

1 THE CLERK: Keeler on the TRO.

2 MR. POULOS: Michael Poulos on behalf of
3 the plaintiff.

4 MR. SOLBERG: Wallace Solberg, one of the
5 attorneys on behalf of defendant.

6 MR. HAYES: Michael Hayes on behalf of the
7 defendant.

8 MR. PERKINS: Floyd Perkins and Patrice
9 Harris on behalf of the People of the State of
10 Illinois.

11 MR. KENNEY: James Kenny for the
12 plaintiff.

13 THE COURT: Let me just ask some questions
14 because I have -- for the plaintiff Choi is?

15 MR. POULOS: Michael Poulos, P-O-U-L-O-S,
16 and Mark Haller (phonetic) and James Kenny.

17 THE COURT: Who's going to talk?

18 MR. POULOS: Judge, I'll be arguing the
19 motion.

20 THE COURT: And for the defendants?

21 MR. SOLBERG: Wallace Solberg,
22 S-O-L-B-E-R-G.

23 MR. HAYES: Michael Hayes, Your Honor.

24 THE COURT: All right. Attorney General?

1 MR. PERKINS: Attorney General, yes.

2 THE COURT: Are you going to argue?

3 MR. PERKINS: No, Judge, we're just
4 present.

5 THE COURT: All right. You can have a
6 seat if you'd like.

7 All right, this matter is up
8 on a motion for declaratory judgment and
9 preliminary injunction; however, I think we
10 agreed that this would be treated as an
11 argument on a Temporary Restraining Order;
12 and affidavits, etcetera, were filed to
13 support the Temporary Restraining Order.

14 Is there anything else that you
15 want to tell me about the state of the
16 pleadings?

17 MR. POULOS: I do want to clarify one
18 point that the defendants raised.

19 We were given leave to file an
20 affidavit, and in their responsive brief they
21 indicate that we were not given leave to
22 properly file the affidavit, but that's what
23 it is in this court for.

24 THE COURT: I did state that if this is

1 going to proceed with a Temporary Restraining
2 Order, if the plaintiff believed that they
3 needed additional evidence by affidavit to
4 support their motion for Temporary Restraining
5 Order that they could have an opportunity to
6 file that by a date certain.

7 MR. POULOS: Yes.

8 MR. CAGNEY: What they did, Your Honor,
9 and what our position is, you had given them
10 leave to file an amended complaint, and when
11 they filed the amended complaint they threw in
12 a slew of facts in the affidavit, so that was
13 the basis for our concern.

14 MR. SOLBERG: And for the record, Your
15 Honor, the Attorney General's Office did file
16 two certifications.

17 THE COURT: Well, I see that, but I don't
18 know how that is -- I gather that the Attorney
19 General's Office is a party to this case?

20 MR. POULOS: They're technically a --
21 we're not seeking any relief.

22 THE COURT: So the argument doesn't really
23 concern the Attorney General's position unless
24 you want to refer to it in the course of your

1 arguments in response to the Temporary
2 Restraining Order.

3 MR. POULOS: What the Attorney General
4 does is regulate charitable trusts.

5 THE COURT: I recognize that. Well, you
6 can use it in whatever way you wish to use it.

7 MR. POULOS: Also, Judge, with regard to
8 the amendment of the complaint, there was one
9 line in the complaint that we were interested
10 in amending; and, instead, it was suggested
11 that we would file an entire new answer. We
12 felt that after taking that into consideration
13 that was not necessary at this time.

14 THE COURT: The Court has received all
15 briefs and will now sign this order.

16 Okay, you may argue.

17 MR. POULOS: Thank you, Your Honor.

18 We are here today seeking to
19 block the removal of Dr. Kwan Choi as a
20 trustee of the Urantia Foundation and seeking
21 to compel the defendant trustees to permit him
22 to participate as a trustee and to provide him
23 with such information as he requests as is
24 normally provided to trustees.

1 We allege two reasons in support
2 of our case. Number one, we claim that the
3 procedures for removing him were not properly
4 followed and, therefore, the intended removal
5 is void; and secondly, we allege that they are
6 attempting to remove him for the reason that
7 he has some concerns about the operation of
8 the Urantia Foundation both in terms of
9 procedures and in terms of the handling of
10 funds, and the other trustees do not want him
11 to be able to look into what's going on and so
12 they took to have him removed. Those are the
13 two grounds why we believe the Court should
14 enter relief on behalf of Dr. Choi.

