

**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 X, pp. 1627-1805
as the board of Directors of COMMUNITY)	
CHAPEL AND BIBLE TRAINING CENTER)	February 4th, 1991
and COMMUNITY CHAPEL AND BIBLE)	
TRAINING CENTER,)	
)	
Defendants.)	

**TRIAL TRANSCRIPT, VOLUME X
PAGES 1627-1805**

BE IT REMEMBERED the above-named cause of action came on for arbitration on February 4th, 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;

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ONLY INCLUDED FOR ORGANIZATIONAL CLARITY AND EASE OF USE.**

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BARNETT - Direct (By Mr. Wiggins)

1 (The following proceedings occurred on February 4, 1991)

2 (9:30 a.m.)

3 THE COURT: Okay. Is everyone ready to begin?

4 MR. WIGGINS: We would like to continue this
5 morning with the testimony on rebuttal of Pastor Barnett,
6 the plaintiff in this case.

7 THE COURT: At the close of the last hour, he had
8 explained the concept of deliverance, and if you could
9 touch on that briefly. In going back over it, I'm not sure
10 that I fully understand.

11 MR. WIGGINS: Yes, your Honor. I had hoped to
12 pick up there. Unfortunately, we left that subject hanging
13 and didn't quite finish it on Friday night.

14
15 REBUTTAL EXAMINATION (Continued)

16 BY MR. WIGGINS:

17 Q Pastor Barnett, we were talking on Friday evening right
18 before we recessed about your own deliverance that you
19 underwent, and you listed for us the demons from which you
20 sought deliverance, and I would ask you to describe the
21 process of deliverance that you went through, the steps,
22 and how this deliverance was actually accomplished.

23 A Well, I will do that, but deliverance, of course, is not

method. It is accomplished by God when
y, and when a person is really seeking to

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accomplished by a

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there is sincerit

BARNETT - Direct (By Mr. Wiggins)

1 be free, demons will continue to test you and tempt you,
2 and you have to continue to uphold. It is our
3 understanding and experience that if there is enough
4 continual pressure put on him and determination made, the
5 spirit loses his right to remain hassling you if you are
6 blocking him in every way possible and calling on God.

7 So what we do is we come in and talk about the problem
8 and look to see what kind of things are underneath that are
9 causing the problems, the insecurities and the hurts and
10 are you blaming your wife -- well, yes, I do blame her at
11 least intellectually and emotionally, or whatever -- and
12 you go through these things and say, well, there are demons
13 ~~pressing you in these particular areas. We try to~~

14 determine who they are, what spirits they are. Usually the
15 person lies down because maybe it's going to be a while,
16 but they can rest and be comfortable, and the group gathers
17 around him and they all begin praying against this
18 particular spirit.

19 Q Was there a group or a team of people who worked on
20 deliverance for you?

21 A Yes.

22 Q Who was on that team?

23 A Well, Jody Powell and Cathy Heasley, Sue Towery -- now
24 Zwack --

25 Q That's the same woman who testified here?

BARNETT - Direct (By Mr. Wiggins)

1 A Yes. And several others.

2 Q Did all this happen in one day? Does this process happen
3 in one day?

4 A No. Sometimes when that spirit comes up to the surface, as
5 we say, and is manifesting, that is the time we find you
6 can really deal with it, force it to talk, and get results,
7 but it's typically a real spiritual battle that usually
8 lasts hours. And that spirit will go the same day if you
9 keep putting pressure on it.

10 It typically takes a lot longer. It takes praying
11 against it, setting your mind against it, praying to come
12 to a willingness to not have this in your life because a
13 person can want to be free of something but if he doesn't
14 want it bad enough to pay the price, then he may not get
15 delivered. So sometimes it takes time to pray and come to
16 the point of willingness no matter what the cost to pay the
17 price.

18 Q So how many days did this team work with you on
19 deliverance?

20 A Typically five days -- five mornings a week at two-hour
21 sessions for approximately maybe six or seven weeks.

22 Q When did this start?

23 A Probably the end of June and finishing somewhere around
24 August.

25 Q Of what year?

1 A Of '87. But I did give some of my time to a particular
2 woman that I was having problems with. I told her that we
3 both have to get delivered or I'm going to cut off the
4 relationship, and I'll give you some of my time. She had a
5 longstanding problem with this, a lot more than I did. So
6 I gave her a couple days a week of my time. She didn't
7 come consistently, but she came partially, and she never
8 did get delivered, but she didn't really put enough time
9 and effort into it. Otherwise, I was working five days a
10 week. Sometimes it was three times a week when she was
11 taking the deliverance time.

12 Q So each session was really two hours in length; is that
13 right?

14 A Yes.

15 Q What would happen during these two hours?

16 A There would be discussion of the problem and trying to find
17 what areas we needed to pray about and talk about,
18 willingness and the other things that would mask the
19 problem, and there would be prayer and putting pressure on
20 the demons by rebuking them in the name of Jesus,
21 commanding them to come out on the basis of scripture and
22 the power of God and so forth, and then talking about
23 taking a stand -- you know, the next time something comes
24 on you, temptation comes, take a stand against it, to pray,
25 to ask the Lord to bring it to your remembrance, all these

til you
f it.
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ocess?

1 things, and endeavor to talk it out, and do this un
2 get a pattern of it and you see that you are free o
3 Q Did there come a time when you believed that you we
4 delivered of the demons through this deliverance pr
5 A Yes.
6 Q When was that?
7 A Somewhere about the middle of August of '87.
8 Q How did you reach that conclusion that you had been
9 delivered?

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1 bring that up to them.

2 That was part of my argument to them -- I don't
3 understand. It's been all this time. That's why Jerry
4 Zwack doesn't have any grievances except his Bible College
5 class and being put out of the counseling center, and I'm

6 not doing anything now, so he doesn't have any partic
7 grievance.

8 Now they may have had other kinds of subtle reas
9 that they didn't tell me, undercover reasons, but my
10 for the hearings was these three grievances that Jerry
11 Zwack had against me.

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Q There was testimony about your availability in the fall of 1987 to consult with counselors about disfellowship, whether you were available when a counselor wanted to call you about disfellowshipping.

BARNETT - Direct (By Mr. Wiggins)

1 A Oh, yes.

2 Q Did David Motherwell make any complaints to you at that
3 time about your availability?

4 A Not to my knowledge. I have never heard anybody complain
5 that I wasn't available enough. In fact, I worked long,
6 long hours and excepting for a few weeks which I will
7 explain in a minute, excepting for those few weeks, they
8 could call me anytime. I interrupted my sermons sometimes

9 ~~for a time. I started, ceasing in the morning and in the~~
10 by two o'clock I hadn't gotten any further than a few
11 paragraphs because of phone interruptions. But I allowed
12 things to be interrupted. I took phone calls that came in
13 from anybody, and I was available, and I was available
14 every evening besides. I worked seven days a week and I
15 was available.

16 There was a short time that I finally began to say I
17 just have to get some time together and get my sermons done
18 without any interruption, and so I published a schedule,
19 and every day I gave a few hours -- a couple in the morning
20 and a couple in the afternoon -- and I would have a block
21 in between where nobody was to bother me so I could get my
22 sermons done. They were a couple of days a week -- one day
23 a week here and one day a week here. I would allow a
24 couple hours in the morning to reach me and a couple in the
25 late afternoon. I took a block of a number hours, four or

1 five hours, and asked people to compile these calls and
2 call me at these times. It never really worked out so I
3 abandoned it after two or three months or so.

4 But the hours that were available to me, it wasn't
5 like phone calls the entire time and then the time was up.
6 There was time in there when calls could have been made. I
7 just don't agree that I wasn't available, and I also --
8 especially for something as big as disfellowship. You make
9 sure he is available, and I was available, and I disagree
10 with the statements that David Motherwell made that he had
11 access to me that the others didn't have. He didn't have
12 access -- we had all these phone lines coming into three
13 phones in my house, and I had a secretary. He had no
14 special access to me that everybody else didn't have.

Community Chapel?

discussions that he
signed the
t began the
talked to you

recall that he

1641

16 final approval of disfellowships at Comm

17 A No.

18 Q Now, Mr. Motherwell testified about the

19 had with you before you entered into or

20 agreement, the January 25 agreement, the

21 eldership hearings. He said that he had

22 several times about that.

23 THE COURT: This is January 25?

24 MR. WIGGINS: January 25, right?

25 Q Mr. Motherwell testified that he doesn't

1 used the word "teeth" when he was discussing things with
2 you, but that you might have used the word. What is your
3 recollection of whether either you or David Motherwell said
4 anything about teeth during these pre-hearing discussions
5 between you and David Motherwell?

6 A Well, I can understand how he might forget, but I remember
7 explicitly his comment. And maybe it wasn't his own words.
8 Maybe it was words that he was parroting from the
9 eldership, but he came back from them and said, Don, I
10 recommend that you go ahead and meet with them because the
11 eldership has admitted, quote, that they have no teeth to
12 discipline or have any authority over you in any way. They
13 are only coming for loving counsel and to try to help you
14 and Jerry's hearts. They have admitted that they didn't
15 have any authority, and he did use the word teeth. Whether
16 he remembers it or not, I remember it, and I have always
17 quoted that from that time on.

18 Q One other point that Mr. Motherwell testified to. He
19 testified that after the senior elders met and decided to
20 place you on special status, the February 10 meeting of the
21 senior elders, they wrote you on February 15th purporting
22 to place you on special status. Mr. Motherwell has
23 testified that he told you that if you refused to follow
24 special status, that would be the end; is that true?

25 A I do not remember that at all, and I very seriously doubt

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Q There has been testimony about the fact that for a time in
20 1987 Lanny Peterson and Scott Hartley were counseling with
21 you about your marriage. How long did they counsel with
22 you?

23

A Contrary to Lanny's assertion of four months, we agreed to
24 counseling, they came over to my house, I spent an hour and
25 a half or two telling where I was at, my story and so

1 forth, and they didn't say anything at that time. So I
2 call that counseling session number one, then just getting
3 the facts from my side, because they had already talked to
4 my wife.

5 THE COURT: When was this?

6 THE WITNESS: In June of '87.

7 A And so they got the story from my side because they had
8 only talked to my wife and got her story.

9 Then a few days later I got a telephone call from
10 Lanny that lasted about ten minutes, and I got a short
11 letter also, and then we met one more time, and about one-
12 fourth through that meeting, the projected length of time
13 that you would normally have, maybe I should say about
14 after a half-hour through the meeting, I got up, fired them
15 as it were, and said I was going to find someone who would
16 show me some love and respect. So I only had one and a
17 quarter sessions with him, and all within the time frame of
18 one week. I did not have them counsel me for four months
19 like he alleged.

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BARNETT - Direct (By Mr. Wiggins)

1 So in that context, I said don't talk to the women,
2 meaning don't go out where there are no allegations made
3 and start asking them all these questions. But as to those
4 who already had brought up something or there was something
5 alleged or something, they had a right to do that.
6 Although I did ask -- I didn't demand, but I asked -- that
7 they come to the person first if there is a problem and
8 tell him at least before they went to somebody else.

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24 THE COURT: Who was that?

25 THE WITNESS: Jerry Zwack.

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1 And I felt these were substantial reasons, and so the other
2 day while court was going on, I began to reconstruct the 14
3 reasons. I wrote them down. I have the note in my pocket
4 if I could refresh my memory. Am I permitted to do that?

5 Q Yes. Do you have a note that lists the 14 reasons?

6 A Yes. I wrote them down. These are the reasons I gave
7 them.

8 THE COURT: You would like him to recite these?

WIGGINS: I would like him to explain to your

MR. WIGGINS

9
10

Honor:

COURT: Okay. Just serially, starting with

11

THE COURT

12

number one.

the 14 reasons I wrote down and told them,
back. Number one, elders have no
me on special status. The bylaws don't
authority, neither does the Bible.

13

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Okay. These are

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put in the letter

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Number two,

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1 Number four, I was at a retreat one time and I was
2 praying diligently, and the Lord showed me how he would
3 solve my problem in being without a wife and being needy
4 and unloved and hurt and everything. He showed me after I
5 had been praying for a prolonged time how he was going to
6 solve it from within, and I felt the special status would
7 be a, realistic attempt to impose a law that wouldn't solve

so you can't get it solved or
because you are not even in an
than actually getting it solved
ritual status would place an
, in my judgment, if I couldn't
On vacations we would go as
as stated to me was that I
n if there was another woman
n vacation alone. I'm not the
alone like some people are.
a man, and no other man would
days a week, long hours, and I
needed desperately to be on
es, I needed to be around
ed me love and would pray for
o forth. I just felt like this

9 remove me from a problem --
10 even known if it's solved be
11 environment of it -- rather
12 right on the firing line.
13 Number five, I said spi
14 unbearable restriction on me
15 be on vacation with others.
16 groups, and the rule as it w
17 could not even be on vacation
18 present. Well, I can't be o
19 kind of guy that can go out a
20 And I can't just go out with
21 do it anyway. I work seven o
22 was under heavy pressure. I
23 vacation with people. Beside
24 people who loved me and showe
25 me and give me comfort and so

BARNETT - Direct (By Mr. Wiggins)

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When we get into the problems having to do with the other counselors and the counseling staff, a number of them were in coalition and a number of people were concerned because they were saying things, even John Bergin from the pulpit, but they were saying things that were undermining the pastor. They had come to me about it, and they were confused because their guidelines were different than mine and they were saying things different than I was about the philosophies, so they needed to come to me. They couldn't come to Jack Hicks. They didn't trust him to have that kind of ability. He was good administratively, but not spiritually they didn't feel. They didn't feel they could come to any of the other counselors because they were involved in the same kinds of things.

And then there were some who would come to me because the senior elders caused problems, and they couldn't go to anybody else but me. I had more complaints about Scott

BARNETT - Direct (By Mr. Wiggins)

1 Hartley with women than anyone in the church. And then
2 there's the woman who is Jack's connection. She came to me
3 and then she wrote me a letter and said that Jack and I
4 have been committing adultery for two years. And he thinks
5 it's spiritual and so forth.

6 I could not do this out in the assembly like somebody
7 alleged. Jack Hicks said Don could do it out in the
8 assembly after service. That was totally impossible. If I

9 sat out in the assembly in an area where the service would
10 hours, and they are
11 all the post-service.
12 and a half, and then
13 we worship for about
14 Then we dismiss and

10 I would have -- see, our services last
11 informal, and particularly what we call
12 So we have worship for about an hour
13 we preach for about an hour, and then
14 another hour or an hour and a half.

15 when we have a post-assembly worship, and that was
16 if could be. Well, at that time -- and the people
17 for more hours. If I did that, I would constantly
18 people coming to me interrupting me over and over
19 they would want to give me love and hugs and stuff
20 they go home -- they would want to talk to me. They

I just
21 want to say things. It was constant interruptions.
22 couldn't do that.

23 Number eight, special status was contrary to a
24 prophecy given from a woman from a satellite church
25 not know of the building rebellion. I kept it from

1 congregation.

2 THE COURT: Contrary to a prophecy?

3 THE WITNESS: A prophecy given by a woman from a
4 satellite church in Illinois. She did not know about the
5 building rebellion. I kept it from my congregation. I did
6 not want to let them know that we were having an in-house
7 problem here. In this prophecy she stated very powerfully,
8 and as far as I know, she didn't know anything about the
9 elders having problems with the pastor. This was, I think,
10 in the spring of '87, spring camp meeting. She said the
11 Lord said to her -- we believe it was the Lord -- said a
12 number of things, and one thing was, elders do not try to
13 put your pastor in your mold of liberty or in your mold of
14 carefulness. If you do, you will bow him and break his
15 back. I have a mold for him, and when I put him in my
16 mold, he will fit, and a lot of other things.

17 I interpreted this to mean two things. The mold of
18 liberty was that they had this mega connection philosophy
19 that I disagreed with, that God wanted them to have one
20 special connection above everybody else that was to be
21 theirs all the way to the end, and I said, no, God wants to
22 connect everybody in the spirit, to love everybody. He is
23 not trying to single out one person for you. And this mold
24 of liberty -- they had kind of a braggadocio thing, maybe I
25 should say spiritual elitism, where we've got a mega and

1 you don't.

2 And then the mold of carefulness I interpreted to
3 mean trying to restrict me, trying to put me on like
4 special status when it came. And I thought this was
5 directly contrary to what God told them to do. And you
6 will find this statement in several letters that I wrote
7 them saying you are flying in the face of a prophecy that
8 you accepted as being from God, and you are doing exactly
9 the opposite, and you are asking me to do just the opposite
10 of what God said. I perceived this to be a demonic ploy to
11 try to get around the way God wanted to solve my problem
12 and stop me without it being solved and then try to remove
13 me by a law. Then if temptation came in the future again,
14 it would break out again. I felt this was
15 counterproductive.

16 Number nine. I said special status was manifestly
17 unfair, even if the general elders had the authority, which
18 I don't believe they did. They had more of a need to be on
19 special status than I did in my judgment since I had quit
20 for this period of time and a lot of them were continuing
21 and continued on after that for a long period of time, even
22 by their own admissions and accusations towards each other,
23 which I have positive knowledge of. And I have heard it on
24 the tapes and so forth. And they had refused special
25 status for themselves, and I said what about you? What

1 about these things you are doing? Why don't you put
2 yourself on special status? Why don't you put everybody on
3 special status if you feel this? I felt that it was unfair
4 to single me out as the only person.

5 Number ten, special status is not required by the
6 bylaws or by the Bible. What I mean is not being able to
7 be alone with somebody else. And in fact it was contrary
8 to the bylaws and the counseling policy that said that
9 counselors shall not attempt to, quote, control or
10 manipulate the life of another individual.

11 Then there were some more words, and then it said,
12 unless it is in conformance with the church law. This was
13 not a church law.

14 Number 11, I said it was not necessary because I was
15 tracking well, doing well.

16 Number 12. In my judgement it would have caused
17 problems but solved nothing because I was doing well. It
18 wouldn't solve anything, but it would cause me problems,
19 not being able to go on vacation, problems when another
20 woman would come to me worried about something else.

21 Number 13. I felt it was unreasonable because if it
22 was for the purpose of protecting the corporation, which
23 they said it was, I never did anything that could cause a
24 legitimate lawsuit, and I told them -- people can sue you
25 for anything, and they have. We've had lawsuits -- in

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~~MR. ROHAN: Your Honor, I would move to strike~~

those portions of his last answer that refer to reported
adultery on behalf the elders. The court has ruled on that
at the beginning of this case.

THE COURT: It is in now and I will just leave it

MR. WIGGINS: Thank you, your Honor.

Pastor Barnett, I would like to ask you about a few
statements that were made by Greg Thiel during his
testimony last Thursday or Friday, and I just wanted to
know whether these things are true and whether you agree
with them.

Did you testify at the eldership hearings that you
agreed with the substance of Jerry Zwack's allegations?
I said there is hardly anything that he has alleged
that is really true to character. There were some facts in

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1 there that were true, but as brought out, I can't relate to
2 hardly anything he said the whole nine hours. It was a
3 total mischaracterization.

4 Q Did you deny abusing your pastoral authority during the
5 hearings?

6 A Absolutely.

7 Q Did you deny -- I think the word that Mr. Thiel used was
8 that you were guilty of a preponderance of lying. I'm not

9 even sure what he meant there. Mr. Thiel said that Pastor

10 Barnett never denied that he was guilty of a preponderance
11 of lying -- I think those were his words. Is that true?

12 A No, the opposite is true. I was accused of it, and I told
13 them the only reasons that you think I am lying is because
14 you have collected this mass of data, that circumstantial
15 evidence, hearsay, exaggerations, outright lies,
16 misunderstanding, half truths. You don't know the whole
17 story, and you have put it all together, and as time goes
18 on, the story grows. So you don't know the facts.

19 And I said it's like where we play the gossip game
20 where you write something down and you whisper in a
21 person's ear and it goes around about twenty people, and
22 then when it comes out the last person says what is told,
23 and everyone roars with laughter because it was not what
24 was said. People forget parts of it and add to it. I said
25 this is exactly what has happened. This is like the gossip

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1 game. This thing has traveled so much, and everybody has
2 added to it and forgotten things and twisted it, and it has
3 come out totally different than it is, and I said I was
4 hurt. I have been a careful person. I have prided myself
5 in accuracy and carefulness. I have been an honest person.
6 My wife said, honey -- well, I shouldn't say that I guess.

7 It might waive a special status or something.

8 Anyway, I have been regarded as an honest person, and
9 here it is being told to the whole congregation that I am a
10 dishonest person -- that came later -- and the elders were
11 accusing me of this, and I categorically denied the
12 preponderance of lying.

13 Q Whenever anyone disagreed with you about something in the
14 church, did you label that person as being rebellious?

15 A Did I label a person what?

16 Q Well, the testimony was that whenever you disagreed with
17 something that someone said in the church, that you would
18 label that person as being rebellious; is that true?

19 A No. As a matter of fact, I have been careful not to call
20 things rebellious unless there is a certain attitude
21 involved, because some people were making that mistake in
22 the counseling center. I taught from the pulpit and I told
23 the counseling center, I said, look, if you tell a person
24 to quit doing something. Say these two people were
25 committing fornication. And three months later they are

1 still doing it, that's not rebellion. They may not be able
2 to get a hold of the problem. I said don't call it
3 rebellion. I said that's not rebellion. They are under
4 pressure. Don't call it rebellion unless you see a defiant
5 attitude come up and they are defying you and defying
6 authority and they are defying God and then refusing to do
7 it. I said that's rebellion. Just the fact that they
8 can't get a hold of something, that's not rebellion.

