this point.

2 THE COURT: Which one is that?

3 MR. PIERCE: This would be 44.

4 (Exhibits 44 & 45 were marked.)

5 Q Showing you what has been marked as Exhibit 44,
6 Defendant's Exhibit Number 44; is that one of the, if
7 you look back at Exhibit 24, please, for a minute and
8 look at the second page, the third paragraph. It says
9 that there are two letters attached from Mr. Leach
10 dated January 22nd and February 8, 1987. Is Exhibit
11 44 one of those two letters that was attached to this
12 letter?

13 A Yes.

14 Q And that was a letter that you had received from
15 Leach; is that right?

16 A Repeat your question.

17 Q You had received that letter from Mr. Leach; is
18 correct?

19 A Yes.

20 Q Was it discussed with Mr. DuBois and Mr. Hartle

21 A Yes.

22 Q Was it also discussed with Pastor Barnett?

23 A I think I recall a brief discussion with Pastor
24 Barnett.

25 MR. ROHAN: Your Honor, based on the f

1 that Exhibit 15 has been admitted, this is an integral
2 part of Exhibit 15, we would move the admission of
3 exhibit defendant's Exhibit 44

4 MR. JOHNSON: Your Honor, we objected, I
5 believe, to the admission of Exhibit 15, and it was
6 admitted to show notice and to show what the elders
7 did with regard to these letters.

8 Number one, they're hearsay.

9 Number two, they were not included by Counsel
10 as part of that exhibit.

11 Number three, they express legal opinions
12 from someone who has not been qualified as an expert.
13 If counsel wanted to present additional expert
14 evidence from somebody, he might have so indicated,
15 and Mr. Leach is not qualified. In fact the only
16 thing that we know is that the action they took in
17 response to Mr. Leach's advice has been overturned by
18 the Supreme Court.

19 Finally, Your Honor, we have asked numerous
20 witnesses to tell us what went on in their
21 conversations, including this witness, and time and
22 time and time again, even though Pastor Barnett was
23 part of the Board of Directors then, time and time
24 again they have invoked the attorney/client privilege
25 and have refused to reveal in pretrial discovery, any

1 of the discussions that went on or any of the
2 communications.

3 THE COURT: Let me first ask you, if this is
4 not hearsay, and I --

5 MR. ROHAN: I believe it's not hearsay
6 because we're not offering it for the truth of the
7 matter asserted. We are offering it to show that this
8 was in Mr. Hicks' mind as to what he believed his
9 responsibility as a director was at the time.

10 MR. JOHNSON: Well, Your Honor, he can
11 testify that he had a particular belief at a
12 particular time but --

13 THE COURT: He has already so testified, as
14 far as I know, hasn't he?

15 MR. JOHNSON: I think so, too. This doesn't
16 show more than that. This is hearsay and shouldn't be
17 admitted.

18 MR. ROHAN: Well, it also shows notice to
19 Barnett of the information contained herein, which is
20 that Barnett's conduct was violating his fiduciary
21 duty. It's relative on that point.

22 MR. JOHNSON: I don't think it shows that,
23 Your Honor.

24 THE COURT: I haven't read either one, either
25 44 or 45, but back to you, Mr. Johnson, why shouldn't

1 this be admitted to show that the Board of Senior
2 Elders acted on advice?

3 MR. JOHNSON: Well, I don't think it's
4 relevant whether the Board of Senior Elders acted on
5 advice of an attorney or not. In other words, their
6 case isn't any better if they acted on the advice of
7 an attorney or not.

8 THE COURT: I'm wondering if it isn't, not
9 that it lends more force to it, but their claim.

10 MR. JOHNSON: You have to remember, Your
11 Honor, this came after the last testimony by Mr. Zwack
12 or Mr., these were apparently, the exhibit is --

13 MR. ROHAN: January 22nd. It's before Mr.
14 Zwack even, anybody testified.

15 MR. JOHNSON: That these were attached to and
16 transmitted to Pastor Barnett. That's exhibit --

17 MR. ROHAN: This letter is addressed to
18 Pastor Barnett Exhibit 44.

19 MR. JOHNSON: Well, it may be addressed to
20 him, but there's no evidence that he received it.

21 MR. ROHAN: He testified he talked to them
22 about it.

23 MR. JOHNSON: He talked to him about a letter
24 coming. There is no evidence that Pastor Barnett ever
25 saw this letter before it came on February 5th.