15 With regard to the procedures,
16 there are two governing documents for the
17 Urantia Foundation. The first document is
18 Declaration of Trust, which was executed
19 January 11, 1950 by five settlers, and there
20 are by-laws executed just one month later,
21 February 11, 1950. The by-laws were adopted
22 by those same five settlers under the
23 authority that they granted themselves. The
24 settlers were the original trustees.

1 THE COURT: I was looking for the by-laws.

2 MR. POULOS: There was some question in
3 terms of which was the current set.

4 THE COURT: It says organizational meeting
5 of the Board.

6 MR. POULOS: The by-laws are contained in
7 that.

8 THE COURT: Okay. I probably could have
9 used a current set.

10 MR. POULOS: I apologize. Currently
11 there's some amendments. Mr. Frasier, the
12 attorney for the Foundation, has provided a
13 more recent copy, and that is contained, I
14 believe -- well, certainly there's a copy of
15 that in the defendant's exhibits, and that's
16 Exhibit B to their Memorandum in Support of
17 their motion for judgment on the pleadings.

18 THE COURT: Okay, that's what I'm looking
19 at. This is kind of an interesting photocopy.
20 The by-laws consist of all of these papers.
21 You've got two or three or something --
22 Article III. The copy is kind of peculiar.

23 Well, go ahead.

24 MR. POULOS: What is most important are

1 the removal provisions.

2 THE COURT: All right.

3 MR. POULOS: The Declaration of Trust does
4 provide that a trustee may be removed for a
5 reason; Declaration of Trust is silent on the
6 procedures for removing the trustee. The
7 by-laws contain provisions indicating that
8 a trustee may be removed for a certain
9 unspecified cause; and that, of course, is one
10 of the arguments that is at issue here.

11 And that's not going to be
12 really relevant, but what is relevant is that
13 the by-laws specify a procedure. It is
14 necessary first that a vote be taken at which
15 four of the five trustees agree that a fifth
16 trustee should be removed, thereafter, the
17 vote must be confirmed at the next three
18 quarterly meetings, and that also must be
19 confirmed by a vote of the other four trustees
20 and the trustee who they are seeking to remove
21 unless, of course, the fifth trustee also
22 wants to be removed.

23 In this particular instance, a
24 meeting was called on September 7th by

1 telephone. We contend that that meeting was
2 called without proper notice and the
3 defendants --

4 THE COURT: September 7th of what year?

5 MR. POULOS: September 7th of 2001.

6 THE COURT: Okay.

7 MR. POULOS: The defendants in their
8 affidavits contend that trustee Mo Siegel
9 instructed his secretary to send notice to
10 Dr. Choi of the meeting, but there is no
11 competent evidence that the notice was, in
12 fact, timely sent to Dr. Choi. He did receive
13 a notice by e-mail, but that's not provided
14 for in the by-laws, and it was late. He
15 received that at the last minute. At the
16 meeting Dr. Kwan wasn't given proper notice,
17 did not participate in that meeting, but
18 apparently the other four trustees voted to
19 remove him while he never received any actual
20 minutes or other certification to that effect.

21 Under the by-laws then the next
22 step to remove Dr. Choi would be to vote on
23 it at the quarterly meeting that was supposed
24 to have been held on October 20th. No such

1 meeting was held. The by-laws in Section 3.1
2 provide that --

3 THE COURT: Okay, that's my problem
4 because of the way this is copied, and I'm
5 trying to follow what was stated in the
6 by-laws, so if you can just point me to the
7 page. And these pages are unnumbered so --

8 MR. POULOS: Let me just --

9 THE COURT: I'm going to number them the
10 way they've been sent to me; and if you're
11 referring to provisions in the by-laws, that
12 would be helpful.

13 MR. POULOS: If you look at the
14 defendant's --

15 THE COURT: I'm looking at the copy that's
16 in the defendant's motion for judgment on the
17 pleading. Do you have a better copy? Fine.

18 MR. POULOS: Actually, Judge, that copy
19 was just taken -- but nonetheless, this is the
20 3.1 that you were discussing. Section 3.1 is
21 the provision that deals with --

22 THE COURT: Quarterly meeting.

23 MR. POULOS: -- quarterly meetings, and
24 removal of trustees is Section 2.4 which is, I

1 believe, on the third page in the section
2 you're looking at.

3 THE COURT: I'm on Page 4 instead. I'm
4 looking at removal of trustees.

5 MR. POULOS: I'm sorry, that is correct.
6 So we're looking at really two provisions,
7 Section 2.4 and Section 3.1.

8 THE COURT: So the first meeting in
9 October was October 20th?

10 MR. POULOS: I'm sorry. Then didn't they
11 subsequently change that -- I'm sorry, there
12 was an amendment. It was 3.1, then there
13 would be the third set.