9 Q Were you heavy handed with people in the church?

10 A I believe that I am just the opposite. I have had that
11 charge leveled at me, but most of my congregation, I
12 believe -- we dealt with this in the platform. People
13 would go out and they would make accusations. I would
14 publicly talk about it. I would say, how many of you think
15 I am heavy handed, and they would say, no, no. I was
16 ~~accepted as a person who was like a father to people.~~ I
17 loved my congregation, and I would always tell them I love
18 you. And they would yell back, we love you pastor. I have
19 felt like I was a father to them. I loved them, and I did
20 not like heavy handedness. I did not like legalism.

21 There were others like Scott Hartley who was kind of a
22 heavy handed controller. And once upon a time he was in
23 charge of the Christian school, and I had to take him to
24 task several times. I would have to say, Scott, you cannot
25 control lives like that. You have got to allow people

1 freedom. It is an absolute requirement in the church.
2 They have a right to their own freedom. You have got to
3 consider it their lives.

4 John Bergin was heavy-handed, and as a matter of fact
5 he was afraid of maybe getting fired from the counseling
6 center for it. He would try to control people.

7 I was always against control. People wanted me to put
8 certain guidelines down. I would give a general guideline,
9 and they would say exactly what do you mean. I was not
10 going to paint a line. You are going to have to before God
11 yourself determine where that line is. I have taught that
12 what people do in their own homes and in their own personal
13 lives -- we don't want to control them. I give as much
14 liberty as I can possibly give.

15 Now, there were always some people who didn't like
16 restrictions, and they would call you controlling and
17 heavy-handed if they didn't want it, but I do not
18 characterize myself that way. I think the vast majority of
19 the congregation has verbally stated and showed their
20 evaluation that I'm not that way. I don't think they feel
21 I'm that way. In fact, they have always shouted out, no,
22 just the opposite.

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1 true?

2 A Well, he was taking a statement made at the hearing and
3 unfortunately twisting it or else forgetting and mis-
4 applying it, mischaracterizing it.

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Q Pastor Barnett, there has been much made of the fact that you accused the elders of a power play. Did you accuse the elders of a power play?

A I did.

Q Why did you do that?

A Well, I see a lot of motives. I see a lot of things that happened that led me to that conclusion, and they fall into two groups. I will mention this group that's very short, and this other one has a number of points.

1 In Group A, the things that led me -- I saw a building
2 rebellion.

3 THE COURT: You what?

4 THE WITNESS: I saw a building rebellion in the
5 counseling center and eldership.

6 A In fact, it got so bad that I saw a lot of things they were
7 doing wrong in counseling, and I had made a long list to go
8 and talk to them about, and I did not bring it to them out
9 of fear. They wouldn't accept it and they wouldn't allow
10 me to bring it -- I knew they wouldn't allow me to bring
11 it. It had gotten that bad.

12 John Bergin was getting up and saying things contrary
13 to me, and when I was on vacation he would preach sermons
14 and people would come to me and say he's preaching the
15 opposite of you, Pastor. John even said himself that he
16 was afraid he was going to get fired for undercutting Don.
17 He'd say I can't preach everything I really wanted to
18 preach.

19 It got so bad I verbally and I wrote a couple of
20 letters to the counseling center saying quit undermining
21 your pastor.

22 Well, one of the problems was that there was a man in
23 the church who came in -- we had a lot of musicians. It's
24 a big church now, you know. We had 3500 members. He would
25 come in and pound the piano and he would heavy breathe and

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1 sing so his words were overlapping the last words, so
2 before these waves crashed the next ones were coming in. I
3 couldn't understand a word he was saying. I told the music
4 director -- I said if I was walking by a building and heard
5 that music, I wouldn't guess it was church people in there.
6 I don't know what kind of music this is. My music director
7 said, well, he's a clone of Billy Joel, and I didn't know
8 who Billy Joel was. He is some rock star I guess. Well, I
9 forbade his music. I said I do not count this music
10 spiritual. It has spiritual words to it, but the music
11 itself is not spiritually uplifting and I will not allow
12 it.

13 Besides that, ~~there were~~ some others that I felt
14 not as bad as him but were in that area, so I had my music
15 director and assistant director give a seminar over a
16 period of time about music, and I made some policy
17 concerning music I wouldn't allow in the church.
18 Well, this was setting a lot of people on fire --
19 number of people on fire -- particularly a lot of people
20 really appreciated this because when most of our musicians
21 would come on, everybody would come out and worship. When
22 this second group would come on, half the people would
23 come out and the others would sit until it was over with. A
24 lot of people were able to handle that music, but a lot of
25 weren't.

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1 And Lanny Peterson himself bragged -- he said I have
2 got more contraband tapes than anybody in the whole
3 assembly, and he would go to Jim Wagner who was the
4 technician -- in court here he said, well, I got permission
5 from Jim Wagner. Jim Wagner can't give him permission.
6 Jim Wagner is only a technician, sound booth technician. I
7 am the pastor.

8 Lanny wrote me a long note trying to get me to change
9 my mind on it. He was taking these tapes and getting Jim
10 to make them for him, contrary to the pastor, and taking
11 them -- we had so many people who wanted to worship and
12 dance, that we had four different areas in the church, big
13 areas, scattered in two different buildings on different
14 floors. So worship time would come, people would go to
15 these different areas, and the music was piped in, and
16 sometimes it was live over there too. He would put on
17 these tapes, contrary to me, and have him do that. And he

18 would go out to home fellowships -- we had home dance
19 worship fellowships, and he would take them there and he
20 would play these things.

21 I was in a fellowship and John Bergin and him were
22 both undercutting my music director who was feeling like I
23 did about it. I finally had to stop them from doing this.

24 It was a huge thing to them -- my wife and Jerry Zwack
25 were also involved, and others were involved in the same

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1 feeling. They had to have that music, and I would not

2 allow it, and so it was a big thing to them, and they were
3 very upset that I wouldn't allow the music that they liked.

4 Also, the counseling center began, in my judgment, to
5 feel kind of high-minded. We know more about counseling
6 than Pastor because we are dealing with all these
7 connections and we know and he doesn't and we're further
8 along than he is. We're having spiritual experiences that
9 he is not. And I admit that they had earlier experiences
10 than I did, and they had some that I didn't, but I felt I
11 knew things that they didn't, and besides it was my
12 jurisdiction and they shouldn't be running ahead of the
13 pastor. They did not like me setting certain guidelines,
14 and they would jump the fence. It caused what Sandy Baxter
15 called in court the progressive party. The progressive
16 party, interestingly enough, was led by a lot of the elders
17 and counselors.

18 I would come to the eldership counseling meetings and
19 I would talk to them about pulling the assembly back to
20 more restrictive guidelines. Every time John Bergin -- he
21 is a powerful personality -- and he would come on and
22 demolish every reformation effort I would take, and not one
23 of the counselors would ever take my side. Every time I
24 wanted to do that, it fell to nothing. I knew I couldn't
25 do it without their help because they were a big part in

1 the leadership of this and the counseling center. And so
2 we had that problem.

3 And they had different counseling philosophies, and
4 they did not want to follow mine. Plus the fact that I was
5 preaching against this mega-only connection thing, and
6 every time it happened, some of them would feel the pastor
7 is preaching against me.

8 Q Well, let me interrupt you. What is this mega connection
9 experience you are talking about? You have mentioned it a
10 couple of times, but I don't know if we ever talked about
11 it.

12 A If you had a spiritual union with one person that was way
13 above everybody else, or if they confined it to one person
14 --

15 THE COURT: Just a minute here. I'm losing you
16 in the explanation. How did you start that now?

17 Q We are talking about mega connections.

18 A If a person had a wonderful spiritual experience with
19 someone as they worshipped, we would say they had a
20 spiritual experience. If it continued on, we would say it
21 was a spiritual connection, it was a continuing thing. If
22 it was a fantastic experience and it was always that way
23 and if they confined themselves to one person almost -- say
24 they worshipped with eight people, but with one almost all
25 the time, they characterized it -- John Bergin called it a

1 |] | mega connection. This is a real powerful one with one
2 | | person. And he began to develop the theory that God wanted
3 | | us to have one person only, special to the rapture. I kept
and they were upset because the
nst them and what they were doing.
as a matter of fact, in an elders
authority, took over the meeting,
astor wrong, forcing me to rebuttal
estroyed the whole meeting we were
nd of thing that was building in a
s. A number of the counselors,
and elders, began to get
h their connection, which I
olate from their mate, and some of
orce their mate and marry their
rriage had not been satisfying,
ey were having wonderful
nnection.
k Hicks called a meeting of all
. His purpose of the meeting was
at he should take off his policy.
o not and cannot divorce your mate
Children can be hurt. Your mate

4 | | preaching against that, a
5 | | pastor was preaching again
6 | | John Bergin got up,
7 | | meeting and without any a
8 | | and began to prove the pa
9 | | him afterwards, and it de
10 | | going to have.
11 | | So there was this ki
12 | | lot of areas.
13 | | Another area was thi
14 | | some of these counselors
15 | | romantically involved wit
16 | | forbid. They began to is
17 | | them began to want to div
18 | | connection because the ma
19 | | had not been good, and th
20 | | experiences with their co
21 | | So, for example, Jac
22 | | the elders and counselors
23 | | to convince the pastor th
24 | | I had a policy that you d
25 | | and marry a connection.

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1 can be hurt. If you have marriage problems, see it
2 through. Let's give God a chance to work on it and see it
3 through. Stick with it and show them all you can. Just
4 don't react because you have a spiritual love, and when the
5 spiritual love is gone, you may not have the romantic love
6 anyway.

7 He was trying to get me to change that policy. One of
8 the examples he was using was Wayne Snoey, who was the
9 director of operations, who wanted to divorce his wife --
10 an unsatisfactory marriage -- and marry his connection.
11 And he did later.

...d me to change that. John Bergin at the
... And Jack just kind of hung his
...ed embarrassed because the counseling center
... not everybody, but a number of people knew
... wanting to divorce his wife and marry his
... and later he did.
... had a problem, a major problem. They were
... out of the church if they divorced their mate
... connection. I didn't always put a person out
... but I said right now, because of the present
... all these people have all this powerful
... e -- and it's not marriage love, not romantic

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1 love. They don't know the difference perhaps, but they
2 know they've got love, love, love, and this other person
3 they don't have any love for. I said this is not the time.
4 If we have some of our leaders -- and we had about ten
5 leaders wanting to do this -- I said we are going to get
6 500 people running in, and a lot of people are going to be
7 hurt and a lot of children are going to be hurt. I said
8 this is not the time for this.

9 And so they were stuck because unless they got rid of
10 me they could not divorce their mate and marry their
11 connection, and this was so important that some left the
12 church in order to do it. A number of them did. And they
13 left the counseling center and so forth. This was a huge
14 motive to get rid of me. That is another reason why I
15 called it a power play.

16 There was a lot of things like this altogether in the
17 building. Plus, they were dragging in some psychology that
18 I disagreed with from a number of books they were reading,
19 and one of the philosophies, for example, was nobody can
20 hurt you but yourself.

21 THE COURT: What was that?

22 THE WITNESS: Nobody can hurt you but yourself.

23 A There were a lot of people hurt out in the assembly. And
24 it was bringing them into confusion. I said that is not
25 true biblically and it's not true logically and

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1 historically, and I gave them examples from all three
2 sources. And I didn't want that philosophy in there.
3 There was a growing wanting to change. There began to be
4 objections to my anti-legalism sermons by some of them on a
5 doctrinal basis. And some of them accused me of making it
6 self-serving, and I would get up and say because I have
7 been charged with this, I am letting you know. This is not
8 self-serving. It has nothing to do with me. I have
9 already confessed my sins. I don't justify them. They
10 cannot be justified. But there are people out there that
11 need God's grace. There are people that need to know we
12 are living in the new covenant and not the old. This has
13 helped me and I'm going to help you with it. And so there
14 were doctrinal things building as well.

15 All of this together brought -- in fact, there was for
16 quite some time a push to get me out of there. Even in
17 September I had information, before the hearings in '87.
18 One of our attorneys said that he heard --

19 MR. ROHAN: Your Honor, objection --

20 THE WITNESS: Let's not go into what you heard
21 from anybody else.

22 THE WITNESS: Okay.

23 I perceived that it got down to the place where -- see

24 Scott Hartley had lost his position as head

25 Christian School. He was replaced by a woman

of the
an who had a lot

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1 more experience and ability. Now, he was nothing but a
2 counselor, except for his senior elder position. He felt
3 demeaned as being a senior elder and only a counselor.
4 Now, if he could get rid of me, Jack Hicks would be
5 president and he would be able to divorce his wife and
6 marry his connection. Scott Hartley would be vice-
7 president and general manager, and Wayne Snoey could stay
8 in operations, and the other counselors could stay in and
9 other elders and do it with their wives and so forth. I
10 was getting in the way in a lot of ways.

11 So I finally said this cannot be to protect the
12 corporation because you people are just as liable for
13 lawsuits as I am. In fact, you have done some things that
14 ~~might even make a legitimate lawsuit. I haven't. It can't~~

15 ~~be to protect the women for the same reason. This is only~~
16 ~~an excuse. You finally found an excuse to get rid of me.~~
17 ~~This is an excuse you have. It is a power play. You want~~
18 ~~to take over. take over control. You want to control me or~~
19 else control the church.

20 And so when they changed bylaws, what do they do?
21 They took out the place where you cannot diminish the
22 pastor's salary. Now, they could control me by my salary.
23 If I didn't do what they wanted, they could drop my salary.
24 They began to implement things like this to get control
25 over me. I had seen it building for a number of years. I

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2 them. I could see the picture. I felt that this was a
3 hypocritical power play using this as an excuse, where if
4 they told the truth and got right into it, there was no
5 reason to single me out from them. I was the only person
6 in the church who got up and confessed before the whole
7 assembly. I was the only person that I know who really
8 went for deliverance. They just kept right on. And I
9 thought this is total hypocrisy.

10 Q Pastor Barnett, a number of the elders have said and their
11 letters say that they truly loved you. Do you still think
12 it was a power play despite these statements about loving
13 you?

14 A I believe they loved me. I really do. And I loved them.
15 still love them. After what they have done to me, which
16 think is so wicked, I still love them. God has given me
17 that love and I am thankful for it. I am really thankful.
18 When Jerry was so bitter, I would write letters of love to
19 him. I loved him. I cried at night. I felt sorry for him
20 in the position he was in. I loved that man. I had a
21 spiritual connection with him. And we did things, my wife
22 and him and others, together. I felt so hurt that he was
23 in that position.

24 Yes, I think they loved me, but I think that they were

25 caught in a bind, and I think there were other factors that

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1 were pushing them to need this control. I think this is --
2 I can't say this categorically, but if I had let everybody
3 divorce who had wanted to and let all the music in and let
4 them run the counseling center and I pulled back the
5 authority and did all these things, I doubt that they would
6 have wanted to put me out. Why put me out for what they
7 are doing? That wouldn't make any sense. And what a lot
8 of the congregation was doing.

9 MR. WIGGINS: Your Honor, I have a few more
10 questions to ask. Would this be a convenient point for our
11 morning break?

12 THE COURT: If you choose, yes. It is quarter to
13 eleven, and we will be at recess now until eleven.

14 (A 15-minute break was taken.)

15 MR. WIGGINS: Your Honor, at this time I have no
16 further questions of Pastor Barnett.

17 MR. ROHAN: We have no questions.

18 MR. WIGGINS: Your Honor, we have nothing
19 further.

20 THE COURT: You may step down, sir.

21 MR. WIGGINS: Your Honor, the plaintiff rests the
22 rebuttal.

23 THE COURT: Let me see. I was going to take care
24 of an administrative matter before we start arguing now,
25 and I can't remember what it was.

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1 MR. ROHAN: Your Honor, I have actually two
2 matters.

3 THE COURT: Have we finished the evidence?

4 MR. ROHAN: I have one document on surrebuttal
5 that I would like to offer.

6 THE COURT: Okay. Would you like to have the

7 witness --

8 MR. ROHAN: I don't think I need the witness for

9 to.

10 (Defendant's Exhibit 58 marked for
11 identification.)

12 MR. WIGGINS: Your Honor, might I --

13 THE COURT: How do I caption this?

14 MR. WIGGINS: Order Dissolving Restraining
15 Orders.

16 MR. ROHAN: Your Honor, this was an order that
17 was entered in this case by Judge Quinn on December 16,
18 1988. We would only like to introduce this exhibit for the
19 purpose of showing that on December 16, 1988, Judge Quinn
20 dissolved Judge Bates' restraining order which was an
21 exhibit previously admitted --

22 THE COURT: As of when?

23 MR. ROHAN: December 16, 1988. Judge Quinn
24 dissolved Judge Bates' restraining order, which is an

25 exhibit in this case. We are only offering this exhibit to

1 show that. I believe the court records, in any event, show
2 that.

3 THE COURT: As a matter of fact, they don't.

4 MR. ROHAN: This is an official record in this
5 case. But you are not aware of it because we don't have
6 the whole court file here.

7 THE COURT: Okay.

8 MR. WIGGINS: Your Honor, it certainly is a
9 pleading in this case, and certainly this happened. I
10 guess I'm uncertain of any relevance that this document
11 has, particularly after the Supreme Court decision which
12 undid Judge Quinn's orders. So I don't quite understand
13 why this has any relevance.

14 THE COURT: I think that every time the Supreme
15 Court does something, however it comes down, it requires
16 the trial judge to do what they said to do. Is that not
17 the case?

18 MR. ROHAN: Your Honor, if counsel would
19 stipulate to the fact that on December 16, 1988, Judge
20 Quinn dissolved the restraining orders, particularly Judge
21 Bates' restraining order, and that they were dissolved as
22 of that point, then I don't have to get into what the
23 Supreme Court did or did not do about that. That would
24 suffice for our purposes.

25 MR. WIGGINS: Well, it's true. It's irrefutably

1 true that that is what happened and this order reflects
2 that that is the action. I just don't understand the
3 relevance of this, particularly at this point on
4 surrebuttal. I'm not sure what this is reflecting.

5 THE COURT: I suppose it is -- and I'm not trying
6 to be counsel, but I try to frame it in my best Bernice
7 Johnson way so that I understand what I'm doing. I assume
8 that it in some way on his theory rebuts your contention
9 and proof going to the present elders.

10 MR. ROHAN: It does go to that question.

11 MR. WIGGINS: Well, it certainly happened.
12 Whatever the legal effect of that document is, I have no
13 idea, and so we certainly got into the question about Mr.
14 Motherwell's authority, and I guess if this has any
15 relevance --

16 THE COURT: I will admit it for that purpose.

17 MR. ROHAN: There are two other matters, your
18 Honor. The first is that I'm very sad to state that one of
19 the witnesses and one of the defendants in this case, Jack
20 DuBois, died last week. He testified by deposition.

21 THE COURT: Who is that?

22 MR. ROHAN: Jack DuBois.

23 THE COURT: Oh, and I am supposed to read his
24 testimony then?

25 MR. ROHAN: Yes.

1 THE COURT: I have not read it at this point, but
2 I intend to.

3 MR. ROHAN: He passed away on Saturday.

4 THE COURT: How long do you imagine it would take
5 to read it?

6 MR. WIGGINS: Thirty minutes, I would think.

7 THE COURT: I could possibly do it between now
8 and noon?

9 MR. ROHAN: Yes.

10 MR. WIGGINS: I think so, your Honor.

11 MR. ROHAN: And I have another matter which is
12 that we told the witnesses in this case -- and it's in our
13 agreement between the parties setting this matter over to
14 JAMS -- that they could be identified by a code. Mrs. A. I

15 believe, is under the impression that she will be so
16 identified. I apologize for not having brought this up to
17 the court when she first testified, but I would like to in
18 the record substitute -- and to the extent that the court
19 reporter has already prepared some transcripts, our office
20 will take the responsibility and then work out with Mr.
21 Wiggins' office, substituting wherever her name is used,
22 first name or last name, that we substitute a code for
23 that.

24 MR. WIGGINS: I have no objection to that, your
25 Honor.

BARNETT - Direct (By Mr. Wiggins)

1 THE COURT: Okay. What would you suggest?

2 MR. ROHAN: Well, I guess the best code to use
3 would be Community Chapel Employee.

4 MR. WIGGINS: I guess I would like a code that
5 doesn't describe anything about her. How about Mrs. "X" or
6 something like that.

7 THE COURT: We have someone described in that
8 fashion like the Palm Springs -- well, where are we now? I
9 recall a number six having been talked about. How about
10 number seven?

