

APPENDIX B*

NAME	Unpaid Wages	WPCL Penalty	FLSA Penalty	Punitive Damages	TOTAL
Robert Brown	\$252.00	\$500.00	\$105.00	\$1000.00	\$1,904.60
(+ 47.60 travel reimbursement)					
Claudia Carter	486.00	500.00	202.50	1000.00	2238.50
(50.00 loan to employee)					
Devon Coble	486.00**	500.00	245.00	1000.00	2231.00
Steven DeHoff	367.50	500.00	49.00	1000.00	1924.00
(+ 7.50 returned check charge)					
Tina Franklin	478.50	500.00	199.38	1000.00	2177.88
Randy Heckman	826.41	500.00	0.00	1000.00	2326.41
Doris Hoover	251.25	500.00	175.88	1000.00	1927.13
Leon Johns	680.62	500.00	0.00	1000.00	2180.62
Beverly Lannen	572.25	500.00	122.62	1000.00	2194.87
James Menter	687.00	500.00	42.94	1000.00	2229.94
Roger Miller	496.63	500.00	85.62	1000.00	2082.25
Larry Mugrage	480.00	500.00	64.00	1000.00	2051.50
(+ 7.50 returned check charge)					
Charlene O'Donnell	566.12	500.00	121.32	1000.00	2187.44
Saundra Perry	544.00	500.00	0.00	1000.00	2044.00
Albert Pugh	148.50	500.00	132.00	1000.00	1780.50
Robert Stanley	399.38	500.00	279.56	1000.00	2178.94
Ronald Statler	557.38	500.00	119.43	1000.00	2176.81
Richard Stottlemeyer	673.00	500.00	42.06	1000.00	2215.06
Dale Stouffer	781.62	500.00	0.00	1000.00	2281.62
Bradley Valentine	420.00	500.00	175.00	1000.00	2095.00
David Weaver	678.00	500.00	42.37	1000.00	2220.37
David West [Q]	0.00	500.00	0.00	1000.00	1500.00
Randy Yaukey	795.00	500.00	0.00	1000.00	2390.60
(+ 95.60 travel reimbursement)					

[Q] This plaintiff quit after receiving a bad check for wages. His penalty is based on the wages represented by the bad check.

* FLSA penalty is the amount by which double the minimum wage exceeds plaintiff's actual wages owed.

* WPCL penalty is \$500 for each plaintiff.

** The court notes that, by its calculation, wages owed to Devon Coble amount to \$516. However, the parties stipulated to the amounts listed on plaintiffs' Exhibit 19, which lists unpaid wages owed to Devn Coble as \$486.

* Editor's Note: Appendix to Brown, et al. v. Garvis, et al., opinion immediately preceding these appendices, herein.

NANCY J. RAY V. PENNSYLVANIA STATE POLICE, LIEUTENANT MATTHEW E. HUNT, TROOPER HARDING, TROOPER JOHN RIDGE AND TROOPER LES FREELING, C.P. Franklin County Branch, No. 1993-155.

Civil Action-Tort claim to recover for emotional distress caused by failure to police to return remains of murdered daughter to mother for burial-Doctrine of sovereign immunity as a bar to intentional torts-Negligent mishandling of a corpse-Negligent infliction of emotional distress.

1. Mother's claim against state police for intentional infliction of emotional distress for the mishandling of her daughter's remains is barred by the doctrine of sovereign immunity.
2. Although current Pennsylvania law permits a cause of action for the intentional mishandling of a corpse, a claim of negligent mis-handling is not similarly recognized.
3. A claim of negligent infliction of emotional distress is based primarily on mental suffering caused by improper handling of the remains and is a variant of an action for the negligent mishandling of a corpse.
4. The claim of negligent infliction of emotional distress is barred because it is derived from the unrecognized cause of action for the negligent mishandling of a corpse.
5. Even if a cause of action for negligent mishandling of a corpse were recognized, a claim for negligent infliction of emotional distress would fail unless the plaintiff had personally witnessed the allegedly tortious mishandling.

