

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

DONALD LEE BARNETT,)	
)	
Plaintiff,)	Cause No. 88-2-04148-2
)	
Vs.)	
)	
JACK A. HICKS, JACK H. DUBOIS, and E. SCOTT HARTLEY, individually and as the board of Directors of COMMUNITY CHAPEL AND BIBLE TRAINING CENTER and COMMUNITY CHAPEL AND BIBLE TRAINING CENTER,)	TRIAL TRANSCRIPT VOLUME XI, pp. 1806-1838
)	
)	February 6th, 1991
)	
Defendants.)	
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**TRIAL TRANSCRIPT, VOLUME XI
PAGES 1806-1838**

(ORAL DECISION)

BE IT REMEMBERED the above-named cause of action came on for arbitration on February 6th, 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.**

Oral Decision

(The following proceedings occurred on February 6, 1991)

1 THE COURT: As you gentlemen each did, I
2 would like to start my part of this summation by
3 thanking you very much for a lot of things, first of
4 all, for permitting me to sit on this case. I regard
5 that as a distinct honor and privilege. This is not
6 only an unusual case but it's a very important one to
7 the parties and to counsel. And to be asked to
8 arbitrate this matter is a real honor, I think.

9 I would also like to thank you for the help
10 you've been in enabling me to reach a decision in this
11 matter. Now, that's not just a perfunctory compliment
12 designed to ease the pain, that is really heartfelt as
13 far as I'm concerned. It became apparent to me early
14 on that you people were excellent lawyers and you were
15 taking this case very seriously and you were
16 industriously prosecuting it for your clients. And in
17 that connection, I think that the clients are very
18 fortunate in having able counsel.

19 And one of the pastimes that a judge indulges in
20 is to imagine how he would try a case that he's
21 hearing, how he would approach the issues and, of
22 course, it's always easy to second guess somebody.
23 But I can't imagine in reflecting on this case
24 yesterday how I would have tried it on either side any
25 differently, how I think I could have tried it any

Oral Decision

1 better. And I think that you people have been
2 excellently represented in this matter, win, lose, or
3 draw. That's not always the case but it is certainly
4 here.

5 I also want to thank you for your professional
6 attitude in approaching these problems. I recognize
7 that this is, if it isn't now, it certainly was at one
8 time shortly and probably right below the surface
9 quite an emotional thing as far as both sides are
10 concerned. The parties and witnesses here have
11 expressed strong emotions, great love for each other.
12 That love turned a little sour, but still you were
13 able to deal with one another politely and with
14 respect. And we people who try to settle these cases
15 and try to reach decisions, appreciate the lack of
16 rancor, the lack of bitterness, which doesn't help
17 matters for anybody and it certainly makes it
18 disagreeable as far as we're concerned. Very
19 professionally handled.

20 And lastly, I've enjoyed you people personally.
21 I think that's been evident, our contacts in the hall
22 and here. This is something that lawyers probably
23 don't realize but judges are attracted to you people
24 and I found it very enjoyable being with all of you,
25 even though I agree with Mr. Wiggins that this case is

Oral Decision

1 a real tragedy.

2 That makes it all the more important that all
3 matters be pursued and all matters be fully aired and
4 all matters be fully argued. And really that's the
5 reason I permitted what would have otherwise been
6 gross tactical error in allowing evidence to come in
7 that had little, if any, real relevancy to the issue,
8 to the real problem, to the hub of the controversy and
9 to permit an unusual amount of repetition. I think
10 this is the kind of case where the parties, witnesses,
11 should be permitted to fully express themselves, to
12 tell the arbitrator, the arbitor, if you wish to refer
13 to me, all that you have on your mind that relates to
14 what we're here about. And I've tried to accommodate
15 you even though as I jocularly mentioned maybe being a
16 little over done at times. That's not meant to be a
17 criticism. I know now important it is for all of you.

18 The other thing that I might say is that in the
19 course of deciding this case, I want everyone to
20 realize or to understand that I'm accustomed to
21 dealing with disputed facts, I'm accustomed to dealing
22 with contradictory testimony, and I'm accustomed to
23 hearing two different, completely different versions
24 of the same facts.