11 MR. ROHAN: Well, the only problem is that that
12 might be confused with the fact that she was one of the
13 five.

14 MR. WIGGINS: The problem with that is that some
15 of the elders who testified said they never knew who the
16 women were, and so the linkage of trying to link her up
17 with one of the women is a matter of conjecture as far as
18 they are concerned. I would suggest a letter, because we
19 have numbers for the eldership hearings, and if there was a

~~20 MR. ROHAN: Let's call her Mrs. A.~~

21 MR. ROHAN: Let's call her Mrs. A.

22 MR. WIGGINS: That would be fine.

23 THE COURT: Okay.

24 MR. ROHAN: And we'll work that out for the
25 record.

1 THE COURT: Okay. It is agreed and stipulated
2 that the witness, Mrs. A, shall be identified throughout
3 all of these proceedings as Mrs. A, and the court reporter
4 is instructed that insofar as the record has not been typed
5 out that her name be deleted and the name Mrs. A be
6 inserted, and I say that specifically with reference to the
7 testimony today that named her and any others that you
8 might have. It is permitted that counsel at their cost
9 revise the record to show that as to all prepared records
10 to this point, including, by the way, one of my exhibits,
11 which would be Exhibit 36. That is the only exhibit that I
12 see where that name appears.

13 MR. ROHAN: Thank you, your Honor.

14 THE COURT: Is there anything -- let me grind
15 away here and try to remember what it is that I wanted to
16 make sure of. It may come to me before argument, in which
17 case I will bring it up at that time. I can't recall what
18 it was now.

19 Okay. I will straight away read the deposition
20 of Jack DuBois. When do you gentlemen wish to commence
21 argument?

22 MR. WIGGINS: One o'clock?

23 MR. ROHAN: One o'clock.

24 THE COURT: One o'clock would be satisfactory.
25 Without limiting anybody in this, could you give me some

BARNETT - Direct (By Mr. Wiggins)

1 idea of how long your summation will be, only for the
2 reason that if it is past four o'clock I want to call my
3 wife and tell her I'll be late.

4 MR. WIGGINS: Your Honor, my goal is to keep this
5 to an hour. I have a lot of material down here, and unless
6 I can cut this back, I'm not sure it will be an hour. I
7 might run as much as an hour and fifteen minutes.

8 THE COURT: Well, that's three hours. An hour
9 and a half would you suspect?

10 MR. WIGGINS: An hour and a half is a safe
11 estimate.

12 THE COURT: Okay. Then I'll assume that I can
13 get out at about 4:00 or 4:15.

14 MR. ROHAN: I'll be approximately an hour.

15 THE COURT: That's fine. I don't want to limit
16 anybody because I'm prepared to stay. This principle is
17 announced up in Mt. Vernon -- it's a Skagit County rule --
18 when they say how long do we have, your Honor, we say until
19 you drop. Once you hit the floor, the argument is over.

20 I do indeed think that counsel should have as
21 much time as they feel is necessary.

22 MR. ROHAN: Do I understand, your Honor, that you
23 are going to call us back on Wednesday if you have
24 questions?

25 THE COURT: That is my tentative plan. Now does

1 anybody have any problem with that?

2 MR. WIGGINS: What time would you like to do
3 that?

4 THE COURT: Well, I will get to the time -- I
5 don't know -- whatever time you people feel most
6 comfortable with. It won't take me over a couple of hours
7 at least -- probably not that long. So I can start at 9:30
8 or 9:00.

9 MR. WIGGINS: 9:30 would be fine.

10 MR. ROHAN: 9:30 would be fine.

11 THE COURT: Okay. Let it be known then that at
12 the conclusion of these arguments in the afternoon that we
13 will then recess until 9:30 on Wednesday, February 6.

14 MR. ROHAN: Thank you, your Honor.

15 MR. WIGGINS: Thank you, your Honor.

16 THE COURT: Now we are at recess while I read.

17

18 (Court was recessed for lunch at 11:30 a.m.)

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Closing Argument (By Mr. Wiggins)

1 (1:00 p.m.)

2 THE COURT: I remember what it was that I wanted
3 to address before lunch. As in a number of instances
4 during this trial, were it before a jury I would be very
5 careful in ruling on matters of relevancy. In this case I
6 have, as you are aware, permitted tremendous latitude in
7 introducing not only exhibits but also testimony.

8 As to Exhibit 57 and the evidence, I am going to admit
9 that as evidence of plaintiff's rebuttal.

10 MR. WIGGINS: Thank you, your Honor.

11 THE COURT: I feel that that can be dealt with by
12 ruling at the end of the trial, whether it stays or doesn't
13 stay, and I will therefore admit it.

14 MR. WIGGINS: Thank you, your Honor.

15 THE COURT: Are you prepared for closing
16 arguments?

17 MR. WIGGINS: Yes, your Honor. The plaintiff is
18 prepared.

19 Mr. ROHAN: Yes, your Honor. Mr. Shapiro
20 apologizes. He was called away on another matter and won't
21 be able to make it this afternoon.

22 MR. WIGGINS: May it please the Court, on behalf
23 of my client, Pastor Barnett, and my co-counsel, I would
24 like to thank probably all the parties and counsel and
25 thank you, your Honor, for the attention you have given to

Closing Argument (By Mr. Wiggins)

1 us. I thank you for your indulgence when we have belabored
2 points. We appreciate the opportunity to have tried this
3 matter to you and the care you have given to it.

4 In my closing this afternoon I would like to focus on
5 the same points that I talked about during my opening
6 statement, namely the authority of the elders and senior
7 elders to act as they did, the procedure that the elders
8 and senior elders did, and unlike my opening I will talk a
9 little bit about the breach of fiduciary duty, my
10 interpretation of the evidence of breach of fiduciary duty,
11 and then finally I would like to ask the question: Do the
12 violations of process in this case make any difference?

13 THE COURT: One last question, and this will be
14 the last interruption. Might I take those tear sheets
15 home?

16 MR. WIGGINS: Yes, your Honor. And as far as my
17 oratory, I invite you to interrupt me any time you would
18 like to. I argue a great deal in the Court of Appeals, as
19 I'm sure Mr. Rohan does, and I find sometimes it's very
20 useful when the Court interrupts. As you said, this is not
21 a jury trial, and I have no problem with being interrupted
22 and asked questions if you feel it is appropriate.

23 I will begin then with the question of authority.
24 Both Mr. Shapiro and I in our opening statements said that
25 one of the key issues in this case is really the authority

Closing Argument (By Mr. Wiggins)

1 of the defendants to act as they did in this case. And
2 there are only really two sources of authority that are
3 serious contenders here. One is the articles and bylaws of
4 the corporation. The second is the January 25th agreement,
5 which I have never quite concluded is an agreement, but
6 it's labeled an agreement and I will refer to it as such.

7 Now, during the elders' testimony they suggested
8 other sources of authority which they believe authorized
9 the action they took. They mention the statement in
10 Balance Two, which is one of the exhibits before the court.
11 They mention the Bible. They mention miscellaneous
12 statements made by Pastor Barnett over the years.

13 I have to say, your Honor, that I do not believe
14 that these other sources are seriously suggested as sources
15 of authority in this case. I do not believe that the
16 elders can claim that a statement in a publication in 1983
17 gave them authority in 1988 to overrun or override the
18 bylaws. I do not believe they can seriously contend that
19 the Bible gives them authority to override the articles and
20 bylaws. So I will focus on those two sources of authority.

21 Now, the articles and bylaws -- I'm not going to
22 go through all the provisions that we've identified which

~~proceed with the removal of Pastor Barnett from his office~~
24 have gone through those and I don't think we need to r
25 all of that to the Court. I apologize if we have belat

repeat

bored

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Closing Argument (By Mr. Wiggins)

1 the obvious, but we feel it is a very important part of the
2 case.

3 I would like to say a few things first about the
4 use that we asked the Court to make of some of our
5 exhibits. First of all, Exhibits 1 and 4 are the original
6 articles and bylaws of this corporation, and the purpose of
7 putting these in was to demonstrate that the protections of
8 Pastor Barnett are woven into the fabric of his church.
9 The church began with these protections from day one.

10 We put in subsequent bylaws, Exhibits 5 through
11 9, and that is a massive set of documents, and we are not
12 suggesting that the Court should read through those
13 documents. The purpose of putting those documents in was
14 to demonstrate without dispute that those protections of
15 Pastor Barnett have continued one edition of the bylaws
16 after another, and in fact, the defendants themselves, the
17 senior elders, repeatedly signed statements that they
18 agreed, they ratified the adoption of these bylaws over the
19 years. Scott Hartley for 20 years said he agreed with
20 these things. Jack Hicks for 18 years said that he agreed
21 with the protections afforded to Pastor Barnett. Mr.
22 DuBois said for a lesser period of time -- it was nine or
23 ten years -- during the period that he was a senior elder
24 he agreed with all of these protections of Pastor Barnett.

25 The critical exhibit, of course, is Exhibit 10,

Closing Argument (By Mr. Wiggins)

1 the bylaws which were in force at the time of these events.

2 Now we have also put in Exhibit 11, the April
3 1988 bylaws, and we have explained why we think that
4 document is significant, and that is as the Court has
5 indicated a question of law for the Court to decide.

6 We have also put in Exhibit 12, and Exhibit 12 is
7 a thick set of minutes. And the court raised the question
8 to us of what use should be made of these minutes. The
9 reason we put those minutes in was to show that
10 consistently Pastor Barnett was always present for meetings
11 of the board of senior elders. The only exception that we
12 were able to find is reflected in Exhibit 12, one meeting
13 where they knew he was not going to be present, and he
14 specifically designated someone to take his place at that
15 meeting, and gave his consent to the elders to meet without
16 him. That is the significance of Exhibit 12.

17 Now, given all these specific protections for
18 Pastor Barnett in the bylaws, how could they be
19 strengthened? I have thought sometimes of putting myself
20 back in 1967 in the shoes of Lyle Bullinger, the attorney
21 who was one of the original board of this corporation.
22 What else might he have suggested to Pastor Barnett -- oh,
23 put this into these articles -- put this into these bylaws.
24 I don't think it would have occurred to anyone to put in
25 any stronger protections for Pastor Barnett than are

Closing Argument (By Mr. Wiggins)

1 already found in the original bylaws. I don't think there
2 is anything he could reasonably have added to the original
3 bylaws.

4 Now the specific question about the bylaws is not
5 just all of the provisions protecting Pastor Barnett, but
6 also the disfellowshipping provisions. Did the
7 ~~disfellowshipping provisions somehow apply to Pastor~~

8 Barnett? It seems to me that logically when you look at
9 document like this you look for specific protection
10 provisions and you look for general provisions. These
11 bylaws repeatedly say that one specific individual, Don
12 Barnett, cannot be removed from his office. Those are
13 extremely specific provisions.

14 On the other hand, we have a fairly general
15 provision regarding disfellowship, saying members can be
16 disfellowshipped for certain conduct. Now, when you have
17 those two types of clauses in a document, the specific
18 clauses govern over the general. And I suggest to you t
19 it is not reasonable to interpret the disfellowshipping
20 provisions in their general application as applying to
21 Pastor Barnett.

22 And there is one provision in the bylaws that
23 think especially points this out, and I would like to pu
24 this up on the overhead.

25 For these overheads, I have tried to label eve

Closing Argument (By Mr. Wiggins)

1 one. This is Exhibit 10, and we are dealing here with page
2 30 of Exhibit 10. This is Division 2 of the bylaws, as it
3 indicates in the upper left-hand corner, and section seven
4 deals with ordination and licensing into the ministry. If
5 you look down towards the bottom of the page you find a
6 provision regarding the ordination of the original pastor,
7 and it says right here: The ordination of the pastor shall
8 be in effect, with the exception of the original pastor who
9 cannot be removed from office while living until he resigns
10 or until the church no longer exists.

11 Now, the very next page of this document goes
12 right on with paragraph five. The same document, page 31.
13 Right up here in number four we talk about Pastor Barnett.
14 Number five talks about the ordination of a minister of the
15 Gospel of Jesus Christ shall be for life.

16 But it goes on to say in the next sentence:
17 Community Chapel and Bible Training Center may, however,
18 elect to disallow his ministry in this church,
19 disfellowship him and/or refuse to recognize his ministry
20 if he becomes incapable of performing the ministry, if he
21 departs from the faith, or if he lives unrepentant in sin.
22 In such matters, the decision of the board of senior elders
23 is final.

24 Now, what is the significance of that? The
25 significance is that paragraph four talks about Pastor

Closing Argument (By Mr. Wiggins)

cannot be removed from
talks about any other
that many of the elders
re ministers for life,
sfellowshipped.

together, they thought
laws they thought about
they said nothing about
d.

he cannot be removed
to the first sentence
e goes on to say that
minister for life,

her, the clear
if not the absolute
tor Barnett simply
wshipping does not

he articles and bylaws
ellowship Pastor

ary 25 agreement. Now
we have looked at this
because I think it

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1 Barnett and says unequivocally he can
2 office while living. Paragraph five
3 minister, and we have had testimony t
4 here were ministers, and says they ar
5 but it goes on to say they can be dis

6 Now, if you read these two
7 about it. When they wrote these byla
8 who could be disfellowshipped, and th
9 Pastor Barnett being disfellowshipped

10 Furthermore, the fact that
11 from office while living is similar t
12 of paragraph five, but paragraph five
13 notwithstanding that a minister is a
14 they can disfellowship him.

15 If you read those two toget
16 implication of those two paragraphs,
17 force of those two paragraphs, is Pas
18 cannot be disfellowshipped. Disfello
19 apply to Pastor Barnett.

20 So I think if you look at t
21 you do not find any authority to disf
22 Barnett.

23 Let's look then at the Janu
24 we have talked about this agreement,
25 agreement, and I will put it up too b

Closing Argument (By Mr. Wiggins)

1 certainly is the defendants' case here. It is the basis of
2 their counterclaim. The interesting thing about Exhibit
3 15, the agreement that Don Barnett signed, is that nowhere
4 does it say anything about discipline. Nowhere does it say
5 anything about disfellowship.

6 This was drafted, Mr. MacKenzie told us, by Mr.
7 MacKenzie himself, a man who considers himself to be a very
8 careful writer and a very logical person, and yet he writes
9 this rather vague agreement. Why is that? Why do we have
10 an agreement like this that is so vague and so open and yet
11 here we are talking about does this provide authority to
12 disfellowship.

13 I think one explanation for that is this. These
14 hearings began as a private feud essentially between Jerry
15 Zwack and Don Barnett. Jerry Zwack had grievances against
16 Don Barnett and he wanted a resolution of his grievances.
17 He had tried and tried and tried to get a resolution from
18 Don Barnett, and he was never satisfied. So he wanted a
19 resolution, and essentially, this whole thing was convened

to resolve Jerry Zwack's grievances. But during the course
of these proceedings, somehow the nature of the whole

20

21

22

Closing Argument (By Mr. Wiggins)

1 reproof.

2 In other words, these hearings started out as
3 more of a mediation or arbitration between two parties, but
4 somehow in mid-course they shifted into a prosecution, very
5 much like a criminal prosecution. And I think the evidence
6 points that out.

7 In the beginning, it is undisputed that no one
8 said anything to Pastor Barnett about discipline. No one
9 said anything to Pastor Barnett about disfellowship. No
10 one mentioned those things. What they talked about was
11 reconciling Don Barnett to Jerry Zwack. These men had been
12 good friends. This man was his wife's spiritual
13 connection. Jerry Zwack was Don Barnett's wife's spiritual
14 connection. He wanted to get a healing of that

15 ~~and that is why this agreement is so~~
16 parties.

17 And that is why this agreement is so
18 extraordinarily vague. They did not contemplate at t
19 outset taking action against Don Barnett. And Pastor
20 Barnett's actions are consistent with that. If he ha
21 thought for a moment that some disciplinary action mi
22 taken against him, he would never have come in and
23 confessed to what he confessed to. Why was it that h
24 in and confessed to adultery to these men? This was
25 painful experience for Pastor Barnett. It was diffic

Closing Argument (By Mr. Wiggins)

1 for him to get up in front of those men and admit the
2 embarrassing fact that he had fallen, that he was caught up
3 in adultery. Why did he do it? He did it because he was
4 willing to mend his ways with Jerry Zwack. That is what he
5 wanted to do. He never would have done it if he had
6 thought at the beginning that these men were going to
7 somehow turn this around on him and he would be on trial
8 for his pulpit.

9 In fact, the one change that Don Barnett made in
10 this document, the change about which there has been a

is this. He added the words "and

the words "and Jerry"? It is
as something between him and Jerry
sure that Jerry Zwack would abide
by the determination. He didn't
he thought he was on trial by the

tt took them at their
if Jerry Zwack can't
-- and he used the
rove these things, we
like you to be open.
on Barnett took them
at point the elders
er were so shocked --

11 great deal of testimony

12 Jerry." Why did he add
13 because he regarded this
14 Zwack. He wanted to be
15 by the outcome or abide
16 add those words because

17 of the elders of the church.

18 But somehow after Don Barne
19 word, Russ MacKenzie told Don Barnett
20 prove these things with eyewitnesses
21 word eyewitnesses -- if Jerry can't pr
22 would like you to confess. We would
23 We would like you to admit things. Do
24 at their word and did that, and at tha
25 were so shocked -- or some of the elde

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1 they couldn't accept this and they could not live with the
2 idea of Pastor Barnett having committed adultery.

3 At that point, the mediators became police, and
4 they went out and investigated. They sent emissaries out
5 to talk to women, and they came back and reported to one
6 another. The investigators became prosecutors. The
7 prosecutors became judges. And here Don Barnett was on
8 trial, not to resolve a dispute between himself and Jerry
9 Zwack, but he found himself on trial for his career. It
10 was a complete change and turnabout.

11 That is why this document I think was never
12 intended to give authority to the senior elders to take
13 disciplinary action against Don Barnett or to disfellowship
14 Don Barnett.

15 Now when this happened, Pastor Barnett was
16 frankly extremely angry and he lashed out at these men. On
17 February 3rd or February 4th in a tape recorded session he
18 was angry with them and he was very angry with them and he
19 raised specific questions about their authority to deal
20 with him in the way they were dealing with him. And I
21 think the questions he asked are very significant and very
22 interesting in this context.

23 I am putting up on the overhead Exhibit 29. This
24 exhibit is the letter which the 16 elders wrote to Pastor
25 Barnett on February 24th. The purpose of this letter was

Closing Argument (By Mr. Wiggins)

1 to answer the list of questions that Pastor Barnett gave to
2 the elders.

3 And what are the questions that he asked? Who
4 made you a judge over me? And then he goes through a list
5 of possibilities. Do the scriptures give you that right?
6 Do the bylaws give you that right? Did I give you that
7 right? This is an odd thing that he would ask this and ask
8 those questions about them being a judge over him if indeed
9 he started out these hearings thinking that they were going
10 to be a judge over him. He didn't. He thought they were
11 going to mediate. That's why he asked these questions. He
12 didn't believe that they were supposed to be judge over
13 him.

14 And then he goes on and asks why he is being
15 brought to trial. Suddenly it has dawned on him that this
16 is no longer a mediation, but he is being prosecuted. He
17 is indignant in question six. Why am I being tried and not
18 you? What is different about your case? And then finally
19 he asks the question: What will this do to your respect
20 for me? He felt very strongly that this became a terrible
21 problem. If they were prosecuting him, if they were
22 setting themselves up in authority over him, they were
23 turning the church government upside down, destroying the
24 respect for the pastor, and ripping apart the very fabric
25 of this church.

Closing Argument (By Mr. Wiggins)

1 Pastor Barnett's own conduct was entirely
2 consistent with the interpretation that he thought this
3 started as a mediation and then became a prosecution.

4 Now the problem with that is that mediation has a
5 very different set of rules, a very different set of ground
6 rules, than prosecution. In a mediation you are open, you
7 ask people questions, and it is a very informal give-and-
8 take atmosphere. A prosecution is totally different. You
9 don't ask people to confess in a prosecution. You don't
10 act both as an investigator and a prosecutor and a judge in
11 a prosecution. You require witnesses and you require
12 testimony. This agreement though didn't start out as an
13 agreement to prosecute. It started out as an agreement to
14 mediate.

15 The final point I will make about this January 25
16 agreement is this. If you are going to find that this
17 agreement somehow gave to the eldership the power to
18 discipline Pastor Barnett, the power to disfellowship
19 Pastor Barnett, what you have to do is you have to give
20 this agreement the most expansive possible interpretation.
21 You have to interpret the agreement extremely broadly, and
22 you have to interpret the articles and bylaws in the most
23 narrow and constricted way possible. You have to shrink
24 the bylaws and the effects of the bylaws and the natural
25 reading of the bylaws, and you have to expand the reading

Closing Argument (By Mr. Wiggins)

1 of the agreement. That is not a consistent way to read
2 these two documents together, and in fact, if anything, the
3 bylaws and articles of the church should be given the
4 expansive reading, and the agreement should be given the
5 narrow reading.

6 At the very outset of this case I would just
7 return to the position that Pastor Barnett has consistently
8 taken which is that there is no authority for the elders to
9 act as they acted in this case.

10 Let's move on to the second question, procedure.
11 To get to this question of procedure, we really have to
12 assume that there is an authority to act as they acted,
13 which we don't agree with, but let's go on and talk about
14 procedure anyway. The point I would like to make about
15 procedure is that process makes a difference. It makes a
16 difference to us how matters are adjudicated. It made a
17 difference in the Gospels that Jesus told his disciples not
18 to accept accusations except on the word of two or three
19 witnesses. It made a difference to the apostle Paul who
20 wrote to Timothy and said don't even listen to an
21 accusation against an elder unless you have two or three
22 witnesses. It made a difference throughout our legal
23 system. All of our due process protections are based on
24 the idea that process makes a difference. We of all
25 people, as a judge and lawyers, should understand that

Closing Argument (By Mr. Wiggins)

1 process makes a difference. Our whole career is devoted to
2 the idea that process makes a difference. It matters how
3 you adjudicate things.