Daniel F. Wolfson, Esquire Attorney for Plaintiff
John M. Abel, Esquire, Attorney for the Defendants

OPINION AND ORDER

Kaye, J., December 9, 1993:

OPINION

Nancy J. Ray (hereinafter "plaintiff") has filed a civil tort action against the Pennsylvania State Police in which she claims that she has suffered severe emotional distress and psychophysiological problems due to the failure of the State Police to return

the remains of her deceased daughter, Debra Ray Witmer, for proper burial. The complaint, which was filed on April 12, 1993, was amended on May 27, 1993, to include four individual members of the State Police, specifically, Lieutenant Matthew E. Hunt, Trooper Harding, Trooper John Ridge and Trooper Les Freeling (hereinafter "defendants"). The amended complaint alleges that plaintiff contacted each of the named individual defendants at various times during the past decade in an effort to retrieve the remains of her daughter, who was apparently murdered following her disappearance on May 27, 1981. Defendants have filed preliminary objections demurring to the complaint and challenging the specificity of the pleadings. Argument was heard by the Court on November 4, 1993, following the receipts of briefs by counsel for each of the parties.¹ For the reasons which follow, we conclude that the defendants' demurrer to the complaint must be sustained and will, accordingly, order that the action be dismissed.

In ruling on the demurrer, the Court must accept as true all properly leaded material facts, as well as any inferences reasonably deducible therefrom. *Keirs v. Weber National Stores, Inc.*, 352 Pa.Super. 111, 507 A.2d 406 (1986). In order to sustain a demurrer, it must appear with certainty that the law will not permit recovery upon the facts as averred in the challenged pleading. Where any doubt exists as to whether a demurrer should be sustained, that doubt should be resolved in favor of overruling the objection. *Norbert v. Commonwealth, State Police*, 148 Pa.Cmwlth. 505, 611 A.2d 1353 (1992).

The averments in the complaint reflect the plaintiff's daughter, Debra Ray Witmer, disappeared from her residence on May 27,

¹ Argument was originally scheduled for September 2, 1993, upon praecipe by counsel for plaintiff. Plaintiff's counsel failed, however, to timely file a brief prior to argument in accordance with the procedure set forth at 39th Jud. Dist. C.R. No. 39-211.7. The Court, accordingly, ordered that the matter be stricken from the September argument list and ordered plaintiff's counsel to pay the sum of \$337.50 to the Commonwealth's Office of Attorney General in compensation for expenses incurred in preparing and appearing for oral argument. Acknowledgement of receipt of the assessed sum by the Commonwealth was received by the Court on September 14, 1993.

1981. She was twenty years old at the time and resided with her mother. Plaintiff promptly reported her daughter's disappearance to law enforcement authorities, including the Pennsylvania State Police. A dismembered body was discovered by law enforcement authorities at the Williamson Quarry, located in Franklin County, on or about April 13, 1982. The remains were identified as being plaintiff's daughter on August 4, 1982, after having been turned over to the office of the medical examiner of Philadelphia for identification purposes.

A coroner's inquest was subsequently conducted by the Franklin County Coroner, on March 3, 1983, with the cause of death of Ms. Witmer found to be murder. After the inquest, plaintiff requested that the remains of her daughter be returned to her for burial. This request was made by contacting defendant Trooper Harding, who informed plaintiff that the body would be returned only after investigation into the case had ended. A similar request was made in January, 1984. Thereafter, from 1984 through 1992, plaintiff continued to contact various officials within the State Police, as well as the District Attorney of Franklin County, State Senator Terry Punt and U.S. Representative Bud Shuster, in an effort to retrieve her daughter's body. In 1990, plaintiff was informed by a member of the State Police that her daughter's remains had been sent to a Pittsburgh pathologist. To date, none of plaintiff's inquiries have led either to the location or return of her daughter's remains.