14 THE COURT: All right, hang on.

15 All right, thank you, I have it.

16 MR. POULOS: Now, that section, 3.1., does
17 provide that the quarterly meeting date had
18 been changed but only by agreement of all
19 trustees. In fact, no meeting was held on
20 October 20th. A meeting was instead held on
21 November 10th. Dr. Choi filed a written
22 dissent, then the meeting went forward on that
23 date due to a lack of notice or lack of an
24 agreement to change the date of the meeting.

1 At that meeting apparently the
2 trustee proceeded to -- or trustees proceeded
3 to take their first vote confirming the prior
4 vote. Our contention, of course, that that is
5 not effective because there was not a proper
6 quarterly meeting. In addition to that
7 meeting, the trustee excluded Dr. Choi from
8 participation and they continued to exclude
9 him from participation and any business of the
10 Foundation through the January meeting and the
11 April meeting which was just held. The
12 defendants contend that that is perfectly
13 proper because Dr. Choi is what they refer to
14 as a suspended trustee.

15 Now, no where in the Declaration
16 of Trust, no where in the by-laws is there any
17 reference to such a thing as a suspended
18 trustee; and, in fact, the argument which they
19 make, that the Declaration of Trust, the
20 by-laws would be followed -- and, in fact,
21 they argue that the Declaration -- that the
22 intended schedule must be followed. Instead,
23 there is a procedure which I think is clearly
24 intended to prevent the sudden and impulsive

1 removal of a trustee over some matter, and
2 what I believe is intended by the Declaration
3 is that once the initial removal process is
4 initiated you have a period of three seceding
5 quarterly meetings at which the trustees
6 continue to work together and hopefully work
7 out their differences.

8 Trustees are appointed for life
9 and they should not be removed lightly, but in
10 this case Dr. Choi was completely excluded
11 from participation in the affairs of the
12 Urantia Foundation and prevented from any
13 access to the materials, prevented from any
14 access to financial records, prevented from
15 any say in what the Board did in the quarterly
16 meetings or whatever meetings they may have
17 held. He did not consent to changing the date
18 of that meeting, and his consent was required
19 under the rules. And that being said, I do
20 not see how they have followed the procedures
21 to remove him.

22 Now, the removal process -- and
23 this also goes to the question of suspended
24 trustee -- the removal process is precluded by

1 the recording of certificates of approval by
2 the Recorder of Cook County under the terms of
3 the by-laws. Until that happens, Dr. Choi is
4 a member of trustees of the Foundation. In
5 fact, that has not happened as of today and
6 the Court's order from last weeks says that it
7 would not be done until May 1st so that you
8 would have an opportunity to hear this matter.

9 That being said, we would
10 respectfully suggest that the removal process
11 was simply illegal. If you look at the --
12 both sides actually cite in favor a decision
13 by Judge Ann Williams involving the removal of
14 a prior trustee in an unpublished decision in
15 the Court of Appeals confirming Judge
16 Williams' decision. And I think that these
17 decisions are very interesting because they do
18 point out that -- at least in the opinion of
19 Judge Williams and the Court of Appeals --
20 they agree the settlers is not requiring any
21 specific cause for removal, although I also
22 point out that neither of those decisions
23 address the fact that the by-laws were adopted
24 by the settlers within 31 days of when the

1 Declaration of Trust was signed.

2 And it is an issue to consider,
3 but in the Court of Appeals decision they
4 affirmed the removal of trustee Martin Meyers
5 because the proper votes were taken at the
6 proper meetings and the Court of Appeals
7 simply said we're not going to look at the
8 cause but we're going to look to see that the
9 procedures were followed, and they apparently
10 were followed in the case of Martin Meyers,
11 and his removal was confirmed.

12 Here we say the procedures were
13 not followed. The Board has simply attempted
14 to exclude Dr. Choi and is marking time and
15 basically playing fast and loose with the
16 rules. That, of course, is symptomatic of
17 what's been going on at the Foundation and
18 actually raises the second prong.

19 THE COURT: Let's not go there because if
20 the removal hasn't been proper, then we may
21 not have to get to that.

22 MR. POULOS: That is true.

23 THE COURT: So why don't we reserve that
24 argument until after I have heard the

1 responses to it.