25 When I'm met out of court or someplace like that,

Oral Decision

1 people refer to that as lying in court, and I don't
2 believe that in my 22 years I've heard more than half
3 a dozen people that I thought were deliberately,
4 intentionally misstating a fact. It's easy to forget,
5 each puts on his own hat and adopts a version of the
6 facts or what is said or what is done as it applies to
7 him or her and sometimes your interests differ greatly
8 and what you think is being said or how you think it's
9 coming out is through your eyes and I am anxious to
10 hear how you regard it too. The basic function of the
11 judge though is to determine what is more probably the

12 case than not the case, what more probably was done
13 than not done, what was said and intended and what was
14 not and you'll hear me refer to that several times as
15 I discuss the evidence.

16 Lastly, let me say this. The remarks that I have
17 just spoken aren't intended to be findings or anything
18 other than introductory and impressions of my approach
19 to this case.

20 But eventually we're going to get to writing up
21 findings of fact and conclusions of law. I had hoped
22 to have that done. I had hoped to be able to write up
23 these findings, but I haven't been able to do that. I
24 haven't had the time and I'm lacking in facilities. I
25 can pick up a dictating microphone and start talking,

Oral Decision

1 it makes things pretty simple, but when you have to do
2 that and find somebody to type it and somebody to edit
3 it and all, it becomes quite a burden, especially when
4 you don't have any of those things available to you.
5 So, what I'm saying is I will ask you to prepare
6 rather complete and rather detailed findings along the
7 lines that I'm saying and present them to me and I
8 will pick and choose, add my own, and come up with a
9 set that I'm willing to sign and then we will
10 probably, I'm saying this because I suspect that
11 counsel will want to, appear again and take issue with
12 some of the findings and certainly some of the
13 conclusions.

14 I believe that my holdings and findings here are
15 fairly narrow, but I hope to comment and decide all
16 matters that have been put to me, whether I feel that
17 they bear on the issue or not, because I don't want to
18 be accused of overlooking something that somebody has
19 said and is being left to believe that I have either
20 forgotten it or disregarded it or whatever. I hope to
21 comment on everything.

22 The nub of this case and the issues that I feel
23 require care deal with the authority sought to be
24 exercised here by the parties, the procedures which
25 they followed, and whether the evidence supports or

Oral Decision

1 does not support what was done. Basically, that's
2 decision in this case. What I believe to be my fu
3 from rereading the Carter I draw that conclusio
4 d the Organization of case at 108 Wn. 2nd 204 an
5 5 which is found in 49 Wn. App. Lutherans against Mason wh
6 6 e entitled Paul against 441 and in the Federal cas
7 7 Society found in 819 Fed. Watchtower Bible and Tract
8 8 with the function of the Rptr. 876. They all deal
9 9 y filings in court take Court when it's asked to b
10 10 disputes that arise in jurisdiction of and decide
11 church matters.

12 This was our first order of issue long ago when
13 we first approached this. And whether or not the U.S.
14 Constitution prevented and prohibited the civil courts
15 from entering into and deciding or taking any
16 cognizance of disputes between congregants and pastor
17 or pastors that may be competing for the establishment
18 and we found that in the case of congregational
19 churches, such as the one we're dealing with here,
20 that have no hierarchy or procedures for resolving
21 disputes that the Court will examine what is done and
22 if it is done by the procedure authority and is proper
23 and that it will leave the matter in that fashion.

24 Well, let me kind of turn the tables and say what
25 this is not. This is not a case in which some

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1 congregant files an action in court and says
2 complaining about Pastor Barnett, "Look what he has
3 done" and alleges a number of facts and says, "Now,
4 Judge, you recognize that is wrong. Terminate him
5 from any further connection with the church". That is
6 clearly forbidden under our civil approach to these
7 church cases.

8 This is a case of what the elders have done, what
9 Pastor Barnett has done, and whether they have done it
10 in accordance with the facts and the procedures.

11 Okay, the background of the Community Chapel and
12 Bible College corporation should be recited in fair
13 detail. I reread the Supreme Court's opinion at page
14 880 and the first part of 881 of the Washington Report
15 and in that first page or two they summarize how this
16 church came about and what the facts were as they were
17 developed for the purposes of that appeal.

18 I think we should go into a little more detail
19 following the evidence and indicate when this church
20 was incorporated and by whom, to recite the
21 development of the church and how it prospered and
22 expanded, and how the church was situated at the time
23 our problem we'll approach here originated. That was
24 disposed of in a couple of sentences in the Supreme
25 Court summary by simply saying the church went along

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1 fine and dandy for 20 years and then all of sudden in
2 December something arose.