Based on the foregoing facts, plaintiff alleges that defendants' negligent or intentional acts in mishandling the remains of her daughter and in failing to turn over those remains have resulted in severe emotional distress, a sleep disorder and other psychophysiological problems suffered by the plaintiff. Defendants' preliminary objections raise several challenges to plaintiff's complaint. First, defendants contend that they are protected by sovereign immunity from suit based on the commission of intentional torts. Thus, they argue that plaintiff's assertions of intentional infliction of emotional distress through mishandling of the remains of Ms. Witmer are barred. Defendants next contend that Pennsylvania common law does not currently recognize a cause of action for negligent mishandling of a corpse, thus preventing recovery for emotional distress suffered as a result of such negligence. Moreover, since plaintiff's claim of

negligent infliction of emotional distress is integrally tied to the alleged loss of remains of plaintiff's daughter, defendants further argue that a separate cause of action for the infliction of emotional distress will not lie. In the alternative, defendants argue that if a separate cause of action for negligent infliction of emotional distress is permitted, the action must, nevertheless, fail due to the fact that plaintiff did not personally observe the allegedly tortious mishandling of the remains of her daughter. Defendants also have presented challenges to plaintiff's claim for punitive damages and to the specificity of the pleadings regarding negligence.

We will first address the issue of sovereign immunity.² In order to determine whether a Commonwealth employee is protected from liability for allegedly tortious conduct, two discrete inquiries must be made. First, it must be determined that the cause of action asserted by the plaintiff is one cognizable under statutory or common law. It must, additionally, be determined that the cause of action falls within one of the nine enumerated exceptions to immunity which are set forth in Section 8522(b) of the Judicial Code, 42 Pa.C.A. § 8522(b). *Norbert v. Commonwealth, State Police, supra*. A further limitation on the legislative waiver of immunity for Commonwealth parties is the fact that claimed damages must arise "out of a negligent act". 42 Pa.C.S. § 8522(a) (emphasis added). Thus, it has been held that Commonwealth employees are protected by sovereign immunity from the imposition of liability for intentional tort claims. *LaFrankie v. Miklich*, 152 Pa.Cmwlth. 163, 618 A.2d 1145 (1992). Accordingly, plaintiff's claims of intentional mishandling of her daughter's remains, and the concomitant infliction of emotional distress, by the defendants are clearly barred by sovereign immunity and must be dismissed.

² Sovereign immunity is an affirmative defense which should ordinarily be raised in new matter pursuant to Pa.R.C.P. No. 1030. It is recognized, however, that the issue of immunity from suit may be raised by preliminary objection when no useful purpose would be served by delaying a ruling thereon. *Faust v. Department of Revenue*, 140 Pa.Cmwlth. 389, 592 A.2d 835 (1991). Plaintiff's failure to object to the Commonwealth's procedure, additionally, constitutes a waiver of any defect therein. *CSX Transportation, Inc. v. Frantz Construction*, Pa. Cmwlth. , 630, A.2d 932 (1993).

An analysis of the immunity issue relative to plaintiff's assertion of negligence by the Commonwealth defendants requires that we determine whether a common law right of action exists to compensate for the negligent mishandling of a corpse and the attendant emotional distress suffered by the plaintiff. A review of Pennsylvania law on this subject reveals that, although a cause of action for intentional mishandling of a corpse is recognized in the Commonwealth, negligent mishandling of the dead is not currently actionable in this jurisdiction.

The case of *Papieves v. Kelly*, 437 Pa. 373, 263 A.2d 118 (1970) is the leading case in this area of the common law. The circumstances of the case involved the death of a fourteen-year-old boy who was killed by an automobile driver while riding his bicycle. The driver of the car subsequently attempted to hide the boy's body by burying it in a shallow grave. The partially decomposed body was recovered more than two months later.

In concluding that a cause of action for intentional mistreatment of a corpse should be recognized in Pennsylvania, the Supreme Court in *Papieves* adopted Section 868 of the Restatement of Torts, which provides as follows:

A person who wantonly mistreats the body of a dead person or who without privilege intentionally removes, withholds or operates upon the dead body is liable to the member of the family of such person who is entitled to the disposition of the body.

The Court reasoned that the basis for the cause of action "is the right of a decedent's nearest relatives to protection against intentional, outrageous or wanton conduct which is peculiarly calculated to cause them serious mental or emotional distress." *Id.* at 378, 263 A.2d at 120.

In 1977, Section 868 of the Restatement was revised to its present form, which provides that:

One who intentionally, recklessly or negligently removes, withholds, mutilates, or operates upon the body of a dead person or prevents its proper interment or cremation is subject to liability to a member of the family of the deceased who is entitled to the disposition of the body.

