

RECEIVED by Michigan Court of Appeals 3/27/2012 2:16:45 PM

EXHIBIT 16

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MANISTEE

MORAN,

Plaintiff,

v

File No. 07-12845-CZ

RISSE,

Defendant.

_____/

JURY TRIAL VOLUME IV OF XVII

BEFORE THE HONORABLE JAMES M. BATZER, CIRCUIT JUDGE

Manistee, Michigan - Tuesday, May 19, 2009

APPEARANCES:

For the Plaintiff: GRANT W. PARSONS (P38214)
JENNIFER R. BERRY (P67665)
520 S. Union St.
Traverse City, MI 49684
231-929-3113

For the Defendant: CHRISTOPHER K. COOKE (P35034)
125 Park Street, Suite 415
Traverse City, MI 49684
231-922-1888

Reported By: KATHY J. McBRIDE, CSR-2936
Official Court Reporter

TABLE OF CONTENTS

WITNESSES:

PETER BARNES

Cross-Examination by Mr. Parsons	540
Cross-Examination by Mr. Cooke	625
Recross-Examination by Mr. Parsons	661

RECEIVED by Michigan Court of Appeals 3/27/2012 2:16:45 PM

1 Manistee, Michigan
 2 Tuesday, May 19, 2009 - 9:34 a.m.
 3 THE CLERK: Moran versus Manistee/Benzie CMH,
 4 07-12845-CZ.
 5 THE COURT: Good morning. I forgot. We haven't
 6 put on the record yet number of jurors. Counsel stipulated
 7 at side-bar -- we selected seven. If we have all seven at
 8 the end of the trial, that is, when we send them to
 9 deliberate, we'll send seven to deliberate. Five is a
 10 verdict.
 11 MR. PARSONS: That is correct, Your Honor.
 12 MR. COOKE: That is correct, Your Honor.
 13 THE COURT: Then I think we're ready for the jury.
 14 (Jury enters courtroom at 9:36 a.m.)
 15 THE COURT: Good morning, Members of the Jury.
 16 THE JURY: (In unison) Good morning.
 17 THE COURT: We'll continue with Mr. Barnes as a
 18 witness. Mr. Parsons.
 19 MR. PARSONS: Thank you, Your Honor.
 20 BY MR. PARSONS:
 21 Q. Good morning, Mr. Barnes.
 22 A. **Good morning.**
 23 Q. Last week we were talking about the cure of the -- this
 24 note from your diary, correct, exhibit 50? I believe I put
 25 that on the bench right in front of you. Again, that's

1 from your handwritten notes in your spiral notebook,
 2 correct?
 3 A. **Yes, it is.**
 4 Q. So three days after Mr. Moran was terminated at the board
 5 meeting on June 14, three days after that, somebody had
 6 brought up the problem -- there was a problem with that,
 7 correct?
 8 A. **No, sir.**
 9 Q. Who suggested you needed to figure out, as this memo said,
 10 get a sense from Cohl about how to cure a violation of the
 11 Open Meetings Act. That's what it says, right?
 12 A. **That's what it says.**
 13 Q. Call O'Shea, give Frank -- that's Frank Greco?
 14 A. **Yes, sir.**
 15 Q. An attorney friend of yours?
 16 A. **Yes.**
 17 Q. Call cell any time. Doesn't that indicate you think
 18 there's some fixing to do about that board meeting?
 19 A. **No. That was a note to myself. I did not --**
 20 Q. Well, who told you you needed a cure?
 21 A. **That was recommended by Peter Cohl, his staff.**
 22 Q. And who's Peter Cohl?
 23 A. **Excuse me. He's an attorney in Lansing.**
 24 Q. And more specifically, is he the attorney for the
 25 Manistee/Benzie CMH board?

1 A. **I think he's one of them that we've used.**
 2 Q. And so you didn't think of it, but Mr. Cohl thought you
 3 needed a cure --
 4 A. **Yes.**
 5 Q. -- for the way you fired Mr. Moran, right?
 6 A. **That's not the way he expressed it. He said that that is a**
 7 **normal course of action that you follow when you do one of**
 8 **these things -- when you take an action.**
 9 Q. That you want to cure it. So every time you voted -- are
 10 you telling us every time the board has ever voted on
 11 something, then it needs to revote on it?
 12 A. **Maybe I misspoke. He said that in this circumstance, this**
 13 **is something that would be a wise thing to do.**
 14 Q. Exactly.
 15 A. **His counsel.**
 16 Q. Because you hadn't done it correctly?
 17 A. **He didn't say that.**
 18 Q. Do you recall Mr. Cohl -- let me ask it this way. Did
 19 Mr. Cohl attend this meeting in person?
 20 A. **No, sir.**
 21 Q. Mr. Cohl was brought on a speakerphone during the firing of
 22 Mr. Moran, correct?
 23 A. **I don't recall.**
 24 Q. Do you remember Mr. Cohl appeared at that meeting by
 25 speakerphone?

1 A. **He appeared at a meeting a few days later by speakerphone.**
 2 **I don't recall him on the 14th of June on the speakerphone.**
 3 Q. Let me play an excerpt of that tape, if I could. Let me
 4 see if this refreshes your recollection?
 5 A. **Please.**
 6 **(Tape played at 9:40 a.m.)**
 7 MR. COOKE: Well, you know. I'd like the full
 8 excerpt to be played, Your Honor. If the -- cite Mr. Cohl's
 9 testimony --
 10 MR. PARSONS: Mr. Cohl talks for pages. There are
 11 numerous -- I'm just trying to ask if this --
 12 THE COURT: He's asking them -- what this is for
 13 is to refresh the witness's recollection. So your next
 14 question is does that refresh your recollection.
 15 BY MR. PARSONS:
 16 Q. Does that refresh your recollection?
 17 A. **I truly don't even remember the phone call, but I don't**
 18 **challenge that it occurred because -- just because I don't**
 19 **remember it.**
 20 Q. All right. All right. Let's go this way. Somehow
 21 between, then, June 14, or when Mr. Moran was fired, and
 22 June 17, you talked with Mr. Cohl, and he tells you then
 23 that you need a cure, maybe?
 24 A. **I believe that's correct.**
 25 Q. And you get in touch with Mr. O'Shea who is the Manistee

1 County commissioner, right?
 2 A. Mr. O'Shea is the Manistee County commissioner.
 3 Q. And you got in touch with him?
 4 A. Yes.
 5 Q. And you got in touch with Mr. Frank Greco, who is an
 6 attorney in the community here?
 7 A. I don't know if I actually did make the call, but I made a
 8 note to make the call.
 9 Q. And this says call cell any time. Doesn't that indicate
 10 that you perceived there's a problem with the way you fired
 11 Michael Moran, and you're going to have to work on it?
 12 A. Not to me. It's a way to make notes.
 13 Q. Was there a problem described to you by Mr. Cohl because
 14 seven members of that board had been talking about this
 15 vote before the vote took place at the meeting?
 16 MR. COOKE: I'm going to object to more discussion
 17 about conversation with Mr. Cohl. There's privileges here.
 18 We have certain statements on the record that Mr. Cohl made.
 19 And I think if we limit ourselves to those discussions,
 20 that's where the privilege was waived. I don't know what
 21 other discussions were had between this witness and
 22 Mr. Cohl.
 23 MR. PARSONS: Is that a claim of attorney/client
 24 privilege? I believe it's a claim of privilege, correct,
 25 Your Honor?

1 THE COURT: Sounds like it to me.
 2 MR. PARSONS: I believe that Mr. Cohl -- when he's
 3 speaking in public and he's giving advice in public is
 4 waiving the privilege.
 5 THE COURT: I would agree with that, when he's
 6 speaking at a public meeting. But his objection is to
 7 statements not at a public meeting.
 8 MR. PARSONS: But I'm saying -- I'm questioning
 9 whether he can come and go on this conversation. If he were
 10 litigation counsel, I would agree. Because I don't think
 11 that would be -- I couldn't question on that. But this
 12 conversation -- he opens the conversation, he's part of the
 13 conversation, and then he continues on. And I think the
 14 privilege is waived.
 15 THE COURT: So you want to say that's waived?
 16 MR. PARSONS: Except for the litigation part of
 17 it, yes.
 18 MR. COOKE: Well, Your Honor, thank you. The
 19 court has ruled that the privilege was waived on the open
 20 record. And to the extent we have comments made on the open
 21 record, I think that under the court's ruling that's fair
 22 game. I don't think that if you have a relationship with an
 23 attorney and the privilege is waived in an open meeting then
 24 that privilege is waived forever more. I don't think
 25 there's any case law that would support that. And so I

1 think these questions are probing other conversations that
 2 the witness may have had with Mr. Cohl.
 3 MR. PARSONS: I may be able to solve this. Let me
 4 try just to limit it to the meeting. I don't agree with
 5 this, but I'll seek the court's advice before I go beyond
 6 the meeting.
 7 THE COURT: All right.
 8 MR. PARSONS: Thank you.
 9 THE COURT: I have a question whether Mr. Cohl is
 10 this man's attorney anyway. I think he's attorney for the
 11 board. But anyway, go ahead.
 12 MR. PARSONS: Right. Thank you.
 13 BY MR. PARSONS:
 14 Q. The question on the floor is whether Mr. Cohl said there
 15 may be a question because seven members of this board
 16 discussed a decision before they met in public to make the
 17 decision?
 18 MR. COOKE: Same objection. That wasn't anything
 19 that was stated on the record at the meeting.
 20 MR. PARSONS: Well, see, that would be something
 21 the witness would be saying. That's not -- counsel is
 22 testifying. That's not an objection. That's counsel
 23 testifying.
 24 MR. COOKE: I haven't seen that introduced on the
 25 record that that discussion was had.