4 Now, let's go on and talk about this and look at
5 the process violations that occurred in that case. We have
6 talked a great deal about the guidelines, and I don't

7 intend to go through the eleven guidelines again.

8 Court them up. They were a source of discussion and the
9 at great has them in an exhibit and I won't go through that
10 could like length. But there are a couple of points that I w
11 to make about the guidelines.

12 the First of all, there are two versions of
13 . The guidelines. There is a draft and there is a final
14 s of what Court expressed a question during these proceedings
15 the is the point, how am I to regard the draft versus
16 because we final? I don't entirely know the answer to that be
17 Barnett had conflicting testimony from the elders. Pastor
18 ow the wasn't there and he doesn't know. I didn't know ho
19 draft came about and how the final came about.

20 the Russ MacKenzie told us that, well, I did
21 just draft. I cleaned it up, just polished it. It was
22 editorial. It made no difference in the content.

23 tory as Jack Hicks told a little bit different st
24 ck Hicks he did in many situations from Russ MacKenzie. Jac
25 t, and said, well, we all sat around and we talked about i

Closing Argument (By Mr. Wiggins)

1 we made changes based on our discussion, and I think that
2 is probably accurate, and I think it probably made a
3 difference to the senior elders exactly how those
4 guidelines functioned. It made a difference to the senior
5 elders whether these 16 people had some kind of authority
6 to make final decisions, and I suggest that that is
7 probably the reason why the finality element was deleted
8 out of the last guidelines when you get to the final draft.
9 But I don't exactly know how to regard that. I think it
10 makes a difference. I think you should interpret the final
11 in light of the earlier draft, and Jack Hicks' testimony
12 certainly supports that.

13 There are only a couple of things that I want to
14 talk about with the guidelines. One obvious point is the
15 requirement for proof by admission or witnesses, and we
16 have had a lot of testimony about that. What did that term

~~live testimony and~~
pastor should be
cient, and here is
maintained that
ve testimony
until the very
testimony. I
ny might be
ings must be

~~17~~

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~~"witnesses" mean? Was it enough to have~~

gossip and use that as evidence that the
removed? I don't think it ever was suffi
why. The elders have pretty consistently
they kept open their option to present li
throughout these proceedings. It was not
end that they decided not to present live
think they contemplated that live testimo
required to satisfy the guideline that th

Closing Argument (By Mr. Wiggins)

1 proven by admissions or by witnesses.

2 Russ MacKenzie testified that witnesses would
3 include hearsay witnesses. Jerry Zwack could say that a
4 woman came to him and complained about advances by Don
5 Barnett and that would be proof that a woman came to Jerry
6 Zwack and it would be proof that Don Barnett made advances
7 toward the woman. Hearsay was acceptable to Russ
8 MacKenzie.

9 But something very interesting happened during
10 Russ MacKenzie's testimony on the witness stand. When he
11 was presented with a series of hypotheticals, he would not
12 answer them, and I think what happened with Russ MacKenzie
13 was that he genuinely believed hearsay was okay. But when
14 he was confronted with the ultimate conclusion from that,
15 which is if you multiply hearsay you multiply the
16 witnesses, I think he saw for the first time that that
17 didn't work. I think he realized that his theory was
18 unworkable and that a hearsay witness is not the same as an
19 eye witness, and he would not answer the question. He
20 could not accept that he had been wrong for three years.
21 He couldn't accept the logical outcome of the theory that
22 he had.

23 It is irrational to say that when Jerry Zwack
24 came in and repeated gossip and hearsay and then Lanny
25 Peterson went out and got hearsay statements and brought

Closing Argument (By Mr. Wiggins)

1 them back that that was two witnesses. It just cannot be.
2 They could be talking to the same woman, getting the same
3 facts, but because they come independently, they don't
4 become two separate witnesses.

5 The problem that that creates for the elders is
6 that all they can rely on is the admissions by Pastor
7 Barnett because the other men did not have first hand
8 knowledge of any of these things. And, in fact, Jerry
9 Zwack did not have first hand knowledge of what he was
10 talking about.

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17 The next violation of the guidelines that I would
18 ~~like to mention is that the existing guidelines clearly~~
19 contemplated that Pastor Barnett and Jerry Zwack would have
20 an opportunity to rebut evidence that was presented in the
21 hearings. Well, it didn't work that way. It didn't turn
22 out that way because the elders presented evidence during
23 their closed eldership review sessions that Pastor Barnett
24 was never privy to. He had no opportunity to answer that.
25 He had no opportunity to rebut it. They didn't call in

Closing Argument (By Mr. Wiggins)

1 women to testify to these things. They simply had gossip,
2 rumor, hearsay, which Pastor Barnett never got to rebut.
3 That too was a violation, and it was a fundamental
4 violation of the guidelines themselves.

5 Now, what the cases say, and we have talked about
6 this in our trial brief and in summary judgment, is that
7 even if you have authority within a church to terminate a
8 pastor, you still have to follow the right procedure.
9 There is plenty of law on that. The bottom line on this is
10 that they didn't follow their own guidelines in trying to
11 terminate Pastor Barnett.

12 Let's talk a little bit about the bylaw
13 violations that occurred in this case. The main bylaw
14 violations that occurred in this case are two-fold. One
15 was the actions by the senior elders without Pastor
16 Barnett, but also the way they attempted to disfellowship
17 Pastor Barnett.

18 Let's talk about the violations by the elders. The
19 bylaws could not be clearer that Pastor Barnett must be
20 present to have a meeting of the board of senior elders.
21 They violated that provision a number of times when they
22 met without Pastor Barnett.

23 The first time that we know of -- we don't know
24 of all the meetings that might have happened -- but one of
25 the times that we know of was on February 10th. This is

Exhibit 43. Those are minutes of the senior elders' meeting on February 10. This is the meeting at which they purported to place Pastor Barnett on special status. This meeting was particularly significant because the consistent

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~~minutes of its meeting on this date is that the~~

fellowshipped Pastor Barnett was not the adultery, misconduct. It was the fact that he refused to accept the special status.

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Now, if you look at these minutes and you compare these minutes to the minutes in Exhibit 12 which are other minutes of the senior elders' meeting, these are exactly the same format. The senior elders thought they were acting as senior elders when they met on February 10, and that is evident on the face of the document. This is a meeting of the senior elders' meeting. If this was only three senior elders getting together to chit chat about church affairs, they wouldn't have prepared minutes. And if they had prepared minutes, they wouldn't list members present, which would have any meaning unless they are talking about the meeting of the senior elders, they wouldn't have listed a vote of three to nothing, and Scott Hartley wouldn't have been the corporate secretary. They clearly thought that what they were doing was meeting as the board of senior elders. There is no question that they didn't give notice

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Closing Argument (By Mr. Wiggins)

1 of this meeting to Pastor Barnett. There is no question
2 that Pastor Barnett was not there. And as if this is not
3 enough, we have the letter that they wrote to Pastor
4 Barnett after this meeting.

5 This is Exhibit 24. This is the letter of
6 February 15 that the senior elders wrote to Pastor Barnett.
7 And the significant point that I want to make here of this

8 letter -- this is the letter saying we're placing
9 special status -- is this last sentence of the second
10 paragraph. What do they say? Our subject of this
11 is not an elder/committee hearing matter, but a senior
12 elders/corporate board of directors matter. They
13 thought they were acting as the board of directors
14 thought that the board of directors had power to place
15 Donald Barnett on special status, and that they did
16 these meetings.

17 But these meetings were illegal, and Jack
18 finally realized that, and he testified last week that
19 this was not a board of senior elders' meeting, this was
20 just the three of us getting together to chit chat with
21 Pastor Barnett. That is an absurd piece of testimony from
22 Jack Hicks in light of the fact that there are minutes from
23 the meeting and in light of this statement in Exhibit 24.
24 It is not credible. They violated the bylaws when they got
25 together and placed Pastor Barnett on special status.

Closing Argument (By Mr. Wiggins)

1 everything that happened from that point went downhill from
2 there. Everything would pend on that special status. The
3 fact that they got up in church to announce that he
4 wouldn't accept the special status, the fact that he had to
5 get up in church and respond, the fact that they
6 disfellowshipped him, it all grows out of an illegal
7 meeting, a violation of procedure that invalidates the
8 special status, invalidates what they did based on his
9 refusal to follow special status.

10 Well, that wasn't the only time that they met
11 without Pastor Barnett. The senior elders we know, from
12 the testimony of Jack Hicks, met without Pastor Barnett on
13 February 26, the day that they got up in church and
14 denounced Pastor Barnett and announced that he would not
15 accept special. That too was a meeting of the board of
16 senior elders in which they claimed to take corporate
17 action, and it was an illegal meeting in violation of the
18 provision in the bylaws requiring notice to Pastor Barnett.

19 Not only did it violate the bylaws, but it
20 violated a specific directive by Pastor Barnett because the
21 day before on February 25th when he did meet with them, he
22 told them do not do this. Do not get up and tell the
23 congregation about this. Let's go ahead next week and let them

24 have the meetings next week, let's deal with this legal

25 but they weren't satisfied with that. They thought that

Closing Argument (By Mr. Wiggins)

1 knew what was best and they acted as the board of senior
2 elders.

3 But that is not the only illegal meeting of the
4 board of senior elders. We had testimony earlier in this
5 case from two of the elders, from Russ MacKenzie and John
6 Harold, that the senior elders on March 3, the day before
7 Pastor Barnett was disfellowshipped, voted to disfellowship
8 Pastor Barnett. That was their testimony. They said they
9 came in -- actually Russ MacKenzie said they voted in the
10 same meeting as a group of three senior elders, they voted
11 on March 3 to disfellowship Pastor Barnett.

12 John Harold had a little bit different version of
13 this. He said they didn't vote in our presence but they
14 told us they voted to disfellowship Pastor Barnett. Well,
15 if that is true, and Jack Hicks denies that it is true, but
16 if that is true, they met once again without Pastor Barnett
17 to disfellowship him on March 3. And that was an illegal
18 meeting of the board of directors.

19 And that is not the only illegal meeting of the
20 board of directors. We have had a lot of testimony about
21 March 4th and about the meetings that occurred on March
22 4th. The first meeting on March 4 was in the morning at
23 the parsonage.

24 This is Exhibit 47. These are the minutes of the
25 morning meeting. This is the meeting at which they moved

Closing Argument (By Mr. Wiggins)

1 and had some kind of vote to amend the articles of
2 incorporation. Their claim is that this meeting was never
3 stopped. This meeting was continued or adjourned to the
4 afternoon. The problem with that, as with so many of their
5 statements, is that it is inconsistent with the documents
6 they prepared at the time.

7 Scott Hartley wrote in these minutes that the
8 meeting was dismissed at 11:20 a.m. There is nothing in
9 here about adjourning this meeting. There is nothing in
10 here about continuing the meeting in the afternoon. And
11 Pastor Barnett -- actually not just Pastor Barnett, but
12 Jack Hicks also testified -- that while they were at the
13 parsonage, no one said anything about continuing the

14 meeting. No one said anything about adjourning the

15 meeting. It was the end of the meeting. And why did they

16 stop that meeting at that point? Because they

17 down to Olympia and file the articles of amend

18 Now, if you look at their minutes for

19 afternoon meeting you will see once again -- t

20 Exhibit 48 -- you will see in Exhibit 48 that

21 hint whatsoever that this is a continuation of

22 meeting. Nothing about that. They have membe

23 they have a time for the senior elders' meetin

24 go through and recite the business that was at

25 is nothing that says, oh, by the way, this is

Closing Argument (By Mr. Wiggins)

1 meeting we started this morning.

2 This meeting itself was an illegal meeting. They met
3 without notice to Pastor Barnett. It is undisputed. They
4 gave him no notice of this afternoon meeting. It is
5 undisputed that he wasn't there. Yet this is the very
6 meeting at which they purport to have taken the action that
7 is the subject of this litigation. This is the action, the
8 action of disfellowship, and it occurred at an illegal
9 meeting which was illegal because they had not given Pastor

Barnett notice of the meeting.

Now, there is another bylaw that we really ought to
talk about, and that is the bylaw on disfellowshipping.

The question really is raised here of who disfellowshipped
Pastor Barnett and when did they do it, kind of like

Senator Irwin's questions during the Watergate hearings --
what did you know and when did you know it?

The question is who disfellowshipped Pastor
Barnett and when did they do it. Now, Mr. Shapiro told us

in the opening statement of the defense that Pastor Barnett
was disfellowshipped not once but three times, that he was

disfellowshipped by Mr. Motherwell, that he was
disfellowshipped by the group of 16, the entire eldership,
and thirdly that he was disfellowshipped by the senior
elders.

There isn't credible evidence that anyone

Closing Argument (By Mr. Wiggins)

1 purported to disfellowship Pastor Barnett except the senior
2 elders, and I want to go through and explain why. Mr.
3 Motherwell was Pastor Barnett's counselor. Now, if you
4 look at Mr. Motherwell's letter to Pastor Barnett of March
5 4th -- and your Honor, I won't belabor this point because
6 you asked him about this letter. This was Exhibit 42.
7 This was one of the three letters delivered to Pastor
8 Barnett on March 4th. This is the second page of that
9 letter.

10 When Mr. Motherwell was on the stand and
11 testified that he personally disfellowshipped Pastor
12 Barnett, we looked at this letter, and you indicated to him
13 that you didn't see anything on the first page that related
14 to him disfellowshipping Pastor Barnett, and he agreed, and
15 we went onto the second page of Exhibit 42, and that is
16 this page. Right there in the middle of that second
17 paragraph it says, I have personally recommended this
18 action to the senior elders and the entire board of elders
19 as an act of mercy for your own soul and an act of
20 responsibility for God and his people.

21 It is not credible for Mr. Motherwell to sit here
22 today and say, no, I didn't just recommend disfellowship

12 was supposed to be... because...
completely different version of fact. He... 24 time he used a com...
ed disfellowship. And not just then, but 25 said he recommende...

Closing Argument (By Mr. Wiggins)

1 just last November when his deposition was taken, and Mr.
2 Pierce read to Mr. Motherwell from his deposition -- and
3 these are the words that he read to Mr. Motherwell from his
4 deposition. It was November 13, 1990, less than three
5 months ago.

6 Question: All I am asking him is as his
7 counselor did you disfellowship him?

8 These are questions to Mr. Motherwell.

9 Answer: As part of the unit I did.

10 And the unit he is talking about is the entire 16
11 elders.

12 Question: But individually as a counselor did
13 you?

14 And he waffled here.

15 Answer: I didn't need to because the unit did.
16 If the unit hadn't, I would have.

17 Question: So the unit did and therefore you
18 individually as a counselor did not disfellowship him?

19 Answer: No, because the unit did.

20 What was Mr. Motherwell's explanation on the
21 stand of this testimony? The answer to the question is he
22 had no explanation of that testimony. In fact, he knew
23 that this testimony was in his deposition. When Mr. Pierce
24 said he was going to cross-examine him out of his
25 deposition, Mr. Motherwell said the page -- oh, about page

Closing Argument (By Mr. Wiggins)

1 110 he said. Well, this is where this line of questioning
2 starts, but it culminates on page 113.

3 Mr. Motherwell knew that the testimony he was
4 giving was inconsistent with his November testimony, but he
5 had no explanation for why that inconsistency appeared. It
6 is not credible for Mr. Motherwell to sit here today and
7 say that he disfellowshipped Pastor Barnett.

8 Let's look at the second claim, the claim that
9 the eldership voted as a group, the 16 voted as a group, to
10 disfellowship Pastor Barnett. Well, there are a couple of
11 documents that are relevant here.

12 The first of these documents is Exhibit
13 is the minutes of the eldership meeting on March
14 what do they say? They begin these minutes with

15 statement that supports what I'm saying about
16 Motherwell: We have received David Motherwell's
17 recommendation to disfellowship our pastor, Don Barnett.
18 We wish to pass the recommendation onto the senior
19 also recommending that Pastor Don Barnett be
20 disfellowshipped from this church for malfeasance
21 cetera.

22 They aren't saying here we are disfellowshipping
23 him as a group. They are saying we are recommending
24 senior elders that they disfellowship Pastor Barnett.
25 group of people didn't think they had the power

Closing Argument (By Mr. Wiggins)

1 disfellowship Pastor Barnett.

2 Ah, yes, said Mr. MacKenzie, but this was just a
3 document to reflect one of the three votes that was taken
4 at this meeting the night of March 3rd. Well, that's a
5 curious thing. Why would they choose to document this vote
6 which is only a recommendation and not document the vote of
7 all 16? No one has every claimed that they documented the
8 vote of the 16. Well, actually I misspeak. They do say
9 that they documented the vote of the 16 the next day when
10 they wrote a letter to Pastor Barnett, a letter that Mr.
11 MacKenzie stayed up late at night -- I think he said all
12 night -- in an effort to advise Pastor Barnett of the
13 disfellowship. And that letter is Exhibit 34. This is the
14 exhibit which the 16 elders wrote to Pastor Barnett.

15 And what do they say the very next day? The elders
16 not including the senior elders, voted unanimously
17 you out of the church and made that recommendation
18 senior elders. They are going back to the document
19 had, the vote of the 10 elders, not including the se
20 elders, recommended to the senior elders. Yes, I kn
21 they point to the second phrase down below: Therefo
22 are forced to disfellowship you because. But if you
23 at this letter, that is not the structure of this le
24 The first paragraph expresses their deep s
25 The second paragraph explains that they made a

Closing Argument (By Mr. Wiggins)

1 recommendation. The third paragraph says we are informing
2 you of the main reasons why we took this action. And then
3 this action is a recommendation to disfellowship. This
4 action is not we disfellowship Pastor Barnett.

5 So again, the documents themselves don't support
6 what the defendants are saying that they actually did.

7 Now, I know sometimes people write documents
8 loosely and they may not say things precisely and we
9 lawyers like to grab on to different things and really nail
10 down specific words. But this is not a case of one or two
11 documents which they have to back-pedal and explain at
12 trial. Every document they wrote in this case between
13 February and March of 1988 they had to get on the stand and
14 explain away. Ever single document. It's not just one or
15 two. It's every one. Their testimony is inconsistent with
16 what they say at the time they were doing it.

17 Now, this theory that the group of 16 elders
18 disfellowshipped Pastor Barnett took on added significance
19 when Mr. Rohan explained in arguing an objection that,
20 ~~well, your Honor, the theory actually is that the 16 elders~~
21 voted to disfellowship Pastor Barnett on March 3, so
22 anything that happened on March 4th, these bylaw violations
23 and notice violations, doesn't matter because the 16 voted
24 to disfellowship him on March 3rd.

25 The trouble is that it's inconsistent with the

Closing Argument (By Mr. Wiggins)

1 documents. It doesn't fit what they said they were doing
2 at the time. But what it does show is how weak their
3 position really is. If they have to resort to that theory
4 to excuse the lack of notice to Pastor Barnett of senior
5 elders' meetings, that I suggest is an indication of how
6 weak their theory really is.

7 Now that brings us to the last group, the three
8 senior elders. Did the three senior elders disfellowship
9 Pastor Barnett? Clearly that is the group that says that
10 they, in fact, disfellowshipped Pastor Barnett. The
11 problem with that is that they met illegally to do it, and
12 as I have explained, the afternoon meeting of March 4 was
13 an illegal meeting because they gave no notice to Pastor
14 Barnett and he was not present for that meeting. The other

15 ~~problem with that theory is that if they did not have~~
16 authority to disfellowship Pastor Barnett as I have already
17 explained.

18 Now there is something very interesting about
19 their claim that the senior elders disfellowshipped Pastor
20 Barnett, and that is this. We have contended throughout
21 these proceedings that the senior elders didn't believe
22 that they had the authority to disfellowship Pastor Barnett
23 unless they amended the articles and bylaws.

24 And I am putting up here the third page of
25 Exhibit 49. This is the letter from the senior elders to

Closing Argument (By Mr. Wiggins)

1 been delivered from demons. We disagree with you. As a
2 matter of fact, we think you have got to be placed on
3 special status. They didn't trust him. They didn't
4 respect him.

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5 They talked about dealing with Pastor
6 a spirit of love, a spirit of compassion. But
7 it's the sort of love or compassion that you see
8 Testament sometimes where the loving person said
9 so much that I'm going to make your decision for
10 going to do what I say is best for you. That is
11 elders were doing in this case. They were saying
12 Barnett we love you so much that we know what's
13 you. We don't believe you. We don't trust you
14 respect you. We are going to impose special status
15 And if you don't accept it, we're going to bound
16 of here. We love you so much. That is the type
17 that they are really talking about.

18 Now, what would have happened -- and I
19 this question in my opening statement. What would
20 happened if the elders had approached this somewhat
21 differently, if the elders had come to Pastor Barnett
22 said we have got all these things, terrible things
23 been said about you, and we recognize that something
24 happened here, and we need to do something about
25 Pastor Barnett said to them, what about you? You

Closing Argument (By Mr. Wiggins)

1 years. They signed version after version after version of
2 these bylaws. If anyone knew that these bylaws prevented
3 them from disfellowshipping, it was these men, and they
4 signed a statement like that. This is not something Pastor
5 Barnett said. They themselves believed they did not have
6 authority to disfellowship Pastor Barnett.

