

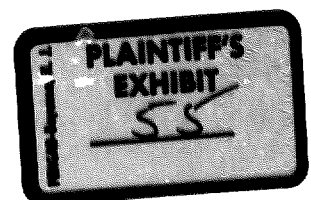
I. DuBois Deposition: Excerpts offered by Plaintiff Donald Barnett

A. 1990 dep

1. 13:8 to 15:3³
 - a) adultery is a tort.
2. 17: 21-25
 - a) never sought legal advice on potential liability as a board member
3. 19:5 to 20:14
 - a) what caused the testimony to end? they had finished taking testimony, and had nothing further to hear. there was nothing more to be presented to the eldership.
4. 22:19 to 23:25
 - a) no effort to obtain DB's presence at the 2/10 meeting to place him on special status.
5. 36:6 to 18
 - a) they began to discuss disfellowship after the 2/28 sermon and after he refused special status.
6. 37:20 to 23
 - a) DB was not present for any of these discussions of disfellowship.
7. 38:20 to 9
 - a) met on 3/4 at the parsonage
8. 42:18 to 22
 - a) no one told DB they were going to continue the meeting elsewhere when he ordered them out of his house.
9. 45:10 to 46:20
 - a) no recall of telling DB they were going to have another meeting, or trying to obtain his presence.
10. 55:15 to 25
 - a) the reason for the disfellowship was that DB refused the special status
11. 55:9 to 56:17
 - a) the 3/4 letter didn't give DB an opportunity to appeal his disfellowship, but if he had changed his mind and accepted special status, he wouldn't have been disfellowshipped. also, never discussed putting the disfellowship to a congregational vote.

B. 1988 dep: 12/6/88

1. 10:11 to 12:20
 - a) the only allegations he found to be credible were DB's admissions of adultery; but accepting special status would have solved the problem.
 - b) he doesn't know who the women were.
 - c) nothing beyond the fact of adultery caused him to vote to remove DB.
2. 19:4 to 12
 - a) Zwacks allegations other than the sexual misconduct "were so much less consequential than the sexual misconduct that I don't remember them."
3. 34:21 to 35:17



Tue, January 29, 1991

DuBois Deposition: Excerpts offered by

a) nothing that DB said led DuBois to believe that these were acts which would submit the corp to liability; it was simply his position of great authority.

COPY

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

DONALD L. BARNETT,)
)
 Plaintiff,)
)
 vs.) NO. 88-2-04148-2
)
 JACK A. HICKS, et al.,)
)
 Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF
JACK H. DuBOIS

A P P E A R A N C E S

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9:50 a.m.
November 14, 1990
Seattle, Washington

REPORTED BY JEAN M. ERICKSEN, RPR

**Sandra
Baker &
Associates** Court Reporters
and Legal
Video Service

1 A Those, and the one in Tacoma.

2 Q Do you know what the one in Tacoma, what the -- I

3 don't remember. I don't remember the names.

4 Q Was it an allegation of tortious conduct by Don?

5 A I don't remember. The corporation was named, and I

6 don't remember whether his conduct was an issue of

7 that or not.

8 Q Any other lawsuits besides the Tacoma suit and the

9 Hull-Butler-Brown suit?

10 A None that I can put a name on at the moment, but I was

11 concerned about these things, but I believed what Don

12 said about them, that the allegations were false and

13 could be easily disposed of, and that there was no way

14 any of these people could prevail, and I believed

15 that, but during the hearings, and right up to the

16 time he began to reply to the allegations by Jerry

17 Zwack, I still believed that.

18 Then in his response to the allegations he

19 made admissions of tortious acts on his behalf, which

20 caused me then to begin to wonder if there wasn't some

21 substance to these suits.

22 Q What tortious acts did he admit to?

23 A Certain behavior with women congregants.

24 Q What sort of behavior?

25 A Adultery.

1 Q Is adultery a tortious act?

2 MR. ROHAN: Objection, calls for a legal
3 conclusion.

4 Q Was adultery, did you believe adultery was a tort --

5 MR. ROHAN: Same objection.

6 Q -- that you could sue for?

7 MR. ROHAN: Same objection.

8 A Yes, I did.

9 Q On what basis did you have that belief?

10 A On what basis did I have that belief?

11 Q Yes.

12 A The conduct which he admitted, was similar to the
13 conduct which had been alleged, in my understanding.
14 I didn't know very much about these suits, but it was
15 similar, at least, to the conduct that had been
16 alleged in those previous suits.