(Emphasis added)

BAR NEWS ITEM

NOTICE OF AVAILABLE GRANT FUNDS

Franklin County Bar Association, expects to authorize the issuance of IOLTA (Interest on Lawyers' Trust Accounts) grants to qualified recipients.

Applications for grant funding must be postmarked to the Franklin County Bar Association by July 28, 1994 Applications postmarked after this date may not be considered for funding.

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I. GENERAL CRITERIA

Qualified recipients must:

1. Be a not-for-profit Pennsylvania Corporation.
2. Be tax-exempt under Section 501(c)(3) of the Internal Revenue Code.
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4. Have as their primary purpose the provision of civil legal services without charge.

II. CATEGORY CRITERIA

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- a. Operate to provide civil legal services to eligible clients and victims of abuse.
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 - ii. received under contract with the Department of Public Welfare.

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Provide direct specialized legal services primarily to individuals from one of the classifications identified below:

- a. elderly;
- b. disabled;
- c. homeless;
- d. seasonal farmworkers;
- e. victims of crime or abuse.

Requests for grant applications can be made and details on the IOLTA program obtained by contacting Thomas B. Steiger, Jr. 120 North Main Street Mercersburg, PA 17236 (717) 328-3525 after July 19, 1994.

Both the Superior and Commonwealth Courts have been presented with the issue of whether Pennsylvania law should be extended to cover negligent mistreatment of a corpse in accordance with the revision of Section 868. Both Courts have concluded that

"any extension of the *Papieves* rule of recovery to include actions for negligent infliction of emotional distress, must come from the Supreme Court itself, through express adoption of the 1977 Restatement (Second) revision of Section 868."

Hackett v. United Airlines, 364 Pa.Super. 612, 616-17, 528 A.2d 971, 974 (1987) *alloc. denied*, 518 Pa. 649, 544 A.2d 961 (1988); *accord Kearney v. City of Philadelphia*, 150 Pa.Cmwlth. 517, 616 A.2d 72 (1992).

Plaintiff relies on the case of *Geiges v. Rosko*, 49 Pa. D&C 3d 61 (C.P. Bucks 1987) to support her position that negligent mishandling of a dead body is actionable in Pennsylvania. In *Geiges*, the Court concluded that the Bucks County Coroner was not immune from suit for the negligent mishandling of plaintiffs' deceased son. The Court's analysis centered on whether the coroner qualified as a local agency employee, which the Court answered in the affirmative, and whether the alleged conduct fell within the exceptions to governmental immunity detailed in 42 Pa.C.S. § 8542(b). As to the latter inquiry, the Court concluded that the exception for care, custody or control of personal property was triggered by the allegedly tortious conduct.

Significantly, the Court in *Geiges* did not analyze whether the substantive cause of action of negligent mishandling of a corpse was recognized by the common law of Pennsylvania. In fact, neither *Papieves* nor Section 868 of the Restatement of Torts were mentioned in the court's opinion. In addition, we observe that the opinion in *Geiges* was filed prior to the decisions in *Hackett* and *Kearney* and, therefore, did not have the benefit of the analyses conducted by the appellate courts on this issue. In short, we find that the subsequent decisions in *Hackett* and *Kearney* are clearly controlling and apparently conflict with the implicit recognition by the *Geiges* Court of a cause of action for negligent mishandling of a corpse.

We are, furthermore, in agreement with defendants that a

separate cause of action for negligent infliction of emotional distress cannot be maintained where the allegedly tortious conduct causing the emotional distress consists of mistreatment of a dead body. As the Supreme Court noted in *Papieves*,

“ [t]he cause of action [for mishandling a corpse] is primarily for mental suffering caused by the improper dealing with the body.’ ”

Id. at 377, 263 A.2d at 120 (quoting comments a and b to Section 868 of the Restatement of Torts). Thus, we believe that a cause of action for negligent mishandling of a corpse may properly be regarded as a variant of an action for negligent infliction of emotional distress. We, therefore, conclude that the holdings in *Hackett* and *Kearney* that Pennsylvania law does not recognize a cause of action for negligent mishandling of a corpse also act to bar any attempt to pursue a separate cause of action for negligent infliction of emotional distress.