2 MR. POULOS: Very good.

3 Thank you.

4 MR. SOLBERG: Your Honor, first of all,
5 apparently the plaintiffs concede that the
6 Declaration of Trust rules, so at that point
7 pure and simple he wasn't removed for any
8 reasons. On September 7, 2001 he was provided
9 notice, we have stated in affidavits; and more
10 importantly, Judge --

11 THE COURT: And he did get notice.

12 MR. POULOS: It was via a letter sent from
13 a trustee Siegel on August 31, 2001.

14 THE COURT: And you're relying on what
15 part of the affidavit of Mr. Siegel?

16 MR. POULOS: Mr. Siegel is attached here
17 in Exhibit 3 to our file.

18 And if I may, Your Honor, I'll
19 just --

20 THE COURT: I have it right here.

21 MR. SOLBERG: Okay, Exhibit 3, Page 2.

22 THE COURT: And what --

23 MR. SOLBERG: The agenda for the September
24 7th meeting was sent to my office including E.

1 Kwan Choi, and he attaches what we sent. And
2 besides that, Your Honor, plaintiff concedes
3 that he was sent an e-mail from Trustee Keeler
4 on September 2nd providing notice of the
5 meeting as well, and that's within the
6 by-laws. It's five days prior to the meeting.
7 And while plaintiff is claiming that he was
8 surprised regarding the fact --

9 THE COURT: Now, the response to this, of
10 course, was that -- okay, Mr. Choi indicates
11 he didn't receive it; is that what his
12 position is?

13 MR. POULOS: He did not receive that until
14 after the meeting.

15 MR. SOLBERG: The problem with Mr. Choi's
16 position --

17 THE COURT: What is he saying? Here's an
18 affidavit about that notice.

19 MR. SOLBERG: In Paragraph 14, Judge, he
20 claims to have been surprised by the fact that
21 he was going to be notified of his removal at
22 the September 10th meeting.

23 THE COURT: Where does he know about that
24 notice?

1 MR. SOLBERG: At least Paragraph 14,
2 Judge. What he's claiming is that he gets a
3 call from Trustee Siegel on September 7th
4 setting the meeting and that he is surprised.
5 If Your Honor wants me to stop --

6 THE COURT: I was looking at what the
7 procedures require for notice of the meeting.

8 MR. POULOS: This was a special order,
9 Your Honor, not a court order.

10 THE COURT: What are the provisions?

11 MR. SOLBERG: Five days' notice.

12 THE COURT: And what section of the
13 by-laws is that, the Declaration of Trust?

14 MR. POULOS: I believe that is Section
15 3.3.

16 MR. SOLBERG: 3.3.

17 THE COURT: And that would be on 6 of my
18 unnumbered copy?

19 MR. SOLBERG: I would say Page 7, Judge,
20 yes.

21 What it provides for, Judge, is
22 notice not more than ten days, not less than
23 five days.

24 THE COURT: It does not say the manner in

1 which that notice should be provided?

2 MR. SOLBERG: No, it says may be
3 transmitted by mail or by telegraph.

4 THE COURT: Now, what section are you
5 reading there?

6 MR. SOLBERG: 3.7.

7 THE COURT: 3.7 on Page 7. Or by
8 telegraph. So it has to be transmitted by
9 mail.

10 So the issue is whether there
11 was a mail notice pursuant to the by-laws of
12 this special meeting. And we have at least
13 the statement by Mr. Siegel that it was sent
14 from his office, all right.

15 MR. SOLBERG: Yes, we do, Judge, a sworn
16 statement. It was sent to his office. And
17 the good news, Judge, is that in response to
18 Mr. Keeler's e-mail on September 2nd, which is
19 five days more than the September 7th meeting,
20 Mr. Choi responded by e-mail on September 4th.

21 THE COURT: Well, there's nothing in these
22 by-laws that talk about e-mail insofar as the
23 by-laws are concerned, is that correct?

24 MR. SOLBERG: Well, e-mail, telegraph. I

1 think it's arguable.

2 THE COURT: So you're arguing that
3 telegraph is e-mail?

4 MR. SOLBERG: No, what I'm arguing, Judge,
5 is that it's clear he received notice.

6 THE COURT: That's not the point, Counsel.
7 The question becomes whether the procedures
8 were followed and whether there's evidence
9 that there was a mailed notice pursuant to
10 3.7, so I was just following that up.