7 Now, I know Jack Hicks said, well, we didn't
8 really think that. I know Jack Hicks has an explanation,
9 just like they all have explanations for all the letters
10 that they wrote. But if you look at Mr. Hicks' deposition
11 which was read during his examination and during cross-
12 examination, there is an interesting thing that Mr. Hicks
13 said.

14 This is part of the deposition of Jack Hicks
15 which was taken on March 9, 1988. This deposition was
16 taken five days after they purported to disfellowship
17 Pastor Barnett. Mr. Pierce read these statements to Mr.
18 Hicks during examination.

19 And this is the entire sequence. It is rather
20 lengthy, but I think it is important.

21 Mr. Hicks said five days after these events,
22 March 3, that was when David Motherwell; Don's counselor,
23 finally came out and flatly stated that he was recommending
24 disfellowship of Don.

25 Again, David Motherwell is recommending

Closing Argument (By Mr. Wiggins)

1 disfellowship.

2 And the eldership themselves -- we're talking
3 about the ten elders I think -- took a vote which
4 recommended an advisory vote to the senior elders
5 recommending disfellowship.

6 This is what Jack Hicks said five days after the
7 event. David Motherwell was recommending disfellowship,
8 and the elders were recommending disfellowship to the
9 senior elders.

10 And what does Mr. Hicks go on to say about that?
11 This is the next page of this deposition. This was also
12 read in during Mr. Hicks' cross-examination by Mr. Pierce.

13 He says: We knew that we were all willing to
14 support the action to amend the bylaws or the articles of
15 incorporation and the bylaws and to disfellowship Pastor.
16 And we realized that the formalization of that would
17 require exclusion of certain words in order to provide the
18 authority for that.

19 Authority for what? What is he talking about? He
20 is talking about disfellowshipping the pastor. That is
21 what he says right there.

22 And then he says in the last sentence I have
23 underlined: We essentially determined what order they
24 would have to be executed in.

25 What does he mean by that? What he means is that

Closing Argument (By Mr. Wiggins)

1 we had to amend the articles, we had to amend the bylaws,
2 and then and only then could we disfellowship Pastor
3 Barnett. These men knew that they could not disfellowship
4 Pastor Barnett without amending the articles and without
5 amending the bylaws.

6 There is another bylaw violation that I would
7 like to talk about here. We have been through a number of
8 the bylaw violations regarding the disfellowship and I
9 won't go through those at great length. We have talked
10 about the fact that the pastor has to concur in the
11 disfellowship. There has to be a right of appeal from the
12 disfellowship. A counselor is the one who does the
13 disfellowshipping.

14 And we have talked about the provisions in the
15 bylaws that say that disfellowship can't apply to the
16 pastor. But there is one other thing that is kind of
17 interesting. I want to put up a page of Exhibit 10 again.
18 These are the bylaws.

19 This is page 29 of the bylaws. Now, remember, we
20 are talking about their claim that a counselor could
21 disfellowship the pastor. This is the statement on
22 counseling from Exhibit 10, page 29. I don't think we
23 talked about this during the trial, and I wanted to put
24 this up. This is one page of the exhibit.

25 Letter B under Article 4, quote: No counselor

Closing Argument (By Mr. Wiggins)

1 shall attempt to control or manipulate the life of another
2 individual, closed quote. Now, Pastor Barnett did talk
3 about that a little bit.

4 What is special status but an attempt to
5 manipulate or control the lives of another individual?

6 And then below that: It is our belief that such
7 counsel does not do violence to a person's free will

because advice from counselors is just that, advice and no
more. The recipient of the counsel is not bound to follow
the counsel that he seeks or is given. He must be
responsible for his own actions unless a counselor directs
a person to a certain action in accordance with the church
laws.

Now, what was the church law that required Pastor
Barnett to accept the special status that the elders tried
to impose on him? There wasn't any church law that
required that. They could have told him you can't commit
adultery. Sure, they could have told him that. They could
have told him you can't lie to women. They could have told
him that. They could have told him you can't manipulate
women. But they couldn't tell him you must stay apart from
women unless you are in the company of other people because
there was nothing in the church laws which required him to
do that. And so the special status itself was in violation
of this statement on counseling at page 29 of the bylaws of

Closing Argument (By Mr. Wiggins)

1 Community Chapel.

2 Who disfellowshipped Pastor Barnett? Nobody
3 validly disfellowshipped Pastor Barnett. Certainly David
4 Motherwell did not disfellowship him and certainly the
5 elders didn't disfellowship him, and if the senior elders
6 disfellowshipped him, they have got to act in a legal
7 manner which they clearly didn't do.

8 I would like to move onto the question about
9 breach of fiduciary duty. I don't even think we should be
10 getting into this because I don't think they had authority
11 and I don't think they followed the right procedures, but
12 most of this trial dealt with the evidence of breach of
13 fiduciary duty. So we have to address it.

14 First of all, claiming a breach of fiduciary duty
15 doesn't solve the elders' problem. They still must have
16 authority to act as they did. Something in the articles,
17 the bylaws, something had to give them the power to do
18 that, and just waving the wand of fiduciary duty over
19 Pastor Barnett's actions doesn't give them the authority.

20 There is no authority in the articles. There is
21 ~~no authority in the bylaws. There is no authority in the~~
22 law as we have pointed out in our trial brief and in
23 previous briefs. So just talking about breach of fiduciary
24 duty doesn't create authority in the elders.

25 The other preliminary point I want to make about

Closing Argument (By Mr. Wiggins)

1 fiduciary duty is that we haven't seen any citations of any
2 case like this. We haven't seen a single cite from the
3 elders that has to do with fiduciary duty by the pastor of
4 a church. We haven't seen a breach of fiduciary duty case
5 that talks about sexual conduct. We just haven't seen that
6 kind of thing. This case doesn't fit the mold for a breach
7 of fiduciary duty, and they haven't yet come up with
8 anything.

9 There is one other point I would like to make
0 about authority before we go on and talk about these
1 things. Logically we think to ourselves, well, surely if
2 somebody is breaching their fiduciary duty there must be
3 some way to get rid of them. There must be a way of

stopping somebody from breaching their fiduciary duty.

There is. There are a couple of things they could have
done. They could have gone to court. They could have
asked the court for guidance on how to deal with this
situation.

In earlier briefs we have cited a provision in
the Nonprofit Corporation Act that authorizes the members
of the board of directors to seek dissolution of the
corporation if a person in control of the corporation is
essentially taking advantage of the corporation, committing
fraud, doing the types of things that are breaches of
fiduciary duty. Well, they didn't do that. They didn't

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Closing Argument (By Mr. Wiggins)

1 want to go to court. They didn't want to prove their case.
2 They wanted to resort to vigilante action, and that is what
3 they did.

4 What else could they have done? Well, as we
5 suggested to many of the witnesses, they could have
6 resigned. They didn't have to remain as elders and they
7 didn't have to remain as senior elders. Oh, no, they
8 couldn't do that because we have a responsibility to these
9 people. We have a responsibility to this church. It would
10 be running away from our responsibilities if we did that.
11 That is not true. When you find yourself in a situation
12 where you don't have the authority to do what you think is
13 the honorable thing to do and there is someone in a
14 position of authority over you and you can't correct their
15 behavior, the honorable thing to do is to resign. That is
16 exactly what Elliott Richardson did during the Watergate
17 crisis. When President Nixon told him to fire Archibald
18 Cox, he wouldn't do it. He resigned. He didn't resort to
19 vigilante action. He took the only way out.

20 And that is what they could have done. They
21 could have resigned. They didn't have to remain. That in
22 itself might have precipitated the crisis. If they said
23 they were going to do that, Pastor Barnett might have
24 decided, gee, we've got to deal with this in some other
25 way. There are lots of things that could have happened.

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5 Now, let's turn to the evidence and talk about the
6 evidence of these different breaches of fiduciary duty.
7 Right away we've got a tremendous problem because it has
8 been three years since these hearings started, and it is
9 very difficult for any of these witnesses to recreate what
10 happened in hours and hours and hours of testimony three
11 years ago. In fact, it's exactly three years ago. These
12 hearings were going on at the very time this trial has been
13 going on. Three years ago.

14 Well, the elders decided in this trial that they
15 would try to cure some of the defects in their earlier
16 hearings. They would bring some women into these hearings
17 and they would try to cure the problem, and I am going to
18 ~~get to that and discuss why I don't think they have cured~~
19 the problem.

20 But I do think there is a problem trying to
21 figure out exactly what was said by whom and who was
22 present. We have had a lot of testimony about things
23 were said when Pastor Barnett was there and things that
24 were said when he wasn't there. It is very difficult
25 sort that kind of thing out.

Closing Argument (By Mr. Wiggins)

1 ~~I have divided the claims of breach of fiduciary~~
2 duty into these different categories. I don't know, they
3 call them a lot of different things and maybe I have missed
4 one or two things, but I think these are the main things.
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Now if this were a totally secular lawsuit
secular corporation, perhaps we wouldn't listen to
demons. Perhaps we would ignore all that. But thi

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Closing Argument (By Mr. Wiggins)

1 a secular lawsuit. This is a religious lawsuit over the
2 control of this church, and we have got to consider the
3 theological aspects of this and consider that there is a
4 theological way of dealing with it and that Pastor Barnett
5 took it.

6 We can't get into deciding that Pastor Barnett
7 was delivered of demons. We can't say this is the breach
8 of fiduciary duty that justified Pastor Barnett's
9 dismissal.

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Closing Argument (By Mr. Wiggins)

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In regard to Mrs. A, this is a witness who told Sandy Baxter that she was angry at Don and she was going to get back at him. She went out of her way to get back at him. She set the ball rolling. She tried to get the elders to hold these hearings. What she says about coercion and intimidation and manipulation is, number one, not very direct, even in her testimony, and number two, not very credible.

25

I don't think we have the type of testimony that

Closing Argument (By Mr. Wiggins)

1 you would look for to find that there had been a breach of
2 fiduciary duty to throw somebody out of the church in light
3 of the clear protections in the articles and bylaws.

4 Lying, number four. Sure, if you accept
5 everything that Jerry Zwack said that these women said to
6 him, well maybe Don Barnett is lying. But it kind of begs
7 the question because Don Barnett gives one account, Jerry
8 Zwack gives another account, and you can't jump to the
9 conclusion that Don Barnett is lying. Once again, I don't
10 know that we have any clear testimony with respect to any
11 of these three women that would indicate that Barnett is
12 lying about any of this.

13 On scriptural attitude and abuse of pastoral
14 authority, this really bothers the elders. It is very
15 clear when you listen to their testimony. They were angry
16 at Don Barnett. They were very upset with him. They felt
17 that he was acting in an unscriptural way and abusing
18 pastoral authority. The problem is that these are matters
19 we can't get into here. If Don Barnett gets up and
20 preaches from the pulpit you should go to the person who
21 wronged you before you go to anyone else, was he
22 manipulating? The Bible says that.

23 If Don Barnett preached that if you deny love and
24 affection or conjugal affection to your spouse, you may
25 cause your spouse to fall. Was he manipulating? Was he

Closing Argument (By Mr. Wiggins)

1 covering up? The Bible says that. You can't use those
2 things. Those are not the sort of things that you can tie
3 back into a breach of fiduciary duty. I frankly question
4 that a pastor has the type of -- I just don't think the
5 Court has any business getting into questions about abuse
6 of pastoral authority because we can't get into that
7 without violating the law of separation of church and
8 state.

9 The bottom line on all of this is that these are
10 not the types of actions that are normally considered to be
11 breaches of fiduciary duty. Again, I say we have not seen
12 any authority from the defendants on this point. We have
13 not had any cases that deal with this type of conduct.

14 The problem too is that fiduciary duty is a high
15 standard. It is an important standard in the law of
16 partnership, the law of trusts, the law of corporations.
17 But if you take the idea of breach of fiduciary duty and
18 you use it for anything that you happen to think is wrong,
19 you cheapen the currency of fiduciary duty. You abuse the
20 concept of fiduciary duty. It has to be reserved for the
21 type of conduct that it disloyal, is fraudulent, or somehow
22 is taking something from the corporation. You have to
23 reserve it for that.

24 If you can stretch a breach of fiduciary duty to
25 include the types of action that we are talking about here,

Closing Argument (By Mr. Wiggins)

1 it becomes such an elastic concept that it becomes a
2 meaningless concept. I think we should value fiduciary
3 duty too highly to deal with it in this offhand and
4 somewhat flippant manner. It may be convenient for the
5 defendants to talk about breach of fiduciary duty, but this
6 is really not the type of case that is a breach of
7 fiduciary duty case.

8 Now, this brings me to the last point I want to
9 make, which is this. Do these violations of process make
10 any difference? After all, the defendants have tried to
11 paint Pastor Barnett as a sexual predator. Gee, that's a
12 pretty serious charge. Shouldn't we wink or overlook the
13 violations of process? Shouldn't we say it's okay? So we
14 didn't give notice of all the corporate meetings, it's okay
15 because, gee, even if we had, he wouldn't have gone along
16 with the action anyway. Well, I guess harmless effort
17 would be the best way to look at it.

18 We can't do that. The problem with what happened
19 in this case was this. The elders were saying through this
20 whole process of special status, Pastor Barnett, we are
21 turning the structure of this church upside down. This is
22 a pyramid with the pastor at the top. We are going to turn
23 it over. You are going to be under us. That was what
24 really, really offended him. They were saying to him we

Closing Argument (By Mr. Wiggins)

1 been delivered from demons. We disagree with you. As a
2 matter of fact, we think you have got to be placed on
3 special status. ~~They didn't trust him. They didn't~~

4 respect him.

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5 They talked about dealing with Pastor
6 a spirit of love, a spirit of compassion. But
7 it's the sort of love or compassion that you see
8 Testament sometimes where the loving person said
9 so much that I'm going to make your decision for
10 going to do what I say is best for you. That is
11 elders were doing in this case. They were saying
12 Barnett we love you so much that we know what's
13 you. We don't believe you. We don't trust you
14 respect you. We are going to impose special status
15 And if you don't accept it, we're going to bound
16 of here. We love you so much. That is the type
17 that they are really talking about.

18 Now, what would have happened -- and I
19 this question in my opening statement. What would
20 happened if the elders had approached this somewhat
21 differently, if the elders had come to Pastor Barnett
22 said we have got all these things, terrible things
23 been said about you, and we recognize that something
24 happened here, and we need to do something about
25 Pastor Barnett said to them, what about you? You

Closing Argument (By Mr. Wiggins)

1 involved in similar conduct. And they had all sat down
2 together in a loving and compassionate way had been able to
3 work out some arrangement and had been able to work back to
4 guidelines that everyone in the church could live with.

5 What if they had done that? We will never know what would

had done that.

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Community Chapel because they would not

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Closing Argument (By Mr. Wiggins)

1 it doesn't matter, we will overlook this violation,
2 overlook that violation. We make people go through the
3 right steps. The concept of due process is if you don't do
4 things right, your action doesn't count. Your action is in
5 violation. It is no longer valid.

6 We do that to the police. If they don't follow
7 the right steps, we will throw out the results that they
8 get. We will throw out confessions. We will throw out
9 admissions. We will throw out arrests. We will throw out
10 all those things. We believe process makes a big
11 difference. And if it makes a difference in that context,
12 it certainly makes a difference in this context.

13 The other thing that you wonder about is this.
14 The elders were deposing Don Barnett in his position as
15 pastor, and they really didn't have the power to do that.
16 They weren't using a democratic model either. They weren't
17 willing to go to the congregation and ask the congregation
18 to vote on this, a procedure that is in the bylaws for
19 subsequent pastors. They were deposing Pastor Barnett and
20 putting themselves in as the senior pastors. That is what
21 they were doing.

22 I started the case by observing that this is a
23 tragic case. I think that this is a tragic case. I think
24 that this church cannot be rebuilt in the same way that it
25 was. We have had three years of a terrible ordeal from all

Closing Argument (By Mr. Wiggins)

1 of the parties. This church has been broken apart.

2 I think it's a tragedy for another reason. I

3 think the wall of separation of church and state has been

breached here. The defendants have opened the veil of 4
confidentiality into the hearing process of an 5
ecclesiastical court. The defendants have brought this 6
court into consideration of biblical interpretation, of 7
pastoral authority, witnesses, demonology, deliverance, all 8
of those things, things that we never -- we are on 9
forbidden turf when we get into these things. We shouldn't 10
be into this. And the elders have bought us into this. We 11
never should have gotten there. 12

I think that the Court should unequivocally 13
reject the invitation by the elders to decide these matters 14
of biblical interpretation. The Court should hold there 15
was no authority for the defendants to take these actions. 16
The Court should hold that repeatedly the elders violated 17
the bylaws and that they violated the very guidelines that 18
they were relying on. Pastor Barnett was never removed as 19
the lawful pastor at Community Chapel and he should be 20
reinstated. 21

I thank you very much for your attention, your 22
Honor. 23

MR. ROHAN: Can we take our recess now, your 24
Honor? 25

Closing Argument (By Mr. Rohan)

1 THE COURT: Yes, I think so.

2 (Court recessed until 2:30 p.m.)

3 THE COURT: You may proceed, sir.

4 MR. ROHAN: Thank you, your Honor. As Mr.
5 Wiggins said, on behalf of my clients and myself and my co-
6 counsel, I do appreciate all the Court's courtesies during
7 this case. It certainly made it a much more enjoyable case
8 to try for all of us.

9 As an overview, let me state that in our opening
10 we stated a few things that we would show. One is that the
11 elders had authority. Two is that the elders had reasons
12 for removing Barnett, valid reasons, reasons recognized in
13 the law. Three, that the elders acted compassionately all
14 the way through their dealings with Donald Barnett and
15 never took a step without serious soul-searching on their
16 part in determining whether or not there was a reasonable
17 alternative.

18 Let's go over, if we might -- and one other point
19 I guess I should make at the beginning is that the conduct
20 of the hearings are not the really true issue here because
21 several of the facts known to Pastor Barnett, in fact, came
22 out other than at the hearings. They came out from things
23 that Pastor Barnett did on February 28th in defying the
24 elders, and they came out in some of the things that was
25 done, such as his refusal of special status that were

Closing Argument (By Mr. Rohan)

1 separate from the hearings.

2 Let me go into the authority for removing
3 Barnett. The first ground upon which Barnett was removed
4 is that he was disfellowshipped. There were three grounds
5 that we have. Each of these grounds standing alone is
6 adequate, and that is why I have put "or" at the bottom of
7 the page here. This is the beginning of the document we
8 have given you. As you see, the top third of it is on this
9 page here.

10 Under disfellowshipping, which is under the
11 bylaws, we are not required to prove cause. That is, we
12 are not required to prove that Donald Barnett did anything,
13 only that he was properly disfellowshipped. And this is in
14 accordance with what both parties agree the first amendment
15 says in terms of disfellowshipping, the church procedure on
16 disfellowshipping. We are not required to prove cause.

17 The test here is to look at the church governing
18 documents and church custom to see if he was
19 disfellowshipped. The issue -- and we believe the only
20 issue -- regarding disfellowshipping is did Donald Barnett
21 have to concur in his own disfellowshipping. We believe
22 the evidence has shown that, in fact, Donald Barnett had
23 given away the right to concur for a variety of reasons.

24 That's our first argument. If the Court rules in
25 our favor that Barnett was properly disfellowshipped, this

Closing Argument (By Mr. Rohan)

1 case is over, and that is adequate grounds for the Court to
2 rule in the elders' favor.

3 The second independent ground here is that
4 Barnett breached his fiduciary duty or just cause. One of
5 the basic reasons for using breach of fiduciary duty here
6 is that Barnett argues that the provisions in the bylaws
7 prohibit his removal, thus giving him a lifetime contract.
8 The case law is clear that a lifetime contract is not a bar
9 to removal of a corporate officer or director or employee

10 for breach of fiduciary duty or just cause.

11 The test. The test is are there fair and honest
12 facts which are supported by substantial evidence and
13 reasonably believed to be true. Here we have shown that
14 there were fair and honest facts. They were supported by
15 more than substantial evidence, and they were reasonably
16 believed to be true, and we have given you the cite of the
17 Washington Supreme Court case that holds that and the
18 reference in our brief.

19 Right to remove. What was the authority given
20 that he breached his fiduciary duty and we have just cause?
21 What was the right to actually remove him based on? Well,
22 there are several. The first is that there is an inherent
23 right to remove. There are two main cases, or several
24 cases, cited in our brief for that proposition. The two
25 main cases are New Founded Industrial Mission, and we have

Closing Argument (By Mr. Rohan)

1 given the cite there in defendants' brief at 27 and 28 and
2 pages 30 and 31, and the Grace v. Grace Institute case,
3 defendant's brief at 34, 35. And we would ask the Court in
4 determining whether the Court has any questions in the
5 future to look at the references in our brief about our
6 inherent right to remove.