Assuming, *arguendo*, that a separate cause for negligent infliction of emotional distress could properly be pursued, the action would, nevertheless, fail under present Pennsylvania law since the allegedly negligent mishandling of the body was not witnessed by the plaintiff. An individual claiming damages from the negligent infliction of emotional distress must, at a minimum, be able to establish that he or she was a witness to the accident or other traumatic event involving a closely related loved one. *Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672 (1979); *Bloom v. DuBois Regional Medical Center*, 409 Pa.Super. 83, 597 A.2d 671 (1991). While this standard represents a less restrictive view of the cause of action than was true under the so-called “zone of danger” test, in which the plaintiff was required to establish that he was personally endangered by the accident which resulted in his emotional distress, it still requires that the plaintiff be an actual witness to the traumatic event. Such “bystander” status has not been averred by the plaintiff in the matter at bar, thus imposing a fatal impediment to any separate claim for negligent infliction of emotional distress.

The Court in *Hackett*, 364 Pa.Super. at 619-20, 528 A.2d at 975, observed that:

[S]hould the Supreme Court choose to extend the *Papieves*

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LEGAL NOTICES, Cont.

TERMS

As soon as the property is knocked down to purchaser, 10% of the purchase price or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN June 20, 1994 at 4:00 P.M., prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on June 24, 1994, prevailing time in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Robert B. Wollyung
Sheriff
Franklin County, Chambersburg PA

7/22, 7/29, 8/5/94

doctrine to include negligent mishandling, the Court must additionally specify whether the current interpretation of *Sinn*, as precluding recovery where the claimant has not witnessed the negligent act, will preclude a cause of action in which the negligent harm to the deceased has not been witnessed by the loved one.

We note that the New Jersey judiciary has resolved this dilemma through a recognition that the cause of action for negligent mishandling of the dead, which is recognized in that jurisdiction, is of an entirely different nature from the "bystander" case. The breach of duty in a negligent infliction of emotional distress case is normally directed at the victim of the accident, with the emotional distress to the bystander resulting as an indirect consequence. The requisite duty in a case involving the negligent mishandling of a corpse, however, is one owed directly to the surviving family member, *i.e.*, the duty not to mistreat and to turn over to the next of kin a family member's dead body. *Strachen v. John F. Kennedy Memorial Hospital*, 109 N.J. 523, 538 A.2d 346 (1988). Viewed in this manner, the plaintiff would be relieved of the necessity to plead and prove that he was a witness to the mishandling of the corpse. A United States District Court opinion interpreting Pennsylvania law has, in fact, suggested such an approach in analyzing cases involving mishandling of a corpse:

In our culture, it is chiefly for the living that the disposition of the dead is of moment. Thus, when a corpse is improperly disturbed by a negligent or intentional actor, the action is properly regarded as conduct directly injuring those who are moved by affection and kinship to make sure that the rites of burial are appropriately observed.

Schachter v. Moss Rehabilitation Hospital, 695 F.Supp. 186, 189 n. 8 (E.D. Pa. 1988). While we are clearly limited by precedent from adopting the approach taken by the Court in *Strachan* and suggested in *Schachter*, we, nevertheless, cite the opinions for their instructive value in this developing area of the law.

Having concluded that plaintiff's asserted causes of action are either barred by sovereign immunity or are not currently recognized by the common law of Pennsylvania, we need not address the remaining objections presented by the defendants.

We will, accordingly, order that the defendants' demurrer to the complaint be sustained and the complaint be dismissed. We note that our ruling in this case is in no way intended as a rejection by the Court of the veracity of plaintiff's assertions of emotional distress suffered over the past decade as she has sought to locate and retrieve her daughter's remains to provide for their proper burial. The foregoing represents the decision which we have determined is required by the legal precedents in the Commonwealth. However, the result is at once unsatisfying and repugnant. A mother has lost her child as a result of what a coroner's inquest has determined to be a criminal homicide. When the victim's remains were recovered, they were placed in official custody on April 13, 1982 for purposes of identification and other post-mortem examination of the remains. From that date to the present, the victim's mother alleges she has been told various stories by various public officials about the location of the remains, and how long those officials would retain them prior to their release for burial.³ We find it incomprehensible that so little regard has been paid to a mother's natural feelings under these circumstances that no one has seen fit - so far as we can determine - to at least conduct an investigation into this shameful episode and to make those findings known to plaintiff. The official response at best can be characterized as stonewalling and avoidance.