11 MR. SOLBERG: And there is, Judge, in the
12 attached affidavit.

13 Besides that, Judge, plaintiff
14 is coming into this court and saying in his
15 affidavit that he didn't receive notice until
16 September 7th and that he was surprised that
17 there was an order for his removal. Well,
18 he's sending a September 4th e-mail to Trustee
19 Keeler objecting to the meeting, and it's in
20 response to Trustee Keeler's e-mail, and this
21 is Exhibit C to the Keeler exhibit, Judge,
22 attached to 2 where our papers follow and what
23 he's saying according to 7.5 of the
24 Declaration of Trust. And so, when he comes

1 into this court saying I didn't have notice of
2 this meeting, that's just flatly untrue, so
3 not only do we have Mr. Siegel's sworn
4 statement that notice was mailed, we have
5 plaintiff himself recognizing that there's
6 a meeting, and on September 7th we have the
7 plaintiff on the phone with the other trustees
8 until he hangs up, so there's notice, Your
9 Honor.

10 Also, Your Honor, the case is
11 clear he did have notice. There was a proper
12 vote for removal on September 7th, it was
13 unanimous, and the trustee doesn't get a vote
14 regarding that. And also, Your Honor, they
15 raise an argument regarding the minutes of the
16 meeting. Well, under the by-laws you don't
17 keep minutes of the meetings. It's clear.
18 It's under Section 2.4. So that's September
19 7th.

20 So we have the meeting. The
21 next regularly-scheduled meeting would be
22 September 20th under the by-laws, but what the
23 by-laws provided is that the trustee can agree
24 to move the meeting, and that's what they did.

1 What plaintiff is trying to do, Your Honor, is
2 since he's been removed, he wants to stop the
3 process. And how does he do that? He goes,
4 well, I'm not going to agree to move the
5 meeting; and what that would do, Your Honor,
6 is it's just -- there's nothing that provides
7 for that. He doesn't have a vote at this
8 point.

9 Now, plaintiffs make much of the
10 suspended trustee/removed trustee. They're
11 trying to draw a distinction on that, but our
12 position is and we believe it's clear from the
13 by-laws and the Declaration of Trust is once
14 that removal vote was taken, you are removed,
15 you don't have any more votes, you don't
16 receive any more documents, and they confirm
17 the removal if it is going to be confirmed at
18 the next quarterly meeting.

19 THE COURT: What's your response to that,
20 once a vote is taken you are removed and you
21 get no notice? Where does that provide for
22 that? In the Declaration? In the by-laws?

23 MR. SOLBERG: Well, what it provides,
24 Section 5 of the Declaration governs removal,

1 and it says he may be removed for any reason
2 by unanimous votes; and then what we do here,
3 Your Honor, is read the Declaration of Trust
4 in conjunction with the by-laws and they have
5 what is allowed to do is appear at three
6 quarterly meetings solely to contest his
7 meeting. But, you know --

8 THE COURT: But he would have to have
9 notice of those quarterly meetings. At least
10 he would have notice even if the meeting was
11 changed, so what is your argument? Do you
12 make an argument that he received notice?

13 MR. SOLBERG: Oh, absolutely. Let me back
14 track. The next quarterly meeting was set for
15 October 20th, but it was re-set to November
16 4th.

17 THE COURT: What necessary requirements
18 are there for a quarterly meeting? What do
19 the by-laws say about notice that needs to be
20 given if at all for a quarterly meeting?

21 MR. SOLBERG: I believe it's Section 3,
22 Judge. That's actually what I handed up to
23 you.

24 THE COURT: Yes, I have that revision

1 which says that there's going to be an
2 agreement of all trustees to change the date.
3 It says notice of such a meeting shall be
4 given at least three days prior to the date
5 thereof. So there's a notice requirement.

6 MR. SOLBERG: Yes. And Your Honor,
7 there's no doubt he received it. He showed
8 up.

9 THE COURT: And what notice was given of
10 such meeting to Dr. Choi? What is your
11 evidence of that?

12 MR. SOLBERG: That he showed up. He was
13 at the November 10th meeting with his
14 attorney.

15 THE COURT: Okay. So that's the only
16 evidence you have that any notice was given by
17 the trustee was that he showed up?

18 MR. SOLBERG: He doesn't allege that he
19 wasn't given notice of the November 10th
20 meeting, Judge. That's not the issue. What
21 he's saying, according to him, it was changed
22 improperly, and what his argument is is that
23 in order to change a regular quarterly meeting
24 of the trustee you have to have a re-vote of

1 all of the trustees. He was no longer -- he
2 was a suspended trustee, so he didn't get a
3 vote. What he wants to say is I know I've
4 been removed, but you know what, I'm not going
5 to agree to reschedule a quarterly meeting
6 and, therefore, you can't have a vote after
7 the September 7th vote to remove him.

8 What he wants to do is stop the
9 vote at the next meeting simply by refusing to
10 agree to a schedule, but our position is, no,
11 you can't do that, you're not a voting trustee
12 anymore, you're a suspended or removed
13 trustee. They're both two ways of saying the
14 same thing.