7 The second ground to remove Barnett Donald is
8 disfellowshipping which we have already talked about.

9 The third ground to remove Barnett is the senior
10 elders' vote of March 4, 1988.

11 The fourth ground to remove Donald Barnett is
12 Barnett's waiver in accordance with the January 25
13 agreement and the hearings that were held thereafter.

14 There is no requirement of certain procedure
15 regarding breach of fiduciary duty. There is no
16 requirement, for instance, if someone is a lifetime
17 employee of McDonalds and he is fired for breach of
18 fiduciary duty that they have a hearing or that they have

ht to confront witnesses or anything else like that.

imply not a requirement of the law.

And lastly, although Pastor Barnett has argued
ere is a requirement of a tort, there is no
ment of a tort, and even if there is one, Pastor
's mauling of Susan Towery Zwack and his sexual
ent in violation of state and federal law of Mrs. A

19 the rig
20 It is s
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Closing Argument (By Mr. Rohan)

1 would certainly meet that test.

2 The last ground is was Barnett removed in
3 accordance with the January 25 agreement. Barnett agreed
4 to discipline. And that is set forth in the January 25
5 agreement, the Balance magazine article, the guidelines on
6 the disfellowshipping and Barnett's admissions, especially
7 in his February 28 and March 6 sermons, both of which we
8 will get into.

9 Let's turn to the first ground, and that is: Was
10 Barnett probably disfellowshipped? As both parties agree,
11 we do not have to demonstrate the reason for his
12 disfellowshipping in accordance with the First Amendment
13

Closing Argument (By Mr. Rohan)

1 Number three, the memo from Jack Hicks to the
2 department heads of January 25. This is where Jack Hicks,
3 in accordance with Don Barnett's instructions, designated
4 David Motherwell as having the power to concur in
5 disfellowshipping.

6 The remaining items on that list are all of the
7 letters either placing Pastor Barnett on special status or,
8 in fact, disfellowshipping Don Barnett.

9 Let's look at the bylaws. If we look at the
10 bylaws, we see that of the grounds -- even though we need
11 not prove grounds -- adultery, lack of repentance, are
12 grounds of disfellowshipping, even though they are not
13 needed.

14 The question comes up, who could actually do a
15 disfellowshipping? In order to interpret the bylaws, we
16 need to look at the parties' contract, the parties'

17 agreement, the bylaws, to determine how they interpreted
18 the agreement. Don Barnett, David Motherwell, and Jack Hicks
19 all testified that elders, counselors and senior
20 elders could disfellowship someone. And they testified
21 that this was, in fact, the way disfellowshippings were
22 done at Community Chapel.

23 Mr. Harold who testified has no further
24 relationship with this church. He is absolutely unbiased
25 witness and has nothing to gain through this litigation.

Closing Argument (By Mr. Rohan)

mainly his testimony, buttressed by the testimony of Motherwell and Jack Hicks, should be believed.

Let's talk for a minute about the letters that the pastor's attorney went into on March 4, 1988, that they actually stated that they were disfellowshipping Donald Barnett. I think that the interpretation given of those letters so far is erroneous just based on the very terms of the letters themselves.

If we look at the elders' letter, Exhibit 34, it starts at page one: Therefore, we are forced to disfellowship you because we have put others out for far more than what you are being put out for.

In addition to that, there are at least five or six other references in that letter, the elders' letter, stating that they disfellowship Donald Barnett. And they say that many members of the congregation will feel that disfellowshipping the pastor is an extreme action. They wonder why we did this. They talk all the way through the elders' letter, Exhibit 34, as to why the elders were disfellowshipping Donald Barnett.

In addition to the letter, several of the witnesses testified -- and Exhibit 34 is number 8 on our Key to Exhibits on Disfellowshipping. In addition to that, several of the elders testified that there were two letters taken on March 3, 1988, to disfellowship Donald

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25 votes

Closing Argument (By Mr. Rohan)

1 Barnett. One was a vote of the eldership, that is the old
2 church's eldership. Prior to this eldership committee
3 being formed several of these people were elders and
4 several were not. The evidence showed that there were two
5 votes taken. One was a recommendation by these people for
6 the senior elders to vote, and several witnesses testified
7 that there was a second vote. That is what we see in
8 Exhibit 34.

9 In addition, it is clear that the senior elders voted
10 to disfellowship. The portion that was read by Counsel
11 during the argument -- that this disfellowship is not
12 contrary to any provision of our articles of incorporation
13 or bylaws as previously amended -- Jack Hicks testified

that he wrote and he put in there meant,	15	that sentenc
were amended or before they were amended, that	16	whether they
inconsistent with them. That is what Mr.	17	this was not
ied about that.	18	Hicks testif
e next sentence in that letter is what Jack	19	Th
about in their right to remove them.	20	Hicks talked
of the disfellowshipping, and he said our right	21	independent
m independent of disfellowshipping, according	22	to remove hi
r, means that we had to first amend the	23	to our lawye
bylaws. But as to disfellowshipping, it did	24	articles and
t. That has been Mr. Hicks' testimony.	25	not mean tha

Closing Argument (By Mr. Rohan)

1 In addition, David Motherwell, his counselor --
2 Donald Barnett said at one point no, no, no, he was not my
3 counselor on March 3rd. I fired him. Then later he was
4 shown a document during this case, and he said, well, the
5 document says -- and it was an affidavit of his -- that he

6 was my counselor but I really didn't mean it. Counsel in
7 his closing has correctly pointed out that David Motherwell
8 was his counselor, and I think that is accurate.

9 David Motherwell's letter stated that he was
10 disfellowshipping Don Barnett. The Court looked at page
11 two of the letter, and the Court said I think there are two
12 sentences in there that say where David Motherwell said in
13 his letter that he was disfellowshipping Donald Barnett.

14 David Motherwell also states in his letter that
15 he was recommending disfellowshipping. Absolutely. David
16 Motherwell recommended disfellowship. Jack Hicks testified
17 that every way they could possibly remove Donald Barnett is
18 what they wanted to do and they picked every way and that
19 is why we have three letters of disfellowshipping, the
20 senior elders' letter, Exhibit 49, the elders' letter,
21 Exhibit 34, and David Motherwell's letter, Exhibit 42.

22 The next item we should look at is whether or not
23 the pastor's concurrence was required to disfellowship
24 Donald Barnett. And as I said earlier, this is one of the
25 key questions in this appeal. Was Pastor Barnett's

Closing Argument (By Mr. Rohan)

1 concurrence required. There are several reasons why Pastor
2 Barnett's concurrence in the disfellowshipping was not
3 required.

4 The bylaws of Community Chapel do state that in a
5 normal situation Pastor Barnett's concurrence is required
6 for disfellowshipping, either his concurrence -- and it
7 states very openly -- or his designee. That is what is
8 stated in the bylaws. His concurrence or his designee.

9 Pastor Barnett admits that prior to July 30,
10 1987, that Jack Hicks was his designee. We see in Exhibit
11 34, which is a July 30, 1987, memo, that Donald Barnett
12 replaced Jack Hicks as his designee for disfellowshipping.

13 THE COURT: Who?

14 MR. ROHAN: Donald Barnett himself replaced Jack
15 Hicks for disfellowshipping.

16 But the more important document is Exhibit 37.

~~Exhibit 37 dated September 25, 1987. In Exhibit 37~~
17 which is a memo from Jack Hicks to the department heads, it
18 states that David Motherwell shall have oversight over the
19 disfellowshipping. Three separate witnesses -- John
20 Harold, who has nothing to gain in this litigation,
21 testified that, yes, that meant that David Motherwell could
22 approve disfellowshipping. Jack Hicks testified that he
23 went over this document with Pastor Barnett and that Pastor
24 Barnett agreed to the contents of Exhibit 37 and agreed to
25

Closing Argument (By Mr. Rohan)

1 giving his power to concur in disfellowshipping to David
2 Motherwell.

3 Why did Pastor Barnett do this? Why did he give
4 up his power? Well, one reason that he gave up this power,
5 according to Jack Hicks, is that he was too busy to handle
6 the disfellowshipping. John Harold testified that he was
7 also busy and also tired and did not want to handle them.
8 In addition, it is extremely likely -- Pastor Barnett
9 himself admitted that I wanted David Motherwell to be a
10 part of this group of 16 elders, even though he was not an
11 elder at the time. He chose David Motherwell to be one of
12 the 16 elders. He trusted David Motherwell. Who better
13 than a person you trusted as much to be his counselor than
14 to be his designee for disfellowshipping, and that was done
15 by Exhibit 37. Pastor Barnett chose his counselor, the
16 person he trusted the most, to do this.

17 There were several other reasons why Barnett's
18 right to concurrence either did not exist or was met in
19 this case, and one of them is in the New Founded Industrial

~~20-00 case we have previously cited in our brief at pages 30 and 31, and 27 and 28, the pastor in that church argued, well, wait a minute I have to concur in my own removal from the church. The Supreme Court of the State of Louisiana said, no, it's anomalous result for that to happen. There~~

21 Industrial, which is cited in our trial brief at pages 30
22 and 31, and 27 and 28, the pastor in that church argued,
23 well, wait a minute I have to concur in my own removal from
24 the church. The Supreme Court of the State of Louisiana
25 said, no, it's anomalous result for that to happen. There

Closing Argument (By Mr. Rohan)

1 is no requirement based on these circumstances. That is
2 what the Supreme Court of Louisiana held. This is an
3 independent ground of why we do not need Pastor Barnett's
4 concurrence.

5 A third ground of why we did not need Pastor
6 Barnett's concurrence appeared in the bylaws itself. That
7 is that this was an emergency or aggravated matter. The
8 bylaws state that in an emergency or aggravated matter, you
9 do not need to seek the concurrence of the pastor or his
10 designee.

11 Why was this an emergency or aggravated matter?
12 Several witnesses testified as to that -- Russell
13 MacKenzie, who is an individual who has no bias in this
14 case and an individual who has no stake in this litigation,
15 David Motherwell and Greg Thiel. And Mr. Thiel also has no
16 stake in this litigation. And John Harold who has no stake
17 in this litigation.

18 Mr. Thiel stated that this was the biggest crisis
19 Community Chapel had ever seen, as did Mr. Motherwell.

20 Let's go through the points of why this was an
21 emergency or aggravated situation. First, prior to the
22 week when Donald Barnett was disfellowshipped or up until
23 that time the elders as a group and the senior elders,
24 that's all of them together, nobody had a full picture of
25 what Donald Barnett was doing. It wasn't until the

Closing Argument (By Mr. Rohan)

1 hearings that all of the information came up about Donald
2 Barnett's conduct. I don't have to go into all of the
3 conduct, but I will go into a little bit on
4 disfellowshipping.

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14 So they were faced with knowing the magnitude of
15 this information at that time, which no one of them had
16 known up until that time. They were faced with him
17 refusing the special status. And Don Barnett defied them
18 on February 29th. He said I want all of you to write me a
19 letter repenting of what you've done and I want you to stop
20 these meetings, and he put his foot down on this.

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22 **DELETED MATERIAL FILED UNDER SEAL**

Closing Argument (By Mr. Rohan)

1 based upon what their lawyer had been telling them.

2 None of Donald Barnett's conduct after he was placed
3 on special status gave any indication to the elders that he
4 would reform his ways. The senior elders' letter of March
5 4, 1988, Exhibit 49, states that Donald Barnett had broken

tion with a woman the
cial status on February
ne.

~~that Donald Barnett~~

was nothing in
t gave the elders any
his ways. They could
conduct would continue

-- that there was an
at the New Founded
cannot be required to
ct that Pastor Barnett
For all those three
the January 25, 1988,
le later at the end,
ncurrence in his own

arning the procedure
pastor has argued in

6 his special status by going on vaca
7 day after he had been placed on spe
8 16. That's at the bottom of page of

~~David Matthews' testimony~~

9 had broken the special status. There
10 Barnett's defiance on February 28 tha
11 hope that Donald Barnett would reform
12 only think that his grossly improper
13 and would get worse.

14 So for all of those reasons
15 emergency or aggravated situation, th
16 Industrial case states that a pastor
17 concur in his own removal, and the fa
18 had given away his right to concur.
19 reasons, plus Barnett's waiver under
20 agreement which I will discuss a litt
21 for all of those reasons Barnett's con
22 disfellowshipping was not required.

23 The pastor has argued conce
24 that was followed in this case. The
25

Closing Argument (By Mr. Rohan)

1 this case for the Court to pay attention to the procedure
2 that was followed by the elders. It is important to note
3 here in terms of disfellowshipping that the only procedure
4 that was required was as set forth in the church documents.
5 The church documents do not require a judicial-type
6 proceeding. The bylaws, the special status guidelines and
7 ~~the other documents do not require hearings. They do not~~
8 require the right to confront witnesses. The elders gave
9 these things to Donald Barnett, but none of these things
10 are required for disfellowshipping. Disfellowshipping is a
11 church doctrine. It is a church way of removing a person.
12 Under the First Amendment, the Court can't look into the
13 reasons why and cannot add procedures to that. But in
14 terms of any legal type requirements, any judicial type
15 requirements, there were none other than what appeared in
16 the bylaws and the other governing documents.

17 Let's talk about special status for a minute.
18 Exhibit 39 is the special status guidelines. Exhibit 39
19 states that special status is a preliminary to
20 disfellowshipping and that if special status is not
21 followed, that then an individual is disfellowshipped.

22 I would like to read from Exhibit 39 which
23 states: Uses of special status. Special status is another

tion. It can be used in a number of
before disfellowshipping. The

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way of saying proba

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ways. A, as a step

Closing Argument (By Mr. Rohan)

is restricted in some way and his remaining in depends on his keeping the condition of the

That is important. Someone's remaining in the ends on his keeping the conditions of his

~~There was testimony that disfellowshipping was~~

usually automatic if one broke or refused the special status. Here Pastor Barnett not only refused it, but broke and gave ever indication he would not follow it. Based that and based on Exhibit 39, his special status was d and his disfellowshipping was valid.

The same exhibit talks about who can put someone special status, Exhibit 39. It says the director of counseling only need approve it, and David Motherwell was director of counseling and he approved it.

Donald Barnett was placed on special status, and e are two letters that discuss that. He was placed on ial status by the senior elders in accordance with the uary 15, 1988, letter, which is Exhibit 24, which is on Key Documents on Disfellowshipping, number four.

THE COURT: Wait just a minute. Okay.

MR. ROHAN: ~~The pastor has discussed whether or~~

the senior elders had a proper meeting to place Donald tt on special status. That is really beside the . The senior elders had independent authority to

1 individual
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Closing Argument (By Mr. Rohan)

1 place somebody on special status as was testified to. They
2 did not need to meet in the senior elders' meeting to do
3 that. Whether they met in a senior elders' meeting or
4 didn't meet in the meeting is irrelevant. They had the
5 authority to do it and they exercised that authority.

6 The elders as a group met on February 24 and sent
7 a letter dated February 24 which is Exhibit 30, which is
8 number five on our Key Documents List. That placed Donald
9 Barnett on special status.

10 Again, the elders of the church, there was
11 testimony, had the power to place somebody on special
12 status, as well as David Motherwell. David Motherwell
13 signed that letter of February 24 placing him on special
14 status.

15 There is no question that Donald Barnett broke
16 the special status. There is no question that Donald
17 Barnett refused the special status in no uncertain terms.
18 And there is no question that Exhibit 39, as well as the
19 testimony of David Motherwell, John Harold and Greg Thiel,
20 states that the breaking of special status is grounds for
21 disfellowshipping.

22 Pastor Barnett argues that disfellowshipment
23 doesn't apply to me because of all the provisions in the
24 bylaws that say I can't be removed from this office and I
25 can't be removed from that office and I can't be removed

Closing Argument (By Mr. Rohan)

1 from this other office.

2 Pastor Barnett misses the point here. Those
3 provisions state, in the point where they talk about those
4 provisions, they state that he cannot be removed. In all
5 of them except in disfellowshipping. In the
6 disfellowshipment section it does not say Pastor Barnett
7 cannot be disfellowshipped. That sentence appears, or a
8 variation of that sentence, in all those other provisions.
9 Why doesn't it appear here? The reason it doesn't appear
10 here is that disfellowshipping is for those who, quote,
11 continue in significant sin without repentance, closed
12 quote.

13 The disfellowshipping applies to all who meet
14 that criteria or who meet the other criteria of adultery
15 and the other criteria set forth in the disfellowshipping
16 section.

17 The disfellowshipping section specifically
18 discusses brethren within the church and the church
19 government. Certainly Donald Barnett was both a brethren
20 within the church and a member of the church government.

21 The bylaws also require Donald Barnett to live a
22 Godly life. He admitted -- and this goes back to 1967 --
23 he admits that his conduct was not part of living a Godly
24 life. It shows that there were standards in this church
25 from the beginning in 1967 as to what Barnett had to live

Closing Argument (By Mr. Rohan)

1 up to. Barnett wants to say, well, yes, there are
2 standards in there for me but I didn't have to follow them,
3 but everything good for me in that document is something I
4 can take advantage of. He can't have it both ways, and in
5 this case he doesn't. Clearly, if Barnett did not live up
6 to the minimum standards set under the disfellowshipping
7 section for everyone, he could be disfellowshipped.

8 You must read all of the bylaw provisions
9 together, and I think if you read them all together, you
10 will see that there is a pattern here but that the pattern
11 stopped where someone could continue in significant sin as
12 Donald Barnett admittedly did so here.

13 There was one new argument that I hadn't seen
14 before today that Mr. Wiggins brought up in talking about
15 pages 30 and 31 of Exhibit 10. He pointed to two sections
16 of that exhibit about somebody being ordained as a minister
17 and it said that Pastor Barnett cannot be removed but it
18 allowed ministers to be disfellowshipped. Well, Mr.
19 Wiggins didn't point to all of the sections in there that
20 were important.

21 I don't have the slide with me, but Section A
22 talks about senior elders and doesn't say they can be
23 disfellowshipped. Section B talks about ministerial elders
24 and it doesn't say they can be disfellowshipped. Section A
25 doesn't say senior elders can be disfellowshipped. Section

Closing Argument (By Mr. Rohan)

1 C doesn't say departmental elders can be disfellowshipped.
2 Certainly he is not arguing that in addition to the pastor
3 neither the senior elders, ministerial elders or
4 departmental elders could be disfellowshipped.

5 He said, well, in the Barnett section he can't be
6 disfellowshipped, but in the minister section it says he

7 can be disfellowshipped. Well,
8 Barnett also say the same thing.
9 to be consistent, it would mean
10 of the church could not be disfe
11 even Pastor Barnett, has ever cl
12 they are claiming that -- before

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the three preceding Donald
So if his argument were
that the entire leadership
fellowshipped. Nobody, not
aimed that -- if in fact
today in this case
e that shows that Pastor Barnett was
shipped. If he was properly
that means that the elders must prevail
e we don't have to show a reason.
e talk about a reason. Let's talk about
ch of fiduciary duty. That's the second
on our sheet.
an inherent common law right to remove
r or employee for just cause. Breach of
ne form of just cause. Pastor Barnett
of the sections in the bylaws prohibit
essentially give Pastor Barnett a
The case law which we have cited in our

13 I believe
14 properly disfellow
15 disfellowshipped, t
16 in this case becaus
17 But let's
18 just cause and brea
19 point we have made
20 There is
21 an officer, directo
22 fiduciary duty is o
23 has argued that all
24 his removal. Those
25 lifetime contract.

Closing Argument (By Mr. Rohan)

1 brief clearly states that a lifetime contract is no bar to
2 someone's removal from a corporation for just cause or
3 breach of fiduciary duty.

4 If the Court is concerned in terms of
5 disfellowshipping, that Donald Barnett's prohibition
6 against removal applies to disfellowshipping and we can't
7 disfellowship him here, if we prove breach of fiduciary
8 duty and just cause, that certainly allows us to get around
9 those provisions in the bylaws because Washington state law
10 is such that a lifetime contract does not bar someone's
11 removal where just cause is involved or breach of fiduciary
12 duty.

13 The second point I should make about procedure,
14 as in disfellowshipping, there is no requirement of
15 judicial type procedures in removing an employee for just
16 cause. If an employer -- let's say McDonald's -- gives
17 their manager a lifetime contract, says you're going to be
18 here for life, the manager goes out and starts having
19 sexual relations with a whole mess of employees, as well as
20 customers, and the customers come in crying to other people
21 and say we don't want to come back and buy your hamburgers.

22 because this man is doing that, McDonald's says we're going
23 to fire him. McDonald's doesn't have to have a hearing.
24 McDonald's does not have to allow the employee to face the
25 other witnesses. McDonald's can fire the person without

Closing Argument (By Mr. Rohan)

1 those kinds of things. It is not required. He just has to
2 have what our Supreme Court in the Baldwin case says is
3 fair and honest cause or reason.

4 The Baldwin case is very important. It's in our
5 trial brief at page 33. We've cited it here on the sheet
6 that you have in front of you.

7 The Court in Baldwin defined what was meant by
8 just cause. It said, and I will quote, we hold just cause
9 is a fair and honest cause or reason regulated by good
10 faith on the part of the party exercising the powers. We
11 further hold that a discharge for just cause is one which
12 is not for any arbitrary, capricious or illegal reason and
13 which is based on facts, one, supported by substantial
14 evidence and two, reasonably believed by the employer to

15 be true.