1 There's evidence, I guess there's evidence, I'm not
2 sure that there is, that Pastor Barnett got the
3 February 15th letter.

4 There's no evidence that indicates Pastor
5 Barnett got the attachments to the February 15th
6 letter, either in the February 15th letter or
7 certainly before.

8 Now, one can assume if Pastor Barnett
9 acknowledges after February 15th that he got the
10 February 15th letter, one can, and if the evidence is
11 here that it was attached, then perhaps it's
12 established that the, that these were received by
13 Pastor Barnett on or after February 15th; in other
14 words, when he got this, but there's no evidence to
15 suggest that he got any of these letters before.

body here has
t even have an
Barnett's office was
somebody testified
and he had his
ell, don't, but I
ere is the church
I guess what I feel
through witness

1243

16 In fact, Your Honor, every
17 testified that Pastor Barnett didn't
18 office at the church, that Pastor B
19 at home, and I believe, I forget, s
20 that all his papers were at home, a
21 office at home and so forth.
22 You look at the address, w
23 can represent that the address on h
24 and not his parsonage, and I just,
25 is especially offensive after going

Hicks - Direct - Rohan

1 after witness after witness, deposition and
2 deposition, and then invoking the attorney/client
3 privilege with regard to any communications between
4 Mr. Leach and them, I feel it's, and beyond that, it
5 is definitely hearsay.

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1 you tell us your understanding, if any you had, Mr.
2 Hicks, as of February 15th, 1988, as to what
3 liability, if any, you and the corporation had for the
4 actions of Donald Barnett that had been admitted to
5 and discussed at the elders' hearings?

6 A Well, we understood that we did have potential
7 liability in any case where tortious conduct was
8 alleged, and we were, of course, being constantly
9 reminded of that in the lawsuits that I mentioned,
10 particularly the Butler, Hall and Brown case, which
11 was, which allegations were very similar to those that
12 we feel could arise again.

13 Q And by "we" felt we had liability, did you mean
14 yourselves, as members of the Board of Directors, or
15 the church, or both perhaps?

16 A Well, certainly the church would have liability. It
17 was my understanding that if I, and we individually,
18 the senior elders, possessed information that
19 potentially tortious conduct was going on, and with
20 that knowledge made no effort to reasonably bring it
21 to a stop, some way or another, that we could have
22 personal legal liability in that matter.

23 Q This would be tortious conduct by an employee or agent
24 of Community Chapel?

25 A That's correct.

1 Q Could you turn to Exhibit 37 in the book in front of
2 you, please, sir.

3 That, Your Honor, is the memo of --

4 THE COURT: I haven't ruled on 45. Do you --

5 MR. ROHAN: The way you ruled on 44, if I

ould be the

would offer 45? I assume your ruling would

7 same.

8 MR. JOHNSON: Same objection.

ble letter, I
ting the same.

9 THE COURT: If it is a comparison
10 will rule the same way on 45, not admit

look at

11 Now, you have been directed to

12 Exhibit 37.

the liability

13 Q Where did you get your understanding of

ou just

14 of the corporation and yourself, that you

15 testified to?

Honor.

16 MR. JOHNSON: Objection, Your Honor.

r, from what

17 THE COURT: Well, he may answer

18 source.

19 A From several sources, actually.

sources" were?

20 Q Could you tell us what those "several sources"

of an interest

21 A For many years I had followed, because of

ng churches,

22 I also had in the legal affairs affecting

as part of my

23 and even from legal classes in school, and

there were

24 engineering education, that employers, in

liability for

25 definitely areas in which employers had

1 acts of employees, court cases that I read abstracts
2 of, you know, and the judgments and the outcomes were
3 that was continuing to happen to some people and also
4 from advice from Jim Leach, the church counsel.

5 Q All right. Let's look if we might now, at Exhibit 37.
6 Do you have that in front of you, sir?

7 A I do.

8 Q Did you draft Exhibit 37?

9 A Yes.

10 Q Can you tell me what the purposes, well, just to sort
11 of cut to the heart of the matter here, can you tell
12 me what the purpose of this letter was regarding
13 disfellowships and counselor consultation, regarding
14 disfellowships which is mentioned in the fourth
15 paragraph of exhibit --

16 THE COURT: Let me see what we're talking
17 about. I'm not up to date with you here.

18 MR. ROHAN: Thirty-seven, Your Honor.

19 MR. JOHNSON: It's the 1/25/87 memo.

20 MR. ROHAN: It's the memo from Jack Hicks to
21 the department heads regarding David Motherwell's
22 responsibility for disfellowshipping.