15 THE COURT: Okay.

16 MR. SOLBERG: And he shows up at the
17 November 10th meeting with his attorney,
18 there's a vote to affirm his removal that was
19 taken on September 7th and at the next meeting
20 of January 29, 2002 there's another unanimous
21 vote confirming his removal and on November
22 20, 2002 the third and final vote confirming
23 his removal was taken.

24 He had notice of all these

1 meetings; and again, he was at the November
2 10th meeting with his attorney. I don't
3 understand. They're not making that argument
4 is my understanding because they were
5 certainly there, they certainly had notice
6 about it.

7 THE COURT: Okay.

8 MR. SOLBERG: And what our position is,
9 Judge, is this is a simple case in the sense
10 that he can be removed for any reason. And
11 what he wants to do is come in and say, Judge,
12 they're removing me without a reason. We do
13 have a reason, we asserted it in our verified
14 complaint. But under the Declaration of Trust
15 which is controlling, he could be removed for
16 any reason at all.

17 What our position is, they have
18 no likelihood of success on the merits
19 whatsoever, they have not demonstrated it,
20 they have no irreparable harm whatsoever, they
21 have no protectable interest. If he can be
22 removed for any reason as a trustee, Your
23 Honor, it's our position that he can't
24 establish a protectable interest.

1 And, Your Honor, this case is a
2 Declaration of Trust. This has been litigated
3 in the Meyers_v._Berman case, which is
4 attached to our motion for judgment on the
5 pleadings as Exhibit C, and plaintiffs in
6 their papers concede that what the Meyers case
7 held is that it led to a conflict within the
8 Declaration of Trust. In the by-laws the
9 Declaration of Trust controls, so the short
10 version is he can be removed for any
11 reason at all. He was removed.

12 Plaintiffs talk about a
13 suspended trustee in a prior appearance before
14 Your Honor. They had talked about this hadn't
15 been done before. In the affidavit by Richard
16 Keeler, this is the exact process that was
17 followed by the removal of Mr. Meyers from the
18 trust. We have sworn statements under oath to
19 that effect as well. So what our position is,
20 Your Honor, is that there is zero likelihood
21 of success on the merits based on the
22 Declaration of Trust.

23 THE COURT: All right. Plaintiff had
24 talked about irreparable harm and I didn't

1 hear you argue that in your beginning. I
2 heard you talk about an ascertainable right
3 in need of protection and the likelihood of
4 success on the merits regarding the question
5 of the meetings themselves. What about
6 irreparable harm?

7 MR. POULOS: Well, I think it's set forth
8 in Judge Williams' opinion the trustee has a
9 duty to the Foundation and to the public to
10 see to the proper operation of the Foundation.
11 We have not argued here today all of the
12 background, that Dr. Kwan's fees were not
13 being handled properly, so we have covered
14 that in our affidavit in great detail.

15 The irreparable harm will occur
16 to the Foundation and to the public if
17 Dr. Choi is not permitted to investigate these
18 matters that concern him and either satisfy
19 himself that the matters have been resolved or
20 have an opportunity to address them with his
21 Board and see to it that they are resolved; or
22 in the final analysis, if the Board refuses to
23 address the issues of possible waste of
24 dollars and the issues raised in the

1 affidavits, Dr. Choi then has recourse to take
2 the matter up with the Attorney General or go
3 to court and proceed.

4 THE COURT: What part of Judge Williams'
5 decision does she talk about the irreparable
6 harm and damage?

7 MR. POULOS: If you look on Page 2 of her
8 decision --

9 THE COURT: Was that a -- it doesn't look
10 like a Temporary Restraining Order was
11 involved in her decision or a preliminary
12 injunction was involved in her decision.

13 MR. POULOS: No, this is actually after
14 the decision, after the fact.

15 THE COURT: So she doesn't opine on the
16 issue of irreparable harm and damage?

17 MR. POULOS: No.

18 THEN COURT: So what facts do you present
19 that supports or law do you present that
20 supports your irreparable harm and damage to
21 warrant a Temporary Restraining Order being
22 entered because that's all you're talking
23 about.

24 MR. POULOS: Well, here's how things would

1 play out. Assuming you permit the removal of
2 Dr. Choi to go forward -- and that's not
3 accomplished until a certificate is recorded,
4 which would be done presumably May 1st in the
5 absence of a Temporary Restraining Order, and
6 I would add that in an affidavit submitted by
7 plaintiffs they state that they have actually
8 signed the certificate and are ready to record
9 it -- at that point Dr. Choi loses the ability
10 and the right to act as the trustee and to
11 participate in the affairs of Urantia and to
12 look into these matters that concern him.