17 Q In what way was it similar?

18 A Misconduct with women congregants, sexual impropriety
19 with women congregants.

20 Q Engaging in sexual activity with women congregants?

21 A In some instances perhaps short of sexual activity,
22 but sexual impropriety. Intercourse, perhaps no.

23 Q It was your belief that it was a tort for a man to
24 have sexual activity with a woman not his wife?

25 A I believed it was the basis for a lawsuit.

1 Q And a lawsuit based on tort?

2 MR. ROHAN: Objection, asked and answered.

3 A Yeah, that was a word that had been used.

4 Q Okay.

5 A What was your question, what is it I'm answering now?

6 Q My question is was it your belief that a lawsuit based
7 on tort --

8 A No, no, I mean the original.

9 MR. ROHAN: You interrupted him several
10 times. The original question you asked him, he has
11 not completed the answer.

12 MR. JOHNSON: Would you read the question?

13 (Pending question was read.)

14 MR. JOHNSON: Off the record.

15 (Remarks made off the record.)

16 Q I believe I asked what happened after Don and Jerry
17 had finished talking.

18 A Yes, that's right.

19 Q That was a prior question.

20 A Yes.

21 Q Was that the one you're referring to?

22 A Yes, I think so.

23 Q What, then, next occurred?

24 A It had to do with continued meetings to decide what to
25 do with the information we had received, and all that

1 Q What was the time frame within which the tortious acts
2 alleged in the lawsuits that you thought were similar,
3 what was the time frame for those tortious acts, when
4 did they occur?

5 A I don't remember. It was sometime before these
6 hearings, but I don't remember exactly when.

7 Q A matter of years before the hearings?

8 A I don't know.

9 Q What was the time frame for the tortious acts that Don
10 admitted, or the sexual activity that Don admitted,
11 that you believed to constitute tortious acts?

12 A I don't remember that, either.

13 Q Did you believe that the time frame was significant?

14 A I don't know that I took it into account.

15 Q You would have felt it was necessary to do something,
16 even if the admissions made by Don were with regard to
17 activities that had happened a year or two years
18 before?

19 A Yes.

20 MR. ROHAN: Objection, speculation.

21 Q Did you ever specifically seek legal advice with
22 regard to the admissions made by Don, and how they
23 might affect your liability as a member of the Board
24 of Senior Elders, or the church's liability?

25 A No.

1 board.

2 Q Did you receive a letter, as a member of the Board of
3 Senior Elders, from a lawyer?

4 A I don't remember.

5 Q What caused the taking of information, evidence or
6 testimony from Jerry Zwack and Don Barnett to end, if
7 you remember?

8 A Caused it to end?

9 Q Yes, were they just done, was there a problem, or --

10 A Well, in the document that convened the hearings, we
11 had done, as far as I know, what that document
12 requested.

13 Q Is this the document that you have identified as the
14 guidelines for eldership hearings?

15 A No, the document that I refer to is a letter by Jerry
16 Zwack to the elders, which asked for these hearings.

17 Q So it was your feeling, as a member of the eldership,
18 and as a member of the Board of Senior Elders, that
19 Donald Barnett had presented all of his information,
20 and Jerry Zwack had presented all of his information?

21 A Yes.

22 Q Was there anything in the guidelines, or in Mr.
23 Zwack's letter, or in any other document, that
24 convened the hearings or governed or controlled the
25 hearings that provided for the taking of any

1 additional evidence or information?

2 MR. ROHAN: Objection, the documents speak
3 for themselves.

4 A I don't remember.

5 Q Was it your belief, as a member of the Board of Senior
6 Elders and a member of the eldership, at the time that
7 Don finished presenting his information, and you then
8 moved into the stage where you were going to, I think
9 you described decide what to do about information you
10 had received, was it your belief at that time that
11 there was to be any additional information presented
12 by anyone to the eldership?