16 What are the facts here that show the first part
17 of the Baldwin test, that there is fair and honest cause or
18 reason supported by substantial evidence? Again, you don't
19 have to prove that the underlying items are true, just that
20 it is believed to be true by the employer.

witnesses. Russell MacKenzie

joined this church when he
hand picked by Donald Barnett
er. He was hand picked by
ter. And he was hand picked by

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Let's look at the

testified. Russell MacKenzie

was 18 years of age. He was

to be a Bible College teacher

Donald Barnett to be a minister

Closing Argument (By Mr. Rohan)

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Closing Argument (By Mr. Rohan)

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Closing Argument (By Mr. Rohan)

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Closing Argument (By Mr. Rohan)

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Closing Argument (By Mr. Rohan)

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Closing Argument (By Mr. Rohan)

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breach of fiduciary duty in this case.

The second part of the test in Baldwin v. Sisters of Providence is was this reasonably believed by the employer to be true. That is the second prong of the test. Reasonably believed by the employer to be true. It doesn't require that it be true but reasonably believed by the employer to be true.

Let's look at Jack Hicks because that was brought up by Counsel for Pastor Barnett. Jack Hicks testified that he had removed Jerry Zwack from his office. Jack Hicks testified basically that he didn't believe what Jerry Zwack was saying. But Jack Hicks testified that as the

hearings were held, one did not believe Jerry Zwack but to believe
Barnett, but as the hearings went on, Donald Barnett
certain conduct and the other elders told of all

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predisposed
Pastor Barr
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have said -- I believe Russell MacKenzie joined the church when he was 18, and I believe Lanny Peterson was 19 -- these people were barely out of adolescence by the time they joined this church. They had spent their entire adult lives with Donald Barnett listening to his teachings. They were hand-picked by Donald Barnett for these offices. They chose not to believe him at those hearings and chose to believe the testimony of others.

I think if the Court recalls some of the testimony that Donald Barnett has given here, the Court can understand why the elders came to that conclusion. Donald Barnett's credibility in this case is simply not the same as that of other witnesses who have testified.

If this Court is to reject the finding of breach of fiduciary duty, it must basically find that everything that Donald Barnett said on the stand is true and everything all of the other witnesses, including several who have no stake in this litigation, is false. That simply isn't correct. Donald Barnett was challenged on

Closing Argument (By Mr. Rohan)

1 numerous statements he made from prior depositions and his
2 declarations, and he tried to shrug them off and basically
3 say, well, I really didn't read this document at the time
4 or I wasn't thinking about this at the time or something
5 like that.

6 The credibility that we have seen in this
7 courtroom in the last several days is the same credibility
8 problem that Donald Barnett had in front of the elders. He
9 simply wasn't believed.

10 There is no requirement for just cause for breach
11 of fiduciary duty that a tort be committed. There is no
12 case cited by Pastor Barnett for such a proposition. In
13 fact, if you look both at the Baldwin case and at the
14 Williams v. Queen City Fisheries case, at page 37 of our
15 brief, in Williams v. Queen City Fisheries the Washington
16 court states: There is no requirement of, quote,
17 corruption, dishonesty or bad faith.

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Closing Argument (By Mr. Rohan)

Closing Argument (By Mr. Rohan)

1 he was concerned about.

2 The final question for breach of fiduciary duty
3 is what power did the senior elders have to act. How did
4 they have to act to remove Donald Barnett given the breach
5 of fiduciary duty? There are several grounds under which
6 the senior elders had the power to act.

7 First, they had the inherent right to remove
8 Donald Barnett. As shown on the chart that we used in the
9 beginning of the case, inherent right to remove is based on

10 the ~~Man Founded Industrial Mission case and the Grace case~~

11 Grace case, as well as other cases.

12 On the chart in front of the Court are the pages
13 to which that is -- this is item 2, paragraph c, under that
14 sheet: Inherent right to remove. Under the inherent right
15 to remove the corporate body which otherwise governs the
16 church has the right to remove.

17 Here Exhibit 10 clearly shows that the board of
18 senior elders in Exhibit 10 -- excuse me, it's Exhibit 3,
19 which are the articles of incorporation. Article 3,
20 section 1, states that the affairs of the corporation shall
21 be managed by the board of senior elders.

22 Clearly it was the board of senior elders which
23 under the inherent right to remove had the right to remove.

24 Since the breach of fiduciary duty overrides a
25 lifetime contract, any provisions in the bylaws saying it

Closing Argument (By Mr. Rohan)

1 can't be removed are overridden by that.

2 Let's talk about how the senior elders exercised
3 this authority.

4 THE COURT: Just a minute. Okay.

5 MR. ROHAN: The question is how did the senior
6 elders exercise their authority to remove. There are
7 several ways. First, inherent right to remove which they
8 did. Secondly, they disfellowshipped Donald Barnett. And
9 there is a letter clearly stating that they were doing the
10 disfellowshipping of Donald Barnett. Either one of those
11 reasons is adequate. You only need one way to remove him.
12 You don't need four or five.

13 The third way that the senior elders removed him
14 is their vote of March 4, 1988. The court has heard a lot
15 of testimony about what happened on March 4, 1988. A
16 couple of things are clear. One, Donald Barnett has stated
17 that no vote was taken. I believe it is clear at this
18 point that a vote was taken. Jack Hicks' testimony was
19 very credible on that point. Jack Hicks testified that a
20 vote was taken that day. And then Jack Hicks testified

~~Donald Barnett threw him out of the house.~~ 21
~~Donald Barnett said, well, it wasn't quite that. It~~ 22
~~threw him out of the house. It basically told them they~~ 23
~~could leave if they wanted to leave. Donald Barnett was~~ 24
~~impeached on that point with his prior testimony, which~~ 25

Closing Argument (By Mr. Rohan)

1 clearly showed that Donald Barnett threw them out.

2 THE COURT: What act on March 4 do you claim gave
3 them the power?

4 MR. ROHAN: The act on March 4 is that in the
5 recess of the meeting in the afternoon the senior elders
6 voted to remove him from his position, which was the third
7 vote they took. And the fourth vote they took was to
8 disfellowship him. That is set forth on Exhibits 40 and 41
9 which are the minutes of the morning and afternoon sessions
10 of that meeting.

11 Much has been made about whether there was one
12 meeting or whether there were two meetings on that day.

13 Pastor Barnett has pointed to different language. Well,

14 "there is language in the morning minutes saying that the
15 meeting was dismissed. Dismissed does not mean adjourned.
16 Dismissed does not mean the meeting was over. In the same
17 sentence that it talks about the meeting being dismissed it
18 talks about it was dismissed because Pastor Barnett refused
19 to allow it to continue and demanded that they leave his
20 house.

21 The exhibit for the afternoon, Exhibit 41, Mr.
22 Wiggins pointed to much of the language in that. One piece
23 of language he did not point out was significant. The
24 piece of language he didn't point out is that it states
25 that Donald Barnett refused to attend this meeting. The

Closing Argument (By Mr. Rohan)

1 refusal to attend this meeting was Donald Barnett's conduct
2 in the morning of saying get out of my house.

3 Judge Norman Quinn ruled in December of 1988 on
4 summary judgment in this very case, that it was engaging in
5 unreality to believe that Pastor Barnett intended to be in
6 a meeting that afternoon. That finding of Judge Quinn was
7 never overturned by the Washington Supreme Court.

8 THE COURT: Would you permit me to interrupt you
9 just for a minute. I am looking for my copy of the opinion
10 in this case, the Supreme Court opinion.

11 Was the issue of a recessed meeting ever decided
12 by the Supreme Court in the opinion, or was it established?
13 I want to call your attention to a couple of things. On
14 page 881 of the Supreme Court opinion, it says: (Reading)
15 On March 4, 1988, a board meeting was called and the senior
16 elders met with the plaintiff. The circumstances of the
17 meeting are disputed. The elders claim they passed a
18 resolution to amend the articles of incorporation, in
19 response to which the plaintiff asked the elders to leave
20 his residence. The plaintiff denied that any vote was
21 taken. He does, however, acknowledge that the amendments
22 to the articles had been placed on the table in front of
23 him. In addition, he concedes the elders said they wanted
24 to take a vote on some matters. However, plaintiff claims
25 that he asked the elders to leave before any further action

Closing Argument (By Mr. Rohan)

1 was taken. (End reading)

2 Then this is the key: (Reading) It is
3 undisputed, however, that the elders continued the meeting
4 at another site, and that the plaintiff did not join them.
5 At the continuing meeting the elders amended the articles
6 by striking the provisions requiring the concurrence of
7 plaintiff to any amendments to the articles and bylaws.
8 They also voted to remove plaintiff as the senior elder
9 pursuant to the amended articles. (End reading)

10 Then in conclusion, turning to what they finally
11 say: (Reading) It is not the function of this court to
12 torture the statutes in order to protect those who freely
13 choose to enter into this kind of relationship. The board
14 of senior elders/directors of the Community Chapel had no
15 authority without the concurrence of the plaintiff to amend
16 the articles of incorporation and bylaws. (End reading)

17 I just state that as a fact. I don't know what
18 the Supreme Court means by saying that -- it doesn't
19 believe there was a continued meeting or that this was a
20 futile attempt or what?

21 MR. ROHAN: Your Honor, the issue was whether or
22 not they had Pastor Barnett's concurrence. There was no
23 issue -- Pastor Barnett never gave his concurrence. There
24 is no question about that. The Supreme Court limited its
25 holding to that. So it was based on looking at the

Closing Argument (By Mr. Rohan)

1 articles the way they existed and the Supreme Court said
2 that, no, Pastor Barnett had to give his concurrence and he
3 didn't give it that day. That was not a disputed fact.
4 Nobody ever disputed that. The dispute was whether or not
5 there was a continued meeting, and the Supreme Court --

6 THE COURT: Yes. In your argument I thought you
7 ~~assigned as one of the reasons the actions of March 4, and~~
8 I asked what actions of March 4, and I still ask what acts
9 of March 4 do you believe were effective in removing Pastor
10 Barnett?

11 MR. ROHAN: Their vote to disfellowship him on
12 March 4.

13 THE COURT: Okay. And not the vote to remove
14 him?

15 MR. ROHAN: No. Because the vote to remove him
16 would have been based on what the Supreme Court has already
17 said.

18 THE COURT: Okay.

19 MR. ROHAN: I did give the Court a wrong
20 reference when I talked about the minutes of the March 4
21 meeting. That's Exhibits 47 and 48. I told the Court they
22 were Exhibits 40 and 41.

23 THE COURT: March 4 meeting.

24 MR. ROHAN: Exhibits 47 and 48.

25 THE COURT: Oh, yes.

Closing Argument (By Mr. Rohan)

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r Donald Barnett was
agreement. Again,
ed on the bylaws and
ciary duty are
dent ground here.
January 25, 1988,
discipline under the
sort of look at that
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there was a lot
why Donald Barnett
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unselor and who had
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to these hearings
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MR. ROHAN: Let's turn to the third portion of
2 our argument if I might which is whether
3 removed properly under the January 25 ag
4 the other two points of the removal base
5 the removal based on the breach of fiduc
6 independent. This is a totally independ
7 Barnett was removed under the
8 special agreement. Barnett agreed to di
9 January 25, 1988, agreement, and let's s
10 agreement, if we might, for a minute.
11 Your Honor, one point on one o
12 questions you asked me. If the elders h
13 right to remove on their March 4 vote, e
14 remove him or their vote to disfellowshi
15 those two -- I think effectively they ar
16 but either one of those two could have d
17 inherent right to remove.
18 Under the January 25 agreement
19 of testimony about this agreement as to
20 entered into this agreement and what kin
21 was. Donald Barnett, as testified to by
22 especially Mr. Motherwell who was his co
23 many conversations with him, entered int
24 because he was afraid if he didn't agree
25 that Jerry Zwack would take his contenti

Closing Argument (By Mr. Rohan)

1 audience. Donald Barnett added the words "and Jerry." By
2 adding the words "and Jerry," Donald Barnett indicated that
3 he wanted both of them to agree to continue until the
4 meetings were concluded to the satisfaction of the elders.

5 Donald Barnett did not add "and Jerry" to show
6 that the grievances were limited to these alleged three
7 grievances that he had. In fact, the only person who has
8 ever testified in this case that there were only three
9 grievances is Donald Barnett. And that is because he
10 wishes there were only three grievances. That, in fact, is
11 not true. He may wish that there were only three, but
12 there were many, and they were varied.

13 This agreement does several things. The language
14 in this agreement is very broad. Donald Barnett signed it.
15 He agreed to its very broad language. What does this broad
16 language allow? It says Don shall not exercise authority
17 over the hearings. Everybody agrees it says that.

18 The other question is who shall exercise final
19 authority? Who gets to make the final decision? Under
20 this January 25 agreement, the elders as a group shall
21 exercise final authority.

22 In addition to that, the hearings are to be
23 concluded at the satisfaction of the elders. It says the
24 elders shall exercise final authority and the hearings
25 shall not be stopped until they are concluded to the

Closing Argument (By Mr. Rohan)

1 satisfaction of the elders. What does that mean?
2 Satisfaction of the elders means until they are satisfied
3 with what they are to do when these are done. Final
4 authority over the hearings means just that. Final
5 authority. Final authority in this case was the ultimate
6 ~~disfellowshipping of Donald Barnett by the congregation of~~
7 16 people.

8 This isn't the only document where Barnett
9 suspended whatever power he has or gave power to someone
10 else. This is a consistent pattern long held at Community
11 Chapel. Let's go back and look at Rumor 20. Rumor 20,
12 Donald Barnett testified, was written by him and reviewed
13 by him. Rumor 20 was in a magazine distributed to
14 ~~national and international churches and ministers for~~
15 as well as people who were already members.

16 What was the rumor? The pastor at Community
17 Chapel is accountable to no one. Accountable. What is the
18 reply? That's untrue. He says it's untrue, I am
19 accountable. Then he goes on to say that I am accountable
20 to the bylaws, which he agreed, the senior elders, to three
21 of the people that disfellowshipped him, to fellow elders,
22 or the group of 16, even to the congregation. And most of
23 all to God. The senior elders watch for my ministry. They
24 would never allow me to err without requiring repentance
25 and/or correction.

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1 And, in fact, this is exactly what they did.
2 They placed Donald Barnett on special status.

3 What happened when the elder and senior elders --
4 why did they place him on special status? They placed
5 Donald Barnett on special status because Donald Barnett, in
6 dealing with Lanny Peterson, his counselor, in dealing with
7 David Motherwell, his counselor, and in dealing with Scott
8 Hartley, his counselor, had refused to mend his ways. They
9 had seen nothing in Donald Barnett's testimony before the
10 hearings that was in any way indicative of anything other
11 than these problems are caused by my wife, these problems
12 are caused by me being a man and I can't help myself,
13 despite the fact that the number of women involved is
14 enormous over a very short period of time. He blamed other
15 people for his problems. From the last testimony given by
16 Donald Barnett I think you get a large whiff of what Donald
17 Barnett told these elders in terms of justifying his
18 behavior. He attempted to justify his behavior there.

19 They wanted to require repentance and/or
20 correction. It's one thing to say repent, but it's very
21 hard to get someone to do it. So what do you do? You
22 apply correction. What was the correction here? The
23 correction here of the special status was a minimal thing.
24 It was not a major thing. The minimal thing that they
25 asked him to correct was not be alone with women, either in

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1 the church or on vacation. This would not have interfered
2 with the way he pastored.

3 As Jack Hicks testified, if a woman -- Donald
4 Barnett was concerned because some women wanted him to
5 counsel them -- he could have gone and done it in the back
6 pew of the church after services or before services. He
7 could have done it on the telephone with a woman. He could
8 have done it in a public place with a woman as long as
9 there were other church people there and he wasn't alone
10 with them. This was a minimal thing.

11 All the way through here, the elders and the
12 senior elders agonized over the fact that this was a
13 serious step we are taking, we know this is a serious step,
14 we want to make sure that what we do is not only correct
15 but is the minimum amount. They didn't first go out on
16 February 15 and announce to the church that we are putting
17 Donald Barnett on special status. Three of them privately
18 got together and sent him a letter. Three of them
19 privately.

20 Then only when Donald Barnett refused it did they
21 go to the group of 16 and say, we have a problem, maybe if
22 we all agree Don will see the light and he will see the way
23 and he will agree to this. It wasn't until even after that
24 that they decided to go to the congregation, and even then
25 reluctantly. They didn't want to go to the congregation,

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1 and it was done basically to protect the women.

2 But this Rumor 20, as well as the agreement, are
3 two of the documents in this case where Barnett surrendered
4 his authority and gave others authority to remove him.

5 Barnett also made several admissions that were
6 played on tape in front of this Court. In his February 28
7 sermon, which are Exhibits 31 and 32, he stated in a tape
8 that was played: And I said that means that we are going
9 to have a senior elders' meeting with the pastor present.
10 We'll discuss the issues and then we will vote on it and
11 then go accordingly. If you outvote me, go according to
12 your vote.

13 That is what he stated on February 28. If we
14 have a legal meeting of the senior elders and you outvote
15 me, we will go according to your vote.

16 He said very much the same thing on March 6,
17 1988, in a sermon which are Exhibits 40 and 41. During
18 that sermon he stated: And if I am outvoted, then you do
19 according to whatever you vote.

20 He was willing on both February 28 and March 6
21 and stated from the pulpit, yes, basically I'm a reasonable
22 person. If these people have a real meeting and want to
23 outvote me, then I'll leave. But he's complaining that
24 they didn't have a legal meeting. Well, I believe they did
25 have a legal meeting on the 4th where they voted to

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1 disfellowship him and remove him.

2 The other thing we have seen are the guidelines
3 in this case. Guideline 11 of the guidelines talks about a
4 final vote being taken at the hearing. Now, this is the
5 one area where I will partially agree with Pastor Barnett's
6 counsel that there may be certain requirements of judicial-
7 type procedures. It depends on the guidelines. The
8 guidelines did state, yes -- and this is only for this
9 section --

10 THE COURT: Refresh me on number eleven.

11 MR. ROHAN: Guideline number eleven?

12 THE COURT: Yes.

13 MR. ROHAN: Guideline number eleven is Exhibit
14 23. These are the guidelines for the eldership hearings.
15 Number eleven states: Final decision regarding each
16 grievance shall determined by a majority vote of all elders
17 present at the eldership review sessions, not including
18 Donald Barnett or Jerry Zwack.

19 And then it says at the last line: The elders
20 shall present their final decisions to Donald Barnett and
21 Jerry Zwack.

22 These guidelines were in front of every one of
23 the elders, as well as in front of Donald Barnett and Jerry
24 Zwack when they were testifying. They allowed final
25 decision on each grievance determined by a majority vote.

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1 What actually happened was that Barnett was
2 placed on special status because his admissions were so
3 much more outrageous than any of the people at the elders'
4 hearings thought they would be. After that and Donald
5 Barnett refusing them, the elders as a group voted to
6 disfellowship him. So in that sense since the hearings
7 were still going on, this was their final vote. They did
8 not vote separately on each grievance, but they did vote as
9 a total that Barnett, based on his conduct, should be
10 disfellowshipped. Certainly Barnett was aware that votes
11 were being taken and agreed to it.

12 Ccounsel has argued that there were certain
13 requirements of legal process. He talked about
14 confidentiality, that the elders broke confidentiality.
15 Well, Donald Barnett broke the agreement of the elders by
16 refusing special status. He broke the agreement on
17 February 28, and he had broken it prior to that by trying
18 to exercise his authority to stop the meetings. Once he
19 exercised authority to stop the meetings, he was the one
20 who broke the January 25 agreement.

21 In addition, confidentiality in a very limited
22 sense was broken by the elders -- or at least the elders
23 decided to tell the congregation, not the entire thing that
24 happened with Pastor Barnett, not any of the gross details,
25 but tell the women in general, explain to the women why it

Closing Argument (By Mr. Rohan)

1 was necessary to place Donald Barnett on special status
2 because it affected these women and why it was important to
3 them not to listen to Donald Barnett, who might say, oh,
4 no, no, please don't pay any attention to what the elders
5 are doing. They had to understand why so they would be
6 protected.

7 The second complaint about due process is that
8 permanent notes were not allowed. Donald Barnett filed a
9 lawsuit on March 4, 1988. The elders testified that they
10 did not wish to destroy evidence. Certainly it is
11 reasonable not to destroy evidence once Pastor Barnett
12 filed the suit.

13 The other requirement of legal process is under
14 the agreement there was some discussion by one witness that
15 live witnesses would be required. John Harold. There is
16 no requirement in the guidelines for live witnesses to be
17 called. John Harold did testify as to that. If John
18 Harold and Russ MacKenzie and David Motherwell on every
19 point testified exactly identical, we would probably hear
20 an argument that since they testified identical as to every
21 point three years later that this meant their testimony was
22 not credible because they must have gotten together and
23 decided on their testimony. The fact that Mr. Harold
24 testified differently than some of the other witnesses, I
25 think, adds to the credibility.

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1 I think in this case, though, that Mr. Harold is
2 wrong since he is the only one who testifies as to any sort
3 of discussion about live witnesses. Certainly the people
4 did not want to drag the women into these proceedings, and
5 that has been pretty much consistent with everybody's
6 testimony.