13 If the Court were to remove
14 Dr. Choi, were to permit him to be removed now
15 at this point and then subsequently determine
16 that the removal was proper, what harm will it
17 have? His removal will have been a nullity,
18 but he will not have been permitted to
19 participate as a trustee to perform his
20 duties. And we're not talking about benefit
21 to him, he certainly would have compensation,
22 we're talking about fulfilling an obligation
23 to the Foundation and the people that are a
24 part of it. The Foundation may have --

1 probably would have appointed a replacement
2 trustee down the road six months from now.

3 THE COURT: All right. Do you have any
4 affidavits of any facts to support either
5 irreparable harm or damage or do you have any
6 case law which you cite which suggests that
7 this kind of a situation is as a matter of law
8 irreparable harm and damage?

9 MR. POULOS: If I may have a moment, Your
10 Honor.

11 MR. SOLBERG: None in the papers, Judge.

12 MR. POULOS: Your Honor, the recitation of
13 the facts are in the affidavit.

14 THE COURT: Dr. Choi's affidavit?

15 MR. POULOS: Dr. Choi's affidavit. We
16 recite a number of facts of very serious
17 allegations of misconduct on the part of the
18 Board. On September 11th of 2000 Dr. Choi --

19 THE COURT: What paragraphs are you
20 referring to?

21 MR. POULOS: Well, most of the affidavit
22 of fact addresses this. If you look at
23 Paragraph 9 it sets forth his concerns in a
24 number of subparagraphs, and if you look at

1 Paragraph 10 he actually recites the history
2 of what transpired, which leads him to the
3 conclusion that something is amiss.

4 And then finally -- I apologize
5 for the lack of specifics, but finally we have
6 attached an exhibit -- he actually sent on
7 September 1st a written statement saying he
8 wants access to these documents.

9 THE COURT: I appreciate the investigation
10 issues and his concerns, but what is the
11 irreparable harm and damage that's going to be
12 done between now and the Court's opportunity
13 to determine the case on its merits; and that
14 is, the propriety of the efforts to remove
15 him?

16 MR. POULOS: If he is removed as a trustee
17 then I would certainly think that the argument
18 will be made that he no longer has a right to
19 look into what has been going on.

20 THE COURT: How does that create an
21 irreparable harm and damage, that he doesn't
22 look?

23 MR. POULOS: It creates a mirage favorable
24 to the Foundation. The Foundation is not a

1 defendant in this case. Dr. Choi is acting to
2 protect the Urantia Foundation. It's not a
3 harm to him.

4 THE COURT: I understand.

5 MR. POULOS: It is a harm to the
6 Foundation because as we recite there is a
7 long-standing pattern, first of all, of
8 improper and illegal exclusion of trustees.
9 In fact, there is a letter attached as part of
10 our affidavit from Gard Jameson and Mo Siegel
11 stating that the very conduct that is now
12 being applied to Dr. Choi was being illegally
13 applied to them earlier.

14 THE COURT: Because something is illegal
15 doesn't mean that it's necessarily creating
16 irreparable harm and damage. It certainly
17 suggests that there's some issues there, but
18 irreparable harm and damage is what I'm
19 looking for, and for a Temporary Restraining
20 Order, there would have to be facts presented
21 by affidavit that --

22 MR. POULOS: In our affidavit -- I can't
23 tell you the exact paragraph -- we talk about
24 the pending copyright litigation. This case

1 is now pending. It's currently pending in the
2 Court of Appeals. Dr. Choi has become very
3 concerned about the possible loss of the
4 copyright. There was a prior case in which
5 the copyright of the Urantia Book was
6 challenged.

7 THE COURT: McMullen.

8 MR. POULOS: It was a case prior to that.
9 According to Dr. Choi's affidavit, legal fees
10 in excess of \$1 million was spent in legal
11 fees -- and that is on Page 7 of our
12 affidavit -- and in that case the copyright
13 was lost and the Appeals Court reversed. Then
14 Mr. McMullen brought a copyright of The
15 Urantia Book -- and this, by the way, Your
16 Honor, is The Urantia Book, very heavy.
17 McMullen in this case and as set forth in
18 here, Dr. Choi went to meet with Mr. McMullen,
19 came back with a set of proposals which the
20 other trustees refused to act upon. Dr. Choi
21 learned that the allowance for legal fees in
22 the McMullen case, the budget was increasing
23 \$1.5 and that the Board ignored his attempts
24 to resolve the case and the trial court ruled

1 that the copyright of the Urantia Book is
2 illegal, is not valid. Now, the Declaration
3 of Trust says that the primary duty of the
4 trustee is to protect The Urantia Book.