13 A No, it wasn't. I believed that we had concluded
14 hearings.

15 Q Do you know whether or not any of the eldership
16 meetings were tape recorded?

17 A No, I don't.

18 Q I'd like you to look at what has been marked as
19 Exhibit Number 4, for purposes of our depositions, and
20 indicate whether or not you can identify that.

21 A No, I can't.

22 Q Would you take a look, please, at Number 5, which is
23 also in the bound volume of deposition exhibits. Can
24 you identify that?

25 A No.

1 and ask if you can identify that.

2 A Well, I can say what they purport to be, but I don't
3 remember seeing them before.

4 Q What do they purport to be?

5 A A report of the minutes of a meeting of the senior
6 elders.

7 Q Are you familiar with the signature and the
8 handwriting of Scott Hartley?

9 A Yes.

10 Q Does that appear to be Scott Hartley's signature?

11 A Yes.

12 Q Based on your memory, or on this document, do you
13 remember, if your memory has been refreshed by this
14 document, a meeting occurring on or about February
15 10th, 1988, between you and Scott Hartley and Jack
16 Hicks?

17 A The date throws me. I don't remember, I can't
18 remember.

19 Q Do you remember being in a meeting with Jack Hicks and
20 Scott Hartley where you and the other two people, Mr.
21 Hicks and Mr. Hartley, decided, as members of the
22 Board of Senior Elders, to authorize a letter be sent
23 to Donald Barnett, putting him on special status?

24 A Yes, I remember that.

25 Q Was a letter prepared to that effect?

1 A Yes, to my knowledge it was.

2 Q Do you know who prepared the letter?

3 A No, I don't remember.

4 Q Did you see the letter?

5 A Yes.

6 Q Did you sign the letter?

7 A I don't remember. I should have.

8 Q Was Donald Barnett present during that meeting?

9 A No.

10 Q Was he advised that you and the other two senior
11 elders were going to hold a meeting of the senior
12 elders?

13 A Not by me. I don't know whether he was or not,
14 otherwise.

15 Q During the meeting was there any discussion of the
16 fact that Donald Barnett was absent?

17 A I don't remember.

18 Q During the meeting was there any effort made by you,
19 or either of the other two senior elders, to obtain
20 Donald Barnett's presence at the meeting?

21 A I don't remember.

22 Q Given the subject matter of the meeting, do you
23 believe that there was any effort made to obtain
24 Donald Barnett's presence at the meeting?

25 A No.

1 home, but I don't remember anything about it.

2 Q Do you remember whether he spoke to those present, as
3 a group?

4 A No, I don't.

5 Q When you indicate that -- strike that.

6 Do you recall when you, as a member of the
7 Board of Senior Elders, first started to discuss with
8 anyone the prospect or possibility of
9 disfellowshipping Donald Barnett?

10 A I can't remember precisely the time and date, but it
11 was subsequent to his public refusal to abide by the
12 remedy we offered.

13 Q That public refusal came after the Friday evening
14 February 26th presentation to the congregation by the
15 senior elders, yourself included, of problems --

16 A It was that and a meeting that the Board of Senior
17 Elders had, all four of us present, in which he
18 refused to us at that time.

19 Q After that, you and others began to discuss, or you
20 began to discuss with others, disfellowshipping Donald
21 Barnett; is that your testimony?

22 A Yes, although I think discussion is a bit misleading,
23 because in my mind it wasn't a matter for discussion.
24 He refused the remedy, and in accordance with the
25 policy of the church, when anyone did that, they were

1 disfellowshipped.

2 Q Did others discuss it then?

3 A I don't know.

4 Q Were you present at any meetings wherein it was
5 discussed?

6 A Well, there was unanimity arrived at concerning
7 whether or not to disfellowship him, but whether or
8 not that was preceded by discussion, I don't know.

9 MR. ROHAN: Is this if a good time to take a
10 break?

11 Q Do you recall being at any meetings of the eldership
12 where contingency plans --

13 MR. ROHAN: Is this a good time to take a
14 break?

15 MR. JOHNSON: I don't know. Is it a good
16 time for you?

17 MR. ROHAN: Yes.

18 (A break was taken.)

