

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

DONALD LEE BARNETT,)	
)	
Plaintiff,)	Cause No. 88-2-04148-2
)	
Vs.)	
)	
JACK A. HICKS, JACK H. DUBOIS, and)	TRIAL TRANSCRIPT
E. SCOTT HARTLEY, individually and)	VOLUME VIII, pp. 1252-1433
as the board of Directors of COMMUNITY)	
CHAPEL AND BIBLE TRAINING CENTER)	JANUARY 31st, 1991
and COMMUNITY CHAPEL AND BIBLE)	
TRAINING CENTER,)	
)	
Defendants.)	

**TRIAL TRANSCRIPT, VOLUME VIII
PAGES 1252-1433**

BE IT REMEMBERED the above-named cause of action came on for arbitration on January 31st, 1991 before the HONORABLE WALTER DEIERLEIN, JR. at Judicial Arbitration and Mediation Services, Inc. Seattle, Washington;

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

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

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

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1 Examination of Jack Hicks continued on
2 January 31, 1919, commencing at 9:15 a.m.

3 ****

4 DIRECT EXAMINATION (continuing)

5 BY MR. ROHAN:

6 Q Mr. Hicks, do you still have Exhibit 37 in front of
7 you?

8 A Yes.

9 Q Exhibit 37 is what you discussed yesterday as
10 acknowledging the power of David Motherwell to approve
11 disfellowships?

12 A Yes.

13 Q Did you discuss this memo with Donald Barnett?

14 A Yes.

15 Q Personally with him?

16 A Personally.

17 Q That was prior to the time, prior to September 25th,
18 1987?

19 A Yes.

20 Q And he approved its contents; is that correct?

21 A Not only that, we discussed in detail. There was
22 considerable discussion, he had much input as to how
23 he wanted the positions to work, what he wanted
24 included in the descriptions of David Motherwell, and
25 for that matter Chris Matthews' responsibilities. It

1 was jointly worked out.

2 Q This is a question I didn't ask you earlier, and I
3 apologize, but you no longer attend Community Chapel
4 do you?

5 A No.

6 Q And you have not attended for the past two years; is
7 that correct, at least for two years?

8 A Yes.

9 Q Let's turn now, if we might, to the events of March
10 3rd and March 4th, 1988. Did you and Scott Hartley
11 and Jack DuBois meet on March 3 and discuss the
12 possibility of disfellowshipping the pastor?

13 A Yes.

14 Q And did you take a vote at that time, the three of
15 you?

16 A There was no vote on that day.

17 THE COURT: That's March 3rd?

18 MR. ROHAN: March 3rd, yes, Your Honor.

19 Q Sometime during the day you met with all of the elders
20 at John Harold's house on March 3rd?

21 A Yes.

22 Q Did you discuss with them what your thoughts were at
23 that time?

24 A Yes, I did.

25 Q Were any votes taken while you were at John Harold's

1 house?

2 A Yes.

3 Q Can you tell me, let me first, actually, ask you to
4 look at Exhibit 33 in the notebook in front of you.

5 That's the minutes of an eldership meeting. It states

1 Q How did all 16 people vote?
2 A They voted yes, in the affirmative.
3 Q In the affirmative to disfellowship?
4 A Yes, voted to disfellowship.
5 Q Could you please turn to Exhibit 34. Exhibit 34 is
6 the March 4th, 1988 letter to Donald Barnett signed by
7 all 16 of the elders; is that correct?
8 A Yes.
9 Q Can you tell me in that document, are the two votes
10 that were taken the day earlier referenced in that
11 document?
12 A Yes, they are.
13 Q Can you tell me where it discusses in that Exhibit 34
14 the vote of the 16 elders to disfellowship Donald
15 Barnett?
16 A Well, the clear statement, I think, is the last
17 sentence, the third paragraph of page one.
18 Q Could you read that, please?
19 A Yes, it says "Therefore we are forced to disfellowship
20 you, because we have put others out for far less than
21 what you are being put out for".
22 Q And the "we" there referred to who?
23 A All the signatures of the letter, the 16.
24 Q Is there a discussion in that March 4th letter of the
25 vote by just the 10 individuals to recommend to the

1 senior elders that they also disfellowship Donald
2 Barnett?

3 A Yes.

4 Q And where is that in the letter?

5 A Well, that's referred to in the second paragraph, the
6 first sentence.

7 Q Okay. After -- that's all the questions I'm going to
8 have on that exhibit.

9 ~~Let's turn to the next day, March 4th, 1988.~~

Did you have a meeting with Donald Barnett on March
4th, 1988?

10

11

A Yes.

12

Q And Scott Hartley and Jack DuBois were also present?

13

A Yes.

14

Q And where did the four of you meet?

15

A At the parsonage.

16

Q And that was in the morning; is that right?

17

A Yes.

18

Q Can you tell me, did you bring any documents with you
to the parsonage?

19

20

A Yes, I did.

21

Q What documents did you bring with you?

22

A Well, I had a folder with me that included quite a
number of documents. I know that I had a resolution
to amend the Articles of Incorporation. I had a

23

24

25

1 resolution to amend the corporation bylaws. I had,
2 I'm sure, a copy of, or I had copies, I had multiple
3 copies of all of these, of the letter to disfellowship
4 Don Barnett. I had a lot of papers.

5 Q Did you give any of those papers at the meeting to

6
7 ed, yes, I did.

6 Donald Barnett
7 A When we arriv

do you recall giving to Donald Barnett
ved at his house on March 4th, 1988?
ving to him the resolution to amend the
ncorporation, and I'm quite certain that
o him the resolution to amend the bylaws
ation.

8 Q Which papers
9 when you arri
10 A I remember gi
11 Articles of I
12 I also gave t
13 of the corpor

COURT: You gave him first the resolution

14 Q Was your --
15 THE
16 to do what?

WITNESS: Amend the Articles of
, resolution of amendment.

17 THE
18 Incorporation

COURT: Amend the bylaws, and what was
er?

19 THE
20 the other pap

WITNESS: To amend the Articles of
, was the first one I mentioned. The
s the resolution to amend the bylaws.

21 THE
22 Incorporation
23 second one wa

discuss a vote to be taken

24 was a vote taken on the yo

25 at that meeting?

1 A Yes.

2 Q Can you tell me what discussion you had at Donald
3 Barnett's house that morning of March 4th?

4 A Well, Don had brought up some other subjects to talk
5 about, and I don't recall what they were at the
6 moment.

7 ~~I mentioned that we three senior elders had~~
8 some important items that we wanted to discuss and to
9 take a vote on, and I think at one point Don asked me
10 what that was, and I said it was, referred to the
11 papers that he had, and I said that the first one was
12 a resolution to amend the Articles of Incorporation,
13 to remove the requirement that the pastor concur with
14 any changes or amendments to the bylaws.

15 I think that that was as far as the
16 discussion went on that. Well, let's see. I don't
17 know, I don't know how far you want me to go.

18 Q Why don't you go on, did later a point come where you
19 actually had a vote at the meeting?

20 A Yes, we did.

21 Q Can you explain to me what you said, and what Donald
22 Barnett said, and what occurred at that time?

23 A Well, Donald Barnett had expressed that he didn't want
24 to discuss anything like that. I maintained that the
25 other three of us did, that we wanted a vote on that.

1 He said, Well, I don't want a vote on that. I said,
2 Oh. He said, I'm not in favor of that, and so, and he
3 obviously did not want to take a vote on that. I
4 said, Well, I'm in favor of this, for one.

5 Then I said, "Jack DuBois, are you in favor
6 of this resolution", and they had copies, as well. He
7 said, "yes", and then I polled Scott Hartley and asked

8 ~~him if he was in favor of the resolution and he said~~
9 "yes". Then I asked Boston Barrett if he was in favor
10 of the resolution and he said "no", he was opposed.
11 He was very animated and considerably upset.

1 We felt that it was totally unnecessary.

2 First of all, the board was small --

3 MR. JOHNSON: Your Honor, I think he has
4 answered the question. This is just narration. He
5 asked if they ever followed Roberts Rules of Order and
6 he said "no".

7 MR. ROHAN: Your Honor, I asked a broader
8 question and --

9 THE COURT: You may explain why.

10 A We simply discussed the matter until everybody had
11 their say and brought out the salient points, and then
12 we would generally discuss if we felt we were ready
13 for a vote.

14 There would be several methods of casting the
15 vote. We never took a written ballot or secret
16 ballot, or anything like that. There were two primary
17 methods we used for voting. One very common one was
18 to --

19 THE COURT: Very what?

20 THE WITNESS: Common.

21 Frequently used was polling each individual

favor of this, what
orth.
d matters, just as a
ions we would just say

member, what, discuss are you in
23 about you Jack and Don and so fo
24 In rather cut and dried
25 simple short-cut, on some occasi

1 all in favor, and they'd say aye or maybe just raise
2 the hand, just in some way assent to the thing, just
3 so that we had a positive --

4 I think we always recorded the vote, like
5 three to one or four to zero, something like that, and
6 that was the way we got that information. It was
7 obvious if we had a dissenting vote, but those are the
8 primary methods of voting.

9 Q What occurred at the meeting of the Board of Senior
10 Elders at the parsonage on March 4th, after you took
11 the vote that you have explained?

12 A Well, as I mentioned, pastor was considerably agitated
13 and upset and was getting more frustrated by the

~~14 moment, because it was clear that we had a different~~
15 agenda than he did, and it was not very long.

16 Don unceremoniously announced that he was
17 not, he didn't want to discuss anything more with us,
18 and unceremoniously told us to get out. I mean it was
19 not physically throwing us out of the house, but it
20 sure, in my estimation, amounted to the same thing.

21 Q Did you leave his house at that point?

22 A Oh, yes.

23 Q Where did you go -- all three of you left his house?

24 A Yes.

25 Q Where did the three senior elders go after you left

1
2

the parsonage?

~~... went to my office at the general headquarters...~~

3 Q What did you do at your office?

4 A We signed, in accordance with the vote which was
5 taken, we signed the Articles of Amendment which
6 authorized by the resolution and recessed the meeting
7 and resumed it later in the afternoon.

8 Q Where was, where and when was the meeting resumed?

9 A Well, the meeting was resumed at the same place
10 recall, at about 3:00 in the afternoon.

11 MR. JOHNSON: Objection, Your Honor, the
12 facts not in evidence. The question does, the
13 question says where was the meeting resumed. There is
14 no evidence that the meeting was resumed.

15 THE COURT: I don't take that as being
16 necessarily an indication that it was. They did it
17 again.

18 MR. JOHNSON: They did it again, they had another
19 another meeting, that's true.

20 THE COURT: That's what I -- whether it
21 constitutes a recessed meeting or not, is up to you.

22 MR. JOHNSON: Okay.

23 MR. ROHAN: Would you mark this.

24 (Exhibit No. 46 was marked)

25 Q Showing you what has been marked as Defendant's

1 Exhibit 46, are these the Articles of Amendment that
2 you signed when you got back to your office on March
3 4, 1988, immediately after leaving the parsonage?

4 A Yes, they are. I would make an exception. This copy
5 that I have has some marks on it that I know were not

6 on it when we signed it.

7 Q Can you tell me which marks were not on it
8 signed it?

9 A For one, the filing stamp in the upper-right
10 handwritten notation of time was not on it.

11 Q Anything else?

12 A Under Item 2 B-1 I see some marks that says
13 some scribblings and "in statute" and a cir
14 surely were not on it. I do not remember t
15 statement just above the signature line the
16 numbers I do not recall that go on it. I d
17 recall that there were any alterations to t
18 when we signed it.

19 Q That's your signature on this document; is
20 correct?

21 A Yes.

22 MR. ROHAN: I apologize for the wr
23 Honor. This is the only copy we have had i
24 is the one with the writing on it.

25 MR. JOHNSON: That's not the only

1 have a bound volume of the deposition exhibits, and I
2 believe this is one of the exhibits in the deposition
3 exhibits.

4 MR. ROHAN: I don't have a clean copy of it
5 without the scribbling on there. It's one of the
6 deposition exhibits, Counsel.

7 MR. ROHAN: I didn't realize it.

8 THE COURT: I'll admit this, and if there is
9 a clean copy we'll replace it with the clean copy; is
10 that satisfactory?

11 MR. JOHNSON: Well, we would object, Your
12 Honor, in that this was filed and this is different
13 than what was signed and notarized. In other words,
14 it was something that was signed and notarized, and
15 then somebody took and made these changes on it, and
16 after making the changes, after it was notarized and
17 signed by the people, and without the people's
18 signature, it was then taken to Olympia and filed, so
19 it was filed in a different form than when it was
20 passed.

21 MR. ROHAN: There's no testimony -- I'm not
22 aware of that.

23 THE COURT: I don't know, maybe so. I'll
24 reserve, then, if you want to have me reserve.

25 MR. JOHNSON: Maybe I could ask a few

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questions on voir dire.

THE COURT: Aren't we churning around something that is only peripherally significant?

MR. JOHNSON: We are, Your Honor.

THE COURT: Because this has been declared to be invalid. Well, I don't see any reason other than, this is --

MR. JOHNSON: I would be happy to submit, for Counsel's benefit, one, this can come in and, two, that this is a true and correct copy of what was subsequently taken and filed, but I think Counsel's testimony brought out demonstrates it's not a true and correct copy of what was passed.

ve on this, but you may

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THE COURT: I'll reserve the right to inquire concerning it.

ve any further

at. We'll look for a clean

MR. ROHAN: I don't have

questions concerning the copy of that...

t.

Exhibit No. 47 was marked.)

been marked as Exhibit 47, are what that document is?

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Let's mark that. (I) Q Handing you what what's those, can you tell me v

we return back up to the, our meeting -- let's see. No, this was the record of the transactions of the

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1 senior elders while we were down at the parsonage with
2 Pastor Barnett.

3 Q Those are the official minutes of the senior elders'
4 meeting?

5 A Yes.

6 MR. ROHAN: Your Honor
7 admission of Exhibit 47.

8 MR. JOHNSON: We won't
9 Your Honor.

10 THE COURT: Admitted.

11 MR. ROHAN: Have that

12 (Exhibi

13 Q You stated that there was a rec
14 afternoon of March 4th, 1988.

15 these the minutes of that reces

16 MR. JOHNSON: What is

17 MR. ROHAN: I'm sorry,

18 Q Can you identify that document,

19 A Yes.

20 Q What is it?

21 A It's the minutes of the continua

22 that day, the remaining three senior elders. Says

23 that it started 3:15, March 4th, in my office.

24 Q What votes were taken in the afternoon portion of the
25 meeting on March 4th, 1988?

~~The first item was the resolution to amend the bylaws.~~

2 That was discussed and adopted.

3 Q What was the second vote that was taken that day or
4 that afternoon?

5 A It was a resolution to remove Don Barnett as a member
6 of the Board of Directors. That was discussed and
7 also adopted.

8 Q Was there a third vote that day?

9 A There was a third action, and that was a letter to Don
10 Barnett stating that the Board of Directors were
11 disfellowshipping him from the church. That was
12 discussed and approved.

13 Q Was Donald Barnett at the afternoon portion of this
14 meeting on March 4th, 1988?

15 A No.

16 Q How many meetings of the Board of Directors took place
17 on March 4th, 1988?

18 MR. JOHNSON: Objection, Your Honor. The
19 witness has testified to two separate meetings
20 occurred. This is just a --

21 THE WITNESS: That does not characterize my
22 testimony.

23 MR. ROHAN: I think it seriously
24 mischaracterizes it.

25 THE COURT: You're objecting?

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MR. JOHNSON: I'm objecting because it calls for a legal conclusion. We're going around and around.

THE COURT: I think you can rephrase the question and get the material.

Q All right. In your opinion how many meetings of the senior elders took place on March 4th, 1988?

MR. JOHNSON: Objection, Your Honor. This witness's opinion as to whether or not there was one meeting, two meetings or five meetings I don't think is relevant.

THE COURT: I know it, but I'll let him express that.

A I believe that only a single meeting occurred, inasmuch as we had one subject in view for the day. There were a number of actions that needed to transpire on that. It was totally related sequence of events, all in the same subject area. We intended to get them all done.

That was only interrupted by the unceremonious break-up of being told to get out of Don's house. We had intended from the very beginning to, in that day, take care of one unbroken sequence of

e. It was all linked that was our intent

24
25

events that all had to transpire together, in my estimation, and

1 from the very start of the day. We had -- well, I
2 guess that characterizes my testimony.

3 MR. ROHAN: Thank you, sir. We would offer
4 Exhibit 48.

5 MR. JOHNSON: No objection.

6 THE COURT: It will be admitted.

7 MR. ROHAN: Let's mark this.

8 (Exhibit No. 49 was marked.)

9 Q There's a letter that was discussed in the prior
10 Exhibit A, letter of the senior elders
11 disfellowshipping Donald Barnett. Handing you what
12 ~~handing you what is discussed in Disfellowshipping Exhibit 49, is that~~
13 that letter?

14 A Yes.

15 Q You drafted that letter; is that right?

16 A I did. There were some additions along the way, input
17 from other people, but I essentially drafted the
18 letter.

19 Q That was signed by all three senior elders?

20 A It was.

21 Q And it was given to David Motherwell to deliver to
22 Donald Barnett?

23 A After it was signed, yes.

24 Q Would you turn to page two of that letter. That goes
25 over some of the reasons that you were

1 disfellowshipping Donald Barnett; is that correct?

2 A Yes.

3 MR. ROHAN: Your Honor, at this point I would
4 offer Defendant's Exhibit 49.

5 MR. JOHNSON: Your Honor, we don't have any
6 objection to this letter being admitted to show the
7 action taken, but we do object to its admission for
8 any other hearsay purpose, in terms of stating --

9 THE COURT: I take it what you're doing is
10 reserving the import that this does do what it
11 purports to do; is that not right?

12 MR. JOHNSON: Yes, just to state the action
13 taken, that it purports to take, but not to state
14 anything else, including reasons, or to state any
15 facts that they allege occurred or didn't occur that
16 supported it, but just to state that, in fact, this is
17 their letter of disfellowshipment.

18 THE COURT: I will admit the exhibit to
19 indicate what the senior elders, as evidence of what
20 the senior elders signed and did, and the reasons they
21 assigned therefor.

22 MR. ROHAN: Thank you.

23 Q Looking at page two of that letter, could you read the
24 paragraph that says "you have consistently", at that
25 point, and read just those three short paragraphs

1 there, please.

2 A The center of the page?

3 Q The second full paragraph on page two. Could you
4 read that, sir.

5 MR. JOHNSON: Your Honor, I'm going to object
6 to him reading into the record a letter that has not
7 been admitted for the purposes there. That doesn't
8 state what the letter does or purports to do.

9 THE COURT: No, but it purports to say why
10 they did what they purported to do in this letter.
11 You may proceed.

12

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DELETED MATERIAL FILED UNDER SEAL

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 MR. JOHNSON: Objection, Your Honor, this is
not an accurate reading. The witness just said "but
added that the senior elders do not know it", and
that's not what the exhibit states.

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THE COURT: Added that the elders --

THE WITNESS: The elders. I'm sorry, I
misread it.

Q The next two paragraphs, too.

DELETED MATERIAL FILED UNDER SEAL

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He specifically, in pretrial motion, said he was not going to rely on any religious matters, and there is nothing, "for over a year you used your pulpit to blame and accuse your wife and others" has nothing to do with any civil.

THE COURT: Where does it say that?

MR. PLAINTIFF: That's the last word that Counsel is trying to read into the record, and my objection is that doesn't have anything to do with anything that had anything to do with the church. It's just another example of Counsel trying to say we're not going to base or justify our actions on religious matters.

THE COURT: I will permit him to read this. I will sustain the objection as to his going into that matter.

Q Let's turn, if we might, to the third page of the letter and the first full paragraph. The last two sentences of that paragraph, could you read those, please, starting with "this disfellowship".

A All right, "This disfellowship is not contrary to any provision of our Articles of Incorporation and Bylaws as currently amended. Previous limitations in the bylaws to your dismissal have been removed by legally-adopted amendments, as of today".

1 Q Can you tell me what you meant by those sentences,
2 what those sentences refer to?

3 A Well, there are two things that were done in this
4 letter and those sentences. One of them refers to one
5 and the other one refers to the other. They were
6 actions all included in this letter.

7 One was the, involved the amendments to the
8 Articles of Incorporation and Bylaws, removing the
9 sections that prevented Pastor Barnett from being
10 removed from his offices, and that is what is referred
11 to in the last sentence that says "Previous
12 limitations in the bylaws to your dismissal have been
13 removed by legally-adopted amendments as of today".
14 That's what that is referring to.

15 Now, the previous sentence refers to his
16 disfellowship, which is the second matter, says "This
17 disfellowship is not contrary to any provision of our
18 Articles of Incorporation or Bylaws as currently
19 amended".

20 The bylaws did not in any form, well, none of
21 the amendments that we enacted had to do at all with
22 the disfellowship, so any version of the bylaws would
23 agree with the disfellowship, but the removal from
24 office would have hinged on the changes.

25 Q And did Pastor Barnett appeal from the

1 disfellowshipment?