5 THE COURT: This already happened. What
6 I need to know is between now and later what's
7 stated in your affidavits that would warrant
8 a Temporary Restraining Order being entered
9 today.

10 MR. POULOS: Mr. McMullen's case is up on
11 appeal, and Dr. Choi, if he is not reinstated,
12 one of the things he will not be able to do is
13 to have input on the handling of this appeal
14 and the appealability to try and save the
15 copyright to the Urantia which would still
16 have to be done.

17 THE COURT: Counsel, you have a response
18 to the argument about the irreparable harm?

19 MR. SOLBERG: First of all, they made
20 absolutely no showing, Judge, of irreparable
21 harm, and if I could quickly -- this
22 copyright, it's a beautiful thing to be on
23 both sides of the issue. On the one hand they
24 say The Urantia Book, the copyright, has to be

1 protected and on the other hand they're saying
2 we don't like how much money you're spending,
3 and that's certainly irreparable harm.

4 THE COURT: All right, I think I heard
5 enough argument for now, and I need an
6 appropriate order prepared. The Court would
7 deny the motion for a Temporary Restraining
8 Order. The Court finds that there's a
9 likelihood of success on the merits; there is
10 an ascertainable remedy for relief; however,
11 the Court finds there has not been sufficient
12 showing of irreparable harm and damage or lack
13 of an adequate remedy at law. The Court will
14 continue the case to a particular date for
15 addressing the merits of the issue, which is
16 the question of whether or not this process
17 for removal of the trustee is in accordance
18 with the Declaration and the bylaws.

19 From my viewing of all the
20 materials presented, that seems to be a pretty
21 narrow, confined issue, and I would like to
22 get to that as quickly as possible so this
23 case can be disposed of and the Urantia
24 Foundation can go forward.

1 MR. HAYES: Your Honor, I think it's
2 almost capable of summary judgment.

3 THE COURT: I think so too because most of
4 the material is already here in terms of the
5 process. If you want to add anything to it or
6 enhance it, you might do that, but I've given
7 an argument date on the motion for summary
8 judgment.

9 MR. HAYES:: Would you suggest, Judge, a
10 matter a housekeeping, that we enter the order
11 today, put a status date 30 days from today?

12 MR. POULOS: My concern would be tendering
13 the Court a certificate. That's my concern;
14 and my concern, that once they record the
15 certificate, they have the ability to put in a
16 new trustee and they may be in the position if
17 you find the removal was proper --

18 THE COURT: Then that new trustee doesn't
19 have a position. If you keep asking for an
20 injunction that has been denied and it's found
21 to be wrong, they will roll it back.

22 MR. HAYES: Thank you, Your Honor.

23 MR. SOLBERG: Thanks, Judge.

24 THE COURT: Good luck.

1 Now, I need an appropriate
2 order. I don't know if you're going to review
3 it or whatnot, but I want all of the findings.

4 MR. POULOS: When could you hear the
5 summary judgment?

6 THE COURT: I could get it on summary
7 judgment certainly in June, perhaps the end of
8 May.

9 MR. HAYES: So, Your Honor, if I may.
10 There are going to be cross motions, I assume?

11 MR. POULOS: I think on the notice issue,
12 that's true.

13 THE COURT: Well --

14 MR. SOLBERG: It shouldn't be hard. And I
15 would like the opportunity to take a couple of
16 days to talk to the gentlemen to see how he
17 wishes to posture the pleadings.

18 THE COURT: It's in everybody's interest.

19 MR. SOLBERG: Thank you, Your Honor.

20 THE COURT: All right, prepare the order.
21 And, yes, I'll give it a status if that would
22 work, and you can work toward that status if
23 you need one. If your motions or cross
24 motions are already on file, great.

1 MR. HAYES: Let me suggest an even shorter
2 status date, and at that time we can report to
3 you what our plans are.

4 THE COURT: Fine. 14 days for status.
5 Middle of May or something like that.

6 MR. HAYES: May 15th.

7 THE COURT: May 15th, that works for me.
8 That happens to be a Wednesday.

9 MR. POULOS: What time will that be?

10 THE COURT: That's 9:30.

11 MR. HAYES: Thank you, Your Honor.

12 MR. POULOS: Thank you very much, Your
13 Honor.

14 THE COURT: You're welcome.

15 (Which were all the proceedings had
16 in the above-entitled cause.)

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