1 MR. PARSONS: But see now I invite him to testify.
 2 I'm not inviting counsel to testify, Your Honor. I object
 3 to that.
 4 THE COURT: No. I'll sustain the objection. You
 5 can -- you can go into what was stated at the public meeting
 6 on the record.
 7 MR. PARSONS: All right.
 8 THE COURT: And you -- if -- you may convince me
 9 that -- you may convince me that you can go into things on
 10 the same topic that weren't on the record because the
 11 privilege is waived as to subjects on the record. But I'm
 12 not convinced of that yet. But I think there is some -- I
 13 think there is some case law on that relating to waiver of
 14 the privilege. I think it comes out of the -- it has its
 15 roots in the Federal cases where witnesses invoke their
 16 Fifth Amendment right. And if they've said much
 17 substantively that they're deemed to have waived the
 18 privilege for all kinds of things opening a door. Well you
 19 may have something by analogy in the area of attorney/client
 20 privilege. But I'm not prepared to say that's so yet. If
 21 counsel want to research it some time, they can research it.
 22 But I think for now you're confined to what was said by
 23 Mr. Cohl on the record. That is not privilege. What he
 24 said in the public meeting is not privileged.
 25 MR. PARSONS: All right.

1 BY MR. PARSONS:
 2 Q. Mr. Barnes, you remember a lot of things, correct, and some
 3 things you don't remember apparently?
 4 A. That's true.
 5 Q. Do you remember at the meeting Ms. Fenstermacher was on the
 6 board, right?
 7 A. Yes, sir.
 8 Q. And that was her voice we just heard?
 9 A. It was.
 10 Q. Telling Mr. Cohl that she wanted him to know certain
 11 things, right?
 12 A. That's the gist of the conversation.
 13 Q. And do you remember other board members also trying to
 14 inform Mr. Cohl about what had happened at this meeting
 15 before he got on the phone?
 16 A. I really don't remember that phone conversation. I've
 17 mentioned that before. And I'll stay with that. I just
 18 don't remember that phone conversation. I do remember one
 19 subsequent to that when -- I think it's documented in these
 20 minutes on the 19th when we had Peter Cohl speak to the
 21 entire board.
 22 Q. All right. Do you remember -- stick with me to June 14th.
 23 Let's see if you at least remember this. Do you remember
 24 that the members who voted no --
 25 A. Uh-huh.

1 Q. -- Mr. Nichols, and Ms. Fenstermacher, and Janice McCraner,
 2 polled those people who voted to fire Mr. Moran. Do you
 3 remember that?
 4 A. No. I was one. And I don't recall being polled.
 5 Q. Let me see if this section of tape refreshes your
 6 recollection. I'm going to put this up just to avoid the
 7 glare.
 8 (Tape played at 9:49 a.m.)
 9 MR. PARSONS: I'm going to ask you if you remember
 10 the polling of the people who voted to terminate Mr. Moran.
 11 (Tape played at 9:50 a.m.)
 12 BY MR. PARSONS:
 13 Q. You referred to turmoil at the board that night, right?
 14 A. Yes, sir.
 15 Q. But does this refresh your recollection that an attempt was
 16 made during the meeting to poll those people who voted to
 17 fire Mr. Moran, and ask them when they got the resolution,
 18 had they discussed it?
 19 A. I can only repeat what I've already said. I've heard the
 20 tape. My hearing is such that when I hear two or three
 21 voices in the background, I can't distinguish one from the
 22 other. And so when it's -- when there's a lot of turmoil,
 23 I know there's turmoil, but I can't distinguish or
 24 articulate the words one spoke or the other. I've been to
 25 doctors about it. It doesn't solve.

1 Q. Have you got an independent recollection why you got Frank
 2 Greco and Mr. Alan O'Shea involved in curing this open
 3 meetings problem?
 4 A. No. The -- no.
 5 Q. No. Okay. You have in front of you exhibit 87, correct?
 6 A. Yes, sir.
 7 Q. This exhibit 87 has been --
 8 MR. PARSONS: Your Honor, I think we've moved the
 9 admission of exhibit 87, but we haven't -- it hasn't been
 10 admitted formally, according to my records.
 11 MR. COOKE: We've got it admitted --
 12 MR. PARSONS: All right.
 13 MR. COOKE: -- over objection to being a partial
 14 exhibit.
 15 MR. PARSONS: All right. May I proceed with the
 16 assumption it has been admitted, Your Honor.
 17 THE COURT: Well, I'll receive it. And if you
 18 want the whole thing, you can have the whole thing.
 19 MR. PARSONS: All right. Thank you.
 20 BY MR. PARSONS:
 21 Q. All right. These are the minutes of the special meeting
 22 that was held Tuesday, June 19, 2007, correct?
 23 A. Yes, sir.
 24 Q. That's five days after Mr. Moran was terminated, right?
 25 A. Uh-huh. Three -- five. Correct.

1 Q. And now the guests are Attorney Peter Cohl by a PolyCom
 2 conference call, right?
 3 A. Yes.
 4 Q. And the purpose of this special meeting was to cure the
 5 Open Meetings Act problem, right?
 6 A. As I recall, this meeting was called for in a motion in the
 7 14 June meeting. But I can't tell you -- I don't recall
 8 that that was the explicit purpose.
 9 Q. Let me ask this. On June 19, did the board convene in a
 10 special meeting and go into closed session and vote again
 11 to fire Mr. Moran?
 12 A. I'm looking at the minutes to see if we went into closed
 13 session.
 14 Q. You have trouble remembering that, too, right?
 15 A. Yes, sir.
 16 MR. COOKE: Your Honor, if we're going to ask
 17 about the June 19 meeting, then, in detail, I'd ask that the
 18 entire minutes of the meeting be allowed for the witness's
 19 refreshment.
 20 THE WITNESS: It doesn't say --
 21 MR. PARSONS: I'm not asking -- I mean, I thought
 22 I had the entire meeting. I had one, two, three, and four
 23 pages.
 24 Sir, can you confirm that for the jury? You have
 25 four pages?

1 THE WITNESS: I do.
 2 MR. COOKE: I have three and four in my book. So
 3 maybe I can see the exhibit, and I'll withdraw, then.
 4 MR. PARSONS: I believe you've got this attached
 5 to -- defense counsel has the --
 6 MR. COOKE: I'm just asking about the exhibit in
 7 front of the witness at this point.
 8 THE WITNESS: Ah.
 9 BY MR. PARSONS:
 10 Q. Do you in fact have one of four, two of four, three of
 11 four, and four of four in front of you?
 12 A. I do. And we did go into closed session.
 13 Q. All right. On June 19, the board went into closed session,
 14 and in that closed session, we don't know what they did,
 15 right?
 16 A. I was at the closed session.
 17 Q. But there aren't any minutes of that?
 18 A. These don't address the closed session.
 19 Q. Right. That's a meeting in secret to do something, right?
 20 A. Attorney/client privilege discussion, I think it was.
 21 Q. And at some point, you come out of closed session, and you
 22 vote again to fire Mike Moran, right?
 23 A. To terminate the contract, yes.
 24 Q. I'm sorry. Terminate the contract. Mr. Moran lost his job
 25 again, right?