19 Q (By Mr. Johnson) Back on the record now.

20 During any of these discussions amongst the
21 eldership where disfellowshipment for Donald Barnett
22 was discussed, was Donald Barnett present?

23 A No.

24 Q Were there meetings held by you and Mr. Hicks and Mr.
25 Hartley of the Board of Senior Elders where

1 disfellowshipment was discussed, prior to March 4th?

2 A I don't remember.

3 Q Do you know whether or not Donald Barnett was ever

4 present at any meeting where you were present, where

5 the possibility of his being disfellowshipped was

6 discussed?

7 A No.

8 Q Was there a period of time or a point in time when

9 Donald Barnett asked you, as a member of the Board of

10 Senior Elders, to meet with him individually?

11 A There was one. I don't remember the date, but it was

12 sometime after all these occurrences that we're

13 speaking about now.

14 Q Would it also have been after March 4th, 1988?

15 A Oh, yes.

16 Q Were you present at a meeting of the board or at the

17 meeting of the eldership when a package of documents

18 was delivered by messenger from Jim Leach's office?

19 A I don't remember that.

20 Q Do you remember going to Donald Barnett's house with

21 Jack Hicks and Scott Hartley to hold a meeting?

22 A Yes.

23 Q Do you remember what day that occurred on?

24 A No.

25 Q I would ask you to take a look at Exhibit Number 14 of

1 back here, and ask if you can identify that document.
2 A Yes, I can identify it. I haven't seen it in a long
3 time, but I can identify it.
4 Q On page two of that document, does your signature
5 appear?
6 A Yes.
7 Q Did you sign it?
8 A Yes.
9 Q Where were you when you signed it?
10 A I believe it was in Jack Hicks' office.
11 Q Would this have been immediately following the meeting
12 in the parsonage?
13 A It was a continuation of the meeting in the parsonage.
14 Q But was it immediately after you left the parsonage?
15 A Yes.
16 Q Was Donald Barnett there in Jack Hicks' office?
17 A No, he was not.
18 Q Did you or anyone else at the meeting at the parsonage
19 advise him as he ordered you out of his house, the
20 parsonage, that you were going to continue the meeting
21 elsewhere?
22 A No, not to my knowledge, not to my recollection.
23 Q I'd like to ask that you take a look at Exhibit Number
24 13, and indicate whether or not you can identify that
25 document.

1 A Yes.

2 Q What is it?

3 A It, too, purports to be the minutes of a senior elders
4 meeting held on the 4th of March at 3:15 p.m. in Jack
5 Hicks' office.

6 Q Do you recall such a meeting?

7 A Not really, no.

8 MR. JOHNSON: Let's go off the record.

9 (Remarks made off the record.)

10 Q I'd like you to take a look at Exhibit Number 15. Can
11 you identify that document?

12 A Yes.

13 Q What is the document?

14 A This is a Resolution to Amend the Bylaws of the
15 Corporation.

16 Q Do you recall considering that resolution?

17 A Yes.

18 Q I'd ask you to take a look at the last page of that
19 resolution, and the next to the last page at the
20 bottom, and examine the date, and having done so,
21 indicate if you can recall the meeting wherein you
22 discussed or considered that document.

23 A I know the meeting occurred, but as far as my
24 recollection of it, I don't have any. As to the
25 surroundings and so forth, I don't know. I couldn't

1 tell you where it was, but I know the meeting
2 occurred.

3 Q Do you know whether that meeting occurred on the same
4 day that the meeting at the parsonage, that was
5 continued at Jack Hicks' office occurred?

6 A It says it does, but I don't remember that for sure.

7 Q Do you recall whether or not Donald Barnett was
8 present during this meeting?

9 A No.

10 Q You don't recall, or he wasn't present?

11 A No, he wasn't present.

12 Q Did you advise him, prior to this meeting, that there
13 would be a meeting?

14 A No, I didn't.

15 Q Do you know whether or not he was advised by anyone?

16 A No, I don't.

17 Q Was there any discussion during the meeting by anyone
18 with regard to making an effort to call him, to have
19 him back to the meeting?