2 A There was never any appeal, to my knowledge.

3 MR. ROHAN: Mark that.

4

has been marked as Defendant's.

you identify that document??

e a photocopy of the resolution to
that we adopted and signed on March

signature on page three; is that
n the last page?

natures of Scott Hartley and Jack

N: Your Honor, I would offer Exhibit

SON: Your Honor, I will, for the
the basis that the state Supreme
ed that this document has any course
ver, so it cannot be introduced to
what they purported it to do, because
t do what they purported it to do.

(Exhibit No. 50 was marked)

5 Q Handing you what

6 Exhibit 50; can y

7 A Yes.

8 Q What is that?

9 A This appears to be

10 amend our bylaws t

11 4th, 1988.

12 Q And that's your s

13 correct, I mean or

14 A Yes.

15 Q Those are the sign

16 DuBois?

17 A Yes.

18 MR. ROHAN

19 50.

20 MR. JOHNS

21 record, object on

22 Court has not rule

23 or effect whatsoev

24 show that it did w

25 we know it did not

1 I guess to show, for the limited purpose of
2 showing their state of mind or something, it may have
3 some relevance.

4 MR. ROHAN: Well, Your Honor, the
5 disfellowshipping of Donald Barnett occurred on both
6 the 3rd and 4th of March 1988.

7 If the disfellowshipping of Donald Barnett on
8 the 3rd of March was effective, the one done by the 16
9 elders and by David Motherwell, then Donald Barnett
10 was no longer a member of the Board of Directors of
11 Community Chapel on March 4th, 1988, he had been
12 removed from all of his positions, and all these
13 meetings were illegal. The argument made before the
14 Supreme Court was a different argument. This is a
15 totally different argument.

16 If the Court agrees that Donald Barnett was
17 disfellowshipped on March 3rd, then this was a meeting
18 of the Board of Senior Elders and all these changes to
19 the articles and bylaws were in effect.

20 MR. JOHNSON: Your Honor, then if that was
21 true, then the Supreme Court decision had no meaning
22 whatsoever, because then the actions taken that
23 morning would have been legal, and the Supreme Court
24 would not have said that they weren't legal, and it
25 would not have been necessary for the pastor's

1 concurrence to be sought, and the whole thing would
2 have been moot, and that's obviously not what the
3 Supreme Court said.

4 THE COURT: I will admit it for the purpose
5 of showing what they did by way of taking action to
6 amend, and likewise what they didn't do by taking
7 action, attempting to amend.

8 Q (By Mr. Rohan) Did the bylaw amendments that are in
9 Exhibit 50 make any changes in the disfellowshipping
10 section of the bylaws of Community Chapel?

11 A No, they did not.

12 Q ~~Thank you. I have no further questions, but I'm sure~~

13 Mr. Johnson will have some questions.

14 THE COURT: Just a minute, Mr. Johnson. Let
15 me catch up with you people.

16 *****

17 CROSS EXAMINATION

18 BY MR. JOHNSON:

19 Q Mr. Hicks, I believe you testified that you were the
20 general manager of the Community Chapel?

21 A I was.

22 Q And you were the vice-president, also?

23 A Yes.

24 Q And one of the senior elders?

25 A Yes.

1 Q And had a number of other title as well; is that fair
2 to say?

3 A Yes.

4 Q Is it also fair to characterize your breadth of
5 authority within the Community Chapel as being either
6 broader than anyones except the pastor, or the equal
7 of anyone else's except the pastor, the breadth of
8 responsibility and authority?

9 A Yes.

10 Q Is it also fair to say that you were, next to the
11 pastor, the most highly paid employee of the Community
12 Chapel?

13 A That's true.

14 Q Do you remember when it was that you became a member
15 of the steering committee?

16 A It was approximately a year after I began attending
17 Community Chapel, which would have put it, I believe,
18 sometime in 1968, probably late in the year.

19 THE COURT: I beg your pardon?

20 THE WITNESS: Sometime in 1968.

21 Q And you, I think, testified that you became a member
22 of Community Chapel in the fall of 1967?

23 A That's correct.

24 Q Were you part of the original group that formed the
25 Community Chapel?

1 A I was not.

2 Q But you joined very shortly thereafter?

3 A That's correct.

4 Q I'd like you to turn to what has been marked and
5 admitted as Exhibit Number 5, please.

6 THE COURT: Refresh my recollection. Who
7 were the original organizers?

8 MR. JOHNSON: The original organizers, Your
9 Honor, were Pastor Barnett, Scott Hartley, one of the
10 defendants here, Cal Freder, no, Lyle Bullinger and
11 Keith Gunn, those three people.

12 THE COURT: I remember now. I had confused
13 him with Scott Hartley.

14 Q Okay. When you joined the church, Mr. Hartley was
15 already a member of the church and a member of the
16 steering committee?

17 A Yes.

18 Q And then you became a member of the steering committee
19 approximately a year later?

20 A The best I recall, yes.

21 Q Exhibit Number 5 are some Articles of Faith and
22 Bylaws. I notice that we have talked about the bylaws
23 and we have talked about the Articles of
24 Incorporation. The Articles of Incorporation are not
25 the Articles of Faith and Bylaws, isn't that fair to

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say?

A That's true.

Q And the Community Chapel has, throughout its history, designated its bylaws as Articles of Faith and Bylaws; is that true?

A In general, that's right.

THE COURT: Wait a minute. Let me straighten that one. The bylaws throughout have been called articles and bylaws; is that right?

THE WITNESS: I believe in more recent years they just became bylaws.

THE COURT: They were originally called articles.

THE WITNESS: They still contain the Articles of Faith, so the removal of the title faith, from the title, was not indicative of any major change, it was just a simplified form of the name.

Q Just on that, would you turn to Exhibit Number 10 briefly, and I would ask that you turn to the very first page, not of the index, but of the document itself.

MR. ROHAN: This is Exhibit 10?

MR. JOHNSON: Exhibit 10. These are the bylaws that were in effect January 1986.

~~Q Is it fair to say that those continue to be referred~~

1 to as the Articles of Faith and Bylaws?

2 A Yes, I stand corrected.

3 MR. JOHNSON: I do that, Your Honor, we have
4 talked about Articles of Incorporation and Bylaws, and
5 here the bylaws were always designated the Articles of
6 Faith and Bylaws.

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

8 (Remarks made off the record.)

9 Q Turn back, if you would, to Exhibit Number 5 and turn
10 to the last page. These are the Articles of Faith and
11 Bylaws, the bylaws of September 9, 1969.

12 Was this the first set of bylaws of Community
13 Chapel, the first revision that you had a hand in
14 approving and adopting?

15 MR. ROHAN: By "the last page" you mean the
16 statement of faith regarding military action?

17 MR. JOHNSON: I thought I was looking at
18 Exhibit 50.

19 MR. ROHAN: There's three pages that have his
20 signature on it.

21 Q (By Mr. Johnson) Let's look at page two of the
22 Articles of Faith and Bylaws, Mr. Hicks, Exhibit
23 Number 50.

24 A Page five.

25 Q Page 13 of Exhibit 50, is that your signature?

1 A Yes, that is.
2 Q By affixing that signature you approved and adopted
3 this verions of the bylaws?
4 A The bylaws were in existence at the time that I became
5 a senior elder, and there were amendments and changes
6 that were being asked to be incorporated, and our vote
7 was on changing the bylaws, and my signature concurs
8 with those.
9 Q Turning to the next page or two pages, to the next
10 page, does that purport to be a bylaw amendment?
11 A Yes.
12 Q And you approved that?
13 A Yes.
14 Q Now, let's turn to Exhibit Number 6. I ask that you
15 turn to the very last page of Exhibit Number 6. Does
16 your signature appear there?
17 A Yes.
18 Q Would you turn to Exhibit Number 7.
19 A (Complying)
20 Q Turn to page, well, it's not the last page, it's page,

21 I suggest you turn to page 7, the last page, and see
22 with a signature line, is that your signature, the
23 last signature on the set?
24 A Yes.
25 Q What does that signature purport to do?

1 A It states above the signature line, "ratification of
2 these bylaws".

3 Q Would you turn to Exhibit Number 8, and I would direct
4 your attention again to two pages before the end.
5 That's page 43 of Exhibit 8, two pages from the end of
6 that group of pages.

7 Your signature there also indicates that you
8 ratified the bylaws, that version of the bylaws?

9 A Yes, the changes, right.

10 Q Does it say ratification of changes or ratification of
11 these bylaws?

12 A It says "ratification of these bylaws".

13 Q I'd ask that you turn to page of Exhibit Number 9,
14 page 39. It's the page following page 38. What does
15 the title of that page indicate?

16 A I am --

17 Q Can you please help me.

18 A I went to the end of nine and there's another
19 signature sheet back here.

20 Q Page 38, the page following is page 39, so it's the
21 page following page 38. What's the title of that page
22 indicate?

23 A It says "Ratification of Divisions 1 through 5 of the
24 Articles of Faith and Bylaws of Community Chapel and
25 Bible Training Center".

1 Q Your signature appears there?

2 A Yes, it does.

3 Q Along with Mr. Hartley's, Mr. DuBois and Pastor
4 Barnett's?

5 A Yes.

6 Q What's the date of your signature and the others?

7 A 3/19/82.

8 Q Now, if you turn to Exhibit Number 10, the next
9 exhibit, I'd ask that you turn to what is five or six
10 pages in, it's entitled "Community Chapel and Bible
11 Training Center, Articles of Faith and Bylaws". Do
12 you have it?

13 A That has the heading?

14 Q That's it, yes. Would you indicate what the revision
15 date of this exhibit set of bylaws is?

16 A It says January 1986.

17 Q Would you turn to what is page 67 of Exhibit 10, this
18 exhibit.

19 A Let's see, 67, you said?

20 Q Yes. Do you have it?

21 A Yes.

22 Q Can you read what title of this page is?

23 A It says "Ratification of the Articles of Faith and

24 ~~Bylaws of Community Chapel and Bible Training Center".~~

25 Q Does your signature appear below?

1 A Yes.

2 Q And your signature is dated what date?

3 A January 28th, 1986.

4 Q For the record, now, these were, were
5 Articles of Faith and Bylaws of the
6 that were in effect on March 4th, 19
7 of time prior to that, extending back

8 1986?

9 A Would you please restate

10 Q These are the bylaws that
11 28th, 1986 up to the date

12 A I don't have a specific,

13 changes of bylaws. I can

14 made no revisions of the

15 time. There were, as we

16 of revisions of the bylaw

17 accurate track of all of

18 Q Would you look at the pag

19 that you're on there, the

20 This is an amendment to t

21 A In fact, I remember that

22 change, in fact. I think

23 maybe it was the winter,

24 think that was it, probab

25 February, that there was

re they not, the
Community Chapel
88 and the period
k to January 28th.

your question.

were in effect from January
of the, up to March 4th?

there were a number of

not state positively that we

bylaws in that period of

have already seen, a number

s, and I do not have an

those.

the three pages after the page

third page following that.

those bylaws, is it not?

those were not, there was a

it was in the fall of, or

at camp meeting time. Yes, I

ly late January, early

another change to the bylaws

1 involving the change of a relationship of the
2 satellite churches.

3 Q Change of the relationship of the satellite churches?
4 A Yes.

5 Q The fall of what year?
6 A I think it was -- here's my recollection. Because of
7 the liability that the church --

8 Q Yes, but would you just answer the question. What
9 year was this change that you're talking about
10 regarding the satellite churches?
11 A The change that I am thinking of was made probably in
12 very late, or in January, or maybe very early February
13 of 1988.

14 Q Okay. Let's go back to the page that I have referred
15 you to. Let me repeat my question. Is this an
16 amendment to the bylaws?
17 A Which page is this?
18 Q Three pages following the signature page that you were
19 on before, that you're on there now, three pages.
20 A All right.
21 Q Is that an amendment to the bylaws?
22 A Yes.
23 Q And that's dated March 10th, 1987?
24 A Yes.
25 Q And this is not the change that you were talking

1 about, is it?

2 A No.

3 Q Would you turn one page over --

4 THE COURT: That was exhibit number what?

5 MR. JOHNSON: This is, Your Honor --

6 THE COURT: An attachment?

7 MR. JOHNSON: Attachment amendment to Exhibit
8 Number 10.

9 Would you turn over one page. This also is
10 an amendment to the bylaws?

11 A Yes.

12 Q And it's dated April 2, 1987?

13 A Yes.

14 Q It bears your signature?

15 A Yes.

16 Q And it is not the change that you're talking about, is
17 it?

18 A No.

19 Q Now, I direct you to Exhibit Number 12, and I ask that
20 you turn to the second page of Exhibit Number 12.

21 Okay. Looking at Arabic I of the second page of
22 Exhibit Number 12 -- well, first, the page you're on
23 is the senior elder meeting minutes for December 17th,
24 1987; is that correct? I'm sorry the third page of
25 ~~Exhibit Number 12, okay?~~

1 A Yes.

2 Q That's the senior elder meeting, December 17th, 1987?

3 A Yes.

4 Q Does Exhibit Number 1 reflect what you were referring
5 to?

6 A Yes.

7 Q Now, when Exhibit Numbers 5 through 10 were adopted,
8 did they always include a provision that the pastor,
9 the original pastor of the church, could not be
10 removed from the church while he was alive?

11 A That provision was in the bylaws for a long time. I
12 can't remember the earliest version of it, I don't
13 have a specific recollection. It may have been from
14 the very first one that I took any action on, but I
15 can't specifically recall that.

16 Q Well the first one you took action on was Exhibit
17 Number 5; is that correct, the 1969 version?

18 A It's possible that it was, but certainly this many
19 years later I cannot state that to a fact.

20 Q Would you look at Exhibit Number 5 again. The first
21 page, these were the Articles of Faith and Bylaws
22 dated September 9, 1969; is that correct? This is
23 indicated on page 1 of Exhibit 50.

24 A Excuse me. Your question again was?

25 Q These are the Articles of Faith and Bylaws, the

1 bylaws?

2 A Yes.

3 Q Dated September 9th, 1969?

4 A Yes.

5 Q And you had become a member of the steering committee
6 approximately a year before?

7 A Yes.

8 Q And on the very last page of Exhibit Number 5 we see
9 your signature, do we not?

10 A Now, I see my signature appears on several pages in
11 this. Are you talking about the very last page?

12 Q Let's turn to page 13.

13 A Page 13, yes, 13, yes.

14 Q That bears your signature, does it not?

15 A Yes.

16 Q You have indicated there are some additional pages
17 that purport, one to be an amendment, a supplement to
18 bylaws and statement of faith regarding military
19 service, and that bears your signature as well,
20 doesn't it?

21 A Yes.

22 Q Now, would you turn to page five of Exhibit Number 5.
23 Would you read paragraph Arabic II at the top of the
24 page?

25 A "The pastor having established the original church,

1 paren, along with the congregation, and we feel by
2 God, end paren, shall have oversight of same until the
3 pastor agrees to change."
4 Q Isn't it fair to say that this bylaw, this version of
5 the bylaws provides that the pastor cannot be removed
6 until he decides, agrees to change?
7 A It says what it says.
8 Q Does it talk about removing future pastors in the next
9 paragraph?
10 A Yes.
11 Q What must be done in order to remove a person from the
12 church as pastor, if he's a pastor subsequent to
13 Pastor Barnett, what steps does Arabic III of Article
14 3 provide must be done, to remove a future church
15 pastor?
16 A Item 3 says "Future pastors may only be removed by
17 both a two-thirds vote of the steering committee and
18 of the congregation."
19 Q Isn't it fair to say that every version of the bylaws
20 adopted and ratified by you, while you were a senior
21 elder or a member of the steering committee of the
22 Community Chapel and Bible Training Center, contained
23 a provision that said the pastor shall not be removed,
24 the original pastor having established the church
25 shall have the oversight of the same until he agrees

1 to change?

2 A I think the wording of that changed over the years,
3 but I think that is substantially correct.

4 Q Didn't every single version of the bylaws of the
5 Community Chapel and Bible Training Center that you
6 approved during your tenure from 1969 until 1988 of

7 the Community Chapel and Bible Training Center,
8 contain a provision that said subsequent pastors,
9 after Pastor Barnett, could be removed only by a vote
10 of both the senior elders and the congregation?

11 A To the best of my recollection that was in those
12 bylaws.

13 Q You got a letter from Jerry Zwack sometime in late
14 1987 or early 1988?

15 A I did.

16 Q Following the receipt of that letter did you and other
17 people in the church decide that it might be
18 appropriate to have some meetings or hearings to
19 discuss some of the things raised in that letter?

20 A I did not.

21 Q You never did decide that that would be a good idea?

22 A I did not.

23 Q Did you think it was a good idea?

24 A I thought it would have been helpful to settle a huge
25 question. I thought it would probably be necessary to

1 settle the question, the accusations that Jerry had
2 brought against the pastor, were ever going to get

3 ~~settled, it would take some kind of a hearing, yes.~~

4 Q: Well, what if no hearing had been held, what do you
5 think would have happened, I mean, if everybody had
6 ignored Jerry Zwack's letter, what would have
7 happened?

8 MR. ROHAN: Objection, Your Honor, this calls
9 for speculation.

10 THE COURT: I don't know where we're headed
11 here, but you may answer.

12 A I expected that Jerry would go ahead and carry out his
13 threat that he had expressed in the late December
14 letter.

15 Q What was his threat?

16 A His threat, as I remember, was to take his charges if
17 the eldership, the hearing, the church would not hear
18 the matter of, the board who he was submitting it to
19 would not hear the matter and investigate it, that he
20 was going to take it to a broader forum or audience.
21 The threat, as we understood it, was either taking it
22 to the church congregation as a whole, or perhaps to
23 the media who, such as the newspapers.

24 Q When you say "the threat, as we understood it", who do
25 you mean "we"?

1 A Well, as I understood it. Pastor Barnett had also
2 expressed to me that he had the same interpretation.

3 Q Did you talk with other people that had received the
4 letter, beside yourself?

5 A I don't recall a specific conversation, but I was
6 generally aware that others, say of the eldership who
7 got the letter, had reached a similar interpretation.
8 I did not talk with every one of the other elders. I
9 may have only, just in passing, heard from one or two.
10 I did not make it a point to discuss that letter with
11 anyone.

12 Q Did you call Jerry Zwack?

13 A I did not call Jerry Zwack.

14 Q Why didn't you call Jerry Zwack?

15 A Because I felt that at this point the ball was in
16 Pastor Barnett's court, inasmuch as there was no
17 possibility of holding any nature of hearings unless
18 pastor authorized it, and pastor, from his own
19 conversations with me, indicated that he was
20 deliberating the matter, he was weighing it, and had
21 not yet reached a decision on it, and I just let the
22 matter rest in his court until he came up with a
23 decision.

24 Q Did you ever consider calling Jerry Zwack and saying
25 hey, Jerry, can't we settle this without a big

1 hearing, why do we have to have a hearing, and what do
2 you mean by these blackmail threats?

3 A I had already talked with Jerry on numerous previous
4 occasions, and he had completely explained his
5 position to me in those meetings, and there was no
6 question that I had in my mind to ask him at that
7 point.

8 Q Did you have a good relationship with Jerry Zwack at
9 the time?

10 A At the time the relationship was very strained.

11 Q You had been the one that had terminated him from his
12 position at the --

13 A I had, yes.

14 Q Whose decision had it been to terminate him from his
15 position at the counseling center?

16 A It was my decision, with reluctant concurrence of
17 Pastor Barnett.

18 Q Now Jerry Zwack didn't think it was "reluctant
19 concurrence", though; did he?

20 THE COURT: Didn't think it was reluctant to
21 what?

22 Q Jerry Zwack didn't think that Jerry Zwack's reluctant
23 concurrence was reluctant; did he?

24 A I think that you're correct, as to your opinion.

25 Q Didn't he blame Pastor Barnett as to his being

1 terminated from the counseling center?

2 A He blamed Pastor Barnett and me.

3 Q And the counseling center position that he was
4 terminated from was his full-time job?

5 A Yes.

6 Q So the decision to terminate him, put him out of work?

7 A Yes.

8 O And he blamed Pastor Barnett along with you?

1 Did Jerry Zwack continue to hold his position
2 at the bible college?

3 A For a short time.

4 Q Then did that position cease, or did he; did he cease
5 to hold that position?

6 A He ceased to hold that position.

7 Q Do you know how that occurred?

8 A In general, I do.

9 Q Can you describe that?

10 A Jerry was very irate and extremely upset over being
11 dismissed from his position in the counseling center,
12 and he began to use the, his position as instructor of
13 his class in the bible college as a platform to air
14 his grievances. Well, I shouldn't say his grievances,
15 but his displeasure, his criticalness of the pastor,
16 of me, of the church government, totally inappropriate
17 to a professional instruction and college place.

18 They were matters totally unrelated to
19 teaching and he was using that as a platform to air
20 his, a certain numbers of gripe and displeasure with
21 Pastor Barnett and the administration, and we found,
22 we warned, I think Pastor Barnett warned him on that,
23 and he continued to do it, and on that basis the
24 pastor was forced to remove him in order to keep him
25 from spreading his dissent in what we considered was a

1 highly improper manner.

2 Q You indicated that Pastor Barnett's concurrence with
3 your decision to terminate him or fire him from his
4 position in the counseling center was reluctant. Can
5 you describe why you believe it was reluctant?

6 A Pastor Barnett had always expressed great affection
7 for Jerry, and I found that quite believable, because
8 I myself found Jerry, you can understand I'm using
9 this in the highest sense of the word, a real
10 sweetheart. He was an excellent friend and just, I
11 really enjoyed being with the man.

12 I have had many excellent worship experiences
13 with him and I counted him as someone who was very
14 close to my heart, and so I could understand Pastor
15 Barnett also feeling the same way. Perhaps, I think,
16 he even felt more so.

17 I also was of the opinion that in the time
18 period when Jerry was attempting to counsel Don on his
19 marriage and other problems, that, in addition to
20 that, was a counselor in the counseling center, that
21 he came by significant amounts of information that
22 Pastor Barnett would not want to see around, personal
23 information. I had no idea as to what the information
24 was, but it was alleged by Jerry as being damaging.

25 I felt there was probably a deep desire on

1 Don's part, in addition, and I don't know where you
2 would draw the line, I'm not saying I would know where
3 the line was drawn in his heart or mine, but it seemed
4 rather obvious from the outside that Don had a real
5 stake in not upsetting Jerry to the point that he was
6 going to do anything drastic about those, in order to
7 keep his good favor. It just didn't take being a
8 rocket scientist to conclude that.

9 Q But ultimately he concurred in your decision to let
10 him off, to fire him?

11 A Yes, and I'll have to say that I did bring, I'll use
12 the term considerable pressure to bear to dismiss
13 Jerry.

14 Now, Jerry had gone into such a snit over the
15 failure of his ability to get through to Pastor and
16 Pastor to respond in any constructive way to the
17 difficulties, Don's problems, as Jerry understood
18 them, that -- boy, I got off the track here. Could
19 ~~you please restate the question? I'm sorry. Maybe we~~
20 could have the court reporter do that.

21 THE COURT: You were expressing why he,
22 Pastor Barnett, was reluctant to go along with your
23 firing.

24 A Oh, yes, I did bring considerable pressure. That was
25 the point I was trying to make. Jerry became,

1 because, just based on sketchy information which he
2 provided me, which as far as I was concerned was
3 virtually meaningless, he had stripped it of anything
4 specific.

5 Jerry was very irate and exceedingly
6 ~~difficult to work with. In fact when he would come~~
7 down to my office, and he reported to me, I was his
8 ~~superior, he would just come down, and really the only~~
9 thing he had on his mind was accusing me for not
10 backing him as opposed to Donald Barnett in the
11 matter, and he became quite uncivil.

12 The relationship, I tried to passify him, I
13 ~~tried to ask him to set that aside, to be civil, at~~
14 least be polite, that we had to maintain a working
15 relationship. I was not after him for anything, it
16 was the reverse.

17 I feel that I had offered him every courtesy,
18 every consideration beyond what was reasonable and he
19 still continued. I couldn't deal with the man.

20 Finally we established that we'd work through
21 an intermediary, which is kind of untenable, but Chris
22 Matthews, who was up there in that office at that
23 time, kind of was the go-between.

24 Q What do you mean the "go-between" or an
25 "intermediary"?

1 A If Jerry had something he wanted to bring to me, he
2 would take it to Chris Matthews, and Matthews would
3 come to my office and discuss it, and take it back to
4 Jerry. That's how bad the relationship was.

5 Q You mean like if I would say you tell Mr. Rohan that
6 I'm unhappy, or something like that?

7 A Yes, I warned him, there was only a very short period
8 of time, I'll give somebody some consideration, bear
9 with them in an hour of distress or something, but as
10 far as an ongoing working relationship, as manager, I
11 would not continue to tolerate that for long periods
12 of time, and so when that showed no signs of abating
13 and if anything, you know, grew worse, that was not a
14 tenable way to conduct business for very long. So I
15 had asked Don Barnett on several previous occasions
16 that, Don, this is not a situation that I can continue
17 to put up with, I want to dismiss him, and Don kept
18 saying no, and I'd wait awhile later, until I felt it
19 was even more untenable yet, and I'd go back and say,
20 Don, this is not something I can put up with.
21 Finally, I had decided this was it, I had to make a
22 change, it was madness to continue to operate like
23 that, and so I made one final strong appeal to Don,
24 and I guess I pulled out all the stops. as it were.

25 and Don acquiesced at that point.

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I explained my frustration. I went over all the detail of how difficult it was, all the difficult situations, and so he finally acquiesced at that time, but I'll have to say, Jerry never accepted it as that. He felt like Don was using me as a front to get rid of him. It absolutely was not true.

He'll probably think that to his dying day

did and I know where I was.

him that it was your idea?

ould not accept that.

t accept it?

ON: I wonder if this would be a

e a break.

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as Jerry Zwack's

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Q You explained to h

A Absolutely. He wo

Q He simply would no

A No way.

MR. JOHNS

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good time for a break.

THE COURT: Yes, we'll take

(A break was

Q (By Mr. Johnson) Mr. Hicks, what was your position in the counseling center?

A I think while he was there -- let's see, at the time he was dismissed he was the manager of the counseling center.

Q Did he counsel people himself, or was he just a front or what was his sort of job description?

A Jerry's position was limited, in a limited way.

Q What do you mean?

1 A In that he was not at all one of our best counselors,
2 and --

Q Had he been trained as a counselor, do you know?

THE COURT: Pardon?

MR. JOHNSON: Had he been trained in any way
as a counselor.

Not that I recollect.

~~Ken: ... the ... it was ... your ... were ...~~

9 shortcomings as a counselor?

10 A Well, his shortcoming that he didn't have the
11 experience that we expected of counselors. Normally
12 counselors would work, say first under the direction
13 of a minister of counseling, and they would consult
14 with the minister of counseling on the counsel that
15 was being given, being given not too difficult cases,
16 to begin with, and gradually, as confidence was built,
17 and expertise and the results that were achieved out
18 of their counsel, confidence would rise and they would
19 be given more difficult cases.

20 In other words, they were tried and they
21 picked up a lot of experience along the way. This was
22 not particularly the way that this, this was not the
23 way that Jerry started his counseling.

24 He had a good way to, he was very good at, so
25 to speak, de-fusing people that came in, that were

1 just irate and, you know, in a semi-rational state, as
2 far as calming them down, pouring oil on the troubled
3 waters for the moment, but he really didn't have the
4 depth to approach a long-term solution for these
5 people.

6 Q Was he ever -- excuse me.

7 A So we did not give him authority over the counselors,
8 per se. Now, he was managing, there was a great many
9 administrative things. He did have interface with the
10 counselors and so forth, but he could not overturn,
11 for instance, he was not the final counseling
12 authority, or for that matter disfellowshipping
13 authority, or any of those kinds of things.

14 He was much more of an administrative
15 manager, although because of where he was, he came
16 into contact with a lot that was outside the strictly
17 administrative.

18 Q Was he ever Pastor Barnett's counselor?

19 A Yes, he was.

20 Q Do you know when that was?

21 A I remember that it included the spring, probably. I
22 don't remember when it started, but it was for some
23 number of months and probably stopped in, the best I
24 can remember, May or June of 1987, or somewhere in
25 there.

1 Q So in the summer of '87, fall of '87, he did not
2 continue to be Don's counselor?

3 A That's correct.

4 Q Did he continue to express a strong interest in Don's
5 ~~personal affairs; is that fair to say?~~

6 A Well, he was very interested in them, although he was
7 taking a hands-off position, because that counselor
8 relationship, the baton, as it were, had been passed
9 to Lanny Peterson and Scott Hartley, and so he was
10 trying to keep a hands-off position, but he was still
11 in an agitated state toward Don.

12 Q Did he have a close and intense relationship of some
13 sort with Pastor Barnett's wife?

14 A He did.

15 Q I believe you said Exhibit 37 was a memo. If you
16 could turn to Exhibit 37. I think it's in this
17 volume of the exhibits. This is a memo you sent out
18 to --

19 A Exhibit 36, you say?

20 Q Exhibit 37, I'm sorry, Exhibit 37. This is a memo
21 said you sent out when Jerry Zwack had been
22 terminated?

23 A Yes.

24 Q So we know that by September 25th Jerry Zwack had been
25 terminated from his position in the counseling center?

1 A Yes.

2 THE COURT: When was that dated, by the way?

3 MR. JOHNSON: Pardon?

4 THE COURT: When was that dated?

5 MR. JOHNSON: This is dated September 25th,
6 1987, and it talks about him having been laid off.

7 Q Now, you talked about David Motherwell having
8 oversight of volunteer counselors and counselor
9 consultation regarding disfellowships.

10 Does this mean that David Motherwell would be
11 the final person that would have to approve
12 disfellowships?

13 A Yes.

14 Q If David Motherwell approved a -- you had had the
15 position of having a final approval authority on
16 disfellowships previously, had you not?

17 A I had.

18 Q And you appointed David Motherwell here to have the
19 final approval?

20 A David Motherwell was the highest authority for
21 counseling-related matters, which included the
22 disfellowships that we had in the counseling center.

23 Q I guess my question, Mr. Hicks, is if you had had sort
24 of a right of last refusal, as it were, and my
25 question is, is the authority that David Motherwell

1 got from this memo the same authority that you had
2 previously had?

3 A I think it worked out that way in practice, yes.

4 Q Would he actually review and approve every single
5 disfellowship, then, that came through?

6 A Yes, he would.

7 Q So somebody would recommend it and then he would

it?

in some cases there
require his approval.

fellowshipped

own to

ely concur, and he

ess in that.

ed any

somebody came to

t to be

pprove?

nt to approve

all's right?

8 approve it, or would he not approve

9 A Yes, he would. It didn't require,
10 were disfellowships that didn't req

11 For instance, if a senior elder dis
12 someone, they had a right in their

13 disfellowship, but he would ultimat
14 was part of the administrative proc

15 Q Do you know whether you ever approv
16 disfellowships after this?

17 A I never did, no.

18 Q Had you before?

19 A I had, for years.

20 Q Was there ever a point in time when
21 you and said I think so and so ought

22 disfellowshipped, and you did not ap

23 A Yes.

24 Q You say the senior elders had a right
25 disfellowships beyond David Motherwe

1 A I said that they had the right to disfellowship
2 people. I didn't say that they had the right to
3 approve the disfellowships of others.

4 Q Okay, but if somebody came to them and said, I think
5 so and so ought to be disfellowshipped, they could
6 either approve someone else's disfellowship, or if
7 they couldn't do that, they could go ahead and
8 disfellowship the person on their own. I mean if they
9 had --

10 A For instance, Scott Hartley, who was a senior elder,
11 was also what we called a counselor-consultant and
12 there were a couple of other counselor-consultants.

13 If someone wanted a second opinion, not a
14 binding opinion, but a second opinion on a difficult

~~case, and, you know, whether it should be~~ 15
disfellowship or special status or, you know, the 16
terms, or something like that, they could go to any 17
one of the designated counselor-consultants and get 18
the second opinion. 19

That did not mean that that person, the 20
counselor-consultant had the, in order to become a 21
party in the disfellowship or anything but -- now, I 22
don't know, I think I may have forgotten part of your 23
question. 24

Q You mentioned Scott Hartley. He was a 25

1 counselor-consultant?

2 A Yes, he was.

3 Q And he was a senior elder?

4 A Yes.

5 Q Now, did he remain a counselor-consultant through the
6 fall of 1987, or was he taken out of the counseling
7 center?

8 MR. ROHAN: Is this question about Jerry
9 Zwack? I'm sorry.

10 MR. JOHNSON: Scott Hartley.

11 A I think Scott was reassigned somewhere in that time
12 frame. I don't remember exactly.

13 Q Do you remember what the --

14 A But he still continued, I know, to do considerable
15 counseling. He was spending, I think, part-time as a
16 administrative assistant to me, and he was still
17 continuing with some of the counseling cases that he
18 had had. I don't think he was taking any new ones.
19 believe he was continuing with ones that he had
20 already started.

21 Q Now, if somebody had approved a disfellowship in the
22 fall of 1987, and then they came to you, the person
23 being disfellowshipped came to you and said -- well,
24 let's say the person that wanted somebody
25 disfellowshipped came to you, would you have had the

1 power, in the fall of 1987, to say no, I don't want
2 that person disfellowshipped, they shouldn't be
3 disfellowshipped?

4 A I was no longer in that position at that time.

5 Q Why not? You had been in that position, had you not?

6 A I had been the one that made the final decision.

7 There was awhile that I did all the review and
8 questioning and investigating to make sure the
9 fairness of the disfellowship, and then tried to get
10 ahold of Don and would get his final concurrence, just
11 based on my brief summary of all my inquiry, and then
12 after some years of that, he, I think, gained enough
13 confidence in my carefulness that he directed that I
14 would be the final authority on that, which I was for
15 a number of years. In other words, they never went to
16 Don at all.

17 Q Was there ever a time that you approved a
18 disfellowship, when you had that authority, when
19 Pastor Barnett overrode your decision?

20 A I do not recall of any instance like that.

21 Q Did you and he ever discuss that?

22 A Discuss what?

23 Q The possibility that he might override your decision.

24 A I don't recall any overrode decision.

25 Q You mentioned in the fall of 1987, I think, that the

1 church's insurance coverage was jeopardized or called
2 into jeopardy. Do you recall that?
3 A I don't remember using the word "jeopardy". I
4 remember using the word we had lost our insurance.
5 That's more than jeopardy, as far as I'm concerned.
6 Q That's the ultimate jeopardy?
7 A The lack thereof.
8 Q I think you indicated that there had been number of
9 lawsuits brought.
10 A Yes.
11 Q Was the insurance company concerned at all about a
12 lawsuit entitled Jorgenson versus the Community
13 Chapel?
14 THE COURT: Jorgenson?

Jorgenson.
not concern the insurance
being referred to. I'm
Jorgenson suit was filed
~~an the first two suits, and~~
t that suit was not a
ne insurance company,
ty in that case, nor had we
liability on their part.
tender the defense of the

15 MR. JOHNSON: Jorg
16 Or did that suit r
17 company?
18 A I know the situation that's
19 just trying to think. The
20 ~~much later, as I recall, th~~
21 it was my understanding that
22 factor, because the, with t
23 because they had no liability
24 alleged that there might be
25 Q In other words, you didn't t

1 Community Chapel to the insurance company for the
2 Jorgenson lawsuit?

3 A I never did, no.

4 Q And because of that you don't believe that they had
5 any concern, that wasn't one of the lawsuits that
6 concerned them?

7 A It was never brought to my attention that that was any
8 part of the insurance company's problem. There were
9 no, I think it was the improper sexual activity of the
10 employees, pastor or agents of the church for which
11 they would have potential liability, that was the
12 great concern to them.

13 Now, that doesn't explain in my mind, and I
14 felt it was totally unreasonable, for instance, that
15 they cancelled our fire insurance for that, but they
16 did. It wound up being everything.

17 Q When you say that they were concerned about possible
18 liability as a result of alleged sexual activity by
19 church employees, did that include any church
20 employees other than Pastor Barnett?

21 A Let's see. There was another lawsuit that was also on
22 the books at that time, and I don't recall, I recall a
23 couple of the litigants. I don't remember the short
24 name of it. There was Chabot. There was another
25 lawsuit that had allegations of some improper

1 relationships, and another factor was that all this
2 was getting tremendous media attention.

3 Q Well, was -- that wasn't a concern, though, to the
4 insurance company, or was it?

5 A I think it was, as well. In other words, the media
6 attention arose out of all of these things, and I felt
7 that the media reporting was disturbing, potentially
8 disturbing to some of the community, and maybe that
9 was the reason they decided to cancel the fire
10 insurance, that they felt like the media attention
11 being drawn to us by virtue of these cases was
12 increasing us as a target for arson or something.

13 Q Was one of the lawsuits alleging sexual misbehavior

against an employee of the church leveled at Elder
Alskog, Ralph Alskog?

A He was one of the defendants named.

Q Was Scott Hartley one of the defendants named?

A He was, but that was later dismissed, before trial or
anything.

Q Were there any other of the members of the eldership
named?

A I don't recall, or I don't remember exactly who, right
now. I have not seen that document in almost three
years now, and so I don't think so.

Q You said that one of those was later dismissed. Do

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~~...you remember when it was dismissed, was it the summer
or the fall of 1988?~~

A I don't remember, I don't remember.

Q Wasn't the lawsuit against Pastor Barnett filed by Ms. Jorgenson dismissed against Pastor Barnett and Barbara Barnett?

A I don't have any recollection, at the time I left, of any actions that had taken place on the Jorgenson suit.

Q You mentioned that there had been lot of publicity about litigation involving the Community Chapel, or the employees of the Community Chapel, that may have been part of the reason why some portions of the insurance were covered.

...n the fall of 1987, the
...king about, that one of
...nvolving the Community
...munity Chapel that was
...in the trial, was the
...n, Your Honor. This has
...this case.
...nderstand the nature of
...think I do.

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Isn't it true that in
period of time that we're talk
the most prominent lawsuits in
Chapel or people from the Comm
getting publicity, lots of it
criminal matter?

MR. ROHAN: Objection
absolutely nothing to do with

THE COURT: Do you un
the question?

THE WITNESS: I don't

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MR. JOHNSON: If I could briefly argue. I don't get into it any, this witness has said that the church, they're trying to say we couldn't get

insurance, and it was because of these particular activities.

Now he's indicated that it's publicity, and the record, we can introduce all the things about the fall of '87, when he says that the insurance went into jeopardy, all of the newspaper articles that revolved around litigation in the Community Chapel, and I can fairly represent that a substantial number of those articles talked about criminal charges against and a

trial that was going on against people that were on the eldership committee, not the pastor.

Counsel brought this up trying to lay the blame for these insurance cancellations on Pastor Barnett and the suits against him, when, in fact, the witness says it was just the surrounding publicity, and the publicity was not so much about the civil suits as it was about the criminal suits.

MR. ROHAN: Your Honor, none of the criminal suits were against the church. The suits that we brought up and the suits, the other suits that Mr. Johnson has brought up, were suits also against the church. Criminal cases were not brought up against

1 the church.

2 The second thing is the criminal cases
3 involved issues of, First Amendment issues of
4 religious freedom and ministerial privilege.

5 THE COURT: I'm going to permit you to answer
6 that question over the objection.

7 A What is the question?

8 THE COURT: The question is as a matter of
9 fact in the fall of '87 the publicity involved

10 criminal charges.

Could I ask for a
11 sdemeanors counted as criminal?

12 THE WITNESS:

clarification? Are mis

13 THE COURT: I'm afraid they are.

14 MR. JOHNSON: Yes.

15 THE COURT: I don't mean to be taking a part.

16 THE WITNESS: I needed that definition.

17 THE COURT: Some people regard them as

18 ~~criminal, some people don't but for my purposes I~~

19 would believe that they should be classified as
20 criminal..

21 MR. ROHAN: He's calling for a yes or no
22 answer.

23 A What is the question again?

24 Q The question again is, isn't it true that in the fall
25 of 1987 a great deal of publicity was generated,

1 newspaper articles, in which the Community Chapel and
2 Bible Training Center was mentioned in the articles
3 with regard to criminal charges that were being tried
4 involving David Motherwell and Scott Hartley?

5 A Yes.

6 Q You're aware that one of those charges was later
7 dismissed with regard to one of those individuals, or
8 are you, are you aware of the outcome of the charges
9 or not?

10 MR. ROHAN: Your Honor --

11 A No --

12 MR. ROHAN: I'd object. This has nothing to
13 do with --

14 THE COURT: You can answer that question.
15 Are you aware of the disposition of that.

16 A I heard a news report.

17 Q Just yes or no.

18 THE COURT: Yes or no.

19 A I had heard something about the resolution of it over
20 the radio?

21 Q Now, I'd like to turn to the hearings or the meetings
22 that began in late January that we talked about here
23 as the hearings, the eldership hearings.

24 Did you ever see an agreement or a document
25 that says Agreement, that bears Donald Barnett's

1 signature and the date January 25th?

2 A Yes.

3 Q Were you present in any eldership meetings where that
4 agreement was discussed?

5 A Yes.

6 Q Do you recall whether or not -- let me ask you this:

7 ~~Were there ever any senior elder meetings where that~~

was discussed, prior to January 25th, well, prior to
or including January 25th?

THE COURT: As distinguished from the whole
group?

MR. JOHNSON: Yes.

Q Now, when you had your senior elder hat on -- someone
has been talking about putting hats on and taking hats
off -- when you had your senior elder hat on, was
there ever a senior elder meeting where that was
discussed?

A I don't recall any meeting like that.

THE COURT: What was that again?

THE WITNESS: I don't recall any meeting like
that. As far as I'm concerned, there never was a time
that the senior elders discussed that agreement in
that time frame.

Q Was there ever a time where the Board of Senior Elders
discussed any guidelines for the eldership hearings?

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1 A Not as a board, no.

2 Q Were there ever any meetings where the senior elders
3 relinquished any of the authority or the jobs or the
4 positions or the rights or responsibilities that the
5 senior elders had under the bylaws, to this group
6 called the eldership?

7 A No.

8 Q Now, the eldership, as a group, did not, as I
9 understand it, have any, the group called the
10 eldership was not a group that is named or recognized
11 or designated or discussed by the bylaws; isn't that
12 fair to say?

13 A No. It was not discussed by the bylaws.

14 Q This was sort of a hybrid group, constructed for this
15 set of hearings?

16 A Yes. I would like to add one qualification to your
17 previous question, is that permissible, because you
18 asked me for an answer, whether the senior elders had
19 relinquished any of their authority.

20 When you said that, I was thinking in terms
21 of Jack, Scott and myself, because I remember that
22 question came up at one point in the hearings, but,
23 with regard to the three of us, but there was one area
24 in which there was a relinquishment.

25 Q By the Board of Senior Elders?

question, the Board of Senior

When the three senior elders
three senior elders not including
is, you and Jack DuBois and Scott
a group, at some point in time,
of Senior Elders, relinquish
eldership?

guidelines that were agreed upon by
part of running the hearings?

guidelines a provision that the
maintained confidential?

guidelines a provision that no
be kept, and that if there were
be destroyed?

such as that, yes.

yourself?

yes.

guidelines did you subsequently

1: A No.

2 Q Well, that was my qu
3 Elders.

4 A All right.

5 Q Was there ever a tim
6 relinquished, the th
7 Donald Barnett, that
8 Hartley, did you, as
9 acting as the Board
10 authority to the eld

11 A No.

12 Q Were there some guid
13 the eldership for so

14 A Yes.

15 Q And was one of those
16 proceedings would be

17 A Yes.

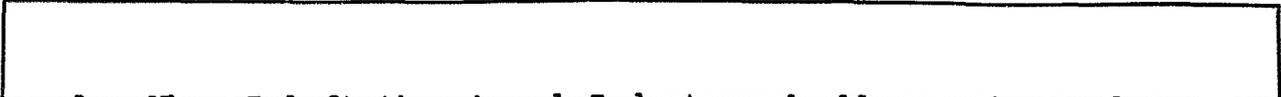
18 Q And was one of those
19 permanent notes woul
20 notes kept, they woul

21 A There was a guideline

22 Q Did you keep notes yo

23 A I kept some notes, ye

24 Q Pursuant to the guide
25 destroy your notes?



~~the envelope destroyed all my notes and~~

do that?
wanted to leave that whole chapter of my
me and I had no interest in ever referring
at information again.

st met, you had some meetings with the
on the eldership committee prior to the
ually commencing, didn't you?

me what we referred to as organizational
get things in order, such as the
yes.

that you discussed the guidelines there?

through a couple of drafts?

did.

a result of discussion that was held
various elders?

you made about well, let's keep this in
ge that or whatever?

(Interruption in proceedings.)

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everything.
Q Why did you
A Because I wa
life behind
to any of the
Q When you first
other people
meetings actu
A There was som
meetings to g
guidelines, y
Q And I take it
A Yes.
Q Did they go t
A I think they
Q Was this as a
between the v
A Yes.
Q Comments that
or let's chan
A Yes.

1 A Also, as I recall, Don Barnett had something to do
2 with the drafting of the guidelines, as well.

3 Q He did, he participated in the drafting of the
4 guidelines?

5 A Yes, I recall -- I have not seen it since the time

6 ~~that it was put out -- but in Don Barnett's memo, Don~~
7 Barnett put out a memo which basically authorized the
8 entire eldership hearings, and named the people that
9 would be on it.

10 I think there was, if I recall correctly,
11 some guidelines that were suggested there, and one
12 ~~page of that of Don's memo I recognize as being the~~

13 second page of the guidelines. You notice it's a
14 different type face. I have noticed that.

15 Q Did you have a copy of that memo?

16 A No, I have kept nothing.

17 Q You had a copy at one time?

18 A Yes.

19 Q Was it one of the things you destroyed?

20 A Must have been.

21 THE COURT: One of the things what?

22 MR. JOHNSON: One of the documents he
23 destroyed. He indicated he destroyed a number of
24 records when he left.

25 A (Continuing) It may not have been in what I

1 destroyed. I only destroyed my own personal
2 handwritten notes. All the other documents, such as
3 published memos, would have been in my desk file at
4 the office, and I left all of those files intact
5 completely when I left.

6 Q When was it that you did leave, do you remember?

7 A My last day of record was, I think, March 14th, 1988.
8 My last working day was the previous Friday, which had
9 been March. I think it would be March 11, 1988.

10 Q Now, when the hearings commenced, who spoke first, if
11 you recall?

12 A Jerry spoke first, Jerry Zwack.

13 Q Who then spoke after that?

14 A Don Barnett spoke after that.

15 Q Did the hearings go fairly smoothly through that
16 period of time, I mean when Jerry spoke the first
17 time?

18 A There were interruptions.

19 Q Were there any interruptions when Don spoke, Pastor
20 Barnett, if you recall?

21 A I believe there were.

22 Q After the two of them spoke, did one or the other of
23 them speak again, then?

24 A Yes, both of them spoke again.

25 Q What was the nature of their reply or their comments

1 during this period of time?

2 A They were rebuttals.

3 Q Rebuttals one to the other?

4 A Yes. Don brought rebuttal against Jerry's testimony,
5 and Jerry doing the same what Don had brought, yes.

6 Q Did there come a point in time where the meeting or
7 the taking of testimony or the speaking of one or the
8 other of them ceased for some reason?

9 A Are you speaking of in a given meeting?

10 A Well, on or about February 2nd, did the meeting sort
11 of break down, in one respect or another?

12 A Yes.

13 Q And did you call an emergency meeting the next day?

14 A In a qualified sense, you can say I did, however it
15 was really my assuming for the moment only, the
16 chairmanship of the, or assuming the leadership of
17 that group, simply to bring some concerns to the
18 group, and that was only a very temporary thing for
19 just a limited two meetings or something.

20 Q So you took over to give some direction to things?

21 A I did.

22 Q And you did this what, in your
23 manager of, one of the senior

24 A Senior elder, yes, and vice-pr

25 Q Did you have occasion to write

capacity as general
elders?

resident and all of that.

a letter as a result of

1 that last meeting, to one of the members of the
2 eldership?

3 A What last meeting are you referring to.

4 Q The meeting where things sort of broke down.

5 A Yes.

6 Q Who was the person you wrote the letter to?

7 A I wrote a handwritten letter to Russell McKenzie, who
8 was the chairman of the hearing committee.

9 Q In that letter did you make any statements with regard
10 to Jerry Zwack's actions, characterizing them as
11 blackmail?

12 A I did.

13 Q Did you make statements in that letter about limiting
14 the issues that would be presented for further
15 discussion?

16 A I did.

17 Q Did you make references in the letter to establishing
18 additional procedures and controls?

19 A I did.

20 Q Why did you make those recommendations in the letter?

21 A My opinion that in the process, and I think it was, I
22 don't recall if it was in the rebuttal or Jerry's
23 ~~original testimony but the issue that is brought up~~
24 by Jerry of an alleged sexual incident involving the
25 pastor.

1 Q How long before had that incident occurred?

2 A Allegedly some --

3 Q Ten years?

4 A Eight, 10 years. That was the subject of speculation,
5 the exact date, but it was something of that order.

6 Q Was this letter subsequently read to the eldership at
7 the next meeting, the meeting that you called?

8 A I don't recall specifically reading that letter to

9 ~~with, I don't know where -- conditions of that kind --~~

10 private communication with Russell at that time,
11 because I didn't want to, in any way disparage Russell
12 in his handling of things, but I felt he needed to
13 take a firmer grip on the scope of things that were
14 being brought, and I was trying to, in essence, urge
15 him to do that.

16 Q Was it clear to you, when you wrote that letter, that
17 Pastor Barnett thought that the scope of inquiry of
18 the meetings had gone far far beyond what he had
19 originally intended or believed it was going to be?

20 A Don had stated with regard to this incident that Jerry
21 had brought up, I'll call it the Los Vegas incident --

22 PASTOR BARNETT: That's not the question.

23 Q Was it clear that Pastor Barnett thought the scope of
24 the inquiry had gone beyond what he originally
25 believed?

1 A Yes.

2 Q Did you propose to the committee --

3 A As far as the time of events being considered, yes.

4 Q Did you propose to the committee or to the eldership a
5 document that you entitled Confidential Committee
6 Hearing Rules of Protocol?

7 A I seem to recall that I did.

8 Q Did you also propose to the committee a set of
9 documents entitled Committee Hearing Rules and
10 Deliveration?

11 A I think I did.

12 MR. JOHNSON: Let's mark this.

13 (Exhibit No. 51 was marked.)

14 Q I'd ask that you identify, is that the rules of
15 protocol that you have indicated you proposed to the
16 hearing?

17 A With the exception of the handwritten annotations, it
18 appears to be.

19 Q There are a few handwritten remarks on page one, on
20 page three and on page four; is that correct?

21 A Yes.

22 Q And those are not your handwriting?

23 A No.

24 Q Otherwise, it's a true and correct copy?

25 A It appears to be.

1 Q Do you know when you proposed that, was that proposed
2 before this meeting or during this meeting, the
3 meeting that you called?

4 A No, it was, I proposed these somewhere in the range of
5 maybe February 2nd or February 4th, somewhere in
6 there. That's as accurately as I can place it right
7 now, of 1988.

8 THE COURT: That doesn't mean anything to me.
9 That was before or after the emergency meeting?

10 THE WITNESS: I probably started on them
11 before the emergency meeting, but just probably
12 immediately after I wrote my handwritten letter to
13 Russell McKenzie complaining about events from so far
14 in history being brought up as an issue now, at great
15 distress to the pastor. I was trying to limit things
16 to more of a current nature, like in the last few
17 years.

18 THE COURT: I think Counsel's question had to
19 do with sequencing and timing, and not what you were
20 trying to do or what happened.

21 A Well, can you ask me a question about the sequence,
22 was it before or after you have such and such a point,
23 if you want to establish that.

24 Q Well, was it before the emergency meeting that you
25 proposed this, if you remember?

1 A I think I proposed these at the emergency meeting.

2 Q At the emergency meeting?

3 A Yes. It's not proper to call them emergency meetings.
4 They were committee procedural meetings or something.
5 I can't say, in a minor sense, an emergency existed, I
6 suppose.

7 Q Now, was this document adopted, this Rules of

8 Protocol, Exhibit Number 51?

9 A No, it was not.

10 Q Was it followed by general consensus?

11 A I don't think it was.

12 Q Was it the ground rules that you operated under?

13 A No.

14 Q Do you remember having your deposition taken on

15 October 3, 1990?

16 MR. ROHAN: What's the date again, Counsel?

17 MR. JOHNSON: October 3, 1990. It's Volume
18 2.

19 A I remember depositions. I remember the approximate
20 time.

21 Q Let me ask you another --

22 Let's mark this.

23 (Exhibit No. 52 was marked.)

24 Q Handing that document to the witness I will ask if
25 this was the document you prepared and gave to the

1 eldership.

2 MR. ROHAN: What is it on your exhibit list?

3 MR. JOHNSON: It's not on the exhibit list,
4 again. It's Exhibit 4 from the deposition and the
5 other documents. The Rules of Protocol is Exhibit
6 Number 5 to the depositions. Is that your, is that
7 ~~the other document that you --~~

8 THE COURT: Those will eventually become
9 mine, sir.

10 A Yes, it is.

11 Q Now, was that adopted by the committee?

12 A No.

13 Q Was it followed by the committee?

14 A No. It clearly was not followed.

15 Q It was not?

16 A It was never in force.

17 Q Now, again I will ask you, do you remember having two
18 depositions taken last fall?

19 A Yes.

20 Q At the first deposition, after you had previously
21 testified about these documents, do you remember after
22 we had taken a break and you and Mr. Rohan had left
23 the room, did he, when he commenced his examination,
24 ask you, well. I'll ask you to read --

25 MR. SHAPIRO: What page are you referring to?

1 Q (Continuing) Page 78 starting at line 25, where it
2 commenced after our restroom break, his examination of
3 you at the bottom of page 78, and would you continue
4 reading through line 13.

5 A Beginning at line one on 79, is that it?

6 Q Line 25 on 78 through line 13 on 79.

7 A All right. Line 25 is Mr. Rohan asking the question,
8 "Handing you Exhibit 4, do you, on reflection and
9 examining Exhibit 4, wish to clarify your earlier
10 statements".

11 Q Now, just can I briefly interrupt and ask you this
12 question. Would you turn to the back of the
13 deposition, the original deposition I have just
14 opened, and see if there is a document set out in
15 there, Exhibit Number 4?

16 A All right.

17 Q Is Exhibit Number 4 the same document as what we have
18 marked as Exhibit 52?

19 A It appears to be.

20 Q Just to make things clear, would you turn over to the
21 next exhibit in the original deposition, just open to
22 your deposition, is that Exhibit Number 5 listed as

23 Exhibit Number 5 here, in your deposition, Exhibit
24 Number 5 is the Rules of Protocol; is that correct?

25 A Yes.

1 Q And that's Exhibit Number 51 this morning?

2 A Yes.

4 start it over.

5 A Mr. Rohan's question is "Handing you Exhibit 4, do
6 you, on reflection in examining Exhibit 4, wish to
7 clarify your earlier statements on the record about
8 recalling that exhibit". Answer, "Well, on reading
9 this over I know that most of these things were ne
10 implemented, and I guess I do remember drawing thi
11 up, because I was concerned that there would be a
12 fairness in the hearings, but I don't think that t
13 ever really, I don't know that they ever really di
14 accept these things."

15 "By they, you mean the elders", that was
16 question. The answer, "Yeah, all the committee
17 members. I don't think this ever was adopted. I
18 never certainly put it into place, like Number 5,
19 voting shall be by secret ballot, it just was neve

20
21
22 put into place like

23
24
25 n going to object

21 Q ... your best ...
22 the Rules of Deliberation, was not
23 Exhibit Number 5?

24 A That's true, neither of them were.

25 MR. ROHAN: Your Honor, I'm

1 ~~at this point. The witness you're mischaracterizing.~~

2 his testimony in the deposition. It says Number 5, it
3 doesn't say Exhibit 5.

4 MR. SHAPIRO: Number 5.

5 MR. JOHNSON: It says what it says. He read
6 it.

7 MR. ROHAN: That's correct.

8 THE COURT: Wait a minute. I'm not sure I
9 understand what has just been said.

10 In his previous testimony I understood that
11 he said that neither Exhibit 51 nor Exhibit 52 had
12 ever been accepted, put into place, followed in
13 practice or anything else by the group, by the
14 committee. Now, what did you say, did he in his
15 deposition say otherwise?

16 MR. JOHNSON: I thought that he said, I
17 thought that he said otherwise. I thought that's how
18 I interpreted the deposition.

19 THE COURT: Read what you think he said when
20 he said otherwise, because I didn't catch it, even
21 from his reading.

22 MR. JOHNSON: Well, on reading this over --
23 no -- yeah -- all the committee members, I don't think
24 this was, I don't think this ever was adopted. They
25 never put it into place like Number 5, "all voting

~~shall be by secret ballot. It just was never done.~~

2 By "this" you're referring to Exhibit Number 4,
3 Exhibit Number 4.

4 I was then going to ask him to read another
5 portion of the deposition earlier, where he talked
6 about Exhibit Number 5.

7 THE COURT: Okay. Maybe this is an
8 appropriate time to break for lunch.

9 MR. JOHNSON: It is, Your Honor.

10 THE COURT: We'll be at recess until a
11 quarter after one.

12 (Lunch break was taken.)

13 THE COURT: Mr. Hicks, you're still under
14 oath. You may proceed Mr. Johnson.

15 MR. JOHNSON: Your Honor, I would like to
16 just simply not proceed with the previous effort to
17 impeach Mr. Hicks, but I think that's probably unfair.
18 When I was 10, I was running across the field and
19 didn't see what I was about to step in, and I do that
20 from time to time.

21 I have reviewed the part of the deposition
22 that I asked Mr. Hicks to read, and I see what
23 Counsel, with a grin on his face, pointed out, that
24 when he was reading with reference to Exhibit Number 4
25 and then Number 5, he said Number 5, not Exhibit 5 and

1 Exhibit 4 has a Number 5 on it --

2 THE COURT: I see.

3 MR. JOHNSON: -- that he was referring to,
4 and he was not, as I had for several months, read the
5 deposition referring to Exhibit 5, as if Exhibit 5 had
6 been adopted.

7 THE COURT: That is a mistake that's very
8 understandable. I think anyone could do that.

9 MR. JOHNSON: Well, I don't step into things
10 as often as I used to do, but I still do, on occasion.

11 Q (By Mr. Johnson) Let me ask you, Mr. Hicks, when you
12 wrote the letter that you mentioned to Russell
13 McKenzie, and called the meeting in early February, or
14 sometime in the first part of February, after things
15 had sort of broken down, did you feel that the scope
16 of the discussion had gone broader, had become broader
17 than Mr. Zwack's letter had originally suggested?

18 A No.

19 Q I think you indicated that you did feel it had become
20 broader than Pastor Barnett had initially expected?

21 A Yes.

22 Q I'd like to briefly direct your attention to the same
23 deposition, Deposition Volume 2, and ask you to turn,
24 if you would, to page 42.

25 MR. ROHAN: Which date is this, Counsel?

1
2
3
4
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7

MR. JOHNSON: This is the February 3rd -- I'm
sorry -- October 3rd deposition.

MR. ROHAN: Page 42.

MR. JOHNSON: Page 42.

Q Actually let's back up to page 41. I would like to
ask you if you can read to yourself from line 19 --

would you read out loud from line 19 on page 41 to

8 --- line eight on page 42?

A Line 19 starts with a question by Mr. Johnson

have indicated some concern you had with the

of the testimony of Jerry Zwack". Answer, "

Question, "Was this broader than you

anticipated was going to be the case? " Mr.

objection, foundation, speculation. Answer,

knowledge of what Jerry Zwack was going to b

16 only made some very very vague a

17 of the end of Decemb

18 expect. I think it

19 suggested, yes, like

20 don't know that was

n, "You
e broadness
Yes".
u had
Rohan,
"I had no
ring. He

illusions in his letter
er 1987. I had no idea what to
was broader than his letter had

going back that many years, and I
a terribly painful thing to do

1 A Yes.

2 Q Now, following that meeting did you and the other
3 members of the, well, did you and Mr. Hicks and Mr.
4 Hartley hold a meeting on February 10th?

5 A Would you care to restate that?

6 THE COURT: You mean the whole group?

7 A (Continuing) Would you care to restate the question?
8 I believe you named the wrong participants.

9 Q Okay. Let me direct your attention to Exhibit 43. Do
10 those purport to be minutes of a senior elder board
11 meeting?

12 A I have testified previously about this memo, and
13 although we did record the minutes of this action, I
14 previously testified that technically it was not a
15 senior elders' meeting.

16 Q Well, that wasn't my question. Does this purport to
17 be the minutes of a senior elder board meeting?

18 A The is titled Senior Elders' Meeting.

19 Q Is that the same format that senior elder board
20 minutes had been placed in for quite sometime prior to
21 that?

22 A That's true.

23 Q You say that even though that appears to be the
24 minutes of a board meeting, it wasn't minutes of a
25 board meeting?

1 A Not technically.

2 Q And it wasn't technically a board meeting because of
3 why?

4 A Because Pastor Barnett was not there, and also the
5 action that was taken was not something that was
6 limited only to the jurisdiction of the senior elders.

7 Q And Pastor Barnett did not approve for you to meet and
8 discuss those matters; is that another reason? Well,
9 let me ask you: did he approve for you to get together
10 and hold a meeting of the Board of Senior Elders
11 without him being present?

12 A No.

13 MR. JOHNSON: I'd like to look at the, I
14 think it's Exhibit 24, the senior status letter, the
15 special status letter.

16 THE COURT: What number is that?

17 MR. JOHNSON: That's Exhibit number 24.

18 Q Now, this is the letter that was referred to, was it
19 not, in the previous exhibit, the exhibit of the
20 document entitled senior -- it's Exhibit 43, Senior
21 Elders' Meeting, February 10th?

22 A Yes, it is.

23 Q This letter purports to be written to Pastor Barnett,
24 not as a result of the eldership committee hearings;
25 isn't that true?

1 A Would you please restate the question.

2 Q Yes, I will. Would you read the last sentence of the
3 second paragraph?

4 A "Our subject of this letter is not an elder slash
5 committee hearing matter, but a senior elders slash
6 corporate board of directors matter."

7 Q Doesn't this letter purport to be an account of the
8 Board of Directors of the Community Chapel?

9 A No.

10 Q What is the duration of the senior status that you

11 sought to impose on Pastor Barnett?

12 A Could you please restate the question?

13 Q What is the duration of the special

14 sought to impose on Pastor Barnett?

15 A It was listed as indefinite.

go on for a short time or a long time?

16 Q It could

time or a long time, yes.

17 A A short t

er?

18 Q Or foreve

y on the circumstances.

19 A Depending

and the other members of the, well, when you

20 Q When you

Hartley and Mr. DuBois got together to take

21 and Mr. H

on referred to in Exhibit Number 43 on

22 the actio

10th, did you advise Pastor Barnett that you

23 February

ing to do so?

24 were goin

25 A No.

1 Q And he wasn't present, I take it?

2 A No.

3 Q Had the Board of Senior Elders met previously to take
4 formal action in a board meeting at times in the past
5 without Pastor Barnett's presence?

6 A I seem to vaguely recall there was at least a
7 circumstance, but I don't remember, it was far enough
8 back, and I have no specific recollection of the
9 incident.

10 Q Okay. Now, did the Board of Directors, the Board of
11 Senior Elders have a meeting on February 26th, 1988?

12 A You're asking if the Board of Senior Elders had a
13 meeting on that day.

14 Q Yes.

15 A I don't recall that we did.

16 Q Do you remember the Board of Senior Elders holding a
17 discussion as to whether or not to authorize the
18 eldership to present certain matters to the
19 congregation on the evening service of February 26th?

20 A I am not remembering that. If you have some record of
21 that, that would refresh my mind, I'd be glad to look
22 at it.

23 Q I'd like to hand you a document and ask whether or not
24 that refreshes your recollection.

25 A Okay, this was a meeting that was actually, I'll say a

1 part of the entire group of 16.

2 Q Did the senior elders at that meeting purport to take
3 some action?

4 A We agreed to the presentation to bring the special

5 status information to the congregation. In light of Pastor's refusal to
6 himself

7 abide by it, we felt this was essential for the
8 and protection of the congregation.

9 Q Okay. Back to the start of the hearings, when
10 began, who was the moderator?

11 A Well, the chairman of the committee was Russell
12 McKenzie.

13 Q And you have indicated that some guidelines were
14 prepared. Do you know who actually did the dra

15 for the initial set of guidelines, beyond
16 you thought Pastor Barnett had had a hand in

17 A No, I don't.

18 Q Were these guidelines, guidelines that, in
19 form, were they guidelines that were reached

20 final form by the time the hearing started.

21 they --

22 A Yes.

23 Q Is it fair to say, then, that at
24 Barnett executed this January 25th
25 guidelines were in effect?

1 A Yes.

2 Q And agreed upon?

3 A Yes.

4 Q And you have indicated he had some part in drafting
5 them?

6 A He had some input.

7 Q Some input?

8 A Yes.

9 Q Was it your understanding that he was aware of the
10 final draft of the guidelines when he signed the
11 agreement?

12 A Yes.

13 Q Were you aware of the final draft of the agreement,
14 the final draft of the guidelines, when the meetings
15 or the hearings started?

16 A Yes, each of us had a copy of them.

17 Q Now, on the evening of February 26th, did you attend a
18 church service at Community Chapel? It was a Friday
19 evening.

20 A I did.

21 Q Did you hear certain people address the congregation
22 Yes.

23 Q Did you yourself address the congregation?

24 A No.

25 Q Mr. Hartley did?

1 A I cannot say that I'm sure Mr. Hartley did.

2 Q Mr. Peterson?

3 A Yes.

4 Q Mr. Motherwell?

5 A I believe so.

6 Q Was your letter of special status read to the
7 congregation, the letter to Don Barnett?

8 A I believe it was.

9 Q Was there any discussion of any sort, or statements of
10 any sort to the congregation, with regard to the
11 hearings?

12 A It's likely the hearings were mentioned.

13 Q Was there any discussion of the hearings?

14 A I simply do not recall that.

15

16 **DELETED MATERIAL FILED UNDER SEAL**

17

18 A To the best of my recollection, no.

19 Q Would you turn to Exhibit 32 in the book in front of
20 you. This is the special status letter.

21 A It's missing from this book.

22 Q Maybe it wasn't admitted.

23 MR. ROHAN: Yes, it was.

24 THE COURT: It was admitted.

25 MR. ROHAN: Which letter?

1 MR. JOHNSON: The special status letter of
2 February 15th Exhibit 32.

~~ROHAN: That was under a different~~

irty-two is the tapes. You just had that
ut, you just had him look at that. It's
ead the first sentence of Paragraph 3?

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ieve that this was read to the
?

Barnett signed the agreement on January
g about the guidelines that were to
hearings and agreed to have the hearings,
hose guidelines, was it your understanding

1, do you believe that he understood that
efore you and admitted intimate personal
the members of the committee wanted him to
members of the committee would have the

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Q Would you re
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Q And you beli
congregation
A Yes.
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1 Q Did you have occasion to hear a sermon or an address
2 that he made to the congregation on, two days later,
3 on Sunday morning?

4 A No.

5 Q You were not present?

6 A I was not present.

7 Q Did you have occasion to subsequently discover from
8 Don Barnett what his attitude was with regard to what
9 ~~the elders had done at the February 26th Friday~~
10 evening service?

11 A As I recall, he came back to the group hearings the
12 day after, it seems like it was the day after, which
13 had been, I think it was a Monday, and fired both
14 barrels.

15 Q Was he happy or angry at what had occurred?

16 A Angry.

17 Q Did he feel that he had been deceived?

MR. ROHAN: Your Honor, I object. This is
pure speculation as to what Pastor Barnett felt. He
certainly can testify as to that.

THE COURT: His opinion as to his reaction.

A I did not hear him use the word "deceived". I do not
recall the use of that word.

Q Did he feel that the elders had broken their agreement
by going to the congregation?

18

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1 A He may have leveled some of those accusations.

2 Q Had he previously felt the elders had broken their
3 agreement with regard to the scope of information that
4 they were allowing into the hearing?

5 A That was never alleged.

6 Q Did he feel the scope was broader than he had
7 originally agreed to?

8 A Well, he had agreed to hear all of Jerry Zwack's
9 grievances, and --

10 Q I'm asking -- go ahead and finish.

11 A He agreed to hear all of Jerry Zwack's grievances.
12 It's only a guess on my part that based on his
13 reaction at the hearings, that he did not expect
14 events from eight years ago to be included in Jerry's,
15 but he had agreed to hear all of Jerry Zwack's
16 grievances, and that was a part of what Jerry Zwack
17 brought.

18 Q Did he react during the hearings in a way that
19 manifested the position or the attitude on his part
20 that they were, that the hearings were becoming
21 broader than he had agreed to?

22 A I'll have to answer no to that.

23 Q Between February 28th and March 3rd, February 28th was
24 a Sunday and March 3rd would have been the Thursday
25 following -- given the fact that it was a leap year,

1 there was a February 29th -- did you have an occasion
2 to meet with an attorney, Jim Leach?

3 A I believe we did.

4 Q Did the eldership hold additional meetings during that
5 period of time?

6 A The eldership hearing committee, the group of 16, are
7 you saying?

8 Q Yes.

9 A Yes.

10 Q Was there a tape played, a video tape played of Jimmy
11 Swaggart either sometime during that time frame?

12 A What time frame are you referring to?

13 Q Let's say the week before February 28th and the week
14 after February 28th.

15 A It was a video tape, I think, of a Jimmy Swaggart,
16 either program of some sort that was played at one
17 point. I cannot state that it was during that time
18 frame. My recollection was that was somewhat earlier
19 than that.

20 Q Was this a tape of Jimmy Swaggart either in tears and
21 apologizing for certain sexual since?

22 A I think that was part of the tape.

23 Q Was there discussion among those that were present
24 that if Pastor Barnett would only exhibit the same
25 sort of attitude that Jimmy Swaggart exhibited, that

1 he wouldn't, you know, that that would solve their
2 problems, or that that would satisfy the eldership?

3 A That doesn't characterize the views that I heard
4 discussed about that.

5 Q Did you ever hear Jack Hicks express that attitude or
6 Jack DuBois?

7 A Not the way you described it.

8 A I don't remember specifically. I remember the gene
9 tenor of the responses to that.

10 Q During the eldership hearings did any of the elders
11 senior elders express the view that mere adultery,
12 consensual sex between two persons not married to e
13

14 other and married to other persons, that mere adult
15 was a tort?

16 THE COURT: Was what?

17 MR. JOHNSON: A tort.

18 THE COURT: A tort.

19 A I'm not sure if the word "tort" was ever used in th
20 process of the hearings.

21 Q So the answer to my question is that you don't
22 remember hearing anybody say that?

23 A No.

24 Q You indicated at one point that you, and I believe t
25 other two senior elders, had some concern about

1 liability, personal liability, based on an
2 understanding you had of the circumstances under which
3 a member of the Board of Directors of a corporation
4 could be held liable?

5 A I had some concerns.

6 Q And I believe you indicated -- what did you indicate
7 was the, in your view, the way, or what you needed to
8 do in order to avoid liability?

9 A Well, considering only that aspect of the problem,
10 which is far from the entire problem, it was my
11 understanding that in that aspect we needed to take
12 some reasonable action to make sure that the problem
13 conduct was stopped.

14 Q During the period of time between March 1st and March
15 3rd, or February 29th and March 3rd, that week after
16 the elders had addressed the congregation, and after
17 Pastor Barnett had replied to the congregation, during
18 the meetings of the eldership that took place during
19 that time, was there discussion of the elders
20 resigning from their positions?

21 A It may have been mentioned by one person kind of in
22 passing, but it received, I can say, no serious
23 committee discussion.

24 Q Was it ever a part of your understanding of the law
25 that you have testified to, with regard to the

1 circumstances under which senior, under which members
2 of the Board of Directors of the corporation could be
3 held liable, that one way to avoid liability would be
4 to simply resign?

5 A That would only solve one of the many problems.

6 Q Would that solve the problem of liability, under your
7 understanding of the law, as you held that
8 understanding in February of 1988?

9 A It may have. That requires a legal conclusion, which
10 I'm not sure I'm qualified to make.

11 well, were you qualified to make other legal
12 conclusions?

13 A That's a broad statement.

14 Q Did you draw certain legal conclusions with regard to
15 your potential liability?

16 A Yes, based on legal counsel and other references that
17 I have previously cited.

18 Q Now, I believe you indicated that the document
19 entitled Senior Elder Meeting and for the meeting or
20 the thing that occurred on February 10th, was not
21 really a senior elder meeting?

22 A I don't consider it such.

23 Q So those probably weren't really senior elder meeting
24 minutes?

25 A That was only the vehicle that we used to record the

1 action of the group.

2 THE COURT: Are you talking, now, about 43?

3 MR. JOHNSON: Forty-three, yes, Your Honor.

4 A Forty-three, 43. Now, wait a minute. I thought you
5 were looking at this.

6 Q I said February 10th.

Oh, February 10th. Yes.

By "this", you were just now, you were referring to
the document that we used to refresh your
recollection?

I was confused for a minute as to which document was
being referred to. I understood your question to
refer to Exhibit 43.

It did.

7 A

8 Q

9

10

11 A

12

13

14 Q

15 A Yes.

16 Q With regard to the meeting that occurred

17 26th, where the senior elders authorized

18 to present certain information to the

19 that would not have been a meeting either

20 presumably; is that right?

21 A Yes.

22 Q That is correct?

23 A Yes.

24 MR. JOHNSON: Excuse me, Your Honor. I'm

25 fishing for a document here.

1 Q Would you turn to Exhibit 33. Can you tell me what
2 that document is?

3 A That document is the minutes of the meeting of the
4 elders present at the hearing meetings.

5 Q This isn't a meeting of the eldership, as we have been
6 using that term in the trial?

7 A I understand that -- refresh my mind on how you're
8 using the word "eldership"? We have used the word
9 "eldership" referring frequently to the entire
10 eldership committee meeting, the entire 16.

11 In what context are you asking me now,
12 eldership? There were those that were specifically
13 elders at the church, but please define the group that
14 you're asking me about more specifically.

15 Q Let's talk about the eldership, all 16. Did all 16
16 people have a meeting on March 3?

17 A Yes.

18 Q Do you know whether any minutes were kept of the
19 meeting of all 16, to reflect action that was taken,
20 if any was?

21 A A record was kept of one specific thing that was done,
22 not necessarily a record of the whole meeting, no.

23 Q There was a record kept, or was something done the
24 next day?

25 MR. ROHAN: I'll object to what the

1 difference between record kept and next day, record to
2 be kept the next day. It's vague and ambiguous.

3 THE COURT: Well, I think we'll get to that
4 here.

5 A I think you have confused me for the moment.

6 Q Isn't the record that was kept, that you're saying
7 that the record that was kept of the 16, the letter
8 that the 16 sent on March 4th?

9 A Yes, it was actually signed on March 3rd.

10 Q Oh, it was signed on March 3rd, so it was already
11 prepared on March 3rd?

12 A The letter that the 16 signed was prepared on March
13 3rd. It had the March 4th date on it.

14 Q But it was prepared and signed on March 3rd?

15 A That's my recollection.

16 Q Nobody worked through night preparing it for the next
17 day?

18 A I think it was signed on the third.

19 Q Was that also true of the senior elder letter that was
20 sent on March 4th?

21 A No.

22 Q Was it also true of David Motherwell's letter that was
23 sent on March 4th, if you know?

24 A I do not know.

25 Q Who prepared the eldership letter of March 4th, if you

1 know?

2 A I think I have testified that I drafted it.

3 Q Not the senior elders' letter, the eldership letter,

4 this is the 16?

5 A Oh, I do not know.

6 Q And Russell McKenzie was the moderator or the

7 chairman?

8 A Yes.

9 Q Was he a fairly careful person, did he take lots of

10 notes and so forth?

11 A Yes.

12 Q Was he known for being fairly accurate?

13 A I would say so.

14 Q Were you here when he testified?

15 A Part of his testimony.

16 Q On March 3rd, when all 16 of you were together, did

17 the 10 elders vote?

18 A Yes.

19 Q And did the 16 in the eldership vote?

20 A The 16 is beyond the number of elders that were there,

21 if we're talking the whole eldership committee

22 meeting.

23 Q The 16 in the eldership. I'm calling all 16 the

24 eldership.

25 A That will always been a point of confusion for me. I

1

know who the elders were and who the elders weren't.

That's the reason I said she is in the eldership

vote.

In the eldership vote all of us voted, yes.

And did the three senior elders vote?

individually, by individually I mean as

occurred on March 3rd?

is vote here, is an advisory vote;

the vote referred to in Exhibit 33?

is, yes.

Is that the vote of 10?

SS: Yes. This is Exhibit 33, I

l at that time recommend to

be disfellowshipped?

ommendation before?

f you know.

6 A Yes.

7 Q At that time, individ

8 a group of three?

9 A No.

10 Q So how many votes c

11 A I recall two.

12 Q Two, not three?

13 A I only recall two.

14 Q And the elders, thi

15 is that correct, th

16 A This particular vot

17 THE COURT:

18 THE WITNES

19 believe.

20 Q Did David Motherwel

21 everyone that Don b

22 A Yes.

23 Q Had he made that re

24 A Before when?

25 Q Before March 3rd, i

1 A I can't recall when it might have been brought up
2 previous to this time. I guess I can't answer that.

3 Q Did you discuss with the eldership amending the bylaws
4 of the Articles of Incorporation?

5 A I did.

6 Q Did you discuss with the eldership amending the
7 bylaws?

8 A Your former question, again --

9 Q First question was did you discuss with the eldership
10 amending the Articles of Incorporation?

11 A Yes.

12 Q And did you discuss with the eldership --

13 THE COURT: Your answer to that was?

14 THE WITNESS: Yes.

15 Q Did you discuss with the eldership amending the
16 bylaws?

17 A Yes.

18 Q And then did you discuss with the eldership

..... 19 ~~disfellowshipping Pastor Barnett, the senior elders~~

20 ~~disfellowshipping Pastor Barnett?.....~~

21 A Yes.

22 Q Did you get some documents during that same meeting on
23 March 3rd from Jim Leach, the attorney?

24 A I believe we did.

25 Q Did the senior elders understand at that time that in

1 order to disfellowship Pastor Barnett it would be
2 necessary, according to, well, it would be necessary
3 to amend the Articles of Incorporation and then amend
4 the bylaws?

5 A No.

6 Q Do you recall your deposition being taken five days,
7 six days after March 3rd, that is on March 9th, 1988;
8 do you recall that?

9 A I remember a deposition in that time frame.

10 Q Would you please turn to page 30. I'd ask you to read
11 from line 20 on page 30 and read through to line three
12 on page 32. Correction, read, please through line 24
13 on page 31, line 20 on page 30.

14 A Do you want me to begin reading there?

15 Q Please.

16 A Answer, "And I think that it was as late as about
17 March 3rd, and that was when the eldership finally,
18 well, David Motherwell, Don's counselor, finally came
19 out and flatly stated that he was recommending

correction on 20 "disfellowship of Don", and there is a

what to make of 21 this copy, a white-out. I don't know

22 that.

23 "the eldership themselves too

r elders 24 recommended an advisory vote to the senior

another 25 recommending disfellowship", and there is

1 white-out over the word "disfellowship".

2 "And that was", there are several white-outs
3 here, "And that was, I think our decision was
4 basically as of that time that we would go ahead with
5 the action to amend the bylaws. We had kept a lot of
6 all the pieces in the planning of it up to that time."

7 Question, "Excuse me, your action was" --

8 Answer, "At that time we decided to take the steps"
9 and there's a white-out there.

10 Question, "I'm just wondering what that time
11 was". The question was "When did this occur".

12 Q Continue down to line 24, please.

13 A Beginning at line 11, Answer, "We decided we would, it
14 was obvious," and there's some white-out there, "that
15 each one of us were willing to support. There was no
16 vote taken or anything, but we knew that we were all
17 willing to support the action to amend the bylaws or
18 the Articles of Incorporation, the bylaws, and to
19 disfellowship the pastor.

20 Question, "Uh-huh". Answer, "And we realized
21 that the formalization of that would require exclusion
22 of certain words in order to provide the authority for
23 that, and the resolutions were prepared by Jim Leach's
24 office, and we had the papers ready to be signed, and
25 we essentially determined what order they would have

1 to be executed in."

2 Q Okay, now the next morning, on March 4th, did you go
3 to the parsonage?

4 A I testified to that already, yes.

5 Q Initially had Pastor Barnett wanted to meet with you
6 one-on-one?

~~A Yes.~~

~~Q But somehow that got changed and all three of you went
together?~~

~~A That's right.~~

~~Q And you were advised of the change by your secretary?~~

~~A Yes, Don Barnett had agreed to meet with all three of
us.~~

~~Q She told you?~~

~~A Yes.~~

~~Q You indicated that there was a vote that was taken
while you were there.~~

~~A Yes.~~

Q And a vote on a document to amend the Articles of
Incorporation; is that correct?

A A vote to pass the resolution to amend the Articles of
Incorporation, yes.

Q And is it fair to say that when you got to the
parsonage Pastor Barnett made clear that he had
another agenda item that he wanted to discuss?

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1 A Yes. We were aware that he had things he wanted to
2 discuss before we went down.

3 THE COURT: I didn't get that.

4 THE WITNESS: We were aware that he had
5 things that he wanted to discuss before we went down.

6 Q What were the things he wanted to discuss?

7 A I'm not sure that I remember now. It was probably
8 where our hearts were, what were we intending to do,
9 or some things of that nature. I truthfully don't
10 know that I recall a whole lot of that right now.

11 Q Is it fair to say that he made clear that he did not
12 want to discuss the amending of the Articles of
13 Incorporation?

14 A That's correct.

15 Q Was it your understanding at that time that the bylaws
16 of the Community Chapel provided that the pastor was
17 in charge of senior elder meetings?

18 A I think I was aware of that. Although that was
19 frequently in practice, it didn't always work out that
20 way.

21 Q Isn't it fair to say that it never worked out any
22 differently when the pastor wanted -- isn't it fair to
23 say that whenever the pastor wanted to restrict the
24 subject matter of a meeting, he had the authority to
25 do that?

1 A We're talking about a circumstance that I'm not sure
2 ever occurred quite like that before. There were a
3 number of times that Don was not even aware of the
4 agenda for a senior elder meeting when he arrived for
5 the meeting.

6 Q I'm talking about situations where he forbid the
7 discussion of an issue during a meeting.

8 A I don't remember that that ever came up.

9 Q You don't remember ever there being a situation where
10 he exercised that authority?

11 A Not just flat out before anything was ever said, no
12 not prior restrictions.

13 Q But you do understand that the bylaws gave him that
14 authority?

15 A If you're going to ask me technical questions on that,
16 I would have to refresh my mind by reading of the
17 bylaw sections regarding that.

18 Q Would you turn to page six of Exhibit 10.

19 A (Complying)

20 Q Well, I'll tell you the bylaws frankly speak for
21 themselves. Let's withdraw that question.

22 Now, in spite of Pastor Barnett's hostility
23 to the issue of amending the articles, you and Jack
24 ~~Desoria and Scott Hareley~~ went ahead anyway, right?

25 A Yes, I testified to that.

1 Q And you made clear to Pastor Barnett that you were

going to go ahead and do this and vote?

2

You're asking if I made clear to him that I was going
to do this?

3

A

that you, as a group, were going to go ahead and do
this.

4

5

Q

I think that that unfolded, I don't recall announcing

6

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and vote that I was going to take

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the vote.

on to your taking the vote?

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Q What was his reaction

that, at first he didn't say

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A Well, the result of

he he was shocked or something, I'm

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anything, like maybe

gan to get more and more upset,

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assuming, and he became

titated. That's the best way I can

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more angry, more agitated

ask you this: did the bylaws, as

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characterize it.

orning, say at breakfast time, give

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Q That's fine. Let me

did the Articles of Incorporation

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they existed that moment

ty to amend either the Articles of

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you the authority, could

bylaws, without his concurrence?

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give you the authority

then. It's been three years since

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Incorporation or the

that piece of paper. If you want

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A I had it in my mind

or, I'd be glad to review

22

I have seen copies of it

n for that answer, but I

23

to ask me a technical question

for themselves.

24

the Articles of Incorporation

25

suspect the documents speak

1 Q Is it your testimony that you don't know whether or
2 not you, as senior elders, as the bylaws stood under
3 the terms of the bylaws, had the authority to amend
4 the bylaws or the articles without his concurrence?

5 A You're asking for my answer now today, in 1988 or
6 1991?

7 Q That's right.

8 A I have forgotten that. Very possibly it doesn't
9 require the pastor's concurrence.

10 Q Isn't that what this lawsuit is all about?

11 A No, I thought that matter had been settled
12 by the Supreme Court.

13 Q I thought so, too.

14 A I don't know why it's coming up now.

15 Q Well, let's look at Exhibit 10.

16 A Let's see.

17 Q I'm sorry, let's turn back to Exhibit 10.

18 are the Articles of Incorporation of the

19 Chapel and Bible Training Center. Look

20 Maybe you can look at page three and re

21 recollection, down under Roman Numeral

22 Numeral VI. I'm sorry, the section enti

23 and Bylaws.

24 A These are not the Articles of Incorporation

in effect at the time of the hearings in Pastor

Barnett's disfellowship.

Q Is that right?

A That's correct.

Q Would you turn to -- I understand that. Would you

turn to, Exhibit Number 3. Look at page, if you

three of Exhibit Number 3.

A I direct your attention to Paragraph J

that you read it, and see if that refreshes

your recollection with regard to my question.

Exhibit 6 henceforth read as follows: Article 6

and Bylaws Section 1. Amendments to these

Articles of Incorporation may be made by a

two-thirds affirmative vote of the Board of Senior

Members and the congregation in concurrence with the

minutes presiding".

Q Now, fine. Do you now remember whether or not, on

March 4, 1988, Pastor Barnett's concurrence were

recorded, according to the terms of the Articles of

Incorporation as they then stood, in order to amend

the Articles of Incorporation?

A Yes, I mean you and the other two members of the

Board of Senior Elders, Mr. DuBois and Mr. Hartley,

in taking action at that meeting that was contrary

to that provision; is that fair to say?

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A We were.

Q Isn't it true, also, that the previous Friday you and your, and Mr. Hartley and Mr. DuBois had authorized the eldership to take action in bringing information to the congregation of the church that Pastor Barnett had been the pastor of for 20 years, that he felt was contrary to what you and the other elders had agreed on, not that it was, but that he felt it was?

A What date are we looking at?

Q We're looking at the previous Friday, Friday of February.

A With that date, please restate your question.

Q The question is, isn't it true that on the previous Friday, February 26th, the Friday before March 4th, that you and Mr. Hartley and Mr. DuBois had authorized the eldership to present to the congregation information about the special status, and read the letter and so forth, that you have testified that Pastor Barnett had thought that action breached the agreement that he had reached, or the guidelines of the committee hearings; isn't it true?

A You have asked me too complex of a question. If you make that into two questions, I'll be glad to answer that.

Q Isn't it true that Pastor Barnett felt that the action

1 of the eldership on February 26th, in revealing to the
2 congregation what it revealed with regard to the
3 hearings, was a breach of the guidelines of the
4 hearings?

5 A He alleged that, yes.

6 Q And on February 4th he felt you were breaching the
7 terms of the Articles of Incorporation?

8 A On which?

9 Q I'm sorry, on March 4th.

10 A He did not state that on that day.

11 Q But the action you were taking did, in fact, run
12 contrary to the express terms of the Articles of
13 Incorporation?

14 A Yes.

15 Q And he became angry when you took your vote?

16 A Yes.

17 Q You had a meeting in the afternoon, then, too, or
18 resumed the meeting, one way or the other; is that
19 fair to say?

20 A Yes.

21 Q On March 4th?

22 A Yes.

23 Q I think you have indicated you think it was a
24 resumption of the meeting, because as you have
25 testified, your intention was to complete one unbroken

1

chain -- I believe those are your words -- one

1 A Recess.
2 Q When you left, did you communicate to Pastor Barnett
3 that this meeting would continue at some later time?
4 A ~~I don't think there was an opportunity for that.~~
5 Q ~~I didn't ask you that. I just asked you if you did.~~

A	No.	6
Q	Later that afternoon did you call Pastor Barnett and say Mr. Hartley is back from Olympia, so we're going to meet some more?	7 8 9
A	I did not call him that afternoon.	10
Q	Did anyone call him, as far as you know?	11
A	As far as I know, nobody did.	12
Q	Did he come to the meeting?	13
A	No.	14
Q	After the meeting in the morning, after the morning portion of the meeting, you and Mr. Hartley and Mr. DuBois returned to your office, is that your testimony?	15 16 17 18
A	Yes.	19
Q	And you started out from your office, hadn't you actually started out from your office, hadn't you all met there before you went over to Pastor Barnett's parsonage?	20 21 22 23
A	We were all in my office. The meeting with Don was off and on several times. The pastor's secretary was	24 25

1 also my secretary, and she was the communication
2 go-between, and so everybody just congregated in my
3 office trying to wait to see what the final word on
4 the meeting was going to be.

5 Q Okay and then the three of you left from your office
6 and went to the parsonage, and after you left the
7 parsonage, the three of you, you went back to your
8 office?

9 A Yes.

10 Q And when you got there I think you testified you
11 signed the Articles of Amendment?

12 A Yes.

13 Q And they were then notarized?

14 A Yes.

15 Q By who?

16 A My secretary, Bonnie Martin, was also a notary.

17 Q Did you transact any more business at that time at
18 your office in the morning?

19 A No.

20 Q And so Mr. Hartley left for Olympia to file the
21 Articles of Amendment?

22 A Yes.

23 Q And do you remember what time it was when he got back
24 from Olympia?

25 A All I know is that he was in my office, I can only

1 testify that he showed up in my office again about, I
2 would say about 3:00.

3 Q Where was Mr. DuBois, then, when Mr. Hartley showed up
4 at your office?

5 A He showed up in my office, also.

6 Q Now, Mr. Hartley was the secretary of the corporation,
7 was he not?

8 A Yes.

9 Q Did you and he ever discuss why, if this was one
10 meeting on the, on March 4th, why there are two sets
11 of minutes, did you ever discuss that?

12 A No, I have never discussed that.

13 Q Now, during the afternoon, as I understand your
14 testimony, and according to --

15 Has Exhibit Number 48, the minutes, been
16 ~~admitted? I believe it has, hasn't it?~~

17 MR. ROHAN: Yes.

18 Q Turn to Exhibit 48. The first item of business, it
19 sounds like, occurred on the 3:25, when you passed the
20 resolution to amend the bylaws; is that your memory?

21 A After meeting resumed the first thing that we did was
22 to pass the resolution to amend the bylaws, yes.

23 Q The second thing you did was to pass another
24 resolution, this time to remove Don Barnett as a
25 member of the Board of Directors?

1 A Yes.

2 Q Now, was it your clear impression at that time that it
3 was necessary to amend the Articles of Incorporation
4 in order to give you, members of the Board of Senior
5 Elders, the authority to pass Items Number 1 and
6 Number 2, the resolution to amend the bylaws, and then
7 the resolution to remove Don Barnett?

8 A You'll need to be more specific with that question,
9 because I think you have left an ambiguity that leaves
10 ~~me undecided as to what the proper answer is.~~

11 Q Can you point me to the ambiguity that I have left
12 out?

13 A You said "to remove Don Barnett". I assume that
14 you're talking about removing him as pastor, as
15 president of the corporation, from all of his offices.

16 Q I'm referring to whatever you did in Number 2, the
17 resolution to remove Don Barnett as a member of the
18 Board of Directors.

19 A Okay, so please restate your question.

20 Q Was it not your understanding, and the understanding
21 of Mr. Hartley and Mr. DuBois, that in order for you
22 to take the steps you took in Number 1, the resolution
23 to amend the bylaws that afternoon, and the steps that
24 you took in the second action, the resolution to
25 remove Don Barnett as a member of the board, that in

1 order to take those two steps you had to have taken
2 the previous step in the morning to amend the Articles
3 of Incorporation?

4 A Yes.

5 Q Was it your understanding and your belief at the time
6 that it was also necessary to amend the Articles of

7 ~~Incorporation in the morning in order to grant~~

8 yourselves the authority to disfellowship Pastor
9 Barnett?

10 A No.

11 Q And so this action, disfellowshipping Don Barnett, did
12 not require that you file the Articles of Amendment in
13 the morning, did it, in your mind?

14 A No.

15 Q Why didn't you do that when you returned to your
16 office from the parsonage, why didn't you do that
17 then?

18 A We were anxious to get, we only had a limited time
19 window in order to get the amendments to the Articles
20 of Incorporation filed in Olympia, and that appeared
21 to be the highest priority item at that time. We
22 couldn't wait until --.

23 Q Couldn't waste too much time because he had to get
24 down to Olympia?

25 A Yes, yes.

1 Q Let's look at line Item Number 2, the resolution to
2 remove Don Barnett as a member of the board of
3 directors. When was that discussed and adopted?

4 A The minutes indicate that it was 3:30 p.m. on the
5 afternoon of March 4th.

6 Q And then after that you all three signed the letter of
7 disfellowship; is that true, the March 4th letter from
8 the senior elders?

9 A Yes, subsequent to that, we did sign that letter.

10 Q What time was that approved, that action?

11 A The minutes indicate that that was at 3:30 p.m. the
12 same day.

13 Q That didn't take much time, after you have done Number
14 2 to do Number 3, since they both seem to have
15 occurred at 3:30. My question is, could you not have
16 afforded that 30 or 40 seconds that it took in the
17 afternoon to take that action in the morning, didn't
18 you at least have that much time in your office before
19 Mr. Hartley went to Olympia?

20 A ~~You're asking a sensational thing. What did we do? What is the~~

21 the order in which we did and --

22 Q I think I know. I'm asking why you say you didn't
23 have time enough to take Item Number 3, the action t
24 disfellowship in the morning. You said you didn't

25

~~want to waste time.~~

1 A I didn't specifically state that we didn't have time
2 enough for this. I say that we had an order that was,
3 as far as the articles and the bylaws and that were
4 concerned, there was an order in which a lot of that
5 had to be done, and we realized we had a time window
6 with respect to Olympia, and so --

7 Q The lawyer told you the order to do things in, didn't
8 he?

9 A Yes.

10 Q He told you to amend the Articles of Incorporation
11 first, right?

12 A He said that resolution would have to be adopted.

13 Q Pass that resolution and then sign the Articles of
14 Amendment, correct?

15 A Yes.

16 Q And he provided the Articles of Amendment, didn't he --

17 he prepared them, sent them by messenger the night --
18 before?

19 A The resolutions came the night before, and I think the
20 articles probably were in that package too.

21 Q Then he said make sure they're filed in Olympia with
22 the Secretary of State?

23 A Yes.

24 Q And then amend the bylaws?

25 A Yes.

1 Q And the bylaw amendment --

2 Do we have the resolution, do we have the
3 bylaw amendments?

4 MR. ROHAN: They're Exhibit 50 or 51, 50.

5 Q Would you take a look at Exhibit Number 50?

6 THE COURT: Fifty?

7 MR. JOHNSON: Yes, 50.

8 Q Did Exhibit 50 strike from the bylaws the provisions
9 that had previously existed in the bylaws that
10 prohibited Pastor Barnett from being removed from
11 various positions in the church?

12 A Yes, it did.

13 Q And so the lawyer suggested that you were, or told
14 you, advised you to amend the articles and eliminate
15 the provision that prohibited you from amending the

16 bylaws, right?

17 A Yes.

Olympia, right?

18 Q File that article of amendment in

19 A Yes.

om the bylaws all of
tor Barnett from
astor, from being
being taken out of
ons department, or
held, to remove

20 Q Then amend the bylaws, removing fr
21 the provisions that prohibited Pas
22 being taken out of the church as p
23 taken out of the corporation, from
24 the bible college or the publicati
25 any of the other positions that he

1 those protections and those prohibitions against
2 removal?

3 A That's correct.

4 Q Then after having done that, the lawyer said
5 disfellowship him?

6 A Mr. Leach never discussed disfellowship at any time
7 with us, on any occasion that I ever recall. He was
8 concerned with the removal, the steps to remove Don
9 from the Board of Directors and all of that, and he
10 felt, his logic was that that would hold up under
11 state law, and so forth, and of course that has all
12 been settled as an issue already. I never discussed
13 disfellowship with Mr. Leach at all.

14 Q Let me ask you, did you believe that that was the way
15 to do it, to do disfellowship last?

16 A No.

17 Q That's fine. Then why did you not disfellowship him
18 in the morning, given the fact that, as you have
19 testified, the action to disfellowship him apparently
20 took less than a minute to sign the letter, it was
21 done at 3:30 in the afternoon, why didn't you do it in
22 the morning?

23 A Why didn't we do it in the morning?

24 Q Yes.

25 A I think our focus was on getting the legal papers done

1 and filed down in Olympia.

2 Q But you had time to do it?

3 A We had time to do it, and I may have had Bonnie Martin
4 typing a late draft on the 3rd of, on the 3rd of
5 March, when I had discussed the senior elders' letter
6 with the committee --

7 Q My question was, did you have time to do it, and you
8 answered that?

9 A My answer, I think, would be no.

10 Q You didn't have time to do it?

11 A Didn't have time to do it. I think it was being
12 redrafted to incorporate some additions that the
13 committee wanted to see in it before its final f

14 Q But it then had nothing to do with the order of
15 documents as you have previously testified?

16 A That particular one doesn't, no.

17 Q That had been my question, why didn't you
18 disfellowship him in the morning, and didn't you
19 testify that you had in mind an order of document

20 A I had, yes, an order of documents, as far as all
21 the, there was an order in which I had preplanned
22 my mind, made sense to accomplish everything.

23 Q And didn't, in that order, didn't disfellowship
24 place in that order?

25 MR. ROHAN: Your Honor, all this has be

1 gone over at length.

2 THE COURT: Yes, I think it has been gone
3 over.

4 Q During the discussions that you and the senior elders
5 had on March 4th, or you and the eldership of 16 or

6 the elders of 10, or any of the other groups or
7 subgroups thereof had during the preceding two weeks,

8 was there ever a discussion of placing the issue to
9 the members of the Community Chapel congregation as to
10 whether or not their pastor should be removed from
11 them?

12 A I don't recall any discussion of that. It was not --

13 Q It was not discussed?

14 A It was not a congregational matter, and we all knew
15 it.

16 Q It was not discussed?

17 A That's right.

18 MR. JOHNSON: Your Honor, we would like to

19 offer, if we could, Exhibit 43, which has been

20 previously proposed by Counsel. I believe these are

21 the February 10th minutes.

22 binder, and I don't know that

23 and we'd like to offer them.

24 THE COURT: Just a minute, please.

25 Forty-three was the one I was

1 MR. ROHAN: I have an extra copy here, Your
2 Honor, that we actually made for you.

3 THE COURT: Does anybody have the copy with
4 the tag on it?

5 MR. JOHNSON: Is that an extra copy?

6 THE COURT: I have a copy here, but I'm
7 looking for the one that was marked for me. If you
8 can't find it, why we won't, but --

9 MR. ROHAN: We should mark another one just
10 so that we have it for the record.

11 THE COURT: But if there is one floating
12 around, I would like --

13 MR. WIGGINS: I believe the witness was using
14 it, because you indicated that would eventually be
15 your copy.

16 MR. ROHAN: We can mark this one. That's an
17 extra copy. Would you mark this Exhibit 43.

18 (Exhibit No. 43 was re-marked.)

19 THE COURT: This was admitted. You didn't
20 propose it, I think.

21 MR. ROHAN: I didn't offer it, either. I
22 identified it. I did not offer it

23 THE COURT: Okay, it's admitted.

24 MR. JOHNSON: Should we continue or should we
25 take our break now, Your Honor?

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THE COURT: Let's see where we get,
continuing it.

Q (By Mr. Johnson) Did you view what the eldership did
in the meeting, before the congregation on February
16th, as breaching the guideline provision that there
be no discussion of the hearings with anyone outside
the hearings?

A No, we did not. Let me say this. There was a very
limited revelation of confidential information that
was the very minimum that we felt was necessary, which
was pushed upon us by Pastor's failure to take even
the smallest reasonable step to correct his conduct.

We felt that forced us, the emergency of the
situation and the protection of the congregation,
forced us to go to them, in essence, to warn them if
Don would not take the corrective action, then, you
know, maybe we could warn enough people of the danger,
that they would be protected some by that.

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Q Well, is it your testimony, then, that
Guideline Number 6 did permit you, as
reveal to the members of the congregat
admitted, during the hearings, numerou
sexual misconduct, did Guideline Numbe
eldership to do that?
A We felt that --

1 Q I'm not asking you what you felt. I'm asking you what

2 your, as the eldership, your fair interpretation of
3 Guideline Number 6 was, not whether or not you felt
4 that circumstances required that you breach that or
5 change it or stretch it, but did you feel that
6 Guideline Number 6 permitted you to tell the members
7 of the church that Pastor Barnett had come to these
8 hearings and admitted numerous instances of sexual
9 misconduct?

10 A Those guidelines did not have that in view, no.

11 THE COURT: I didn't hear that.

12 THE WITNESS: I said the guidelines did not
13 have that in view, no.

14 Q Was the action of the senior elders in placing Pastor
15 Barnett on special status an action of the Board of

16 Senior Elders?

17 A No.

18 Q Whose action was it?

19 A Each of us, myself, Scott Hartley and Jack
20 all, according to long-established procedure
21 individually, had the authority to disfellowship
22 the church, disfellowship and also place people on
23 special status.

DuBois,
res,
fellowship in
people on

so you're saying that was the action of you three
individually?

24 Q

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1 A Individually, yes, individually and collectively.

2 THE COURT: I think we might as well recess
3 then, and you can finish. We'll be at recess until
4 two minutes after the hour.

5 (A break was taken.)

6 MR. JOHNSON: I have no further questions of
7 this witness, Your Honor.

8 ****

9 RE-DIRECT EXAMINATION

10 BY MR. ROHAN:

11 Q I have a few questions.

12 You testified in answer to one of Mr.
13 Johnson's questions about the satellite churches. Why
14 were the satellite church amendments attempted to be
15 made?

16 A They were made in response to the legal allegations,
17 allegations of legal liability for acts of our
18 satellite pastors, which was the case at hand in the
19 Gabrielson versus McDonald versus the Chapel and Don
20 Barnett and everybody else.

21 Q When you usually made changes to the bylaws, you would
22 have one document that would spell out what the new

23 items were?

24 A We had done it both that way, and we had
25 by simply revising the master bylaws with

also done it
a new

1 paragraphs in it, so that we had one integrated set of
2 bylaws as opposed to a set of bylaws with dozens of
3 amendments. We wanted to keep an integral document
4 out of it.

5 Q When you did the one integrated type of amendment, did
6 you and the other board members typically read through
7 that entire mass of documentation?

8 A No. Our review process consisted of the secretary or
9 clerk, or whatever she was called, actually she was
10 our legal assistant, she would mark the paragraphs
11 that were changed, and generally we would only review
12 just those, to satisfy that the changes were being
13 made correctly, but we did not completely go over the
14 whole document before signing it.

15 Q At the time that the elders' hearings started, were
16 you more likely to believe what Donald Barnett said or
17 Jerry Zwack said?

18 MR. JOHNSON: Objection, Your Honor.

19 THE COURT: I think that can be rephrased as
20 to the form of the question. I'll sustain it.

21 Q (By Mr. Rohan) Can you tell me as of the time the
22 elders' hearings started, had you given any -- strike
23 that.

24 When Jerry Zwack first started testifying at
25 the elders' hearings in January of 1988, did you

1 believe what he was saying?

2 MR. JOHNSON: Objection, Your Honor. Whether
3 this witness believed it then or not, is not really
4 relevant.

5 THE COURT: He may answer.

6 A At that point in time I was holding an open mind and
7 was not trying to pass a judgment. I was accepting
8 what he had to say, and I was waiting to hear what
9 Pastor's rebuttal was going to be on that. I tried
10 very hard to not make a judgment on it at that time.

11 Q What happened that caused you to finally make a
12 judgment on that, if you ever did make a judgment?

13 A Well, I think it was, I certainly have to count the
14 admissions that Pastor Barnett made, which clearly
15 indicated that there had been serious problem of
16 considerable magnitude.

17 Then the question of whether there was a
18 problem was no longer a question, it was only how
19 extensive, how far beyond what he admitted did it go,
20 and how current was it; in other words, just the
21 bounds on it, it was there, and we were just trying to
22 size the thing at that point.