1 A. I think there's a distinct difference between the two
 2 terms. There is in my mind.
 3 Q. Did Mr. Moran lose his job all over again?
 4 A. He was no longer employed by the board, that's correct.
 5 Q. Is this what you think of as a cure for the -- for a
 6 potential Open Meetings Act violation?
 7 A. Sir, I'm not an attorney. I don't even understand what the
 8 need for a cure is beyond what we were advised by an
 9 attorney who had counseled us to take that action. We
 10 complied with his advice, and followed his counsel.
 11 Q. My question is even more simple than that.
 12 A. Okay.
 13 Q. On what date did you cure the perceived Open Meetings Act
 14 violation -- what date? Was it this, or was it in July?
 15 A. I thought it was the July meeting. If it's not in the
 16 minutes here. I thought it was the July meeting.
 17 Q. All right. Starting on June 19, though -- June 19, exhibit
 18 87 -- was Michael Moran at that meeting? Was he notified
 19 to be at that meeting? Was he allowed to be at that
 20 meeting?
 21 A. He was allowed to be at that meeting -- at the open
 22 meeting. The Open Meetings Act allows him to be there. He
 23 was no longer an employee. And was he given a written
 24 invite, is that your question?
 25 Q. Was he given notice that you were going to go into closed

1 session to discuss his employment?
 2 MR. COOKE: Well, I don't think we've established
 3 that that was the closed session meeting to discuss his
 4 employment, so I object to the form of the question.
 5 MR. PARSONS: All right. Let me withdraw.
 6 BY MR. PARSONS:
 7 Q. I thought I had laid the foundation for this, Mr. Barnes.
 8 Excuse me.
 9 A. Keep going.
 10 Q. On June 19, this is a special meeting, did you discuss
 11 Mr. Moran's employment in closed session?
 12 MR. COOKE: Wait a minute. If you're in closed
 13 session, you can't talk about discussions in closed session
 14 unless the Court authorizes the opening up of those minutes.
 15 So he's trying to invade the purpose of the closed session
 16 meeting without laying a foundation that it was improperly
 17 entered into.
 18 MR. PARSONS: Mr. Moran has a right under the
 19 constitution and the laws to know when his -- when his
 20 employment is getting discussed to be terminated. I'm
 21 trying to find out when they did it, then I'm going to the
 22 issue was he noticed. We have a right -- the jury has a
 23 right to know if they discussed his employment and
 24 termination. I'm not asking about who said what in that
 25 meeting. I'm asking about the subject of it.

1 MR. COOKE: Well, then you should go to the proper
 2 meeting. Because you're confusing this -- you're
 3 confusing --
 4 MR. PARSONS: Counsel is testifying, Your Honor.
 5 MR. COOKE: No. I am saying you cannot mislead
 6 the jury and this witness. You know when the meeting
 7 occurred.
 8 MR. PARSONS: I'm speaking to the Court.
 9 THE COURT: Yes. If you folks want to discuss it
 10 between yourselves, I'll take a recess, or you can go out in
 11 the hall and discuss it. If you want to address your
 12 arguments to the Court, please do that, and I'll rule on
 13 them.
 14 MR. PARSONS: Thank you, Your Honor.
 15 MR. COOKE: My argument is this, Your Honor.
 16 Thank you. Is that we have to deal with the proper minutes
 17 of the proper meeting, and not look at other -- the counsel,
 18 Your Honor has this exhibit. He knows when this resolution
 19 was.
 20 THE COURT: Okay. This is what you can do. You
 21 can ask him the date of the meeting. You can ask him if
 22 plaintiff's employment or termination from employment was
 23 discussed. You can ask him if the board was in closed
 24 session on that date. You can ask him if it was an open
 25 session on that date. If it was in closed session --

1 MR. PARSONS: Okay.
 2 THE COURT: -- you can ask if the subject of
 3 plaintiff's employment was discussed in closed session.
 4 MR. PARSONS: Okay.
 5 THE COURT: If you get that on the record, then
 6 you've laid a foundation to go into the discussion, unless
 7 the discussion was -- and the board went into closed session
 8 for pending litigation, attorney/client privilege, that kind
 9 of thing.
 10 MR. PARSONS: Okay.
 11 MR. COOKE: Thank you, Your Honor.
 12 THE COURT: If he denies it, you can impeach him.
 13 MR. PARSONS: Thank you.
 14 THE WITNESS: I don't know what that means.
 15 BY MR. PARSONS:
 16 Q. Mr. Barnes, did the board meet on June 19?
 17 A. Yes.
 18 Q. Did the board meet on June 19 to discuss Mr. Moran's
 19 employment or termination?
 20 A. Without the agenda for that meeting in front of me, I can't
 21 tell you exactly what the purpose of those meetings were.
 22 There were three meetings scheduled as a result of the
 23 actions taken on the 14th. And I just can't tell you which
 24 was which and what was what.
 25 Q. Which three meetings on which three dates? Can you tell us

558

1 that?
 2 A. If I can find the minutes from the 14th of June, I can.
 3 Q. Number 40?
 4 A. Okay. I just found it. As I recall -- I thought that it
 5 was in here. Perhaps I'm remembering the resolution
 6 itself.
 7 Q. There were three resolutions, apparently, right?
 8 A. The one for termination.
 9 Q. My question is on what three dates did the board meet? You
 10 brought this up just now. I'm just following you. What
 11 three dates?
 12 A. Again, the resolution may give us those dates. I recall
 13 them from last week on something that must be in this
 14 stack.
 15 Q. All right. Let me start -- you can't remember the three
 16 dates on which you --
 17 A. No. They were all three in June. I remember that. And I
 18 remember one of the purposes was to be sure that the
 19 payment made to Mr. Moran under the terms of his contract
 20 was full and complete and expedited, to be fair.
 21 Q. I'm talking about the termination.
 22 A. I'm just telling you what I remember.
 23 Q. Let me ask -- let me go to this point.
 24 A. Yes, sir.
 25 Q. Do you understand that an employee of the public has a

559

1 right to appear when their employment is being discussed by
 2 the public body? They have a right to appear? Do you know
 3 that, or not?
 4 A. When a public employee -- would you repeat the statement?
 5 Q. Does a public employee have a right to appear in front of
 6 the public board when his or her employment is being
 7 discussed?
 8 A. To my understanding, yes.
 9 Q. So Mr. Moran had a right to hear the discussion, correct?
 10 A. I'm not certain of that. I'm not an attorney. But at that
 11 point he was no longer an employee.
 12 Q. Well, why wasn't he -- why wasn't he an employee anymore?
 13 A. His contract was terminated.
 14 Q. What date?
 15 A. On the 14th of June.
 16 Q. And that's not accurate, is it? Because you had to cure
 17 it. It wasn't effective that day, right?
 18 A. It was effective that date, yes, sir. To my understanding,
 19 it was effective that day.
 20 Q. You took a vote on June 19 of some sort, right?
 21 A. We -- as documented in the minutes.
 22 Q. And you took a vote on June 27 was the next -- or July --
 23 July 12 was the next meeting, wasn't it?
 24 A. Sounds right. But I can't -- you know, I have to look at
 25 the calendar to know.

560

1 Q. Can you tell us any meeting Mr. Moran ever was given notice
 2 before the meeting that his employment was going to be
 3 discussed by the public board -- any meeting?
 4 A. The agenda for the 14th of June meeting, I believe, had his
 5 contract identified as a subject matter.
 6 Q. Can you tell us any meeting when potential discipline of
 7 Mr. Moran was given -- he was given notice of that before a
 8 meeting?
 9 A. I don't recall one.
 10 Q. But you're sure as you sit here today that Mr. Moran was
 11 terminated on June 14 and was no longer an employee,
 12 correct?
 13 A. That's my understanding, yes.
 14 Q. And just so the jury's clear, after June 14, you voted at
 15 the July meeting to do something about Mr. Moran, right?
 16 A. I believe we took the same resolution and voted it a second
 17 time.
 18 Q. Same vote on July 12.
 19 Now, here I want to ask you, between June 14 and
 20 July 12, it's about one month, right?
 21 A. Approximately.
 22 Q. Did the board ever pay Mr. Moran for the time between the
 23 June 14 meeting and the July 12 meeting?
 24 A. No, sir. Not to my knowledge.
 25 Q. Were Mr. Moran's benefits ever carried over from June 14 to

561

1 July 12?

2 A. **Not as an employee.**

3 Q. So what the board did on July 12 was it just went back and

4 it rubber stamped June 14, came out the same, and he was

5 still gone, right?

6 A. **On July 12th a vote was taken the same as earlier. The**

7 **result was somewhat different.**

8 Q. Because Mr. Nichols had resigned, right?

9 A. **That's the difference.**

10 Q. So it came out 7-4?

11 A. **But it was the same resolution that was voted on exactly.**

12 Q. And my question is except for the fact that one of the

13 members who voted against you had resigned immediately, he

14 was a board officer, in fact, right?

15 A. **That's true.**

16 Q. He had -- other than that fact, the board simply rubber

17 stamped the June 14 termination, right?

18 A. **I wouldn't use the term "rubber stamped." Every vote is**

19 **important.**

20 THE COURT: He didn't say it wasn't important.

21 THE WITNESS: Okay.

22 THE WITNESS: The vote was taken, yes.

23 BY MR. PARSONS:

24 Q. And the point is, it was rubber stamped?

25 MR. COOKE: I object to the form "rubber stamped."

562

1 BY MR. PARSONS:

2 Q. Do you know what I mean by the term rubber stamped, sir?

3 A. **It's derogatory in my lexicon -- my terminology. It is a**

4 **derogatory term.**

5 Q. Without commenting on that, let me ask you, do you

6 understand, rubber stamp meaning you just did the same

7 thing virtually identically just at another date?

8 A. **In this case, according to legal counsel, it was important**

9 **to do. So the second time around wasn't quite the same**

10 **thing, because it was done for a different purpose.**

11 Q. Was the motion the same?

12 A. **The motion was the same.**

13 Q. Was the vote the same except one of Mr. -- one of the

14 people who voted not to fire him was gone?

15 A. **Correct. Yes.**

16 Q. And was the result for Mr. Moran the same? He was out of a

17 job?

18 A. **That remained the same, yes.**

19 Q. So those three important aspects, at least for Mr. Moran,

20 were rubber stamped from June 14 over to July 12?

21 MR. COOKE: I want to place another objection,

22 Your Honor, because the statute allows us -- the board to --

23 THE COURT: Your question is argumentative. The

24 witness has said he would not use the term "rubber stamped."

25 BY MR. PARSONS:

563

1 Q. All right. Do you have any term you want to suggest there.

2 A. **The action was taken a second time.**

3 Q. Okay. But the loss of the job -- nothing was changed

4 other -- he remained out of his job, and he received no

5 benefit or no pay for that month period, right?

6 A. **Yes.**

7 Q. Now, I'm going to show you what's marked plaintiff's

8 proposed exhibit 48.

9 A. **Thank you.**

10 Q. Do you recognize this document?

11 A. **I do.**

12 Q. You did it, right?

13 A. **I wrote it.**

14 Q. You wrote this.

15 MR. PARSONS: I would move Plaintiff's proposed

16 exhibit 48.

17 MR. COOKE: No objection, Your Honor.

18 THE COURT: Received.

19 BY MR. PARSONS:

20 Q. All right. Plaintiff's exhibit 48, down in the left hand

21 corner, it's dated June 27, 2007; do you see that?

22 A. **Interesting. Yes. I don't get it.**

23 Q. And up at the top you've got a caption or stationery that

24 says Manistee/Benzie Community Mental Health MBCMH services

25 Board of Directors. And again, you've made up a stationery

564

1 for this memo?

2 A. **That's the way I headed this one, yes.**

3 Q. But it's interesting you seem to put stationery-like

4 headings on memos that you personally are writing, correct?

5 A. **I have, yes.**

6 Q. And up at the top, it says June 26, 2007, and you are

7 writing this memo to whom?

8 A. **I don't think I was writing this to anyone. As I recall,**

9 **these are questions that either were answered, or were --**

10 **I -- weren't answered. This was more of a way for me to**

11 **address issues and structure my thinking.**

12 Q. What did you do with this memo? Is this one that looks

13 like it was sent, but wasn't sent?

14 A. **I don't think it was sent. I'm honestly confused by the**

15 **two dates you've pointed out. That's the first time I**

16 **noticed that. And the only explanation I can offer doesn't**

17 **make much sense to me either. And that is that I did it**

18 **after midnight. Or I printed this after midnight. I can**

19 **think of no other explanation.**

20 Q. Exhibit number 48, will you read statement number 5,

21 please?

22 A. **It's lengthy.**

23 Q. Just number five.

24 A. **Right. The former executive director, Michael Moran,**

25 **signed a letter addressed to the three MBCMH board officers**

565

1 dated 4-18-2007, that advised of intended actions to -- and
 2 this is in quotes, to inform their -- and I put in
 3 brackets -- Michigan Department of Community Health,
 4 bracket, compliant officer, that Manistee and Benzie
 5 Counties are currently out of compliance with the county
 6 local funding requirement, end quote. Well, dot, dot, dot,
 7 quote. And -- then I returned to quotes -- I intend to
 8 file a complaint with the office of the United States
 9 attorney for the Western District of Michigan regarding
 10 threats, coercion, and intimidation toward myself and other
 11 administrative staff by Manistee/Benzie Community Mental
 12 Health board member, Dennis Risser, dot, dot, dot, end
 13 quote.
 14 Q. Now, after that, you go through a series of statement,
 15 question, question, question, question. And you are asking
 16 various members of the board, Kadlec, McCraner, to respond
 17 to you, correct?
 18 A. I never asked those questions. This was a part of my
 19 mental structure thinking.
 20 Q. And then down at the bottom of this, you say, I urge you to
 21 resign your offices immediately, correct?
 22 A. That's the last statement, yes.
 23 Q. Now, I've asked you previously was Mr. Moran's April 18,
 24 2007, letter a factor in his being fired, and you've
 25 responded what to that?

566

1 A. The content of the letter was not a factor because it was
 2 all known long before. The way the letter was distributed
 3 and received was a factor. Well, I don't know if it was a
 4 factor, but it was a consideration.
 5 Q. In his firing?
 6 A. In his performance.
 7 Q. But that's not my question. Was Mr. Moran's April 18, 2007
 8 letter --
 9 A. I remember the letter.
 10 Q. Oh. First day of trial. Was Mr. Moran's April 18, 2007,
 11 letter a factor in his firing? What do you respond to
 12 that?
 13 A. Give me a moment to think about it. Yes. But not to
 14 content. Let me rethink that.
 15 Q. Let me move on. I want to ask you a follow-up question.
 16 Letter was a factor. Now let me ask you this. Would you
 17 admit that not only was it a factor in firing Mr. Moran,
 18 but it was a factor in you trying to get the three main
 19 officers on this board to resign?
 20 A. No. Absolutely not.
 21 Q. Mr. Barnes, you asked questions, and you make questions,
 22 and you make questions on exhibit 48. The only issue in
 23 that -- let me strike that.
 24 Isn't it true all the questions in exhibit 48
 25 initiate from Mr. Moran's letter of April 18, 2007?

567

1 A. The purpose of the listing --
 2 Q. Can you tell me the answer to my question first?
 3 A. I'm sorry. Say it again, please.
 4 Q. Do all the questions in exhibit 48 start from Mr. Moran's
 5 April 18, 2007, letter?
 6 A. No.
 7 Q. Okay. The end of the letter, what you're looking to do in
 8 this letter, is to wind up urging three members to resign,
 9 right?
 10 A. Yes.
 11 Q. And those three members, they're all gone now as we sit
 12 here today, right?
 13 A. Today.
 14 Q. And Mr. Nichols immediately resigned, correct?
 15 A. That's correct.
 16 Q. And do you think this April 18 letter of Mr. Moran was a
 17 factor in the -- all five members who supported him being
 18 moved off of that board?
 19 A. No, I don't.
 20 MR. COOKE: There's no foundation for that.
 21 There's no foundation for that.
 22 THE COURT: No. He can ask the question.
 23 MR. COOKE: There's no foundation as to why five
 24 members left the board some years thereafter.
 25 THE COURT: He doesn't have to lay a foundation.

568

1 He can ask the question. The witness answered the question.
 2 BY MR. PARSONS:
 3 Q. Exhibit 99. I'm going to show you what's been marked
 4 plaintiff's proposed exhibit 99?
 5 THE COURT: The witness agreed. And they're all
 6 gone as we sit here today, right? Answer, today.
 7 MR. PARSONS: Right. Thank you, Your Honor.
 8 THE COURT: Go ahead.
 9 BY MR. PARSONS:
 10 Q. Mr. Barnes, do you remember this document?
 11 MR. COOKE: Object to this. It's being -- which
 12 one is this?
 13 MR. PARSONS: Proposed exhibit 99.
 14 MR. COOKE: I asked this be removed from the board
 15 until we have an opportunity to talk about this. I thought
 16 we were going to have an opportunity to talk about the
 17 foundation of these exhibits before they're thrown in front
 18 of the jury.
 19 MR. PARSONS: They haven't been thrown in front of
 20 the jury.
 21 MR. COOKE: I've got one up on the screen here.
 22 MR. PARSONS: You do not. This is exhibit 48.
 23 I'm talking exhibit 99. I'm going to move the introduction.
 24 THE COURT: I'm going to walk off the bench here
 25 if you two want to keep having conversations with one

569

1 another. I'll send the jury home for the day. And you can
 2 talk to one another all you want.
 3 MR. PARSONS: I apologize, Your Honor.
 4 MR. COOKE: Ms. Berry threw exhibit proposed 99 in
 5 front of this jury. I was reading it off the screen. These
 6 exhibits I've had objection to. I've had objection to lots
 7 of these exhibits. We're supposed to have an opportunity
 8 for me to object as we go. And unless the exhibit's
 9 admitted, it shouldn't be on the screen in front of the
 10 jury. This one is particularly prejudicial to us, and they
 11 put it up in front of jury for the jury to read.
 12 MS. BERRY: I don't even have it in my hands, Your
 13 Honor. I apologize.
 14 MR. COOKE: Ms. Berry, I was reading it off your
 15 screen.
 16 MS. BERRY: This was the exhibit that was just on
 17 the screen.
 18 THE COURT: What did I say?
 19 MS. BERRY: I apologize, Your Honor.
 20 MR. PARSONS: Your Honor, could I respond to
 21 counsel to you?
 22 MR. PARSONS: I am holding our copy of exhibit 99.
 23 Ms. Berry did nothing except put -- exhibit 48 was still in
 24 front -- on the presenter. It was not exhibit 99. I will
 25 guarantee the Court the jury has not had the first glimpse

570

1 of exhibit 99. And now I think we -- now I am moving the
 2 introduction of plaintiff's proposed exhibit 99, which is in
 3 my hand still.
 4 THE COURT: All right.
 5 MR. PARSONS: I can lay a foundation.
 6 THE COURT: I'll excuse the jury.
 7 (Jury exits courtroom at 10:21 a.m.)
 8 THE COURT: Go ahead.
 9 MR. PARSONS: Your Honor, I want it understood,
 10 just for the record, there is absolutely no publication
 11 of -- she does not have a copy of exhibit 99 at her
 12 counsel -- at her table for counsel to say it was up.
 13 THE COURT: All right. Okay. Go ahead. Ask the
 14 witness to identify it.
 15 BY MR. PARSONS:
 16 Q. Sir, do you recognize this document. This was sent to
 17 MBCMH board members from Jeff Rose July 3, 2007, correct?
 18 A. Yes, sir.
 19 Q. And actually, you asked Mr. Rose to send this document,
 20 correct?
 21 A. I was counseled to do that.
 22 Q. But did you ask him to sign it?
 23 A. I did.
 24 Q. And so you recognize this document, correct?
 25 A. Yes.

571

1 Q. All right. And this is part of the ordinary course of
 2 board business for the MBCMH at or about July 3, 2007,
 3 right?
 4 A. Yes.
 5 Q. And it concerns an ongoing question concerning Mr. Moran's
 6 termination and the process that was followed, correct?
 7 A. Let's see. This does not address Mr. Moran's termination.
 8 This addresses a different issue.
 9 Q. This addresses the meeting process at which Mr. Moran was
 10 terminated, correct?
 11 A. It may. It addresses Open Meetings Act issues --
 12 Q. And it's --
 13 A. -- of which there were more than one.
 14 Q. All right. And you had called Mr. Rose and told him that
 15 you had been interviewed by the Michigan State Police
 16 regarding the Open Meetings Act issues, correct? That's
 17 what it says at the beginning of the second paragraph?
 18 A. I had called Peter Cohl.
 19 Q. I'm sorry. Well, it says Peter called me today and told me
 20 that he had been interviewed by the Michigan State Police
 21 regarding Open Meetings Act issues. That's referring to
 22 you, correct?
 23 A. That's me. There's two Peters here, so it's a little
 24 confusing.
 25 Q. I understand. But this document refers to something that

572

1 you actually said to Mr. Rose, correct?
 2 A. Yeah. The first part talks about my conversation with
 3 Mr. Rose.
 4 Q. And you had --
 5 THE COURT: Where are we going with this? How is
 6 this relevant to anything?
 7 MR. PARSONS: It's relevant because it's part of a
 8 cover-up. These board members are being advised, based on
 9 the advice of Peter Cohl. All Manistee/Benzie Community
 10 Mental Health board members, upon being contacted by a
 11 police agency investigating Open Meetings Act issues, should
 12 immediately contact Peter Cohl prior to discussing the
 13 matter with the investigator.
 14 THE COURT: What's your objection?
 15 MR. COOKE: My objection is this is an improper
 16 assertion of counsel that cannot be used against these
 17 defendant. The violations being investigated also include
 18 misdemeanors. So there's a potential criminal investigation
 19 going on.
 20 THE COURT: Okay. All right. The Court's ruling
 21 is this. The objection is overruled. Here's why. This
 22 appears to be some kind of invocation of Fifth Amendment
 23 right not to incriminate one's self. The well-established
 24 rule in the United States in the State of Michigan regarding
 25 the question: Can an adverse inference be drawn from an

573

1 invocation of a right to silence? Answer: In a civil
 2 proceeding, answer: Yes.
 3 MR. PARSONS: Okay. Thank you.
 4 MR. COOKE: The police were investigating criminal
 5 charges. That's the problem with the memo. The Court's
 6 read it. It talks about a police investigation -- police
 7 interviews regarding --
 8 THE COURT: Okay. All right. So what?
 9 MR. COOKE: So the argument that's going to be
 10 made is because Peter Cohl advised board members if they get
 11 contacted by the police to refer the police to the attorney.
 12 THE COURT: Okay.
 13 MR. COOKE: I think that's proper use of an
 14 attorney in a criminal investigation. How can that be
 15 asserted on this record, particularly when it's -- the Court
 16 is called upon to decide the Open Meetings Act issues, not
 17 the jury. So we're running into that same prejudicial
 18 impact that this is going to have on this jury.
 19 THE COURT: The question is can an adverse
 20 inference be drawn? There's inference of a Fifth Amendment
 21 invocation, can an adverse inference be drawn? Yes.
 22 Look, you can ask -- you can ask this witness, you
 23 can ask every other witness: Were you prosecuted? Were you
 24 criminally prosecuted by the Manistee County prosecuting
 25 attorney? By the Attorney General of the State of Michigan?

574

1 By the United States attorney? Answer: No.
 2 MR. COOKE: Here's the problem. That doesn't cure
 3 the prejudice because Janice McCraner is going to testify
 4 that she withdrew the charges, that's why they weren't
 5 pursued.
 6 THE COURT: Okay.
 7 MR. COOKE: If I might just put this on the
 8 record. I apologize for taking the time to do this. But
 9 this is important to us. And the issue is -- if this is
 10 being introduced to show something regarding apparently the
 11 Open Meetings Act issue, that there was some sort of a
 12 cover-up, and that's what this memo is talking about, and
 13 this is to be tried to the Court -- the Open Meetings Act
 14 issues is to be tried to the Court -- what counsel is going
 15 to use this is to prejudice this jury to argue that this
 16 whistle blowers, or breach of contract action that he is
 17 asserting, any conversations had by these board members were
 18 violative of the law, and therefore they should be
 19 disregarded, or they should be viewed at with disfavor by
 20 the jury. So this is going to be a bleedover from an
 21 assertion of a right to counsel in a police investigation as
 22 it pertains to the issues that the jury is a called upon to
 23 decide. And that's why we wanted a bifurcation. And
 24 counsel is right on -- mixes these things up again in front
 25 of the jury.

575

1 THE COURT: I've made my ruling. We're ready for
 2 the jury.
 3 THE COURT: By the way, you can argue there's an
 4 open meeting violation, and you raised it on this committee
 5 that met who wanted to extend Mr. Moran's contract.
 6 THE WITNESS: That's precisely what this is about.
 7 (Jury enters courtroom at 10:29 a.m.)
 8 THE COURT: Go ahead, Mr. Parsons.
 9 MR. PARSONS: Thank you, Your Honor. On the
 10 record, moving the introduction of plaintiff's proposed
 11 exhibit 99.
 12 THE COURT: Received.
 13 MR. PARSONS: Thank you.
 14 BY MR. PARSONS:
 15 Q. Now, exhibit 99 is a document -- this is not from you,
 16 correct?
 17 A. Correct.
 18 Q. It's on -- it's interesting it's on stationery heading that
 19 looks like that stationery heading that you make up
 20 occasionally?
 21 A. We use the same software -- computer software.
 22 Q. But this one is an official -- this is from Manistee/Benzie
 23 CMH's interim CEO, Jeff Rose, correct?
 24 A. It's got a signature on it.
 25 Q. And the date of this is July 3, 2007, correct?

576

1 A. Yes.
 2 Q. And the subject of this meeting is what?
 3 A. As stated.
 4 Q. It says police interviews regarding Open Meetings Act
 5 issues, correct?
 6 A. Yes.
 7 Q. And then it says I am relaying this message to you based on
 8 Peter Barnes' request. And that's you, Peter Barnes,
 9 correct?
 10 A. That's correct.
 11 Q. It goes on to say, Peter called me today and told me that
 12 he had been interviewed by the Michigan State Police
 13 regarding Open Meetings Act issues, correct?
 14 A. Correct.
 15 Q. He told me that the investigator told him that he was the
 16 first of many interviews of Manistee/Benzie Community
 17 Mental Health board members to come. He, that's you,
 18 Mr. Barnes, asked that I communicate the following message
 19 to you in this regard, correct?
 20 A. Correct.
 21 Q. And you did -- you, Peter Barnes -- you did in fact ask
 22 Mr. Jeff Rose to convey a communication to the other board
 23 members, correct?
 24 A. On advice of counsel.
 25 Q. Based -- and then the memo goes on -- correct -- based on

577

1 the advice of Peter Cohl -- and that's counsel?
 2 **A. Yes, sir.**
 3 **Q.** -- all Manistee/Benzie Community Mental Health members,
 4 upon being contacted by a police agency investigating Open
 5 Meetings Act issues, should immediately contact Peter Cohl
 6 prior to discussing the matter with the investigator,
 7 right?
 8 **A. Yes.**
 9 **Q.** And this is your idea that -- or Mr. Cohl's idea, and
 10 you're making sure Jeff Rose passes this on, right?
 11 **A. Peter Cohl suggested to me that I do this. That's why I**
 12 **did it.**
 13 **Q.** Mr. Barnes, does it strike you as -- as unusual that a
 14 member of a public commission would be refusing to talk
 15 with police until he or she has first talked to legal
 16 counsel?
 17 **A. I'm not an attorney, and don't try to think through what an**
 18 **attorney might think.**
 19 **Q.** Could you answer my question?
 20 MR. COOKE: He's -- I object to him being
 21 interrupted. He's answering the question.
 22 MR. PARSONS: All right.
 23 BY MR. PARSONS:
 24 **Q.** Continue a little bit. But then I will come back to my
 25 questions.

1 MR. COOKE: He's asked do you think it's unusual,
 2 Your Honor. He should be allowed to describe it.
 3 BY MR. PARSONS:
 4 **Q.** Do you think it is unusual that a public official should
 5 refuse to talk to state police before being talked --
 6 asking for counsel?
 7 **A. I think what's unusual is that an attorney/client -- or an**
 8 **attorney counsel advice would be ignored by a public**
 9 **official. In this case, going back to exhibit 48, for**
 10 **example, that addressed the Open Meetings Act violation of**
 11 **the executive committee meeting. Not any other Open**
 12 **Meetings Act. And I -- this issue could have addressed**
 13 **both. Open Meetings Act.**
 14 **Q.** Now, would you say that answer is closer to yes, or closer
 15 to no?
 16 **A. If you repeat the question, perhaps I can give you a better**
 17 **answer.**
 18 **Q.** Is it unusual for a person to find as a public official to
 19 refuse to talk to state police until he or she has first
 20 consulted with legal counsel?
 21 **A. I doubt it. No.**
 22 **Q.** Okay. I'm going to introduce plaintiff's proposed -- or
 23 I'm going to show the witness plaintiff's proposed exhibit
 24 85. Do you recognize this document, sir?
 25 **A. Yes.**

1 **Q.** You drafted it, correct?
 2 **A. Yes.**
 3 **Q.** On your computer?
 4 **A. Yes.**
 5 **MR. PARSONS: I'm going to move the introduction**
 6 **of plaintiff's proposed exhibit 85, please.**
 7 MR. COOKE: No objection to 85.
 8 MR. PARSONS: I -- Your Honor, did you say
 9 admitted, or received?
 10 THE COURT: Received.
 11 MR. PARSONS: Thank you.
 12 BY MR. PARSONS:
 13 **Q.** Exhibit 85, the date of this is July 12, 2007, correct?
 14 **A. The date of this memo, yes, sir.**
 15 **Q.** Now, down in the lower left hand corner, distinctively, it
 16 appears to be your dating system, July 10, 2007, correct?
 17 **A. Yes, sir.**
 18 **Q.** And there was a meeting of the board on July 12, 2007,
 19 correct?
 20 **A. Yes.**
 21 **Q.** And you drafted this document in advance, apparently?
 22 **A. Yes.**
 23 **Q.** And you gave it to all MBCMH Board of Directors this time?
 24 **A. I believe it was in the packet.**
 25 **Q.** Okay. This one was in the packet, right?

1 **A. I said I believe it was.**
 2 **Q.** All right. Purpose, risk management. Quote, I move that
 3 the resolution below passed by the MBCMH board action on
 4 June 14, 2007, be ratified, confirmed, and approved at this
 5 regularly scheduled MBCMH board meeting. Then it says --
 6 it sort of looks ahead here. Oh, I see. This resolution
 7 was passed by the board action on June 14, 2007. Is that
 8 what it says?
 9 **A. That's what it says.**
 10 **Q.** I'm going to ask you that rubber stamp question again. Was
 11 this the way that the June 14 motion was simply rubber
 12 stamped, again?
 13 MR. COOKE: Objection to the form.
 14 THE WITNESS: What do I do now?
 15 THE COURT: I'll sustain the objection. He's --
 16 that's not a term that he says he would use.
 17 MR. PARSONS: He likes. All right.
 18 BY MR. PARSONS:
 19 **Q.** Did -- in fact, sir, did the board simply put before it the
 20 same resolution, correct?
 21 **A. Yes.**
 22 **Q.** The board simply voted, didn't change anything in the
 23 resolution, right?
 24 **A. That's correct.**
 25 **Q.** Nothing else changed that you're aware of as a result of

1 this resolution, right?
 2 A. (No response.)
 3 Q. Didn't do anything new that the other one didn't do?
 4 A. This was done at the advice of counsel. Exactly the way
 5 you see it.
 6 Q. Because this time it was on the agenda, correct?
 7 A. I can't answer that. I'm not an attorney.
 8 THE COURT: You don't know whether it was on the
 9 agenda?
 10 THE WITNESS: No. It was on the agenda. But you
 11 said because it was on the agenda.
 12 BY MR. PARSONS:
 13 Q. Oh, all right. I'm sorry. The Court's question was what I
 14 wanted. Was it on the agenda this time?
 15 A. I believe it was.
 16 Q. Was -- before this vote was taken, did anybody ask Michael
 17 Moran whether he wished to defend himself, or to respond in
 18 any way?
 19 A. Not to my knowledge.
 20 Q. I'm going to show the witness plaintiff's proposed exhibit
 21 36. Do you recognize that document?
 22 A. I do.
 23 Q. It's dated July 12, 2007, and it is the board minutes from
 24 the July 12, 2007 board meeting, correct?
 25 A. It is.

1 MR. PARSONS: I would like to move the
 2 introduction of plaintiff's proposed exhibit 36.
 3 MR. COOKE: No objection, Your Honor.
 4 THE COURT: Received.
 5 BY MR. PARSONS:
 6 Q. On the second page under approval of the June 19 special
 7 meeting minutes, the minutes were approved, correct?
 8 A. Moved, supported -- motion carried, yes, sir.
 9 Q. And then it says Ms. Fenstermacher and Janice McCraner
 10 asked that their no votes be so noted because they believe
 11 an illegal motion was made during the meeting June 19,
 12 correct?
 13 A. That's what the minutes show.
 14 Q. And then on page 5, here's the -- Peter Barnes moved,
 15 supported by Jean Bowers, that the resolution concerning
 16 the MBCMH executive director passed by MBCMH board action
 17 on June 14, 2007, be ratified, confirmed, and approved at
 18 this regularly scheduled MBCMH board meeting?
 19 A. Yes.
 20 Q. Is this the last time the board voted to fire Mr. Moran --
 21 or to terminate Mr. Moran?
 22 A. To my memory, yes.
 23 Q. Now, can you tell me -- here's one last question on this
 24 exhibit 36. These are minutes of July -- the July 12
 25 meeting, right?

1 A. Yes.
 2 Q. They're not dated until the September 13 meeting, right?
 3 A. Approved?
 4 Q. Yeah.
 5 A. That's what the record shows.
 6 Q. Is it fair to say it took two months to -- for the board to
 7 have these minutes fly-specked by counsel because it
 8 anticipated litigation?
 9 MR. COOKE: Object to the form.
 10 THE WITNESS: No.
 11 THE COURT: You want the answer to stand?
 12 MR. COOKE: That's fine.
 13 THE COURT: Okay.
 14 MR. PARSONS: I'm sorry.
 15 BY MR. PARSONS:
 16 Q. It took two months to get these meetings minutes from a
 17 public meeting of July 12 signed and voted on by the board,
 18 didn't it?
 19 A. Yes.
 20 THE COURT: Did the board meet in August?
 21 THE WITNESS: I believe so, yes, sir.
 22 BY MR. PARSONS:
 23 Q. I'm going to show the witness plaintiff's proposed exhibit
 24 37. Do you recognize that document?
 25 A. Yeah. But I have to read it to refresh my memory in

1 detail.
 2 Q. You can read it, but my primary focus is paragraph 1.
 3 A. I've read it.
 4 Q. You received this as a member of the Manistee/Benzie CMH
 5 board?
 6 A. Yes, sir.
 7 Q. And this was written by Janice McCraner, vice chair of the
 8 Manistee/Benzie CMH board?
 9 A. Yes.
 10 Q. Dated July 12, 2007, correct?
 11 A. Yes.
 12 MR. PARSONS: I'm going to move the introduction
 13 of plaintiff's proposed exhibit 37?
 14 MR. COOKE: Your Honor, object to the hearsay
 15 document, and I object for the same reasons that I've
 16 asserted before this Court outside the presence of the jury
 17 regarding this investigation. I think it deals with that.
 18 THE COURT: The objection's overruled.
 19 MR. PARSONS: Thank you.
 20 MR. PARSONS: Exhibit 37 is received by the Court?
 21 THE COURT: Yes.
 22 MR. PARSONS: Thank you, Your Honor.
 23 BY MR. PARSONS:
 24 Q. Exhibit 37 written by Janice McCraner, vice chair of the
 25 board, dated July 12 -- let me back it up just a bit. Does

1 it say after much thoughtful consideration, soul searching
 2 and prayer, I've decided to ask the prosecuting attorney
 3 and the State Police to put a hold on the complaint of the
 4 violation of the Open Meetings Act until resolution of the
 5 possible civil suit which the board is facing has been
 6 determined?
 7 A. That's -- yes.
 8 Q. And does it say down at the bottom, I have been assured by
 9 the prosecuting attorney that this investigation may be
 10 reopened once the civil suit reaches conclusion. At that
 11 time the potential for criminal proceedings, if deemed
 12 necessary, will take place?
 13 A. Yes.
 14 Q. To this date, have you or any of the board members gone
 15 through any more interviews regarding the Open Meetings Act
 16 violations?
 17 A. I can speak only for myself.
 18 Q. Are you aware of any other ongoing criminal investigation?
 19 A. I'm not aware.
 20 Q. Thank you. This is out of sequence. I'm going to show you
 21 exhibit -- it's not -- I'll withdraw that.
 22 All right. After the litigation was filed, we
 23 requested documents from you. We requested documents be
 24 produced, correct?
 25 A. From me?

586

1 Q. Yes.
 2 A. Oh, yes. Through the attorney, I mean.
 3 Q. Right. Through your attorney. And I'm going to show you
 4 plaintiff's proposed 69. Do you recognize that as an
 5 affidavit that you signed in this case?
 6 A. Is this the -- yes.
 7 MR. PARSONS: And Your Honor, I would move the
 8 introduction of plaintiff's proposed exhibit 69. There's
 9 actually two affidavits.
 10 MR. COOKE: Your Honor, I object to the
 11 introduction of this. I object to this line of
 12 questioning. These were discovery issues that were brought
 13 throughout various motions by the plaintiff and by the
 14 defense over a fairly lengthy period of time. The Court
 15 has resolved all those discovery issues. There's no
 16 allegation that discovery hasn't been allowed with respect
 17 to documents. And I think that these matters are really
 18 not relevant to this proceeding. And if they have any sort
 19 of relevance or materiality, the prejudice of going through
 20 this exercise far outweighs the probative value under the
 21 circumstances of this case.
 22 THE COURT: We'll take a recess at this point.
 23 (Jury exits courtroom at 10:49 a.m.)
 24 THE COURT: Where are we going on this?
 25 MR. PARSONS: Your Honor, we're not going very

587

1 long, but we're going to the issue -- with exhibit 69, there
 2 is an exhibit June 16 of 2008, and there's an affidavit also
 3 August 15 of 2008, in which Mr. Barnes swears under oath
 4 that he does not have certain documents that we later found
 5 out he had. And I want to continue my inquiry into the fact
 6 that he said he didn't have documents, then he brought out
 7 documents that are not favorable to them, to Mr. Barnes,
 8 that are actually pretty damning documents. In his own
 9 handwriting. These are not -- these are documents, again,
 10 out of his personal files that he swore under oath he didn't
 11 have. I want to put them in.
 12 MR. COOKE: Your Honor, we fought this fight. And
 13 the specific request originally was documents pertaining to
 14 the termination of Mr. Moran. It was very limited in its
 15 scope. Mr. Barnes looked through his documents, produced
 16 those things he thought pertained to the termination of
 17 Mr. Moran. And then the next -- if the Court recalls, the
 18 next request by counsel was much, much broader than that,
 19 and they ended up going through a whole box of documents.
 20 We went through all of that exercise. And I think that
 21 that's going to come into --
 22 THE COURT: And what was that?
 23 MR. COOKE: What was --
 24 THE COURT: Yeah. What was the next request?
 25 MR. COOKE: Well, the next request differed in

588

1 scope. And it was --
 2 THE COURT: Well, that's what I'm asking.
 3 MR. COOKE: It was all documents in your
 4 possession. In your possession. And so then Mr. Barnes --
 5 we produced a whole box of documents that he had.
 6 THE WITNESS: Boxes.
 7 MR. COOKE: And we allowed counsel an opportunity
 8 to go through the documents. And we got into all that
 9 discussion. There's no allegation on the floor that we
 10 withheld documents. We gave full discovery. They've got
 11 every document that Mr. Barnes ever created.
 12 THE COURT: So what specifically shows that he
 13 withheld?
 14 MR. PARSONS: Mr. Cooke did not correctly state
 15 the situation, Your Honor. In the affidavit -- the first
 16 affidavit of June '08 -- Mr. Cooke says, we broadened out
 17 our inquiry later on. That's not true. This affidavit
 18 says, other than documents I have already produced by
 19 counsel for the Manistee/Benzie Community Mental Health
 20 board, there are no other notes, handwritten, printed, or
 21 recorded, taken by me pertaining to the termination of
 22 Mr. Moran. We asked for documents, we asked for notes, and
 23 he said, I have nothing. What we later discovered is a
 24 treasure trove of documents that show that Mr. Barnes is not
 25 telling the truth in the affidavit, and he has a scheme to

589

1 harm Mr. Moran that he's launching with Mr. Greco and
 2 Mr. O'Shea apparently. And this goes to issues, including
 3 Mr. Barnes' credibility, which is fundamental, and it goes
 4 to the issue of mitigation.
 5 THE COURT: What documents do you have relating to
 6 Mr. Moran's termination did you subsequently get? That's
 7 what I'm asking.
 8 MR. PARSONS: Oh, I'm sorry. We have a spiral
 9 ring-bound handwritten notes from Mr. Barnes. The June 17
 10 one that I've already put in.
 11 MR. COOKE: What exhibit?
 12 MR. PARSONS: That's exhibit 115. And then we
 13 have these so-called Barnes memos one through five. And
 14 those are exhibit 49, I believe. Among others, yeah. And
 15 exhibits -- exhibit 49 includes four memos that are made
 16 concerning specifically -- the first one, for example, after
 17 the MBCMH board meeting called to primarily review --
 18 THE COURT: All right. Okay.
 19 MR. COOKE: Is the Court going to allow the
 20 inquiry, then?
 21 THE COURT: Anything further?
 22 MR. COOKE: I'm just saying -- we're going to get
 23 a battle -- into the battle of what pertaining to the
 24 termination of Mr. Moran means, and Mr. Barnes produced what
 25 he thought pertained to the termination of Mr. Moran. And

590

1 there's no argument that anything was withheld over the
 2 course of this discovery. So to get into this discovery
 3 battle is going to be --
 4 THE COURT: Okay. Here's the Court's ruling. He
 5 gets to impeach with a prior statement. And this -- these
 6 things are admissible because this is not -- this is not
 7 impeachment by --
 8 MR. PARSONS: Extrinsic.
 9 THE COURT: -- by extrinsic evidence that brings
 10 up whole other issues. And Mr. Barnes gets to explain. You
 11 can have him explain why it's not impeaching.
 12 MR. COOKE: Well, with I think if he's got -- Your
 13 Honor, if he's got -- plaintiff's counsel has specific
 14 exhibits that he claims pertain to this affidavit that were
 15 not produced. I think there's an argument that that can be
 16 impeachment. But I suspect he's going to say, and you
 17 produced a big box of things later on. And yes, we did,
 18 because the Court ordered it. And we produced everything in
 19 the man's possession. And counsel had a chance to go
 20 through everything³ and have come up with a couple three
 21 documents that they can argue is impeachment. I don't want
 22 the jury to think that this box of documents contained all
 23 sorts of materials that were relevant to the request.
 24 That's the potential prejudicial impact of that line of
 25 questioning.