23 MR. ROHAN: I'll give you mine if you can't
24 find yours, Your Honor.

25 THE COURT: I have it.

1 Q (By Mr. Rohan) Looking at paragraph four, which
2 discusses counselor consultation regarding
3 disfellowships, can you tell me, well, at the
4 beginning of that paragraph it states that David
5 Motherwell will have oversight of all counseling and
6 spiritual matters and for the department, and then

7 goes on. Can you tell me why you wrote this memo?

8 A I wrote this memo to announce the layoff of Jerry
9 Zwack, who was previously the counseling center
10 manager, counseling administration center manager, and
11 a subsequent reorganization of that department to
12 incorporate new management.

13 This was an announcement to all of the
14 department heads, and ultimately this memo was
15 distributed widely.

16 Q What led up to David Motherwell being given
17 responsibility for counselor consultation regarding
18 disfellowshipping?

19 A I'm sorry.

20 Q What led up to David Motherwell being given
21 responsibility in this memo for counselor consultation
22 regarding disfellowships?

23 A David had, for a long time, been our most trusted
24 counselor. He was the second counselor, I believe, to
25 be placed on paid status of any kind at the church.

1 He was highly respected by the church at large, as
2 well as the staff. We had high regard for his level
3 head, his sound judgment and his fairness.

4 Q What was he being asked to do, as counselor of
5 consultation, regarding disfellowshipping?

6 A David and some other of the counselors in the
7 counseling center office had the authority to
8 disfellowship people.

9 We wanted to assure that the rules were being
10 applied uniformly and fairly, and one person wasn't
11 getting a stiffer set of rules than the other, and so
12 we did have counselors of lesser authority, lesser
13 experience, that would have to go to a counselor
14 consultant, and David had oversight over all of that.

15 That means that, in essence, the
16 disfellowship, he would have oversight over the
17 disfellowship.

18 Q Was this a change in -- let me ask you this: at one
19 point were disfellowships supposed to be approved by
20 yourself?

21 A They were.

22 Q And at another point after that there was a memo, I
23 believe, that shifted that responsibility to Pastor
24 Barnett?

25 A That's true.

1 Q And that was, I believe, at the end of July of 1987.

2 Did he have the time to fulfill that role?

3 A I had many complaints from the counseling center staff

4 because Don did not have the time to act on their

5 requests, and it was a tremendous bottleneck, it was a

6 ~~very great trial and difficulty. People simply could~~

7 not get ahold of him on a timely basis, and in some of

8 these matters, time was of the essence.

9 Q By "these matters", you mean disfellowshipping --

10 A Disfellowships. Time was of the essence often.

11 Q Did Pastor Barnett have hours that he was available to

12 talk to you and other people on the staff?

13 A Yes.

14 Q In the fall of 1987?

15 A Yes, and they did, and the hours were relatively few,

16 and I can remember they changed. They might be like

17 between two to four in the afternoon, maybe Tuesday

18 and Thursdays. Those would be the only times that he

19 would accept calls from any of the staff, including

20 me, and he was frequently, got very upset if you

21 called at any other times.

22 To make matters worse, he was not always

23 available during those times, because I would save up

24 all my material to call him, I know for myself, and

25 try to reach him, only to find that he was gone for

1 the afternoon, or he wasn't available, or he said, No,
2 don't call me now, so then that meant I had to wait
3 until the next time.

4 As time went on it got worse and worse to try
5 to get in touch with him, and then these hours,
6 consistently he would not be available during those
7 hours, and then a few weeks later he would come out
8 with a memo, there was a new set of hours, and we'd go
9 through the same routine again. It was very very
10 difficult.

11 There would be a solid week at a time that I
12 would be totally frustrated in trying to get ahold of
13 him for matters that I considered were important.

14 Q That was when he was in town; is that right?

15 A On, yes, in town.

16 THE COURT: I will not read 44 and 45, but

17 they should remain part of the record as having been

18 ~~proffered and refused.~~

19 MR. ROHAN: Are we at the end of the

20 THE COURT: Yes, we're at 4:30 at the

21 and we will recess for the day. We will return

22 9:15 tomorrow morning.

23

24

(Court was adjourned at 4:30)

25