23 Q At the time the elders' hearings started, did you
24 believe that Jerry Zwack's accusations were true?

25 MR. JOHNSON: Objection, Your Honor.

1 THE COURT: I think he has answered that
2 question.

3 MR. ROHAN: I'll withdraw that.

4 Q Can you tell me, did Jerry Zwack, during the hearings,
5 bring up the issue of his firing?

6 A He brought it up, but kept claiming that that was
7 really a second or third level consideration to him.
8 He was not interested, the purpose of the appeal was
9 not to get his job back or anything.

10 Q Counsel read a letter that you wrote to Russell
11 McKenzie saying that you wanted to narrow the issues.
12 How did you want to narrow the issues that were then
13 in front of the elders' hearings?

14 A I wanted to narrow them time-wise, and include only
15 events that were reasonably current, such as, and the

16 ~~number was talked in the committee hearings a number~~

17 ~~of times, a time limit of say two years, and Jerry, of~~

18 course, we let him just go, and anything that he

19 ~~wanted to bring up, and he did bring up events that~~

20 were very old, probably the most explosive one some
21 eight, 10 years before that.

22 Q Did Donald Barnett agree to a change in the bylaws
23 which eliminated Community Chapel as having members?

Oh, yes.

THE COURT: What was that again?

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MR. ROHAN: Eliminated Community Chapel as having members.

Q At one point Community Chapel had members, is that right?

A At one point Community Chapel was what was known in the law as a membership corporation. At one point in approximately the early '80's we amended our articles to make us a non-membership corporation. Only the ~~Board of Directors then took membership~~ corporation.

Q So you didn't have to get approval for any changes from members of the corporation after you became a non-membership organization?

A That's right.

Q Can you tell me as of March 3 and 4, 1988, did you believe that Donald Barnett had breached his fiduciary duties to Community Chapel?

A I definitely did.

Q Why did you believe that?

A Well, certainly --

MR. JOHNSON: Well, Your Honor, I'm going to object. I didn't ask with regard to breaches of fiduciary duty, I didn't ask this witness any questions. This is beyond the scope of cross.

THE COURT: I'm going to let him testify,

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bearing in mind that I am aware of what was assigned
as a reason for the action. Go ahead.

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RE-CROSS EXAMINATION

BY MR. JOHNSON:

Q You said that the Community Chapel, Mr. Rohan asked if you agreed to a bylaw change making this a non-membership corporation; do you recall that question?

A I do.

Q Does that change the bylaws or the Articles of Incorporation?

A That was primarily a change in the Articles of Incorporation, however, in order that there not be confusion in it, we did also change the bylaws to make sure that it very clearly defined what we called, what were members and what were not members, lest a conflict arise.

Q After you amended the Articles of Incorporation to make it a non-membership -- oh, first, that resolution to do that, there was a vote to do that, that was actually put to the members of the congregation?

A It was.

Q And all the people in the congregation had an opportunity to vote?

A Yes.

1 Q And they approved it, overwhelmingly?

2 A Yes.

3 Q Now, you say you did make some changes in the bylaws
4 after that, to clarify membership?

5 A That's right.

6 Q So what was membership in the Community Chapel limited
7 to, after that change in the Articles of
8 Incorporation?

9 A The only members of the corporation were the Board of
10 Directors.

11 Q Were there other members spoken of in the bylaws of
12 the Community Chapel and Bible Training Center?

13 A Not after that time. If they were, it was
~~well qualified as to the sense in which that was used.~~

14 ~~Q~~ Would there be members of the church after that time?

15 A The term was loosely used to regard those who
16 fellowshiped at the church, but not in a legal sense.

17 Q Well, it was discussed in the bylaws, one of the
18 documents of the church, isn't that fair to say?

19 A Yes.

20 Q And in what way was it discussed in the bylaws, if you
21 know?

22 A Are you asking me how was membership discussed in the
23 bylaws?

24 Q Yes, in this loose way.

1 A By "loose way" I was referring to people just talking
2 to each other and saying I'm a member of Community
3 Chapel. It was used loosely among people. It was
4 talked about and defined as to what we meant by
5 members.

6 We specifically in the bylaws say that there
7 are no members in this corporation, however, and there
8 was a discussion of in this document that any time
9 church members are used, I'm paraphrasing here, I
10 think that it refers to people who regularly made
11 Community Chapel their home, and attend services and
12 so forth, but not from the standpoint of voting or
13 having any legal, well, voting or approval authority.

14 Q Okay. I'd like you to pick up the white volume of
15 exhibits behind you there, and turn to Exhibit Number
16 10 again. Turn to page 50, if you would. These are
17 the bylaws.

18 A This is 50?

19 Q Yes. These are the 1986 bylaws. Can you tell me what
20 the title to Article 8 halfway down on page 50 is
21 about?

22 A One moment until I check. The provisions on page 50
23 do not apply to Community Chapel and Bible Training
24 Center of Seattle.

25 MR. ROHAN: The satellite church?

1 THE WITNESS: It's a satellite church bylaw
2 provision.

3 Q Now, is there a similar provision in the bylaws with
4 regard to the Community Chapel and Bible Training
5 Center?

6 A I believe there is.

7 Q So there are circumstances where members of the church
8 do vote?

9 A No.

10 Q There aren't?

11 A No.

12 Q Would you turn --

13 A Not in the legal sense.

14 Q Would you turn to page 17. I direct your attention
15 three-quarters of the way down the page to the
16 Paragraph B-3, and I'd ask you to read the entirety of
17 Paragraph B-3.

18 A "Future pastors may only be removed by both a minimum
19 two-thirds majority vote of the Board of Senior Elders
20 and a simple majority vote of the congregation."

21 Q Keep on reading.

22 A "A, in such an event the pastor shall be invited to
23 the meeting, paren, called to decide removal, end
24 paren, and have an opportunity to address the
25 congregation for at least 30 minutes prior to the

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voting.

B, in such an event the chairman of the

dearrrn heard shall sit in for the pastor as temporary

~~chairman of the Board of Senior Elders.~~

Q ~~So if a pastor, subsequent to Pastor Barnett, wa~~

~~sought to be removed from his position as pastor~~

~~bylaws provide that the members of the congregat~~

~~shall vote on that, do they not?~~

A Yes, they do.

Q Now, is that section of the bylaws a section, in

mind, as you understood it when you were the

vice-president and general manager of the corpor

~~section of the bylaws, was it a section of the bylaws of the~~

14

~~the church corporation, but about the church itself?~~

A Let's see. By and large it was the govern

church, yes, by and large.

Q So it's fair to say that in 1981, or when

amendment to the articles took place, that

a non-member corporation, but it remained

with members that had voting rights on some

A This, I believe, was the only subject in w

had, and this was not in a legal sense. T

in respect to the fact that they were dire

affected by the ministry of a particular m

we would need, of course, to have their ap

1 calling a pastor, because if they didn't like him,
2 just because the Board of Senior Elders wanted them,
3 or the dismissal, they would vote for that, but not in
4 the legal sense of voting on articles and things which
5 were reserved for the, you know, legal matters of the
6 corporation, they would not vote on it.

7 Q But on removal of the pastor, they would?

8 A Are you going to qualify that further?

9 Q Well, I'm just asking whether or not that's what that
10 provides for.

11 A No.

12 Q It does not provide that they have a right to vote to
13 remove a pastor?

14 A No.

15 Q What does it provide for?

16 A It provides for a vote to remove the pastor, other
17 than the first pastor.

18 Q ~~That's what we're talking about.~~

19 A But you didn't qualify it that way.

20 Q A subsequent pastor they would have a right to vote
21 on, on his removal?

22 A That's correct.

23 Q They couldn't remove him on their own, could they?

24 A No.

25 Q And the senior elders couldn't remove him on their own

1 could they?

2 A Not subsequent pastors.

3 Q And it's your testimony, I think you characterized
4 this as not a legal issue, is it your testimony that
5 if the senior elders voted to remove a subsequent
6 pastor, and a simple majority of the congregation,
7 after hearing the pastor speak, decided not to vote
8 with him, that the senior elders could do it anyway?

9 A Not according to this, no.

10 Q So their vote would have binding effect with regard to
11 the person who was going to be their pastor, and
12 whether he should be removed?

13 A Yes, however that is an internal matter.

14 Q Internal to the church?

15 A Internal to the church, yes.

16 Q Because it affects their pastor?

17 A Yes, it affects the ministries which they're under,
18 yes.

19 Q And it was thought that even though this church
20 corporation should no longer have members that had any
21 voting rights, that the church, with regard to who was
22 going to be their pastor, and pastor over them in
23 church matters, they should still have a voting right?

24 A Yes. We do not say in this paragraph, we do not refer
25 to them as members. They are the congregation; in

1 other words, they do not accrue this voting right by
2 any membership, it's only by being a part of the
3 congregation that they do.

4 Q Well, the congregation, then, is people that are
5 born-again and come and tithe and adhere to the
6 tenets of the faith; isn't that essentially what
7 members of the congregation are defined as in the
8 bylaws?

9 A I don't think that tithing was required for
10 consideration as membership, as it was used, because
11 we knew that we had numbers of people that certainly
12 did not tithe and considered themselves as members of
13 the congregation.

14 Q I direct your attention to page 23 of Exhibit 10 and
15 ask you to read Article 1.

16 A Congregational Voting. This Article 1, you say?

17 Q Article 1, Paragraphs A through E.

18 A "Article 1, in order to be eligible to vote in
19 congregational meetings, one would be A, a born-again
20 Christian who meets all the requirements of Section 3
21 above, B, in regular attendance in the Sunday services
22 for at least the previous six months, C, eighteen
23 years of age or older, D, not actively affiliated with
24 another church, and E, regular in tithing and giving
25 of offerings to this church."

1 Q What is tithing?

2 A We interpreted tithing as a tenth.

3 Q A tenth of your income?

4 A A tenth of our income, yes

5 Q Is that gross or net, after tax, before tax?

6 THE COURT: I think we're getting --

7 MR. JOHNSON: No, that's a serious question,
8 Your Honor.

9 THE COURT: I don't regard it as material to
10 the issue that we're talking about in this case.

11 Q With regard to people who came to church, regular in
12 attendance, who give to the church and are born-again
13 Christians, they had a right to vote?

14 A They had a right to vote, yes. We had people who
15 regularly considered themselves members, that would
16 not completely meet the test for congregational

17 voting.

18 Q Did they get to vote or not, or do you recall?

19 A Subsequent to -- let's put it this way: the last vote
20 that was taken by the congregation was the vote to
21 become a membership corporation.

22 As I recall, that was only done either by a
show of hands or by a standing to give their approval,
and we determined that it was the vast majority, we
did not count.

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If the vote was at all close or was being contested or appealed or something, we had already made arrangements that in an event such as that, then we would examine the individual qualifications of those claiming to vote, trying to vote, and see if they, in fact, were qualified, but we never had an occasion where that was necessary.

Q I have nothing further. Thank you very much.

MR. ROHAN: No further questions, Your Honor. Thank you very much, Mr. Hicks.

THE COURT: You may step down, sir.

MR. SHAPIRO: We'd like to call our next witness, Your Honor, Greg Thiel. I believe he's outside.

GREGORY R. THIEL,

having been called as a witness on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

BY MR. SHAPIRO:

Q Would you state your full name and spell your name, please.

A Gregory Ross Thiel, T-H-I-E-L.

Q Where do you reside, sir?

A 20903 - Fourth Avenue South, Seattle, 98198.

Q Are you presently employed?

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your last

8.

1 A Yes.
2 Q Where do you work?
3 A Pace Network.

4 THE COURT: Pace what?

Pace Network.

member of Community Chapel and

approximately February of

portion of that time period,

h, again, approximately

don?

heology.

me were you a teacher?

h June of 1988.

5 THE WITNESS:

6 Q Have you ever been a member
7 Bible Training Center?

8 A Yes.

9 Q From when to when?

10 A From February of 1971 to
11 1989.

12 Q And during that, at any
13 were you an elder?

14 A Yes.

15 Q For how long?

16 A From June of 1978 through
17 February of 1989.

18 Q Were you a teacher?

19 A Yes.

20 Q What did you teach?

21 A Theology.

22 THE COURT: Par

23 THE WITNESS: T

24 Q During what period of ti

25 A From fall of 1974 through

Q	Are you familiar with, I'm going to use a term called the eldership hearings in 1988, do you know what I'm referring to?	1
		2
		3
A	Yes.	4
Q	Are you familiar with the time period that those hearings went on?	5
		6
A	Yes.	7
Q	Approximately what was the time period that those hearings went on?	8
		9
A	Approximately January through March 1988.	10
Q	What, in your mind, prompted the hearings?	11
A	A letter.	12
Q	From?	13
A	Jerry Zwack.	14
Q	Do you recall when you received the Zwack letter?	15
A	Christmas Eve, 1987, December 24th.	16
Q	When did you first hear that hearings would be held?	17
A	I received notice sometime between December 24th, when I received the letter, and January 21st, 1988.	18
		19
Q	And when did the hearings officially start, sir?	20
A	The hearings officially started January 25th, 1988.	21
Q	Prior to the hearings commencing, were there organizational meetings?	22
		23
A	Yes.	24
Q	Can you tell us what subjects were discussed at the	25

1 organizational meetings?

2 A We discussed, first of all, whether to have hearings.
3 We also discussed what the subject matter of the
4 hearings would be.

5 We discussed who would be attending those
6 hearings, who would be on the committee.

7 We discussed who would be the moderator of
8 the meetings.

9 We discussed the need to have a special
10 agreement for the meetings.

11 We also discussed the need for guidelines for
12 conducting the meetings, and then, of course, we
13 settled on a time and a place to meet.

14 Q Let me take those questions one by one, those issues
15 one by one. What did you decide with regard to
16 whether to have the hearings?

17 A We decided that due to the gravity of the charges that
18 were contained in Jerry Zwack's letter, it was
19 absolutely imperative that we hold meetings.

20 Q What was to be the subject matter of the hearings?

21 A The subject matter was going to be the specific
22 grievances that Jerry Zwack had against Don Barnett.

23 Q And were those limited in any way?

24 A Well, according to the guidelines that we established,
25 the hearings did not have to be limited strictly to

1 the issues that were raised in Jerry Zwack's letter,
2 but if other evidence was presented, additional
3 evidence, that the elders had reserved the right to
4 ~~investigate that evidence as well.~~

5 Q Okay. You mentioned who was to attend, the attendees.
6 What was decided on that?

7 A There was a committee of 16 people that we decided
8 should attend the meetings, plus, of course, the two
9 parties involved.

10 Q You also mentioned a special agreement. What was
11 discussed about a special agreement and the need
12 special agreement?

13 A Well, since Don Barnett was one of the two parties
14 the dispute, and since he also held the position
15 pastor of the church, we deemed it necessary, in
16 to avoid the appearance of a conflict of interest
17 his part by him presiding as judge over the hearing
18 in which he himself was one of the disputants, that
19 needed to ask him to voluntarily submit to two
20 strictures.

21 Q The strictures were what?

22 A Number one, that he would not exercise his pastoral
23 authority over the hearings, and that the elders,
24 rather, would exercise final authority concerning
25 matters raised in the hearings, the board of elders.

1 the committee as a whole.

2 Number two, Don would permit the hearings to
3 continue, and once they began, allow them to conclude
4 to the elders' satisfaction.

5 Q There are two exhibit books there. Would you take a
6 look at Exhibit 15, please.

7 You have referred to a special agreement.
8 Was that the document that you're referring to,
9 Exhibit 15?

10 MR. PIERCE: Your Honor, I object. This is
11 all cumulative. I don't know how many witnesses we
12 need to identify this document. Counsel should be
13 limited to new pieces of evidence which are not
14 cumulative. I don't know how many times we have to
15 identify documents like this. I think we all know
16 it's the agreement.

17 MR. SHAPIRO: I agree.

18 Q Let me ask you one question about that document.
19 Based on your understanding of that document, what
20 authority did that document give the group of 16?

21 A It gave them --

22 MR. PIERCE: I object, Your Honor, it calls
23 for opinion evidence.

24 THE COURT: He may answer.

25 Q Go ahead, you may answer.

1 A It gave the committee of 16 final authority, the right
2 to exercise final authority in regards to the
3 hearings.

4 Q Prior to the agreement being drafted and signed by

5 Donald Barnett, did you believe, as an elder, you
6 such authority to hold these hearings?

7 A Yes.

8 Q What did you base that authority on, what source
9 authority?

10 A The scriptures, Don Barnett's spoken and written
11 admissions that he was accountable to the senior
12 elders, to his fellow elders, to the congregation
13 whole.

14 I guess I would, since then, say that I
15 also discovered in the bylaws --

16 MR. PIERCE: Objection, Your Honor. What
17 thought at that point in time may be relevant, but
18 discoveries are not something that was in his mind
19 that time.

20 THE COURT: I will sustain the objection

did you want the special

Don from again appearing to
th he himself was one of the

21 Q Why, if that was the case,
22 agreement?

23 A Well, we wanted to protect
24 be judging a matter in which
25 parties in a controversy.

1 Second of all, we wanted to make sure that he
2 would not actually be tempted to exercise control over
3 the hearings, to stop them, to control them in some
4 way, so we felt that we wanted him to submit in
5 writing to us a promise that he would allow them to
6 continue, and he would allow us to make the decisions.

7 Q And did you think this agreement gave you that
8 promise?

9 A Absolutely.

10 Q Now, you mentioned the format. Without going through
11 all the phases of the hearing format, was there a
12 rebuttal phase?

13 A Yes.

14 Q Both sides get an opportunity to rebut?

15 A Yes.

16 Q Now, you mentioned guidelines; do you recall that,
17 earlier?

18 A Yes.

19 Q Turn to Exhibit 23, I believe.

20 MR. PIERCE: Objection. Your Honor, if we're
21 going to do another identification here, these
22 documents have been talked about, too. This is really
23 cumulative information.

24 THE COURT: I grant you that, Mr. Pierce, but
25 your co-counsel has been cumulative, too, and I think

1 it should work both ways.

2 MR. JOHNSON: Which one would that be, Your

3 Honor?

4 Q Mr. Thiel, I'll be brief because --

5 THE COURT: Now, wait a minute. Protect

6 yourself at all times.

7 MR. SHAPIRO: Don't worry, Your Honor, you

8 can be sure of that.

9 Q Are these the guidelines you refer to?

10 A Yes.

11 Q Were these the guidelines that were in effect when the

12 hearing started, Exhibit 23?

13 A Yes.

14 Q Were there any other guidelines that were in effect

15 during the hearings?

16 A No.

17 Q Were there others proposed?

18 A Yes.

19 Q Who were they proposed by?

20 A Jack Hicks.

21 Q Were they ever adopted?

22 A No.

23 Q Now, Guideline Number 6 talks about confidentiality.

24 Do you see that?

25 A Uh-huh.

1 Q It also talks about destruction of notes. Did you
2 take notes at the hearing?

3 A Yes.

4 Q Did you keep your notes?

5 A Yes.

6 Q Why did you keep your notes?

7 A Don Barnett violated this confidentiality clause,
8 first, when he admitted in his presentation before the
9 committee that he had talked to somebody outside of
10 ~~the committee about the proceedings within the~~

11 committee concerning Jerry Zwack's testimony.

12 Q Anything else?

13 A Yes, when the hearings, when the grievance was
14 resolved by Don Barnett's fellowship, he sued us at
15 law, at which time my notes became evidence, and I
16 didn't want to have to stand before a court of law and
17 say I had destroyed evidence, so I felt that at that
18 point they became necessary to preserve.

19 Q Take a look at Guideline Number 7. Do you see the
20 last word in that guideline, the word "witnesses"?

21 A Yes.

22 Q Based on your understanding, what was your
23 ~~understanding of the term "witnesses", as used in~~
24 ~~these eldership hearings?~~

25 A We considered witnesses to be the two parties involved

1 in the dispute, Jerry Zwack and Don Barnett, and we
2 also considered anybody who had information concerning
3 the matter at hand, including any elders or counselors
4 who may be on the committee of 16 who had pertinent
5 information, to be witnesses, and of course any
6 outside people who had firsthand information of
7 alleged incidents.

8 Q The victims?

9 A Yes.

10 MR. PIERCE: I'm going to object to the
11 characterization of the term "victims", Your Honor.

12 THE COURT: You shouldn't use it. Use
13 another term.

14 MR. SHAPIRO: I'm sorry.

15 Q The females involved, would they be considered
16 witnesses?

17 A Yes.

18 ~~Was there ever any resolution or agreement that live~~
19 ~~witnesses or eyewitnesses would be called?~~

20 A NO.

21 Q What was the discussion about a live or eyewitness
22 if you can recall?

23 A Basically that the elders reserved the right to call
24 live witnesses in order to settle the facts, if there
25 was a dispute concerning them.

1 Q Did you call any live witnesses?

2 A No, we didn't.

3 Q Why didn't you?

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1 Exhibit 23 which were the final guidelines. Were
2 there some draft guidelines?

3 A Yes.

4 Q Did you have any part in revising or cleaning up
5 draft guidelines?

6 A Yes.

7 Q Let me show you what has been marked as 35, Exhi
8 35, do you see that?

9 A Yes.

10 Q ~~Is that your interlineation on that document?~~

11 A Yes.

12 Q What was your purpose -- first of all, did you w
13 with anyone in putting those on?

14 A The entire committee was present when each of th
15 guidelines was discussed, and during the course
16 discussions of the guidelines, certain suggestio
17 were made in order to tighten up the syntax a li
18 bit, get rid of redundancies and other small mat
19 and I was the one who was penciling in those char

20 Q Who initially drafted the guidelines?

21 A Russell McKenzie.

22 Q You were designated to clean them up?

23 A Right.

24 Q Was it your intent in any way to change the impor
25 the intent of the guidelines?

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A No.