3 I realize that counsel jumped right in to the
4 Zwack letter of December 23rd of 1987 but I believe
5 more is required than that. I think it is obvious
6 from the evidence that the problems were surfacing as
7 far as Community Chapel is concerned throughout the
8 year of 1987.

9 Among other things, the Barnetts were
10 experiencing marital problems, there were lawsuits
11 commenced against the church and against Pastor
12 Barnett and what kind of lawsuits those were, the fact
13 that as a result of those lawsuits insurance was
14 cancelled creating that problem for the church, and
15 that the attendance and finances of the church were
16 deteriorating.

17 I believe I recall correctly Pastor Barnett's
18 testimony that the attendance of the church dropped
19 from some 3,500 to 2,800, I believe it to be in that
20 range within that time. And it was obvious from

21 action taken such as the laying off of employees that
22 they were experiencing a financial crunch and that
23 brought about then the next finding which would be
24 that Jerry Zwack who had been terminated from the two
25 positions he had held wrote the letter of December

Oral Decision

1 23rd, delivered on December 24th. That is Exhibit No.
2 22.

3 This letter says many things. It was never
4 developed totally in testimony but it specifically
5 refers to misconduct on the part of Pastor Barnett.
6 It only obliquely refers to being laid off. It refers
7 to complaints that Jerry Zwack had received
8 implicating Pastor Barnett and, lastly, well in two
9 places actually, he indicates that not only is he
10 aware of these things but that others are.

11 Specifically, there are two places in the letter,
12 but specifically the next to the last paragraph where
13 he says David Motherwell, Scott Hartley, and Larry
14 Peterson are the individuals with the bulk of details
15 and verifications of all that I have mentioned. I'm
16 sorry if I was too explicit and so forth.

17 That letter was addressed to these people listed
18 on the back sheet who I take it to be not only the
19 senior elders but all the other elders, some of whom

20 appeared here, all of whom have been mentioned here
21 except I haven't heard of Slaminski or Myrick but they
22 are listed here too.

23 When that letter was received shortly after that
24 by the people to whom it was sent or delivered, Pastor
25 Barnett called and told them don't open the letter,

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1 return it to me or just keep it sealed. That was
2 understandable in light of the fact that he either had
3 spoken or understood if nothing was done about this
4 that Zwack was going to take the issue to a different
5 recipient, either the congregation or to a newspaper.
6 ~~And this situation had received publicity, damaging~~

7 publicity, up to that point anyway and that made great
8 urgency to resolving his problem.

9 Now, I'd like to go back and say, too, that a
0 somewhat detailed recitation of the articles and
1 bylaws has to be made here and this is probably as
2 good a time to make it in the findings as anywhere
3 else and what the articles provided and what they
4 didn't provide with respect to the pastor, the elders,
5 disfellowship, and other matters.

6 Now, these articles and bylaws as they existed at
7 that time and previously, for that matter, contained
8 no procedure for resolving any kind of dispute of this
9 matter, of this type. The articles and bylaws plainly
0 stated that Pastor Barnett being the original pastor
1 could not be removed and was in for life.

2 There were many other provisions that have been
3 referred to as protective provisions and I'll adopt
4 that name for them. They can be spelled out in

5 what those were, but they had to do with the

25

findin

Oral Decision

1 number of offices that Pastor Barnett held in the
2 corporation, the fact that he was, for example, ex
3 officio member and chairman of the Board of Directors,
4 the Board of Directors being the Board of Senior
5 Elders and absent in any of those is any provision for
6 removing or disciplining or for resolving any dispute
7 whatsoever between or grievance against Pastor
8 Barnett.

9 Once having received this letter, however, the
10 elders, wondering I guess how to approach the matter,
11 organized to deal with the problem and felt that a
12 hearing was necessary if they were to prevent a
13 disastrous flood of publicity and if they were to
14 correct any wrongdoing they found to have existed.

15 I think it was three pre-hearing organizational
16 meetings were conducted by the 16 people who formed
17 this eldership committee, they being the senior
18 elders, the elders, and three other people who were
19 specifically included being David Motherwell, I think
20 it was John Bergin and somebody else. They all became
21 members of the committee even though they were not
22 strictly elders, as I understand the facts.

23 It was developed during the testimony that most,
24 if not all, of the members of that committee who
25 appeared here and testified were somewhat aware of the

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1 Articles of Incorporation and the Articles of Faith
2 and Bylaws and that they understood and were aware of
3 these protective provisions, as I call them, and the
4 fact that in the organization of the church the pastor
5 was above the church and controlled the church and had
6 crucial control over all of the other divisions of
7 authority.