7 In addition to that, there was a lot of testimony
8 about the number of witnesses that had to be called. The
9 elders and the senior elders in this case -- the guidelines
10 talk about witnesses to allegations. The pastor has said
11 that, well, anybody who is both a complainer and a witness
12 really isn't a witness to an event, so they can't be a
13 witness. Under Pastor Barnett's definition, any of the
14 women who went to the elders to complain about Pastor
15 Barnett's conduct would not be a witness, such that there
16 would never be a witness to adultery because adultery
17 normally is an action that only two people witness, the two
18 people who commit the adultery.

19 Certainly it would be inappropriate and beyond
20 the scope of reason where the elders knew that a lot of the
21 things that would come out were dealing with adultery --
22 because that is what Jerry Zwack said -- it sort of defies
23 logic to believe that they would be restricted in witnesses
24 to only live witnesses and only live witnesses of people
25 that Donald Barnett had had sexual intercourse with because

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1 you would never get the two or three witnesses.

2 So the number of witnesses -- and there were a
3 lot of quotations from Matthew and Timothy on that -- which
4 brings up sort of a related point. One of the pastor's
5 arguments is on the use of religion. We have not
6 introduced religion in this case, your Honor. We have not
7 used the Bible to examine any witnesses. I have not asked
8 any witness a question regarding the Bible. Pastor Barnett
9 has. None of our witnesses have talked about demon
10 ~~deliverance. Pastor Barnett has. None of our witnesses~~
11 have talked in any way other than the secular reasons for
12 removing Pastor Barnett, an indication that, in fact, the
13 reason for removing Barnett was based on secular reasons
14 and can be defended on that ground.

15 Let's switch from talking about this to talking
16 about the April 6, 1988, amendments. The April 6, 1988,
17 amendments -- there is a question of fact before this court
18 as to whether or not there were valid amendments on April
19 6, 1988, and what their intent was.

20 We have seen the recent Supreme Court case on
21 Berg saying that you look at the surrounding circumstances
22 and the other circumstances regarding the amendments.
23 There are a host of reasons as to why the April 6, 1988,
24 amendments did not restore Donald Barnett to power.

25 The first reason has to do with the fact that on

Closing Argument (By Mr. Rohan)

1 their face the amendments do not say Donald Barnett is
2 restored to his prior position. It doesn't say that.

3 The second reason is that under the pastor's
4 theory of the case, the articles and bylaws on March 4 were
5 never amended. If the article and bylaws on March 4 were
6 never amended, then the articles on April 6, 1988, which
7 are identical to the articles that existed before March 4,
8 are one and the same thing. So they don't evidence any
9 intent.

10 Donald Barnett testified that there was a board
11 of directors' meeting in 1987 where it was discussed that
12 the satellite churches would be amended. There were no
13 other amendments discussed. In fact, we saw in Exhibit 12,
14 which are the minutes of Community Chapel, we saw the third
15 page of Exhibit 12, which states that there was a meeting
16 sometime in December of 1987 where the satellite churches
17 were discussed. It was the only thing that was discussed.

18 However, if you look through those minutes and if
19 you look at the other Exhibits 8, 9 and 10, whenever there
20 were amendments to the articles and bylaws, the church's
21 procedure -- and this was also testified to by Jack
22 Hicks -- the church's procedure when there were amendments
23 to the articles and bylaws was to write out what the
24 changes are. If you look at Exhibit 12, the third page in,
25 the December 1987 meeting, there is no discussion of what

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1 the changes to the bylaws are going to be to remove the
2 satellite churches. They simply don't discuss it. There
3 needed to be another document that set forth what the exact
4 changes were.

5 Pastor Barnett admitted that there was no
6 discussion after that meeting in 1987 that he recalls with
7 either Hartley or Hicks or DuBois regarding the satellite
8 churches. He also admits that neither Hartley nor DuBois
9 after March 4, 1988, indicated any intent to put him back
10 on his position as pastor. Where is any testimony as to
11 that.

12 Melinda Erickson's memo, Exhibit 26, which
13 Barnett testified was attached to the copy of the April 6,
14 1988, amendment, only refers to the satellite church
15 amendment which would, in Melinda Erickson's words, quote,
16 sever the satellite churches' legal ties to our
17 corporation.

18 Melinda Erickson's memo is a further indication
19 that the only thing intended by the April 6, 1988,
20 amendments was removing the satellite churches. And that
21 is consistent with what Jack Hicks testified to. Jack
22 Hicks said that we relied on our staff when they revised
23 this bylaw, and I didn't read through all 40 pages or 30
24 pages or whatever every time there was an amendment. I
25 relied on the staff to give me the document, and I signed

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1 it. Jack Hicks' testimony as to what was generally done by
2 the board of directors is relevant and shows that nothing
3 different was done here.

4 There are two more points, and one is Judge
5 Bates' restraining order. Judge Bates' restraining order
6 is Exhibit 25. Under Judge Bates' restraining order, the
7 elders were restrained from doing any action that would
8 interfere with whatever was existing at Community Chapel on
9 March 3, 1988.

10 What existed on March 3, 1988, was the articles
11 and bylaws as they show up in the April 6, 1988, amendment.
12 So it is consistent with what Judge Bates stated.

13 In addition, on December 22, 1988, the board of
14 senior elders voted to ratify the March 4 meeting decision,
15 and that board consisted of Hartley and DuBois. December
16 22, 1988. Judge Quinn lifted Bates' restraining order on
17 December 16. Six days later, immediately after that
18 restraining was lifted, Hartley and DuBois said that we
19 ratify our removal of Barnett on March 4, and we ratify the
20 amendment changes that were made on March 4 and March 10.
21 That is the clearest indication that their intent, Hartley

Closing Argument (By Mr. Rohan)

1 was restored to his position.

2 In ending let me state that the elders were faced
3 with very serious accusations against their pastor. The
4 elders were faced with a serious crisis. The elders took
5 every reasonable step they could in a compassionate way to
6 deal with the problem, and it was only after Pastor Barnett
7 repeatedly refused to submit to correction, refused any
8 restrictions, checks or guards on his behavior, it was only
9 after that and after Pastor Barnett had defied the senior
10 elders and the elders that the elders felt they had no
11 choice but to take the ultimate step and disfellowship this
12 man, whom they loved, and this man who had taught them
13 about religion and had taught them from a time when most of
14 them were 18 or 19 years of age. It was not a step that
15 any of them took lightly. But his conduct as a pastor,
16 they realized, was wrong, and they did not see any evidence
17 whatsoever that Pastor Barnett was going to change his
18 position.

19 For all of those reasons, we believe that we have
20 shown that Pastor Barnett was properly disfellowshipped and
21 for that reason alone the Court can remove him; that Pastor
22 Barnett breached his fiduciary duty and just cause and for
23 that reason alone the Court can remove him; and in
24 addition, that Pastor Barnett was removed in accordance
25 with the January 25, 1988, agreement.

Closing Argument (By Mr. Wiggins)

1 Thank you, your Honor.

2 THE COURT: I think you both have had equal time
3 here. I think we could go back and forth for a while, but
4 what say you?

5 MR. WIGGINS: Your Honor, may I make just a
6 couple of points that I didn't cover and I would like to do
7 that. Maybe we should take a break, or how do you wish to
8 do it?

9 THE COURT: I think we should charge ahead.

10 MR. WIGGINS: Fine. Your Honor, I want to
11 respond to some points that Mr. Rohan made in the format
12 that I used here. I would like to ask Mr. Johnson, if he
13 would, if he could set up the overhead because they are a
14 couple of things that I wanted to put up there.

15 The first thing had to do with the exhibit on
16 which I relied, Exhibit 10, the bylaws that were in effect
17 in 1988 from 1986 and whether or not the provision that I
18 put up before says anything about the right to
19 disfellowship Pastor Barnett.

20 Mr. Rohan said that, gee, there's a list of other
21 people on here, the senior elders and other types of
22 ministers on here, and surely I couldn't be saying that
23 those people can't be disfellowshipped because the bylaws
24 don't say that those people can't be disfellowshipped.

25 I would like to put this up again. This again is

Closing Argument (By Mr. Wiggins)

1 Exhibit 10, page 30. Each of the people who is listed here
2 it says they can be removed from office. The senior elder,
3 the ordination is in effect until he is removed from
4 office. It doesn't say he can be disfellowshipped, but it
5 clearly says he can be removed from office.

6 The ministerial elder, he is an elder until he is
7 removed. A departmental elder, he is an elder until he is
8 removed. And you get down to Pastor Barnett, he cannot be
9 removed from office while living. And then the next page
10 is the page that talks about ministers and the possibility
11 of disfellowshipping ministers.

12 So Mr. Rohan's point, I believe, actually
13 strengthens the argument I was making. It doesn't weaken
14 it at all.

15 Mr. Rohan talked a little bit about
16 disfellowshipping and about this document which allegedly
17 gave Mr. Motherwell the power to concur in
18 disfellowshipping. That is Exhibit 37. The only point I
19 would ask here -- I'm not going to put these up because I
20 don't have all these -- but I would just ask the Court to
21 compare Exhibit 37, the document they are relying on, with
22 Exhibit 14.

23 Exhibit 14 is the document that withdrew the
24 authority of Jack Hicks and said from now on Don Barnett
25 will approve all the disfellowships. It is crystal clear.

Closing Argument (By Mr. Wiggins)

1 Exhibit 37 never said David Motherwell has the final power
2 to approve disfellowships. It doesn't say Don Barnett is
3 giving David Motherwell the power to approve
4 disfellowships. It says he is the counselor consultant.
5 The language is extraordinarily vague. I don't think it
6 has the same dignity. It doesn't move the concurrence
7 power into Mr. Motherwell.

8 The Court will be relieved to know that there is
9 a point in which I agree with my honorable opponent here,
10 my learned opponent. That is in response to the Court's
11 question about the Supreme Court's decision. Did the
12 Supreme Court decision dispose of this question of whether
13 there was a continuation of a meeting in the afternoon? I
14 agree with him that the only issue for the Supreme Court
15 was whether the amendment to the articles and bylaws was
16 valid. They didn't get into this question of whether the
17 meeting continued in the afternoon. So I agree with that
18 point.

19 Now, most of the defendants' case really lies
20 here, the breach of fiduciary duty. The Court asked a
21 question of my learned opponent here, Mr. Rohan, during his
22 argument of what was the action taken by the elders on
23 March 4. The only action they took was to amend the
24 articles and amend the bylaws which had both been thrown
25 out by the Supreme Court and to disfellowship Pastor

Closing Argument (By Mr. Wiggins)

1 Barnett. If you look at -- I won't put it up again. I
2 won't ask for that indulgence. But Exhibit 49, the letter
3 to Pastor Barnett, it says we are disfellowshipping you.
4 It says we are removing you and this is a disfellowship.
5 That is what they did. They disfellowshipped him.

6 So they didn't say we are terminating a lifetime
7 contract for breach of fiduciary duty. They didn't say we
8 are exercising some inherent right we have. They said we
9 disfellowship you for spiritual reasons primarily. I
10 suppose you can stretch that to be secular reasons, but
11 they never said we are terminating any kind of lifetime
12 contract that you might have.

13 Now, the defendants have talked a little about
14 law. I didn't talk much about the standards of the law

15 that govern this case. I relied on my trial brief, and
16 perhaps that was a mistake. I did want to mention a couple
17 of points on that.

18 Your Honor, the defendants rely on this Baldwin
19 case, ~~Baldwin v. Sisters of Providence~~. I'm going to hand
20 a copy of that case up to the Court after the argument, and
21 I would just ask the Court to read that case because I
22 haven't briefed this anywhere. They cited it in their
23 trial brief and unfortunately I didn't discuss this in my
24 trial brief.

25 That case involves a claim by an employee that

Closing Argument (By Mr. Wiggins)

1 there was an implied covenant of employment that he would
2 not be terminated except for just cause. An implied
3 covenant of employment. The Supreme Court said in the
4 Baldwin case, where we have an implied covenant situation,
5 we are going to say since the employer imposed this
6 obligation on itself, we are going to just require good
7 faith and reasonable evidence before the employer can
8 terminate the employee. That is the source of this
9 reasonable and good faith action and this evidence standard
10 that they --

11 THE COURT: That's just a wrongful termination
12 case, isn't it?

13 MR. WIGGINS: It is.

14 THE COURT: I've tried several of them in the
15 last couple of years.

16 MR. WIGGINS: Well, then I don't need to lecture
17 on the law of that anymore because you have had more than I
18 have if you've had a couple in the last few years.

19 There are two other cases that Mr. Rohan cited in
20 his materials, and --

21 THE COURT: New Founded --

22 MR. WIGGINS: And then Grace Institute.

23 THE COURT: I have both of those.

24 MR. WIGGINS: All right. Great. We have
25 responded to the New Founded case in one of the briefs that

Closing Argument (By Mr. Wiggins)

1 we filed in this, and I would just like to tell the Court
2 where we did this. We didn't do it in our trial brief, but
3 in our reply to the defendants' brief opposing our summary
4 judgment we talked about the New Founded case at page 18 of
5 our reply brief on our motion for summary judgment.

6 THE COURT: Saying what?

7 MR. WIGGINS: Saying that in the New Founded case
8 the court said, yes, there is an inherent right to remove
9 this man, but there was nothing in the articles or bylaws
10 of that corporation that said you can't remove him.

11 Furthermore, state law in that case gave to the
12 board of directors a right to remove a person in that
13 position.

14 THE COURT: I understood from my reading that
15 there was something in the bylaws that said that they
16 couldn't remove him, but the court said that falls flat
17 because the state laws give the board of directors rights
18 to do these things and they had an inherent right to. That
19 is sort of a left-handed -- here, I have it right here.

20 (Reading) The charter of the corporation
21 provides that no transaction of any corporate business
22 shall be recognized without the president's endorsement,
23 and it is argued that his removal from his office was
24 without effect until such time as he approved it. (End
25 reading)

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1 And then they said: (Reading) This contention must
2 fall of its own weight. If Anderson's approval is
3 necessary to render his own ouster effective, the anomalous
4 result would be that he could thwart the action of the
5 ~~executive board and deprive it of its statutory right and~~
6 power to remove him from his office. (End reading.)

7 They talk about inherent power too. Up above at
8 page 344 it says: (Reading) Counsel further argues that
9 even if the executive board possesses the power of removal,
10 the board could not legally remove Anderson who was
11 appointed to the office of president, not by the board but
12 by the general assembly in the annual convention. The
13 answer is that the corporate charter endows the executive
14 board with full and complete power to govern the affairs of
15 the association in the interim between annual conventions
16 and in that power is embraced inherent and statutory right
17 to remove any of the corporate officers --

18 MR. WIGGINS: Well, your Honor, the distinction
19 that I make -- well, I guess I've made the point. There
20 was nothing --

21 THE COURT: I'm aware of that case.

22 MR. WIGGINS: Fine.

23 THE COURT: I've read it several times.

24 MR. WIGGINS: I won't dwell on that case.

25 THE COURT: And I'm not saying how I feel about

Closing Argument (By Mr. Wiggins)

1 it.

2 MR. WIGGINS: No. I understand. Grace Institute
3 we've talked about in our response to the defendant's
4 motion for summary judgment.

5 THE COURT: Yes, I have Grace here.

6 MR. WIGGINS: Now, in the Grace case there was
7 nothing in the corporation's bylaws which prohibited the
8 plaintiff's removal. There was no corporate provision
9 governing that. It simply wasn't there. That's the
10 problem. There was nothing like what we have in our case
11 where the bylaws repeatedly say he couldn't be removed.
12 That's the point that I wished to make about the Grace
13 case.

14 Now, with respect to the evidence of breach of
15 fiduciary duty, I won't go through -- I think I have made
16 the points I wish to make with Priscilla Pike who did not
17 say that she engaged in any sexual intercourse with Pastor
18 Barnett or that there was any coercion or intimidation at
19 the time. What she said was that she felt that the sermon
20 was directed to her, but we are talking about a sermon that
21 incorporates a biblical principle, and I just think to say
22 that a court can say that something that is said from the
23 pulpit out of the Bible is a form of manipulation or
24 intimidation, I think that would be a gross violation of
25 separation of church and state.

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1 Susan Towery Zwack, I guess we, of course,
2 disagree on whether she was actually impeached by Kristian
3 Erickson's testimony. I don't believe Kristian Erickson

4 said she was grabbed by the breast. Kristian Erickson
5 -- and also her testimony was that Kristian Erickson was
6 right there in the room when all this happened and he saw
7 it. Well, he didn't see it. He didn't see anything like
8 that. And he was very vague on what she told him had
9 occurred. But he also said in his deposition, and we
10 talked about this a little bit, that it was not a forceful
11 act by Pastor Barnett. That was the point.

12 The other point on which Mrs. Zwack was impeached
13 was that it was her testimony that it was Pastor Barnett's
14 idea to put these two beds together, as if Pastor Barnett
15 was somehow creating a situation here. That's not what
16 ~~Kristian Erickson said. He said the two ladies pushed the~~
17 beds together.

18 And Mrs. Zwack felt so strongly about her
19 testimony here that she felt it was incumbent upon her to
20 violate your order and call Kristian Erickson about her
21 testimony and try to beef up his testimony. I think that
22 is an interested witness, not a disinterested witness.
23 I think that act alone impeaches her testimony.

24 With respect to Mrs. A, and again I won't go
25 through it all, but she did testify to fear of Pastor

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1 Barnett. She testified that he said do this, do that. She
2 didn't testify to any force that he used with her. I think
3 personally that Sandy Baxter's testimony impeaches her. I
4 don't think a great deal of weight can be placed on her
5 testimony.

6 The requirement of a tort. Is there a tort
7 required to prove a breach of fiduciary duty? I don't say
8 that. That is what they have said.

9 THE COURT: Well, I don't know who said it, but I
10 don't regard that as the significant key, whether it is a
11 tort or not.

12 MR. WIGGINS: What I understood the defendants'
13 position to be was that you could have a breach of
14 fiduciary duty by conduct for which the corporation would
15 be held liable in tort, that that could be. That's their
16 theory. That's not my theory. I don't believe that
17 theory. If you believe that, no corporate officer is safe
18 because corporate officers commit torts toward people all
19 the time for which the corporation may be held liable.

20 The defendants' position is that the breach of
21 fiduciary duty overrides the articles and bylaws and that
22 somewhere it is such a major deal that you don't need any
23 authorization to remove someone in the articles and bylaws.
24 There is no authority for that proposition, none
25 whatsoever. They haven't cited anything like that.

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1 There is certainly no authority for the
2 proposition that directors of a corporation can act
3 contrary to the bylaws. All of the law is in the other
4 direction. The bylaws say this man couldn't be removed.
5 That is not overridden by a claim that there is a breach of
6 fiduciary duty.

7 The April 1988 bylaws, I didn't really talk about
8 that very much, but the defense's position on the April '88
9 bylaws -- and I will be very brief on this because I don't
10 think it's a major point -- is that there is no evidence of
11 the intent of the people who signed them or that the
12 evidence of the intent is to the contrary. I don't agree
13 with that. There are three people who signed the April '88
14 bylaws -- Pastor Barnett, Mr. DuBois who did not
15 testify --

16 THE COURT: As I understood it was the result of

17 a meeting they had in December of '87.

18 MR. WIGGINS: That's correct.

19 THE COURT: And what they intended -- I
20 that under the corporate laws it's only effective
21 get it down to Olympia, but I think as far as this
22 proceeding is concerned it reflects the acts in D
23 and not thereafter.

24 MR. WIGGINS: All right, your Honor. I
25 belabor that point. All that I was going to say w

Closing Argument (By Mr. Wiggins)

1 you have a clear corporate document signed in April of
2 1988. There were three men that signed it, two of whom
3 didn't testify in this trial about their intent when they
4 signed it in April of 1988. The only who testified was
5 Pastor Barnett.

6 Jack Hicks testified about intentions about
7 things, but he wasn't a senior elder in April of 1988. He
8 had already gone. He didn't sign that document.

9 Hartley didn't testify and DuBois didn't testify
10 on that point. Donald Barnett is the only one who
11 testified.

12 The last point is that the defendants say we
13 didn't ask that religion be injected into this case. I
14 strenuously disagree with that. Of course they asked for
15 religion to be injected into this case. They are the ones
16 who tore the veil of secrecy that surrounded these
17 proceedings. They are the ones who have paraded an entire
18 ecclesiastical proceeding before this court. They are the
19 ones who have insisted that they have the right to go into
20 all of this, and they are the ones who opened this up.

21 Of course we testified to the religious aspects
22 of this. We had to testify to the religious aspects of
23 this, but it is they who have insisted that this court
24 should violate the constitutional wall of separation, and I
25 will not accept the responsibility for that. We have been

Closing Argument (By Mr. Wiggins)

1 very careful. We have always said we shouldn't be getting
2 into these areas. They are the ones who wanted to get into
3 these areas and look at the reasons for the termination of
4 a pastor. I don't think we should ever have been involved
5 in this, and I lay the blame at their feet.

6 THE COURT: Okay. Gentlemen, let's put the room
7 back in its original configuration.

8 MR. ROHAN: Your Honor, we are going to be back
9 at 9:30 on Wednesday?

10 THE COURT: Yes.

11 MR. ROHAN: For your questions or for a ruling?

12 THE COURT: For my ruling.

13 (Court was recessed 4:20 p.m.)
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