20 A I don't remember.

21 Q Was it your belief at the time, that Donald Barnett
22 would have approved of the discussion of and the
23 passing of the resolution contained in Exhibit Number
24 15?

25 MR. ROHAN: Objection, speculation, lacks

1 sexual activity with any other woman, other than his
2 wife?

3 A Yes, that's true.

4 MR. ROHAN: Asked and answered.

5 Q Had you, at that point in time, engaged in sexual
6 activity with any woman other than your wife, during
7 the period of 1986, '87 or up until March 4th, 1988?

8 A No.

9 Q Was Donald Barnett, following your and your fellow
10 senior elders disfellowshipping of him, given an
11 opportunity to appeal his disfellowshipment?

12 A Not in the letter. No, he wasn't.

13 Q Was he given an opportunity to review his own
14 disfellowshipment also?

15 MR. ROHAN: Objection, vague and ambiguous.

16 A He was presented a copy of the letter.

17 Q Was it the senior elders' intention, you, Mr. Hartley
18 or Mr. Hicks, to permit him to review, and if he felt
19 so inclined, reverse his disfellowshipment?

20 MR. ROHAN: Objection, calls for speculation.

21 A I can tell you what was in my mind at the time.

22 Q Okay.

23 A Had he, upon receiving that letter said, in order to
24 avoid this, I will agree to your special status
25 letter, if he had done that, then of course there

1 would have been no reason, in my mind, to
2 disfellowship him. That was church policy.

3 Q Had he been advised of that by you, or any member of
4 the --

5 A He knew the church policy.

6 Q Did anybody specifically advise him of that?

7 A I don't know.

8 Q Did you discuss, or were you present during any
9 discussion by the members of the Board of Senior
10 Elders, or by the members of the eldership, of the
11 possibility of presenting the decision whether to
12 remove Donald Barnett as pastor of the Community
13 Chapel and Bible Training Center to the congregation,
14 did you ever hear that discussed?

15 A No. You mean in the way of presenting it for a vote?

16 Q Yes.

17 A No. That was not church policy.

18 Q It was not church policy to present to the
19 congregation the decision whether or not to remove a
20 pastor?

21 A No.

22 Q Were you aware of a movement or desire by any elders
23 or any persons attending Community Chapel and Bible
24 Training Center during the year 1987, or early part of
25 1988, prior to the eldership hearings, though, to

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
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DONALD L. BARNETT,)
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 JACK A. HICKS, et al.,)
)
 Defendants.)

DEPOSITION UPON ORAL EXAMINATION
OF
JACK H. DuBOIS

VOLUME III

Taken at 260 Grand Central on the Park
Seattle, Washington

DATE TAKEN: DECEMBER 6, 1988
REPORTED BY: SHEILA MECARTEA, CSR

1 member of the church.

2 MR. ROHAN: Counsel, yesterday, in the
3 deposition of Mr. Hartley, Mr. Pierce and I agreed to
4 have the deposition sealed when his questions were
5 asked.

6 Off the record.

7 (Discussion off the record.)

8 MR. ROHAN: Counsel have each agreed
9 that we will ask the court for an order sealing this
10 deposition.

11 Q. Would you please list the allegations that
12 were made that you found ultimately to be credible,
13 either by virtue of what was indicated by others or
14 by virtue of what was admitted to by the plaintiff.

15 MR. ROHAN: I'll object on the basis
16 it's overbroad, but you can answer.

17 A. The only information I used in changing my
18 opinion, as I have previously said, were the
19 admissions by the plaintiff. Those were the only
20 ones.

21 Q. Can you indicate precisely what the
22 admissions were that the plaintiff made?

23 A. He admitted to committing adultery with
24 certain women in the congregation.

25 Q. Did he name the women that he had committed

1 adultery with?

2 A. No.

3 Q. Was there anything beyond the admissions of
4 the plaintiff that occurred in the hearing that told
5 you who was or who may be the women that he was
6 referring to?

7 A. No.

8 Q. Is it your testimony, then, that at this
9 point in your life, you have no knowledge who the
10 women were that he was referring to?

11 A. Yes.

12 Q. Did he indicate anything with regard to the
13 particulars of these admitted acts of adultery, other
14 than just the fact that some sexual intercourse
15 occurred?