8 So, it became immediately important to protect
9 Pastor Barnett from exercising any control over these

to really kind of outline what was
agreement which was marked Exhibit 15
25, 1988, was presented to him.
the words "and Jerry", he signed
gives rise to the first issue of fact
it was intended, what was expected,
in the agreement and how the
it. What was said is, of course,
it. What was discussed and
question in doubt. But it is my finding
background that I have heretofore
the events leading up to this in
of the church, and the letter
Gatherwell sometime later, but

11 of interest. And
12 to be done, the ag
13 and signed January
14 And after insertin
15 it.

16 Now, this gives
17 probably as to wha
18 what was mentioned
19 parties understood
20 obvious by reading
21 intended is a quest
22 that based on the
23 referred to as bei
24 1987, the conditio
25 written by David M

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1 referring back to conversation he had with Pastor
2 Barnett, that the pastor had to have known that his
3 conduct was going to be scrutinized and he had to have
4 known that something, if found to be reprehensible,
5 that something would be done about it. This was not
6 just a fact-finding thing.

7 Now, surely some of the elders thought this was
8 no big deal and that Pastor Barnett in short order
9 would be able to explain all the matters and that the
10 whole nasty situation would go away either because
11 they had great faith and trust in him or they
12 suspected Jerry Zwack's motives and reasons for
13 bringing this about. Whatever the case may have been,
14 some of them thought it was no big deal. But there
15 were others among them who certainly realized there
16 was serious, serious problems, one of them who was
17 David Motherwell who dealt with and was at that time
18 counsel for Pastor Barnett.

19 In addition, the group has worked out a set of
20 guidelines that would be used during the hearing to
21 sort of give some direction, some order, some guidance
22 to the hearings and they were adopted after some
23 revisions and they are listed as an exhibit, and what
24 exhibit number I don't have right now, but that should
25 be indicated. These guidelines were at least made

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1 known if not discussed with the pastor and Jerry Zwack
2 at the time the hearings started.

3 So, then the hearings began and following the
4 guidelines each of the two, that is Jerry Zwack and
5 Don Barnett, were permitted an opening statement.
6 These statements have been variously described as nine
7 hours long for Jerry Zwack and 20 to 30 hours long for
8 Pastor Barnett, after which each spoke in answer to
9 the other.

10 I have in my notes somewhere when the hearings
11 began but they ran into early February. And on
12 February 3rd after hearing the remarks of each of
13 them, the elders met with Pastor Barnett at his
14 request and he abraded them, according to their
15 characterization, for the way the hearings were going.

16 And he apparently asked them and I would so find
17 among other things eight questions which were answered
18 and referred to in Exhibit No. 29. And these
19 questions may or may not be quoted but they challenged
20 what was going on, the right of the committee to even
21 have the hearing and where they got that right and why
22 he was being, quote, brought to trial and the reasons
23 why he should be tried and not others, not
24 specifically some of the other elders and what are the
25 specific grievances against him and those matters.

taken as a challenge and a violation of
of January 25th, an attempt to enter,
or challenge the process of the
believe that hearing was best described
Kenzie in testimony, but the meaning I
evidence was that Pastor Barnett was very
te. lashed out at the eldership

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the agreement
delay, upset,
hearings. I b
by Russell Mac
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ctee, they felt, and it was obvious that there
challenge to that committee at that time. The
ship committee continued to meet, however, and
nued to deliberate and did not call any further
sses or live witnesses and none were proposed by
r Zwack or Barnett.

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The next paragraph should refer to the fact that
y the deliberation stage some at least of the
s told what they knew about the grievances of
nduct, sexual misconduct on the part of Pastor
t, his misuse and abuse of his pastoral
rity, and the details of his associations with
These were statements made in the deliberation
of the hearing out of the presence of both Zwack
rnett and to which now Pastor Barnett takes
ion. That will be referred to later.
The senior elders then met. It should be
ned here again if not already that the senior

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1 elders were included in the group of 16 which
2 constituted the eldership hearing committee. The
3 senior elders met and took action to place Pastor
4 Barnett on special status. That was an action that
5 was taken by the three elders not in the presence or
6 authorized by Pastor Barnett. And the details of the
7 special status provisions should be spelled out in the
8 findings as well as the description of what special
9 status was.

10 It's been described several ways as, one, the
11 first step in disfellowship or as being a type of
12 probation which puts certain restrictions on an
13 individual. It's the finding of this Court that it
14 was all of those but principally a device by which the
15 church attempted to correct a situation that they
16 found intolerable. In other words, it was a curative
17 fashion.

18 Now, I refer back to the agreement of the 25th
19 and point out that while it was agreed that nothing
20 was said in the agreement or even mentioned about
21 discipline or disfellowship or special status or
22 anything like that, the agreement does say how it
23 reads. And it's the finding, as I previously said,
24 that the parties at that time and place considering
25 the seriousness of these charges must have known that

Oral Decision

1 some consequence would come about.
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10 DELETED MATERIAL FILED UNDER SEAL
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18 On February the 24th, the elders responded to
19 Pastor Barnett's, quote, lashing out, quote, on
20 February 3rd by the letter, Exhibit 29, answering
21 questions that he put to them, explaining what their
22 position was.

23 And throughout this time and particularly about
24 this time it became obvious to the eldership committee
25 that Pastor Barnett was resisting any attempt that

Oral Decision

1 they might have of trying to correct his conduct, that
2 he had any number of explanations for what happened,
3 most of them excusatory and that the elders then
4 determined that they had to do something more.

5 They addressed the congregation on February 26th
6 telling the congregation that they had placed Pastor
7 Barnett on special status or that he had been placed
8 on special status and indicated in that address to the
9 congregation that Pastor Barnett had admitted to
10 certain sexual misconduct. That's referred to in the
11 letter.

12 This followed a meeting on the 25th, I believe,
13 in which a rather heated discussion took place between
14 the membership of the committee and Pastor Barnett

15 ~~and that the committee was satisfied that they knew all they had to~~
16 committee was satisfied that they knew all they had to
17 know about Pastor Barnett's activities. This was at a
18 time when the meeting was broken off when Pastor
19 Barnett had to go to Kalispell. And in his absence,
20 the elders addressed the congregation on the 26th, I
21 believe.

22 When Pastor Barnett returned, he addressed the
23 congregation on the 28th, and not only was the
24 transcript of that sermon prepared but also the tapes
25 are in evidence. I'm trying to think of what finding

Oral Decision

1 I should make in connection with the sermon. It has
2 to be read or heard to be understood. Many, many
3 things are said. It's been described as a two-hour
4 sermon. I don't know how long it took Pastor Barnett
5 to give it, but it took me a long time to read it and
6 many things were said at that time.

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13 DELETED MATERIAL FILED UNDER SEAL
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22 I'll be interested in what you gentlemen include
23 in that finding. As I say, in order to know what
24 occurred at that sermon you have to read it or hear it
25 to get the full import of it. It was if somebody said

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1 two hours, I'll believe them. It was a long session
2 in which even Pastor Barnett says he was stringing it
3 out a little long and many, many things were said, but
4 I believe I have capsulated the essence of it.

5 At any rate, the following week the eldership
6 committee met again on March 3rd, I believe it was.
7 I'm not just sure when in sequence this occurred,
8 maybe it's important, I didn't seem to think it was
9 because the two acts were done, who went first or what
10 that was about didn't seem to make any difference. If

11 you gentlemen think it does, you can so provide in
12 your finding.

13 The four senior elders in Exhibit No. 49 took
14 action to disfellowship Pastor Barnett and the
15 eldership took similar action in Exhibit No. 34 doing
16 the same thing.

17 On March 4th, early in the morning responding to
18 calls from Pastor Barnett's secretary, the three
19 senior elders met at the parsonage with Pastor
20 Barnett. There was some misunderstanding between
21 them. Pastor Barnett thought they were going to come
22 in separately, the elders came in as a group of three.
23 A dispute arose as to why they were there. Pastor
24 Barnett wanted to take up a matter having to do with
25 addressing the congregation. They wanted to take up

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1 an amendment to the bylaws and articles, which would
2 remove from the articles and bylaws some of the,
3 quote, protective provisions.

4 The elders did have amendments in hand, passed
5 them to Pastor Barnett who either disregarded them or
6 placed them on the table and continued his subject.
7 And they asked him how he would vote and he kept
8 talking about his subject And it was - Hines - I

ve, who asked the others how they voted and they
hey adopted it. At that point, Pastor Barnett
tly terminated the meeting by ousting them from
ouse, the parsonage.

The elders then went to Jack Hicks' office,

1. where they executed documents which were

ately dispatched to Olympia which would amend
laws and articles. At that time and place, the
senior elders took the action to disfellowship
Barnett which I have previously mentioned as
Exhibit No. 49.

I'm trying to review in my own mind if I feel
were any significant findings which I have
d up to this point. At any rate, I'm going to
five-minute recess and we'll be back and I'll
ue.

(Short break taken.)

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Oral Decision

1 That was the easy part, discussing the issues in
2 this case. The Defendants claim in their counterclaim
3 ~~that they had authority to do what they did and that~~
4 calls for an examination of what authority the Board
5 of Senior Elders had under the Articles of
6 Incorporation and Articles of Faith and Bylaws.

7 It appears to me that their duties, functions, or
8 powers are set out in Division 1 of the articles and
9 bylaws, Section 2, Article 1, Section 3, Section 4,
10 Article 1, and Section 6. Those are the ones that I
11 found. And in all cases where their function is
12 defined, it is subject to the concurrence of the
13 pastor and, in some instances, where the pastor is
14 required to act as chairman and conduct the meeting on
15 his agenda. The articles and bylaws are clear enough.
16 They require no further statement. They say what they
17 say.

18 Under the facts as I have derived them on the
19 background of this case, it seems to me that the Board
20 of Elders does have authority. I refer to the Grace
21 Institute case, 226 Northeastern 2d 531, the Rodick
22 against the Ukrainian Church, 296 New York Supplement
23 496 and the New Found Industrial Mission against
24 Anderson at 49 Southern 2d 342.

25 Most certainly, those cases can be distinguished

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1 from the one we have here. Neither counsel have found
2 cases that specifically deal with this type of factual
3 pattern. What I mean by that is where a pastor in
4 charge or a president in charge of a church has been
5 established to have been guilty of pastoral overreach
6 and breach of fiduciary relationship, was ousted by a
7 board where everything they did had to be with his
8 approval. But the language in those cases and the
9 holdings in those cases arrive at a result, I believe,
10 which is correct.

11 In the first place, and I can quote the quotes in
12 the cases but they have been quoted so many times, I
13 believe that I'm only running through old ground here,
14 and that is even where there are statutory provisions
15 or Article of Incorporation and bylaw provisions that
16 prevent the removal of the pastor, if he is found to
17 have violated his pastoral duties and breached the
18 confidential relationship and duty of utmost good
19 faith, these actions may be taken by other constituted
20 authorities.

21 To this the Plaintiff has said there is nothing
22 in this picture of articles and bylaws which would
23 countenance action taken without his consent. And one
24 is inclined to wonder how broad are these protective
25 provisions? Do they permit -- Do they shield him

Oral Decision

1 from any type of act that he might do? Is there no
2 authority or reign on his activities? It occurs to me
3 that sexual misconduct with these women, using his
4 position to achieve them and intimidating them into
5 silence is one of the most flagrant breaches of
6 pastoral duty one can imagine.

7 When that became a fact or in this dispute and
8 when asked was there nothing that could be done by the
9 elders, counsel uses the example of Elliot Richardson
10 and said yes, reassign and walk. And I know, and I
11 don't mean to pick on that example as being a poor
12 one, I understand what he said but let me explain my
13 holding. Elliot Richardson owed absolutely nothing to
14 anybody but Elliot Richardson. And if he didn't like
15 what he was asked to do, all he had to do was slam the
16 door.

17 These elders had some duty too. They were
18 leaders of this church, not supreme leaders, I
19 realize, but they had a congregation looking at them
20 and women complaining to them. Who was supposed to do
21 something about this situation? And the total answer
22 in the words of the Plaintiff is nobody. Nobody could
23 do a thing.

24 Now, I know that there are a couple of references
25 here to this case that I'd like to comment on. One of

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1 them was by Justice Dolliver in holding that if
2 parties enter willingly and voluntarily enter into
3 this relationship with the provisions of the articles
4 and bylaws as they exist that he felt that the statute
5 in which Judge Quinn had ruled was violated and that,
6 therefore, made these provisions illegal, would not be
7 tortured into extricating people who had voluntarily
8 entered into this relationship. I don't understand
9 Justice Dolliver to say by saying that nothing could
10 be done he was going to leave them as he found them
11 and, if they agreed to this, he wasn't going to do
12 anything about it. I don't understand him to say that
13 at all.

14 In considering other corporate law, there are
15 provisions that protect minority stockholders in
16 business corporations, there are methods for resolving
17 imbalance interests, here there are none. It just
18 impresses me as being wrong that this situation can go
19 unremedied.

20 The solution that is suggested by Plaintiff I
21 believe meets present public disapproval, and I don't
22 mean to compare this with what Pastor Barnett did or
23 as an example of what should apply here, I'm simply
24 trying to explain what I mean.

25 Examples all over the place can be used, but the

Oral Decision

1 one that immediately comes to mind is the instance of
2 the lady whose name I used to call up very quickly but
3 has escaped my memory right now in New York who was
4 stabbed to death and raped in the presence of and
5 within view of any number of good New York citizens
6 who didn't stop the assailant, who didn't come to her
7 rescue, who didn't do anything other than simply turn
8 their backs and pass by.

9 Now, they had a right to do that. There's
10 nothing in the law that says that you have got to help
11 somebody in that situation. But the whole City of New
12 York was horrified at the idea that nobody would come
13 to this woman's rescue, that they would turn and walk
14 away.

15 Now, I'm not drawing any, I repeat, any parallel
16 with this case other than to say that now in public
17 feeling you can't walk away from a bad situation when
18 you have some duty to do otherwise.

19 Another example would be, and this was written up
20 in the papers recently, was the whistle blower who
21 complained and drew attention to the Seattle City
22 building inspector, I think, or something who
23 accumulated a number of hotel and restaurant bills and
24 had the City pay them and they were found to be not
25 proper City expenditures. And if I understand the

Oral Decision

1 letters to the editor correctly, the whistle blower
2 had been fired from the City of Seattle and the
3 Seattle people are indignant. He had no duty to call
4 that to anybody's attention. I don't think present
5 construction of law will countenance a solution like
6 that.

7 The proper steps taken by the elders is brought
8 into question, first having to do with guideline
9 violations. A number of things were said about
10 witnesses and how many witnesses and whether a witness
11 was one who was the accuser or not. And I take it
12 what Plaintiff is complaining of is that Motherwell,
13 Hartley, and Peterson at least, if not more, gave
14 testimony and comments about instances they knew of at
15 the eldership hearing when Pastor Barnett and Jerry
16 Zwack were not present, had no opportunity to
17 cross-examine or respond to it.

18 It seems strange to me that this should be
19 brought up at this time. In Jerry Zwack's letter
20 which I quoted, he indicated that those people all had
21 more information, more detail than he did. It was
22 obvious that some of these elders had received
23 complaints or who had knowledge of things that were
24 going on, and nothing was said at the time they were
25 permitted to hear the matter. As a matter of fact, I

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1 heard Pastor Barnett say that one of the reasons he
2 wanted Motherwell on the committee was so he could
3 explain his side of this controversy.

4 And a witness is a witness, as far as I'm
5 concerned. And whether they are the accuser or not, I
6 use the word in its common everyday meaning and that
7 is anybody that has evidence they saw, heard, or felt
8 occurred in their presence they could testify. I'm
9 not just sure that that even applies here because as
10 far as I understand as to the witnesses who were
11 referred to by Zwack, most of them were admitted or a
12 substantial part of the instances were admitted by the
13 pastor.

14 Bylaw violations have been complained of and that
15 is the senior elders met, took action, held a board
16 meeting without Barnett. That is true. I'd like to

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18 that in terms of fairness, fair play, due process
19 once the eldership committee was established, bot
20 sides were permitted abundant time to present the

21 statements and the committee then decided as they

22 The next matter I would like to talk about h
23 do with the action taken and the sequence of the
24 action taken. The pastor was put on special stat
25 the action of the Board of Elders at which he was

Oral Decision

1 present nor had notice.

2 The disfellowship which was the eventual ousting
3 of Pastor Barnett was accomplished by a board action
4 in Exhibit 49 and an eldership action, Exhibit 34. As
5 to the eldership action, it seems to me that that is
6 clearly contemplated by the January 25 agreement that
7 he would step aside and let the elders settle the
8 matter to their satisfaction and would not interfere
9 with them.

My finding, therefore, is that pursuant to the
1 procedures set out by the eldership committee and
2 agreed upon and participated in by the pastor, they
3 had authority and did disfellowship him.

4 As to their claim that they had an inherent
5 right, the Board of Senior Elders had an inherent
6 right to terminate the pastor, the action they took on
7 March 4, Exhibit 49, as well as the special status on
8 Exhibit 24 on February 15, the Court feels that the
9 following is the approach and the philosophy that
0 should control. The bylaws and Articles of
1 Incorporation have been referred to in cases as being
2 contracts, being in contract. It is the creation of
3 the legal entity participated in by the organizers and
4 shareholders.

5 What was the obligation, duty, or status of the

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1 pastor in relationship to the church? He was in
2 charge of the congregation and of all the active
3 managing committees. He was obliged to lead a Godly
4 life. He was to minister to the congregants, assuming
5 a personal, emotional connection with his congregants,
6 one that the law regards as being especially close and
7 confidential.

8 This Court can't imagine any more powerful
9 fiduciary relationship than that of pastor and member
10 and that to violate that relationship in the course of
11 his pastoral relationship, as he admitted and as the
12 ~~elders found that he did broke and violated that~~

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contractual relationship and the articles
protected him and gave to the elders the a
act without his consent and permitted them
authority to oust him.

To put in it in a different way, one w
there no controls over the pastor? And it
interesting to me to hear what Pastor Barne
connection with Rumor No. 20 of the publica
hear that his idea of being accountable, as
understood it, was to make a disclosure, to
clean breast of it with the elders and that
accounting to them, much I guess the same w
accounts to the IRS when you fill out your

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1 I don't think that's the way the rumor was circulated
 2 nor how the average person understands it when you
 3 would tell them I am accountable to my boss or my wife
 4 or something. That means that you are responsible, it
 5 would seem to me. That's the way the common
 6 understanding would be because the rumor was that he
 7 was not responsible to anybody. He was the law unto
 8 himself which now he claims to be, not accountable in
 9 that he explained what happened.

10 I think there's a duty to the congregation and to

the case to carry out faithfully
 the duties of the pastor and that does
 not include the right to do what was
 done here without fear
 because they had to be taken
 and he couldn't be removed as long

law that applies here is that the
 authority and power on a breach
 of trust duty to take the action they
 pastor.

or claim that the Defendants make
 or attempts to amend the bylaws
 and that having removed those
 of the bylaws that the action they

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the congregation's faith
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So, I feel the l
 senior elders had the
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There's one othe
 and that is that thei
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Oral Decision

1 take was pursuant to the bylaws. That was because the
2 meeting at which they took that action was a continued
3 meeting from the events that occurred in the parsonage
4 on March 4. I believe that legally speaking that was
5 not a continued meeting and that attempt was
6 ineffectual.

7 Another matter that should be covered here is the
8 claim that the amendments to the articles and bylaws
9 of April 1988 reinstated Pastor Barnett. The Court
10 has previously indicated and will so indicate now that
11 this was not the legal consequence of the filing of
12 the articles in April of 1988. Although they are
13 dated as of that date, it appears by the evidence that
14 these were amendments enacted by a board in December,
15 No. 1, not April.

16 No. 2, the amendments were not intended to
17 reinstate anybody or to remove anybody, but the
18 amendments were intended to separate the satellite
19 church.

20 No. 3, any attempt to change or reinstate anybody
21 as an officer would be violative of the restraining
22 order and, therefore, ineffectual and, lastly, that
23 there was certainly no valid meeting in April, the
24 meeting was in December.

25 The board and committee took the action they did

Oral Decision

1 they removed Pastor Barnett by the method of
2 disfellowshipping him. The Court finds that they had
3 authority and followed the proper procedure and their
4 action was effective. These were all the acts of the
5 board and/or the eldership committee. One was
6 effective under the procedures and set out for the
7 eldership hearing, the other was the inherent right of
8 the board to take the action it did when faced with
9 violation of fiduciary duty.

10 Many other things can be said but I'm drawing to
11 a close. There are details that will probably come up
12 later as to when and who did certain things, but I
13 feel badly about this. I feel badly that this matter
14 ever arose. I feel badly that the parties couldn't
15 have worked it out so that everybody was happy. I
16 feel badly that I had to say the things that I did
17 say, but I find that the board acted within its power
18 and likewise the eldership committee.

19 This is more than just the loss of a job, in the
20 words of counsel it's a tragedy, not only a personal
21 tragedy but congregational tragedy.

22 I would hope that you gentlemen can get out
23 findings and conclusions promptly and I'll assure you
24 that I'll make myself available at your call. That's
25 all. (End of Court's Decision.)