Q Is that no?

A No.

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1 coercion.

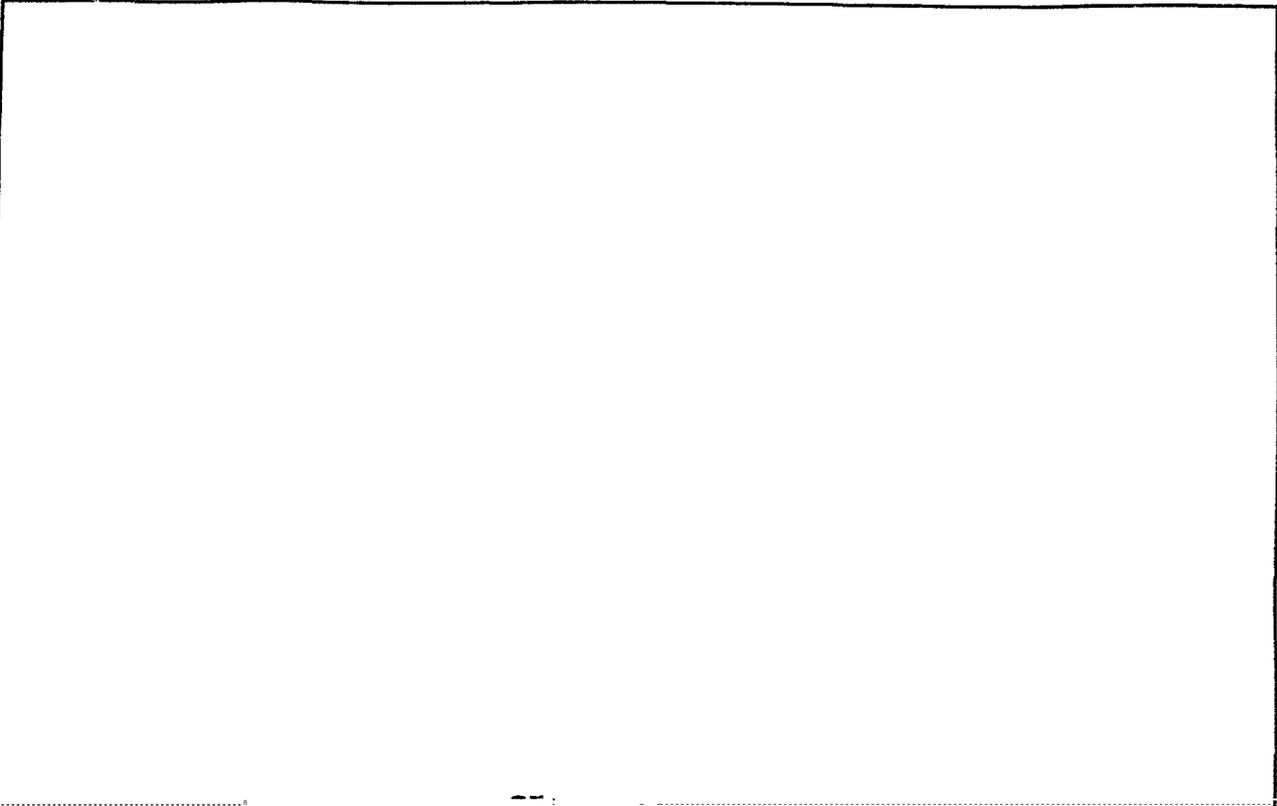
2 MR. PIERCE: I'm going to object and move to
3 strike. The witness is testifying as to what his
4 opinions are, rather than what Jerry Zwack testified.
5 He said "what I'm trying to say", "what I think" and I

6 ~~wrote these notes down. These are his opinions, not~~

7 what Mr. Zwack testified to.

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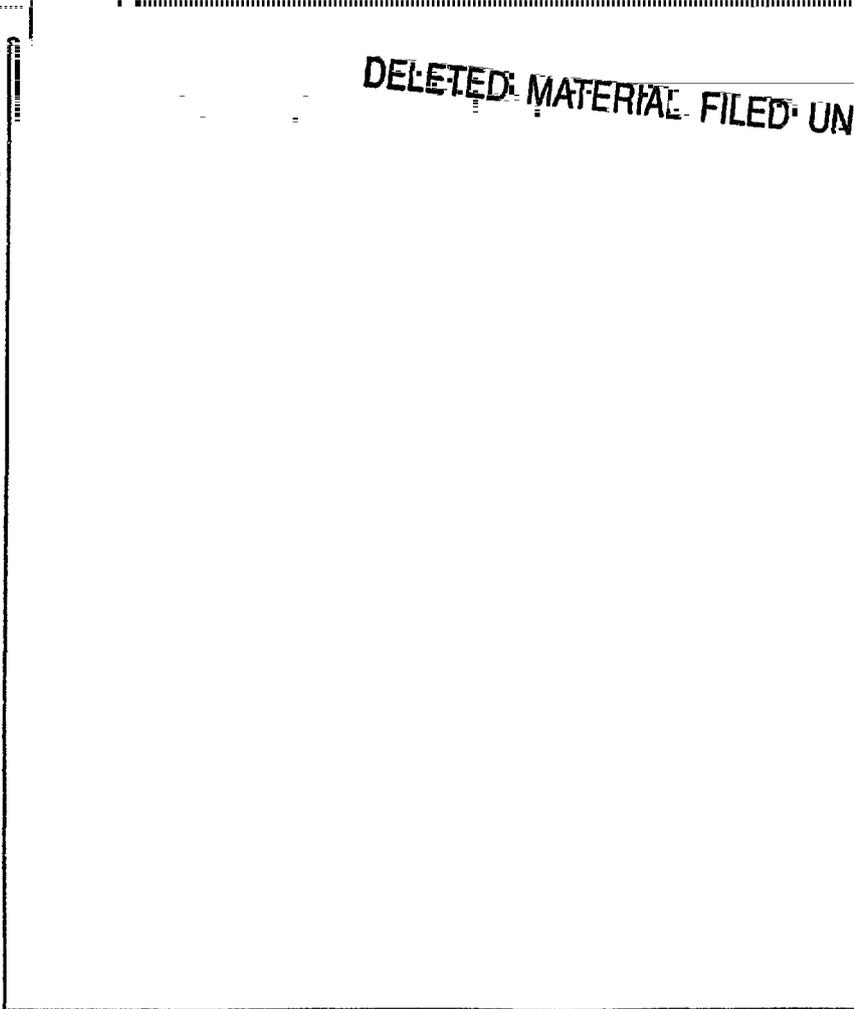
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Q You said the hearings started on January 25th. Did something happen on the 3rd of February that surprised you, something regarding a tape?

A Well, that occurred on the 3rd of February, but we were not advised of it until the 10th of February and

on the 10th of February an audio tape was played during the committee meeting.

1 That was a tape that was made of a meeting
2 that Don held with the senior elders and with David
3 Motherwell.

4 Q What was the tape about?

5 A On the tape he challenged the committee's right to
6 hold the hearings and to make judgments concerning the
7 grievances that Jerry brought in the hearings, and he
8 brought, oh, five or six different questions that all
9 had to do with who gave us the right to hold these
10 meetings, did scriptures give us the right, did he
11 give us the right, did bylaws give us the right, why
12 was he being tried and we weren't being tried, what
13 would these hearings do to our respect for him, and so
14 forth.

15 Q Keeping in mind the special agreement which you
16 testified to earlier and the guidelines, how did you
17 interpret the playing of the tape to the committee?

18 A It was an obvious attempt to control the hearings and
19 to bring them to an end.

20 Q Did you believe it was a violation of the guidelines
21 and the special agreement?

22 A It was a clear violation.

23 Q Notwithstanding the fact you thought it was a clear
24 violation, did you respond to it?

25 A Yes, we decided that, you have to understand that we

1 love this man, and we decided that we would table all
2 other matters of business, and we would take in hand
3 all of the objections and the questions that he had
4 brought on the 45-minute tape, and that we would
5 appoint a theological committee to look into the
6 substance of those questions, and that we would draft
7 responses to each and every question that he gave.

8 Q Take a look at Exhibit 29.

9 A Okay.

10 Q That's a February 24th, 1988 letter from the 16 men?

11 A Are you asking me?

12 Q I'm asking you: is that right?

13 A Yes.

14 Q Is that the response to Donald Barnett's audio tape?

15 A Yes.

16 THE COURT: What number is that, again?

17 MR. SHAPIRO: Twenty-nine.

18 Q Did you have a hand in researching and putting this
19 document together?

20 A Yes.

21 Q Now, what is special status?

22 A It is a disciplinary measure enacted by a counselor in
23 order to restrict the behavior of a counselor in order
24 to protect them and/or the church.

25 Q You were not a counselor; is that right?

~~A. I reserved the right to counsel as an elder, but I did not hold a position as a full-time counselor in the church.~~

~~Q. Before we move on, during Donald Barnett's testimony did he ever agree to the substance of Jerry Zwack's allegation?~~

A Yes.

Q Were those the words he used?

A Yes.

Q Now, was Donald Barnett put on special status during the month of February?

A Yes.

Q And initially who notified him of being placed on special status?

A The senior elders drafted a letter on February the 15th, and that letter was given him on that day, notifying him.

Q What, if any, reaction did the remaining members of the group of 16 have, with regard to that action of placing Donald Barnett on special status?

A When the full committee was notified on February 22nd of the senior elders' action on the 15th, we discussed it, and we unanimously concurred in the necessity for it, and furthermore decided that in order to indicate that, we would, ourselves, draft a letter showing that

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1 the rest of the eldership concurred in the action of
2 the senior elders.

3 THE COURT: When was it that you heard about
4 this letter of the 15th?

5 THE WITNESS: February 22nd.

6 Q Is when you heard about the senior elders' letter?

7 A Yes, during a committee meeting.

8 Q And the remainder of the committee signed a letter
9 dated when?

10 A We began to draft a letter that very day. I believe
11 we also worked on it on the 23rd. It was completed
12 the 24th and dated the 24th of February.

13 Q Now, why did you agree that Donald Barnett should
14 remain or be placed on special status?

s presentation to the
r pattern of habitual
ed with his admissions
s he lied to counselors
e us concern, naturally.
the fact that the
his own testimony, led
initially were still very
that we had an aggravated
cy on our hands and that
protect him and the women of

15 A Because his admissions in hi
16 committee indicated a 20-yea
17 sexual misconduct, and coupl
18 that in certain circumstance
19 about his conduct, which gav
20 This, coupled with
21 pressures that, according to
22 him to fall in these areas,
23 present in his life, we felt
24 situation, we had an emergenc
25 we needed to, in order to pro

1 the assembly, needed to restrict his behavior right
2 away.

3 Q That was on the 24th?

4 A Yes.

5 Q How did Pastor Barnett react to that?

6 A David Motherwell spoke with him, I believe it was the
7 following day.

8 Q The 25th?

9 A The 25th, and reported back to the committee.

10 MR. PIERCE: I'm going to object to anything
11 that was said, Your Honor. It would be hearsay,

12 ~~freely, with Mr. Motherwell.~~

13 Q Without stating the substance of the words, did you
14 learn what Pastor Barnett's reaction was?

15 MR. PIERCE: I object, Your Honor.

16 Non-verbal communication by Pastor --

17 THE COURT: Yes or no, did you know what his
18 reaction was?

19 THE WITNESS: Yes.

20 Q How did you learn?

21 A David Motherwell reported it to the committee during a
22 meeting and on the --

23 THE COURT: That's the answer.

24 Q Did you have any contact with Pastor Barnett on that
25 day?

1 A On the 25th of the following day we granted him the
2 right to personally address the exclusive eldership
3 review hearings.

4 Q Was that within the guidelines?

5 A No, it was not.

6 Q Why did you allow that allowance of the guidelines?

7 A Because we had a crisis, a grave crisis on our hands
8 in the church, and we felt that we needed to give him
9 every opportunity to defend himself, to work with us,
10 to show some sort of willingness to abide by the
11 special status that had been imposed upon him, so we
12 decided, again, to table the regularly-scheduled
13 meeting, and allow him to address us personally.

14 Q Were you willing to work with him?

15 A To the utmost.

16 Q At that February 25th meeting when he addressed the
17 committee; did he voice his reaction to the special
18 status?

19 A Yes.

20 Q Could you tell us what he did?

21 A He made it clear, in no uncertain terms, that he had
22 absolutely no intention of abiding by the special
23 status, considering it rather legalism, and calling us
24 legalistic hawks for imposing it upon him.

25 Q Hawks?

1 A Legalistic hawks, yes.

2 Q Did you in any way invite him to continue to confer
3 with you?

4 A Well, I think it's safe to say that Don was enraged in
5 his presentation before the committee on the 25th, and
6 after speaking before the committee for a couple of
7 hours, he stormed out of the meeting, and did not give
8 us an opportunity to ask for another opportunity to
9 meet with him.

10 Q Now, did members of the committee of 16 address the
11 congregation the next day, the 26th?

12 A Yes.

13 Q Why did you feel it was necessary to address the
14 congregation?

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ment to address the

Q When you had the agree

1 congregation, were you mindful of the confidentiality
2 provision in the guidelines?

3 A Yes.

4 Q Did you disclose any details or the substance of any
5 admissions made at the hearings?

6 A No.

7 Q Was that purposeful?

8 A Yes.

9 Q Why was that, why did you decide not to do that?

10 A Well, besides the fact that we had agreed not to in
11 the guidelines, we wanted to respect his reputation.
12 We were still in hopes of some sort of a
13 positive resolution of Jerry Zwack's grievances
14 against Don, and we felt that it was something that
15 was not necessary in order to at least inform the
16 congregation that he was on special status.

17 Q Before we get past the testimony, my understanding is
18 women were identified by number at the hearing; is
19 that right?

20 A Yes.

21 Q And there was a numbering code or sequence used?

22 A Yes.

23 Q Was the same code used by Jerry Zwack and Don?

24 A Yes.

25 Q Based on the descriptions given by each, and of the

1 events, were you able to follow who each was talking
2 about, when they were referring, for example, to Woman
3 Number 1?

4 A Yes.

5 Q So did you have any confusion when you went into your
6 deliberative mode, the deliberation sessions, about
7 who Woman 1 was as opposed to Woman 3?

8 A No.

9 Q On any of these women did you have any confusion?

10 A No.

11 Q Did anyone ever indicate that they were confused about
12 which number matched up with which woman and which
13 event?

14 A No.

15 Q Now were you present at the Sunday service when

1 Q Why did you think that was a violation of the
2 guidelines?

3 A Well, the special agreement; I should say.

4 Q I'm sorry, the special agreement. Why did you think
5 it was a violation of the special agreement?

6 A Because he promised in the special agreement that once
7 the hearings began he would do nothing to stop them,
8 he would allow them to continue and conclude to the
9 satisfaction of the eldership.

10 Q Now notwithstanding what he said at the 2/28 service,
11 did you have occasion within a short period of time to
12 try to work with him again?

13 A On the next day, which was the 29th of February, Don
14 called a meeting that morning, because the media had
15 gotten wind that there was some kind of internal
16 conflict within the church, and was asking for a press
17 release.

18 So Don wanted to be able to make some sort of
19 statement to the press and so with several of the

20 e members and some other staff members

21 he --

22 present?

23 as. He asked us to recant of what we had done

24 6th in that service, so that he could say to

25 s the elders have repented of the things they

20 committe

21 present,

22 Q Were you

23 A Yes, I w

24 on the 2

25 the pres

1 did on the 26th, everything is worked out, we have no
2 problem here.

3 Q This was on the 29th?

4 A Yes.

5 Q Did you think this was a violation of the special
6 agreement?

7 A Yes, I did.

8 Q Notwithstanding this additional violation, did you ask
9 Don to continue to work with him?

10 A I actually asked him twice, during the course of that
11 meeting.

12 Q Tell us about that.

13 A The first time I asked him he said --

14 THE COURT: You asked him what? I didn't get
15 that.

16 THE WITNESS: I asked him on behalf of the
17 committee if he would be willing to meet with us
18 again.

19 Q What was your purpose in asking to meet with Don, even
20 though he delivered this diatribe on the 28th and

21 asked you to meet?

purpose was in order to continue to work with him
see if there could be some positive resolution of
crisis that was in front of us, and to avoid an
y scenario.

22 A Our
23 and
24 the
25 ugly

1 Q What was Don's reaction to your invitation to keep
2 working together?

3 A The first time I asked him he said, "I couldn't talk
4 about that right now". Then at the end of that
5 meeting, as he walked to the door, I approached him
6 again, and I said "We want to meet with you, we'll
7 meet with you any time, any place", and he said "I
8 could only do that on the condition that each
9 individual member of the committee write letters to me
10 repenting of what they did on February 26th, at that
11 service, otherwise there would be no basis for meeting
12 with you".

13 Q When was the first time the subject of
14 disfellowshipment came up?

15 A ~~On that day, of February 29th, the committee~~
16 reconvened their exclusive eldership review hearing,
17 and at that hearing the subject of disfellowship was
18 broached.

19 THE COURT: Now that was on what day?

20 THE WITNESS: On the same day, on the 29th,
21 later on in the day.

22 Q Who brought it up, if you recall?

23 A Don's counselor, David Motherwell, said that he was
24 committed to disfellowshipping Don, and that if we
25 were not willing to disfellowship him and concur in

1 that action, he would probably be forced to resign as
2 Don's counselor.

3 Q Now, did the committee of 16 discuss disfellowshipment
4 amongst themselves for a period of time?

5 A Yes.

6 Q Tell us what time period.

7 A We began serious deliberations on that subject, like I
8 say, on the 29th. That discussion continued on the
9 1st, 2nd and 3rd of March.

10 Q On the third was the group of 16 together in some
11 place?

12 A Yes.

13 Q Where were you?

14 A We were at John Harold's house.

15 Q During the course of that meeting was there a vote by
16 the 16, all 16 men --

17 A Yes.

18 Q -- senior elders, elders, and the other people who
19 were not elders, about whether to disfellowship Donald
20 Barnett?

21 A Yes.

22 Q How was the vote taken?

23 A It was a hand vote.

24 Q And if you can recall, what was the vote?

25 A Sixteen in favor of disfellowship, none in opposition.

1 Q Do you recall any other votes being taken?
2 A Yes.
3 Q What other votes or vote do you recall being taken?
4 A The 10 elders who were part of the committee of 16; in
5 other words, minus the three senior elders and minus
6 the three non-elders voted also to, in their capacity
7 as elders, to disfellowship him.
8 Q Did you commit that to writing; do you recall?
9 A Yes.
10 Q Were you present at any vote of any senior elders?
11 A No.
12 Q Do you recall any senior elder vote?
13 A No.
14 Q Do you recall signing your name to a letter
15 formalizing or notifying of the action of the 16?
16 A Yes.
17 Q What was your purpose in so doing?
18 A To notify Don and Jerry Zwack and the church that the
19 committee had disfellowshipped Don Barnett.
20 Q Could you turn to Exhibit 34?
21 A (Complying)
22 Q Take a look at the signature page. Is that the letter
23 you're referring to?
24 A Yes.
25 THE COURT: That number again is what?

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MR. SHAPIRO: Thirty-four.

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Q You have mentioned your participation in two separate

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votes, one vote including all 16, and one vote

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including the 10 elders. Why did the elders

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Don Barnett charged in his February 25th

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to the committee, he charged the senior elders

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separate vote of just the elders, not the senior

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elders, not the non-elders, saying this is what we

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believe and this is what we're doing. As elders we're

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disfellowshipping you, so there would be no question

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that this was a honest, unsolicited vote on the part

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of every member of the committee.

23

Q You mentioned that you no longer are at Community

24

Chapel; is that right?

25

A Correct.

1 Q You stopped being involved with that church when?

2 A Approximately February of, somewhere between the end
3 of 1988 and the beginning of 1989.

4 Q Do you have any interest in the outcome of this
5 litigation?

6 A I have absolutely no personal interest in the outcome
7 of this proceeding.

8 Q Thank you, I have nothing further.

9 *****

10 THE COURT: I have just a couple of questions
11 before you cross-examine him.

12 Mr. Thiel, I don't have any background on

the fact that you had been a member of

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you, other than t

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THE WITNESS: Yes.

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THE COURT: Where?

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THE WITNESS: At Pace Net

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THE COURT: What does tha

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THE WITNESS: That is an

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and I am currently on assignment f

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clerical work.

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THE COURT: Married?

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THE WITNESS: Yes

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THE COURT: Family?

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THE WITNESS: One daughter

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THE COURT: Are you related to any of the other 15 who acted with you on this committee, and when I say "related", I mean either you related with their family in any way, or is your family related with any one of them?

THE WITNESS: No.

THE COURT: I have no further questions, and we'll start your cross-examination at 9:15 tomorrow morning.

(Court adjourned at 4:35 p.m..)