16 A. He -- he named some places -- I don't
17 remember all of them -- and some of the details under
18 which those acts occurred.

19 Q. Was there anything with regard to the
20 manner in which the acts of adultery occurred or the
21 details of the individual acts that you've indicated
22 he, in some cases, described?

23 A. Yes.

24 Q. Was there anything with regard to those
25 details or the manner in which the acts of adultery

1 occurred that was part of your decision to remove
2 him, beyond just the fact of the adultery?

3 A. No.

4 Q. So the mere fact of the existence of the
5 acts of adultery was sufficient and was all that you
6 considered in taking the various acts that you took
7 on March 4th and thereafter?

8 A. No; just the participation in the letter,
9 if accepted, which would place him in a position
10 where he would not be apt to repeat his indiscretion.

11 Q. Was there anything beyond the acts of
12 adultery, or was there anything about the manner in
13 which any particular act of adultery occurred, that
14 was part of your motivation for sending him the
15 letter that you've described?

16 A. No.

17 Q. So the letter was sent simply because he
18 had had sexual contact with a number of other women
19 other than his wife?

20 A. Yes.

21 Q. And there was nothing about any individual
22 act of sexual contact, other than the fact that it
23 was a woman who was not his wife, that had anything
24 to do with your decision to send that letter?

25 MR. ROHAN: I'm going to object. The

1 early February. I don't remember the date.

2 Q. When did they cease?

3 A. Late February or early March.

4 Q. Were the acts of sexual misconduct of
5 Don Barnett the sole subject or the sole focus of
6 these hearings?

7 A. The letter which prompted the hearings
8 contained several allegations, and I really don't
9 remember what the others were. They were either
10 inconsequential as far as I was concerned, or so much
11 less consequential than the sexual misconduct that I
12 don't recall them.

13 Q. When did these acts of sexual contact with
14 other women, women other than Don's wife, take place?

15 A. I don't remember.

16 Q. Do you recall whether or not there was
17 anything admitted to that was more recent than six
18 months previous to the hearings?

19 A. My opinion is yes, but I don't -- I can't
20 really remember.

21 Q. So there may have been something more
22 recent than six months?

23 A. Yes.

24 Q. But there may have been nothing more recent
25 than six months?

1 Q. What sorts of acts of adultery were you
2 concerned would lead to church liability or your
3 personal liability?

4 MR. ROHAN: Same objection; calling
5 for legal conclusion.

6 A. He had been named in lawsuits that
7 mentioned the sexual misconduct, which I can't
8 describe. I don't know how -- I don't remember what
9 it was. For me to hear admissions by him that he had
10 inappropriately behaved sexually with women, with the
11 background in my mind of these lawsuits, if I were to
12 wait until these lawsuits were tried and him found
13 innocent, to do something about it, I'd be at risk
14 during the whole period of that time.

15 I arrived at the opinion that I better
16 do something about it, especially since, even though
17 he had not been sued, apparently, for any of these
18 acts he admitted to us, if the others resulted in
19 lawsuits, these certainly could, and I better do
20 something before it happened.

21 Q. Was there anything in particular about the
22 nature of his admissions that made you believe that
23 these were more than just acts of adultery, that
24 these were acts of adultery that could lead to
25 corporate liability?

1 MR. ROHAN: The same objection; legal
2 conclusion.

3 A. Well, the man did occupy a position of
4 trust and a position of great authority under the
5 existing bylaws at the time, which I considered at
6 the time might be a contributing factor to the
7 participation of these women in sexual misconduct
8 with him.

9 Q. What was it about the admissions that he
10 made that led you to believe that there was something
11 with regard to his position of authority that had led
12 these women to participate in sexual contact with
13 him? What did he say?

14 A. The words he used didn't convey that at
15 all.

16 Q. You thought it might be possible, though?

17 A. Yes.

18 Q. Is that your testimony?

19 A. Yes.

20 Q. The previous lawsuits that you've referred
21 to, how many were there that he was named in?

22 A. I remember three names. As I say that, now
23 I can only conjure up two: Butler, Hall, and Brown.
24 Those are the three I remember.

25 Q. Were those lawsuits all pending at that