Aside from concerns for the plaintiff's feelings, the inability to locate the victim's remains may well jeopardize prosecution of a criminal homicide. We cannot understand why the police and other public officials who are charged with so much of the public's trust that a citizen can be compelled to turn over their loved ones' remains to these officials would jeopardize that trust in this manner.

While we think the decision herein is correct under the current state of the law, we also think that the emotional pain felt by

³ She alleges, inter al., one police officer informed her the remains would not be released until the case is "closed". While there may be some plausible explanation for this, in our experience and to the best of our knowledge, *no* victim's body has ever been retained except for the time necessary to conduct the post-mortem examination.

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LEGAL NOTICES

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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on July 21, 1994, an application for a certificate for the conducting of a business under the assumed or fictitious name of Ernie's Auto Sales, with its principal place of business at 1900 Lincoln Way East, Chambersburg, PA 17201. The name and address of the person owning or interested in said business is John M. Aird, 7225 Long Lane, St. Thomas, PA 17252.

8/12/94

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on August 1, 1994, an application for a certificate for the conducting of a business under the assumed or fictitious name of Critter Care and Pet Taxi, with its principal place of business at 28 Hazel Street, Chambersburg, PA 17201. The name and address of the person owning or interested in said business is Daria Watson 28 Hazel Street, Chambersburg, PA 17201.

Tracy M. Sheffer, Esq.
20 West Main St.
P.O. Box 215
Fairfield, PA 17320

8/12/94

Second Time Around Stables, Inc. hereby gives legal notice of incorporation under the provisions of the Pennsylvania Business Corporation Law of 1988, for the purpose of the boarding horses, including

LEGAL NOTICES, Cont.

their care, feeding, and bedding.

8/12/94

NOTICE OF FILING AN APPLICATION FOR DISCONTINUING A BRANCH OFFICE

Notice is hereby given that Farmers and Merchants Trust Company of Chambersburg, Chambersburg, Franklin County, Pennsylvania, did on August 5, 1994 submit to the Department of Banking, of the Commonwealth of Pennsylvania, an application for permission to discontinue a branch office at:

112 North Seventh Street
Chambersburg

Franklin County, Pennsylvania 17201

All interested persons may file comments in favor of, or in protest of the application, in writing, with the Department of Banking, Commonwealth of Pennsylvania, 333 Market Street, 16th Floor, Harrisburg, Pennsylvania, 17101-2290. All comments to be considered must be received by the Department no later than fifteen (15) calendar days after the date of publication of this notice.

8/12/94

plaintiff in this situation is comparable and should be as compensable as the pain sustained by one who is physically injured. We invite and encourage the plaintiff to appeal this decision to the appellate court so that the decisional law which preclude a recovery can be reviewed for its current vitality. We also think that remedial legislation may be in order, as is a thorough, independent official investigation into this case.

ORDER OF COURT

NOW, this 9th day of December, 1993, the preliminary objections of the defendants in the nature of a demurrer are hereby **SUSTAINED** and it is ordered that the complaint in the above-captioned matter be **DISMISSED**.

THE SEVENTH DAY BAPTIST MONASTICAL SOCIETY OF SNOWHILL, ET AL, V. CRIST KING, ET AL, C.P.
Franklin County Branch, Equity Volume 8, page 19.

Action in Equity -- Authority of civil court to resolve membership dispute within a congregational church.

1. A civil court may not inject itself into matters of religious doctrine or practice, and is confined to resolving disputes which involve neutral principles of law, such as contract or property issues.
2. The question of which persons are qualified voting members in a congregational church is a matter of discipline, faith, or ecclesiastical rule, custom or law.
3. Where a church has no by-laws setting fourth the criteria for voting membership, and no clearly-established tradition has been identified investing some members with the authority to exclude and individual from voting, a congregational church is to be governed by a majority of its members.

Deborah K. Hoff, Esquire, Attorney for Plaintiffs
Kenneth W. Lee, Esquire, Attorney for Defendants

ADJUDICATION AND DECREE NISI

Keller, J., October 30, 1992: