

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Ethylon B. "E.B." Brown, *et al*,

Civil Case No. 27-CV-09-2277

Plaintiffs,

v.

**AFFIDAVIT OF JILL CLARK, ESQ.
SUPPORTING PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT
SUPPLEMENTAL AFFIDAVIT**

Michael "Kip" Brown, *et al*,

Defendants.

I, Jill Clark, Esq., plaintiff counsel in this action, attach the following documents, which are to the best of my knowledge and belief, true and correct copies - these transcripts were not available by January 21, 2010, were received after due to issues already disclosed to the Court. So as not to supplement more than once, Plaintiffs withheld this supplementation until all transcripts were received. All additions to the Memorandum of Law are **grayed** to highlight them:

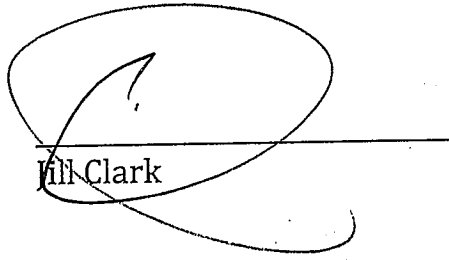
Att. A	PI hearing Tr. pages for Anne McCandless
Att. B	PI hearing Tr. pages for Michael "Kip" Browne
Att. C.	PI hearing Tr. pages for E.B. Brown

This concludes my affidavit of 1 page.

Signed and sworn before me
This, 11th day of February, 2010.

13


Notary Public


Jill Clark



1 serial calling?

2 A No, I don't believe she was.

3 Q Was she with you later that evening?

4 A I believe she came over -- yeah, in fact I know.
5 She came over and helped me put together the form
6 for the signature for the resolution, that the
7 signature cards changed.

8 Q Is Dottie Titus a former executive director for
9 JACC?

10 A Yes, she was.

11 Q Was Dottie Titus terminated by the JACC board at
12 some point?

13 A Yes, she was.

14 Q And who was the chair when Dottie Titus was
15 terminated as executive director?

16 A Brian Smith.

17 Q Did you ask for help from anyone such as Dottie
18 Titus to by electronic means connect all board
19 members together for a meeting on January 15th?

20 A No, I did not.

21 Q Ms. McCandless, showing you what's been marked as
22 Exhibit 10, would you take a moment to look at
23 that, please.

24 Do you recognize that document?

25 A Yes, I do.

ATT. A

- 1 Q Are you a signatory on that document?
- 2 A Yes, I am.
- 3 Q Are you one of the authors?
- 4 A Yes, I am.
- 5 MS. CLARK: Offer Exhibit 10.
- 6 MR. SCHOOLER: No objection.
- 7 THE COURT: 10 will be
- 8 received.
- 9 BY MS. CLARK:
- 10 Q Did you transmit a copy of Exhibit 10 to E.B.
- 11 Brown?
- 12 A No, I did not.
- 13 Q To Shannon Hartfiel?
- 14 A No, I did not.
- 15 Q To Robert Wilson?
- 16 A No.
- 17 Q To Steve Jackson?
- 18 A No.
- 19 Q To (inaudible).
- 20 A No.
- 21 Q If you would look at Exhibit 11, do you recognize
- 22 that document?
- 23 A Yes, I do.
- 24 Q Are you a signatory on that document?
- 25 A Yes, I am.

1 fact there were discussions prior to the January 14
2 board meeting about planning to reopen officer
3 elections involving you, Megan Goodmundson and
4 Dottie Titus?

5 A Yes.

6 Q In fact, everyone else on that carbon copy list,
7 correct?

8 A That's correct.

9 Q Did you do anything to inform any of the board
10 members who were plaintiffs in this action that the
11 topic would be taken up at the January 14, 2009
12 board meeting to reopen officer elections?

13 A No.

14 Q Isn't it true that -- was also a plan discussed by
15 you and several others to terminate Jerry Moore at
16 the January 14, 2009 board meeting?

17 A Yes.

18 Q What did you do if anything to notify any of the
19 board members who are plaintiffs in this action
20 that that topic would be raised at the meeting?

21 A Nothing.

22 Q The agenda that some of you wanted to change the
23 board meeting to on January 14, 2009, did you
24 prepare that or did Kip Browne prepare that?

25 A I don't remember which one of us did, to be frank.

1 change the signature card just on the basis of your
2 minutes of the telephonic January 15th board
3 meeting?

4 A Yes.

5 Q The bank in fact required the resolution that's no
6 in evidence, correct?

7 A That's what we brought, was the resolution. We
8 brought to the bank Exhibit 10.

9 Q That was not sufficient for the bank, correct?

10 A He said no. He told the gals that we talked to,
11 no.

12 Q Would you look at Exhibit 11 for a second?

13 A (Witness complies.)

14 Q Do you understand that to be a bank resolution?

15 A Okay, yes.

16 Q That's what the attorney for the bank demanded,
17 correct?

18 A Right.

19 Q But there was no board meeting between January 15th
20 and February 11th, right?

21 A There was no board meeting, is that what you said?

22 Q Isn't it true there was no board meeting between
23 January 15 and February 11, 2009?

24 A Other than the telephone resolution, no.

25 Q Did you understand that JACC received money from

- 1 several different funding sources?
- 2 A Yes.
- 3 Q That was by virtue of contracts with those funding
4 agencies or foundations?
- 5 A That's correct.
- 6 Q And those contracts had specific criteria, rules
7 that had to be followed in the expenditure of those
8 funds by JACC, correct?
- 9 A Correct.
- 10 Q What did you do to make sure that you had copies of
11 all funding contracts before you started writing
12 the checks out to JACC?
- 13 A There wasn't much I could do since all the files
14 had been taken from the office.
- 15 Q Well, NRP is a funder, correct?
- 16 A Right.
- 17 Q Did you go to the NRP office and get a copy of the
18 contract?
- 19 A I really don't need to do that.
- 20 Q The question was did you do it?
- 21 A No.
- 22 Q Did you have them fax you a copy of the contract?
- 23 A We have a copy of the phase 2 plan.
- 24 Q So you had a copy of the NRP phase 2 plan.
- 25 A Right.

1 Q Did that indicate how NRP funds could be spent?

2 A Yes.

3 Q Did you make sure you got copies of all other
4 funding contracts before you started cutting
5 checks?

6 A No.

7 Q Did you ask any of the funding sources for those
8 contracts before you started cutting checks?

9 A I did not ask for a copy of the contract, no.

10 Q Prior to you being elected in January 12 of 2009 as
11 a board member had you been tracking what was going
12 on at JACC?

13 A What do you mean by tracking?

14 Q Had you been keeping track of the business of the
15 organization, going to meetings?

16 A Yes.

17 Q Isn't it true that in December of 2008 one of the
18 topics of discussion at the board meeting was
19 trying to work with the Ackerberg Group to reduce
20 the back rent or maybe even find a cheaper office?

21 A I don't recall them talking about reducing the back
22 rent. They did talk about I believe moving into
23 new office space.

24 Q The point was that JACC could no longer afford the
25 rent from the Ackerberg Group for that location,

1 they were trying to work something out to be able
2 to keep going on JACC's limited budget?

3 MR. SCHOOLER: Object to the
4 form.

5 THE COURT: Overruled.

6 THE WITNESS: She hasn't asked
7 a question, Your Honor.

8 THE COURT: She did, too.

9 THE WITNESS: Restate the
10 question, please.

11 BY MS. CLARK:

12 Q Isn't it true that the point of the discussions was
13 that JACC could no longer afford the Ackerberg rent
14 and they were trying to work something out with the
15 Ackerberg group?

16 A That's not the impression I got, no.

17 Q Well, isn't it true that one of the first checks
18 you cut on behalf of JACC was for \$5,000 to the
19 Ackerberg Group?

20 A Yes.

21 Q What did you do prior to spending \$5,000 of JACC
22 money to see whether or not some kind of deal could
23 be cut with the Ackerberg Group to reduce the
24 amount?

25 A We owed them that money.

- 1 Q Did you do anything?
- 2 A No.
- 3 Q Did you sign a check to the Hennepin County
4 Treasurer?
- 5 A Yes.
- 6 Q For roughly \$2,500?
- 7 A Yes.
- 8 Q Is that money that was for property taxes on the
9 urban building?
- 10 A On the what building?
- 11 Q Well, what do you call, it the Probation House?
- 12 A The Probation House, right.
- 13 Q Those were taxes paid to Hennepin County, correct?
- 14 A Right.
- 15 Q And the program at Probation House is a Hennepin
16 County program, correct?
- 17 A Correct.
- 18 Q Did you know that Jerry Moore had been in
19 negotiations with Hennepin County to make the
20 property tax exempt?
- 21 A Well, actually, I received a call from a Hennepin
22 County representative, Mr. Cosgrove, and he was
23 very concerned because he had been trying to get a
24 hold of Jerry since last October and working with
25 him on a new lease and getting the property taxes

1 reduced, in fact eliminated, tax-free, tax-exempt,
2 excuse me, and Jerry had not been responsive to
3 him, had not returned any of his calls and was not
4 in fact working with him at all.

5 The County was getting quite concerned because
6 the property taxes had not been paid and even
7 though it's our belief that the property should be
8 tax exempt, until it is tax exempt. We got a
9 letter from the County saying if you don't pay
10 these taxes by I think it was a date in February,
11 we're taking the property back for non-payment of
12 taxes.

13 So if Jerry says he was working with the
14 County on all of this, the County wasn't aware of
15 that.

16 Q Did you do anything to further the project of
17 getting that property to be tax-free or did you
18 just pay the \$2,500?

19 A At the moment was just paid the \$2,500.

20 Q Was \$1,500 of JACC funds paid to Dan Rother, a
21 board member?

22 A Yes.

23 Q What was that for?

24 A It was to reimburse Dan for the legal expenses he
25 incurred when Jerry Moore tried to get a

1 restraining order filed against him.

2 Q Do you have any idea whether Dan Rother had
3 tendered any indemnification to JACC at the time he
4 was sued?

5 A Yes.

6 Q Yes? Did he tender the indemnification of JACC at
7 the time he was sued?

8 MR. SCHOOLER: Object to the
9 form. Asked and answered.

10 THE COURT: Overruled.

11 THE WITNESS: Could you repeat
12 the question?

13 MS. CLARK: Sure.

14 BY MS. CLARK:

15 Q Do you know whether Dan Rother tendered the
16 indemnification to JACC at the time he was sued?

17 A He wasn't sued. Jerry tried to file a restraining
18 order against him. And, yes, I was at the meetings
19 and several occasions when Dan Rother tried to
20 discuss this and had -- he had a document that he
21 gave to the board.

22 Q Let me ask you a different way. Isn't it accurate
23 to say that Mr. Rother spent the money and then
24 came to the JACC board for reimbursement of his
25 legal fees?

- 1 A I don't know. I wasn't on the board at the time.
- 2 Q But you signed the check to Dan Rother. Did you
3 sign the check to Dan Rother?
- 4 A No, I did not sign the check to him.
- 5 Q Who to the best of your knowledge did?
- 6 A I'm not sure if it was -- it would have had to have
7 been Hodson or Browne, but I didn't sign it.
- 8 Q And is there a relationship between Mr. Hodson and
9 Mr. Rother?
- 10 A They are partners.
- 11 Q Involved in a romantic relationship?
- 12 A They're domestic partners.
- 13 Q Did the JACC executive committee, that is to say
14 Kip Browne, you, Mr. Hodson and Mr. Hubbard, make a
15 decision that they would pay some money out of
16 pocket and wait to ask for expense reimbursement
17 until after this litigation was over?
- 18 A I believe we've all paid money out of pocket.
- 19 Q Is there any record of what's being paid out of
20 pocket that's going to be requested of JACC when
21 this litigation is over?
- 22 A I don't believe so.
- 23 Q How much money was in the JACC banking account when
24 you took over?
- 25 A About \$33,000.

1 Q Isn't it true that shortly after JACC paid out
2 \$1,500 to Rother, 5,000 to Ackerberg, 2,500 to
3 Hennepin County, that the McCandless board was
4 discussing that JACC was in financial straits?

5 A We were discussing that before we paid out this
6 money.

7 Q Isn't it true that after that money was paid out
8 the McCandless board was discussing how JACC was in
9 financial straits?

10 A Yes.

11 Q Did you do anything to determine whether the monies
12 that you were paying out were being paid consistent
13 with the funding contracts?

14 A Yes.

15 Q What did you do?

16 A I knew the major portion of that money came from
17 the Northside Home Fund. And I did have a
18 discussion with the woman who is in charge of that,
19 Jill Keiner, saying that we needed to use some
20 funds to keep JACC going. All the utilities hadn't
21 been paid and the taxes and the rent and everything
22 else. I said, you know, we'd be using that money
23 until we could get the reimbursements back.

24 Our organization works in large part on a
25 reimbursement system. We pay out the money, then

1 you put in requests for reimbursements to the city
2 for CDBG funds and to NRP for the NRP funds.

3 Jerry has not put in a reimbursement request to
4 the city --

5 MS. CLARK: Move to strike as
6 non-responsive.

7 THE COURT: Sustained.

8 BY MS. CLARK:

9 Q What did you do to determine whether the payments
10 you made on behalf of JACC that we've been talking
11 about, the 1,500 to Roger, 5,000 to Ackerberg,
12 2,500 to Hennepin County, were consistent with the
13 funding contract?

14 A Ms. Keiner told me basically that if we needed to
15 use the money temporarily to keep JACC going, to
16 keep JACC solvent, then that would be okay with the
17 understanding that those funds would be repaid when
18 we got money.

19 Q And you're saying that that is because of your
20 assumption that most of the funds came from the
21 Northside Home Fund?

22 A Yes.

23 Q Jill Keiner didn't work for the Northside Home
24 Fund, did she?

25 A She works for -- she's our contact for the money

1 that came from the cluster project.

2 Q Isn't it true that in January of 2009 Jill Keiner
3 was an employee of the city of Minneapolis?

4 MR. SCHOOLER: Object to the
5 form, foundation. It's inaccurate.

6 THE COURT: Overruled.

7 THE WITNESS: She works out of
8 the CPED office. I'm not sure, Ms. Clark.

9 BY MS. CLARK:

10 Q She works at the City of Minneapolis, correct?

11 A I'm not sure who pays her paycheck, Ms. Clark.

12 Q Isn't it true that Jill Keiner did not give you any
13 authority to use the funds but told you that that
14 was a question that JACC had to decide?

15 A Right.

16 Q And she told you that some profits have internal
17 policies that allow them to borrow money between
18 different funding accounts but that was an issue of
19 what policies JACC had in place, correct?

20 A Right.

21 Q Did JACC have any policies in place in January of
22 2009 to allow this money to be moved between
23 different funding accounts?

24 A The board made a decision that this was going to be
25 done.

1 Q The question was did JACC have any policies in
2 place that allowed moving money between different
3 funding accounts?

4 A I'd have to say yes.

5 Q What's the title of the policy?

6 A Well, JACC has had financial policies in place for
7 years and this is not a one-time -- this isn't the
8 only time this has been done. When I was on the
9 board before we would do this, where we would take
10 money from one fund when another fund was short.

11 Q What's the title of the policy?

12 MR. SCHOOLER: Object to the
13 form. Asked and answered.

14 THE COURT: Overruled.

15 THE WITNESS: I couldn't give
16 you the exact title of the policy.

17 BY MS. CLARK:

18 Q Did you pull it up, take a look at it?

19 A No.

20 Q Before you cut any of these checks?

21 A It was based on my institutional knowledge of the
22 JACC.

23 Q How many executive committee minute meetings have
24 there been of the McCandless board since January
25 14, 2009?

1 was at about 11:49 in the morning on January 13th?

2 A Whenever, yeah.

3 Q Do you recall?

4 A I don't recall the time, no.

5 Q I have a document that might refresh your
6 recollection.

7 MS. CLARK: Your Honor, may I
8 approach?

9 THE COURT: You may.

10 BY MS. CLARK:

11 Q You sent the e-mail about 11:49 a.m. on January
12 13th, correct?

13 A Yes.

14 Q And at that point you were confirming that you all
15 had already talked about securing the property?

16 A Yes.

17 Q And at that point you confirmed that you were going
18 to get the Ackerberg Group to change the locks at
19 the JACC house?

20 A Yes.

21 Q And at that point you indicated that if Jerry Moore
22 did anything around the property you suggest we
23 make a police report and open a criminal
24 investigation?

25 A Yes.

1 Q You also indicated to this group that it will help
2 our case against him, right?

3 A If that's what's on there, that's what I said.

4 Q On January 13 who were the officers of JACC?

5 A At that time the officers were E.B. Brown, Ben
6 Myers, Robert Scott and -- well, I don't know about
7 secretary because Shannon said she'd only be
8 secretary until the election.

9 Q What authority did you have to change the locks at
10 the JACC house on January 13th?

11 A At that time, none.

12 Q Isn't it true that on January 13th you also told
13 this group I think we all agree that Jerry has to
14 go?

15 A Yes.

16 Q Your counsel asked you about some letters that you
17 provided to Franklin Bank, for example, by Barbara
18 Johnson and Don Samuels. Do you recall that?

19 A Yes.

20 Q Barbara Johnson and Don Samuels are not the
21 Minneapolis City Council, are they?

22 A Could you repeat that?

23 Q I can ask it differently. Isn't it accurate that
24 the Minneapolis City Council never held a vote to
25 take a position on the JACC elections?

1 It was very clear in the bylaws that it was a two-
2 year term. And so, quite frankly, I had thought
3 this concept of one-year terms was in retaliation
4 to Dan Rother for voicing his concerns. He was one
5 of the people slated to stand election again.

6 I had sent an e-mail off to Bob Cooper saying,
7 hey, you know, we're doing this process, take a
8 look at this and I'd like to get your opinion on
9 it. It seems pretty clear to me that we have two-
10 year terms, not one-year terms.

11 Q Did he confirm that?

12 A Yes, he sent a response back, yes, okay. So at
13 that meeting I started off saying had everybody
14 seen the e-mail from Bob Cooper because I sent it
15 around to all of the committee members, including
16 Jerry, and at that meeting it was Jerry, Shannon
17 Hartfiel, and later showed up Jay Clark.

18 And at that meeting he first didn't say anything
19 about it and I said, okay, if nobody has any
20 problems with it. He said, well, I have a problem
21 with it and just sort of went off onto this concept
22 of I'm going over his head and people already made
23 decision and I said but it's not the right decision
24 and we have to follow the bylaws.

25 Q Who runs that meeting?

ATT.

B

1 2009?

2 A No.. Ben Myers wrote the check out to Jerry.

3 Q Do you know whether or not cutoff or diminution of
4 wages is a basis for claiming unemployment
5 benefits?

6 A I'm sorry, I'm still not hearing the end of your
7 sentences.

8 Q Do you know whether the cutoff or the diminution of
9 wages is a basis to claim unemployment benefits?

10 A Typically one does not get a paycheck when they are
11 not employed anymore. So certainly that would be
12 one of the bases.

13 Q Do you know who Tamara Hardy is?

14 A Not personally.

15 MS. CLARK: May I approach?

16 THE COURT: You may.

17 BY MS. CLARK:

18 Q Showing you what's been moved as Exhibit 29 -- is
19 it all right if I remove some of these files down
20 here?

21 THE COURT: Don't lose them.

22 BY MS. CLARK:

23 Q Have you ever seen that document before today?

24 A Yes.

25 Q Are you the recipient -- starting at the top of

1 page, in backwards chronology, are you the
2 recipient from Megan Goodmundson to Kip Browne, an
3 e-mail of January 9, 2009?

4 A Yes, I am.

5 Q Do you recall receiving that from her, something
6 regarding Tamara Hardy?

7 A I remember the second part of it but if you give me
8 a second to read the top part I'll see if it rings
9 a bell.

10 Yes, I remember this.

11 Q This had to do with some of the nominations
12 committee discussions for potential board members
13 for the January 12, 2009 elections, right?

14 A Yes.

15 MS. CLARK: Offer Exhibit 29.

16 MR. SCHOOLER: Offer Exhibit

17 29.

18 MS. CLARK: No objection.

19 THE COURT: 29 will be

20 received.

21 BY MS. CLARK:

22 Q Is it fair to say, Mr. Browne, that as of the date
23 of this e-mail, January 9, 2009, you knew that

24 Tamara Hardy worked at the Jordan New Life Church?

25 A Yes, but I wouldn't be able to identify her if she

1 were in the room. I knew her only by name.

2 Q And isn't it true that Tamara Hardy's name was
3 removed from the slate for possible board members
4 between the October meeting and the January 2009
5 meeting?

6 A We weren't able to verify her eligibility in time.

7 Q The question is isn't it true that Tamara Hardy's
8 name was removed from the October slate prior to
9 the January 12, 2009 elections?

10 A Yes, because we could not verify her eligibility.

11 Q Does removing Tamara Hardy from the slate, even
12 though you knew that she worked in Jordan, fit your
13 definition of inclusiveness?

14 A Pardon me?

15 Q Does removing Tamara Hardy from the slate, even
16 though you knew she worked in Jordan, fit your
17 definition of inclusiveness?

18 A What I knew was that she worked at Jordan New Life
19 but we had not verified her eligibility. Not being
20 able to verify her eligibility, she was not put on
21 the ballot. Is that inclusive? Absolutely. She
22 had every opportunity to bring forward the
23 information, to verify her eligibility and she did
24 not do that.

25 Q Did you work for the city of Minneapolis at one

1 Q Isn't it accurate that the bylaws for JACC require
2 that applications for those interested in running
3 for board member be delivered to the JACC office?

4 A I think the bylaws say one thing and I think the
5 announcement that Jerry put out said something
6 else. So I think that was one of my concerns, that
7 there was mixed messages as to how applications
8 could be appropriately delivered and received.

9 Q My question was merely about the bylaws.

10 A I don't have them in front of me.

11 Q You talked a little bit on direct about Exhibit 138
12 which is an e-mail from Mr. Cooper about terms of
13 board members, do you recall that?

14 A I don't remember 138 but I do know that I sent Bob
15 Cooper an e-mail and he responded.

16 Q Isn't it true the issue was not two-year terms for
17 directors but that some members had been filling a
18 one-year vacancy?

19 A No.

20 Q What did you do to ensure that there was an October
21 board meeting before the annual meeting so that the
22 nominations committee could discharge its duty?

23 A I'm not sure I follow your question.

24 Q What was the date of the annual meeting in 2008?

25 A I think it was the 23rd or the 24th.

1 Q Would the regular board meeting have occurred prior
2 to the 23rd of October?

3 A I believe that's required, but I think Ben Myers
4 cancelled the meeting.

5 Q The question was just whether the board meeting
6 regularly schedule would have occurred before the
7 23rd.

8 A Yeah, I think it would have.

9 Q Did you in fact indicate that you were unable to
10 attend the regularly scheduled board meeting in
11 October of '08?

12 A No. I think what I said was that there was a
13 meeting that Ben Myers called as a special meeting
14 to deal with public safety and youth issues because
15 I had said over and over again that public safety
16 and youth issues weren't being talked about in
17 reports back from those committees. He called a
18 special meeting at 8:00 in the morning and I told
19 him that I can't make an 8:00 in the morning
20 meeting. That happened after the elections.

21 Q Did you do anything to ensure that there was any
22 kind of a board meeting in October, prior to
23 October 23rd, 2008, so that the nominations
24 committee could discharge its duty?

25 A I'm sorry, Jill. I am not following your question.

1 threatened?

2 A I did not have a conversation with Jerry Moore
3 about it so I do not know any of his thoughts on
4 it.

5 Q Prior to the January 14, 2009 meeting you and some
6 others had communicated by e-mail planning to
7 terminate Jerry Moore at the next meeting, correct?

8 A I think we had a discussion about terminating him,
9 yes.

10 Q Did you notify the other board members so they
11 could be prepared for that agenda item at the
12 January 14th meeting?

13 A What do you mean?

14 Q Other than the people that you were discussing the
15 topic with by e-mail, did you notify other board
16 members like Ben Myers that you were going to raise
17 the topic of terminating Jerry Moore at the January
18 14th meeting?

19 A No need, no.

20 Q The question was did you do it or not.

21 A Right, I said, no, there wasn't a need because I
22 knew they would vote against it.

23 Q Is that what determines notice requirements,
24 whether or not someone is going to vote against
25 something?

1 A No. It determined who I was going to have a
2 conversation with. Everybody had notice that we
3 were going to go into a close session when we
4 passed around an agenda.

5 Q You mean that was passed around in a meeting that
6 had already commenced, correct?

7 A I believe the meeting had been called to order,
8 yes.

9 Q With regard to the election of officers, did you
10 notify anyone in advance of the January 14th
11 meeting, like E.B. Brown, Shannon Hartfield, Ben
12 Myers, Bob Scott, that you were going to make a
13 motion to remove officers and reopen elections?

14 MR. SCHOOLER: I'll object to
15 the form and foundation. Assumes facts not in
16 evidence on the notification part.

17 THE COURT: Overruled.

18 THE WITNESS: Can you say that
19 question again, please?

20 BY MS. CLARK:

21 Q Sure. Other than the people that you had already
22 talked to about the topic did you notify any of the
23 other board members, like Ben Myers, Bob Scott,
24 Shannon Hartfield, E.B. Brown, that you intended to
25 make a motion to remove board members and reopen

1 elections?

2 A No, I didn't think they would vote for it.

3 Q Were you in favor of removing the board members and
4 reopening elections?

5 A Pardon me?

6 Q Were you in favor of removing board members -- the
7 officers, excuse me, and reopening the elections?

8 A I was in favor of having the newly elected board
9 members choose their own officers.

10 Q Is that a yes?

11 A To my answer, yes.

12 Q Were you also in favor of terminating Jerry Moore
13 immediately as of the January 14 meeting?

14 A Yes, I was.

15 Q What plan did you put in place for the smooth
16 transition of JACC corporation upon the removal in
17 one meeting of the executive director and all its
18 officers?

19 A We were just going to handle it, take care of all
20 the items that need to be done as executives.

21 MS. CLARK: Nothing further.

22 THE COURT: Anything further,

23 Mr. Schooler?

24 MR. SCHOOLER: A couple

25 questions.

1 right?

2 A Absolutely. No E.

3 Q Okay. I just wanted to make sure that we're being
4 clear on the Browns. Now, what happened once this
5 agenda was insisted upon, this agenda that's
6 Exhibit 4?

7 A Well, it became very ruckus in the room and there
8 was very little regard for the standing approved
9 agenda. Actually, I'll say not approved but
10 approved by the executive board. And there was
11 clamoring to move forth on the new agenda that Mr.
12 Browne handed out. We had invited a guest to be a
13 community spokesperson who is a very upstanding
14 member of the community to talk about his having a
15 program for young people in the community, and
16 there was just the fracas about not allowing him to
17 speak, so the meeting became less orderly. I had
18 asked one of the board members to assume the
19 position as sergeant at arms to allow for more
20 control in the meeting.

21 Q And what finally happened?

22 A Well, I actually had to call for a closed session,

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1 an executive session. And I believe that is my
2 prerogative as the chair person to ask visitors and
3 non-board members to leave the room. But this time
4 the community members were flabbergasted, it was so
5 out of control, so at least I needed to bring some
6 accord in the room about what we would do next.

7 There was a continual insistence to use the
8 agenda that had not been approved.

9 Q What happened next?

10 A I passed out instructions about the closed
11 executive session. They were type-written. I also
12 appealed to the board members to regard our rules
13 for respect.

14 Q And was a closed session held?

15 A There was a closed session held.

16 Q And who determined what the topic was at the closed
17 session?

18 A I determined that the topic would be - well, would
19 not be the discussion or the actual action taken
20 against or for Mr. Jerry Moore. There were
21 comments made that there needed to be some
22 decisions made about Mr. Moore.

1 Q Now, how did that get into the mix?

2 A I think it just erupted on the - it was just
3 totally there with no real rhyme or reason. And,
4 again, out of the chaos members - I recall Mr.
5 Vladimir having a comment about Mr. Moore's
6 behavior and Mr. Michael "Kip" Browne having a
7 comment about it, that we could move to do
8 something about Mr. Moore.

9 Q Now, by that point in time had you yourself had an
10 opportunity to conduct an investigation with regard
11 to Jerry Moore or his employment?

12 A I did not personally have an opportunity to do
13 that. At the meeting, the agenda was going to
14 allow for a committee to be instituted around
15 personnel policy, so then that would be an
16 assignment, one of the assignments.

17 Q So what did you envision as far as process with
18 regard to Jerry Moore's employment?

19 A With regard to Mr. Moore's employment, I believe
20 that we were given information as an - I don't know
21 that it's an addendum to the bylaws but in the
22 information handed to me as the board chair, there

1 was information about employees and how to proceed
2 with handling employee terminations. I read that
3 information and I was willing to have a discussion
4 at the board meeting as clearly the assignment of,
5 actually, assignment of the personnel committee,
6 that would have been again a task, but we did not
7 get to that juncture.

8 Q And why not?

9 A If this is a proper term, it was commandeered, the
10 meeting was commandeered by board members who
11 seemed to side with Mr. Michael "Kip" Browne for
12 pushing forth the agenda that was not official or
13 approved.

14 Q And with regard to those members, did you observe
15 them to have an agenda with regard to Jerry Moore's
16 employment?

17 A The agenda was to remove the executive director.

18 Q Remove the executive director when?

19 A They wanted to do that on the 14th of January.

20 Q You mean at that meeting where the topic was
21 raised?

22 A Yes.

1 Q And had you had an opportunity by that point to
2 review any kind of employment contract regarding
3 Jerry Moore?

4 A No, I had not. And I asked to see an employment
5 contract. I was just recalling reading information
6 about employees but not a formal contract had been
7 given to me.

8 Q Would you have liked to have time to review any
9 contract that existed with regard to Mr. Moore's
10 employment?

11 A Well, absolutely -

12 MR. SCHOOLER: I'm going to object to
13 the form on foundation. It's never been
14 demonstrated that there is a contract.

15 THE COURT: Sustained.

16 BY MS. CLARK:

17 Q Was there any discussion about the process to
18 determine whether Jerry Moore had a written
19 employment contract?

20 MR. SCHOOLER: Object to the form,
21 calls for speculation, impossibility.

22 THE COURT: Overruled.

1 THE WITNESS: I believe when I also gave
2 the instruction, I gave them, the them being the
3 board members in this executive session, closed
4 session, a document that I had received by email
5 from Mr. Moore's attorney that gave information
6 about wrongful employment termination based on a
7 contract and a breach of it.

8 BY MS. CLARK:

9 Q So what would have been your desire with regard to
10 a process around determining whether there was a
11 written employment contract?

12 A I would have liked to have had understanding of due
13 process for termination that applied to the bylaws
14 and to the contract that JACC had engaged Mr. Moore
15 in. There was no information about how to undo
16 that without coming into a legal issue or some
17 problem for the organization.

18 Q And did you voice any of those concerns?

19 A I did.

20 Q What was the result?

21 A That was rejected.

22 Q By whom?

1 A Mr. Browne rejected that notion that we think
2 again. I think I recall Ms. McCandless making a
3 statement about we're not going to be blackmailed
4 by Mr. Moore. This was at the time of my trying to
5 appeal to them to move cautiously about termination
6 and that we were not going to be able to make those
7 judgments or decisions in a closed session.

8 Q What was the end result?

9 A The total end result was the push toward making
10 this agenda - well, basically, overruling and
11 overriding the Roberts Rules and coming up with
12 additional rules that would set in motion this
13 agenda, the new agenda, and that Mr. Moore - they
14 held a vote which we were instructed that no vote
15 would be held, or could be.

16 Q Let me just clarify. Are you saying they held a
17 vote in the closed session?

18 A Yep. There was discussion about let's get rid of
19 Mr. Moore.

20 Q Okay, continue.

21 A And they, the they being board members who were
22 newly elected made that decision, that Mr. Moore

1 should be terminated.

2 THE COURT: Ms. Clark, are you at a
3 stopping point here, do you think?

4 MS. CLARK: Sure.

5 THE COURT: We'll recess until 2:00
6 o'clock.

7 (WHEREUPON, the noon recess was had
8 until 2:00 p.m.)

9 MS. CLARK: Would you like Mrs. Brown
10 to retake the stand, Your Honor?

11 THE COURT: Yes. Well, it's up to you.
12 You wanted to interrupt for Ms. -

13 MS. CLARK: Yeah, she's going to come
14 at about 2:15, so we can see what we can get done.
15 Thank you, Your Honor.

16 BY MS. CLARK:

17 Q When we stopped we were talking about what occurred
18 at the January 14, 2009 meeting. Do you recall
19 generally that discussion?

20 A Yes.

21 Q Now, was there a reopening of elections on that
22 day?