591

1 MR. PARSONS: Fine. He can go into that. All I
 2 want to do is show this.
 3 THE COURT: Are you going to bring in a box?
 4 MR. PARSONS: No. No. No. No.
 5 THE COURT: All right. Then the Court's ruling
 6 stands. We'll take a recess.
 7 (Court in recess at 10:57 a.m.)
 8 (Court reconvenes at 11:18 a.m.)
 9 THE COURT: We're ready for the Jury.
 10 MR. PARSONS: Mr. Barnes, do you have exhibit 69
 11 in front of you, your affidavit?
 12 THE WITNESS: I do.
 13 (Jury enters courtroom at 11:19 a.m.)
 14 MR. PARSONS: Thank you, Your Honor.
 15 BY MR. PARSONS:
 16 Q. Mr. Barnes, you have in front of you exhibit 69, correct?
 17 A. Yes.
 18 Q. And you recognize the first two pages as an exhibit signed
 19 by you June 16, 2008?
 20 A. I do.
 21 Q. And then a few pages in, the last two pages, you recognize
 22 another affidavit signed by you, correct? This one August
 23 15, 2008?
 24 A. Let me check. Yes.
 25 MR. PARSONS: I'm going to move the introduction

592

1 of plaintiff's proposed exhibit 69.
 2 THE COURT: Received.
 3 MR. PARSONS: Thank you.
 4 BY MR. PARSONS:
 5 Q. Mr. Barnes, very quickly, affidavit, begins by saying now
 6 comes Peter Barnes being duly sworn upon his oath, correct?
 7 A. Yes.
 8 Q. You have reviewed your records that you have retained as
 9 they relate to the Manistee/Benzie Community Mental Health,
 10 and other than what was previously -- what has previously
 11 been produced by counsel for the Manistee/Benzie community
 12 health board, there are no other notes, handwritten,
 13 printed, or recorded, taken by me pertaining to the
 14 termination of Mr. Moran, correct?
 15 A. That's what it says, yes.
 16 Q. That's what it says. And that's not -- that's not really
 17 true, is it? You had other notes pertaining to Mr. Moran's
 18 termination?
 19 A. They were outside the scope of what I was told the original
 20 request was for.
 21 Q. And again, is that counsel advice -- I don't want to go
 22 into what your conversation with counsel --
 23 MR. COOKE: Well, then don't ask the question. I
 24 object to that.
 25 BY MR. PARSONS:

593

1 Q. Why do you believe they were outside the scope of what you
 2 were told to produce?
 3 A. As I recall, I was told there was a timeframe from the --
 4 from -- I think it was the May meeting until the June
 5 meeting, any notes in that timeframe, and subsequently it
 6 was any notes, period. That's different.
 7 Q. All right. So you did not produce notes of a certain date,
 8 correct?
 9 A. I only looked at things that I found dated in that
 10 timeframe.
 11 Q. All right. Now let's look at the second affidavit on
 12 exhibit -- within exhibit 69. This is again -- now comes
 13 Peter Barnes who being duly sworn upon his oath, correct?
 14 A. That's the form.
 15 Q. Well, the oath, that's when you say you're telling the
 16 truth, correct?
 17 A. Yes.
 18 Q. I've reviewed all of those documents in my possession for
 19 the time period of May 1, 2007, through June 14, 2007.
 20 Attached is pages 322 through 516 are all of those
 21 documents that are my notes or other memoranda regarding
 22 Mr. Moran or the facts surrounding his termination for the
 23 time period May 1, 2007 through June 14, 2007, right?
 24 A. Yes, sir.
 25 Q. Okay. So you're limiting your search to just that little

1 time period, right?
 2 A. That's what I was told, yes.
 3 Q. Okay. And I can't go into who told you or what, but
 4 somebody told you just to limit your search to that period.
 5 MR. COOKE: Object to the form because that was
 6 the request.
 7 MR. PARSONS: Well --
 8 MR. COOKE: That was the request, and so this is
 9 misleading.
 10 MR. PARSONS: Your Honor, I'm asking my question.
 11 And there's cross-examine, of course.
 12 THE WITNESS: My response was to the request, as I
 13 understood it.
 14 BY MR. PARSONS:
 15 Q. As you understood the request, right?
 16 A. That's right.
 17 Q. Now, in fact, you kept a lot of notes, right? I'm going to
 18 show the witness what's marked as plaintiff's proposed
 19 exhibit 115. Do you recognize that photocopy of those
 20 documents attached -- four pages?
 21 A. I recognize they appear to be from my notebook.
 22 Q. Were you in the habit of keeping a notebook?
 23 A. I think it's evident that I keep notes -- a lot of notes.
 24 But they're primarily for my own personal use. And not for
 25 distribution.

1 Q. And the date of the exhibit 115 is June 17, 2007, correct?
 2 A. That's correct.
 3 Q. The second page of that exhibit is also June 17, 2007?
 4 A. Correct.
 5 Q. Third page is June 18?
 6 A. No.
 7 Q. Fourth page is June 17 again, right?
 8 A. The third page in mine is June 17, and the fourth is June
 9 18.
 10 MR. PARSONS: All right. I'm going to move the
 11 introduction of plaintiff's proposed exhibit 115.
 12 THE COURT: Received.
 13 MR. PARSONS: Thank you.
 14 BY MR. PARSONS:
 15 Q. 115, your notes on June 17, 2007, three days after
 16 Mr. Moran was terminated, correct?
 17 A. Correct.
 18 Q. And the first entry starts out, had a long telephone
 19 conversation with T. Pechacek. She is a fellow board
 20 member who voted terminate Mr. Moran, correct?
 21 A. Yes.
 22 Q. Exchanged ideas and concerns and info received from others.
 23 Does this jog your memory how many people you were
 24 receiving information from at this point?
 25 A. Not by name.

1 Q. And that's Bates stamped page 823, correct?
 2 A. Yes.
 3 Q. Now, the next page, again, June 17. Do you remember that
 4 prior exhibit we had where you're calling Mr. Greco to
 5 discuss the cure that Mr. Cohl has brought up? Do you
 6 remember that exhibit?
 7 A. The note?
 8 Q. Yeah.
 9 A. Yes.
 10 Q. That's a different note from June 17, call Greco -- yeah.
 11 Call Frank Greg, talking about the cure violation. Now,
 12 this is another note from June 17, 6:35 p.m., called
 13 O'Shea, correct?
 14 A. This note says call O'Shea, give Frank's number. I think
 15 this has been admitted separately as another exhibit as
 16 well. Because I think I've seen it before.
 17 Q. Well, I don't recall this one. Continue on. Could you
 18 read your writing to the jury, please?
 19 A. Yeah. These are the same. Exhibit 50 and this are the
 20 same.
 21 Q. Read exhibit 50 to the jury, and then look at this one.
 22 What's 50 say?
 23 A. What's 50 --
 24 Q. Exhibit 50, what does that say?
 25 A. It says called Frank Greco at about 6:00 p.m.

1 Q. And do what?
 2 A. Get sense from Cohl about how to cure a violation of the
 3 Open Meetings Act.
 4 Q. That's 50. Now read what exhibit 115 says, please?
 5 A. Called Frank Greco at about 6:00 p.m.
 6 Q. No. Doesn't it say called O'Shea?
 7 A. No. It says called Frank Greco.
 8 Q. Oh, look at page 825. I'm sorry. These are changed in the
 9 order.
 10 A. Oh. Called O'Shea at 6:35 p.m., gave him the phone numbers
 11 of Frank Greco, cell and home, to call and settle how he
 12 should reference Frank's involvement.
 13 Q. Now, what can you explain to the jury are you doing telling
 14 Mr. O'Shea how to reference Frank's involvement in what?
 15 A. I don't remember.
 16 Q. Go to Bates stamp page 826, would you, please?
 17 A. Next page.
 18 Q. Here, Mr. O'Shea called, right?
 19 A. On the 18th.
 20 Q. On the 18th. The next day. I will deliver a copy of the
 21 document offered by the board committee, the relevant
 22 minutes, the email resignation for O'Shea to have copied
 23 for use during the meeting.
 24 Now, the committee is that the executive
 25 committee minutes?

1 A. I got lost in the references. Please help me catch up with
 2 you.
 3 Q. Can you tell us what notes you're delivering to Mr. O'Shea?
 4 A. Of the motion document offered by the board committee. The
 5 motion addressed, as I recall, the censure of the executive
 6 committee for violation of the Open Meetings Act.
 7 Q. And an email resignation is Mr. Ray Nichols' resignation?
 8 A. I believe so.
 9 Q. And then the question is for O'Shea to do what?
 10 A. Use as he needed.
 11 Q. Do you recall on that document, it says Moran announced he
 12 was increasing his communication with the board. All
 13 right. I've lost that reference. I'll move on from that.
 14 Excuse me.
 15 All right. Exhibit 109. I'm going to show the
 16 witness exhibit -- what's been marked as plaintiff's
 17 proposed exhibit 109. Do you recognize that document?
 18 A. This is one we talked about before.
 19 Q. You produced this document, correct?
 20 A. Yes. As --
 21 Q. Except now it has handwritten notes on it, correct?
 22 A. It does.
 23 Q. And that's different than the version we had before,
 24 correct?
 25 A. Yes.

1 Q. These are your handwritten notes?
 2 A. I'm -- it doesn't quite look like my handwriting.
 3 Q. Is your signature down at the bottom, Peter B.?
 4 A. I'm catching up with you. It is. I'll accept that as my
 5 handwriting.
 6 MR. PARSONS: All right. I'm offering this as
 7 document 109, Your Honor, for the handwritten notes. And
 8 I'll move the introduction of plaintiff's proposed 109.
 9 MR. COOKE: No objection, I guess, to this.
 10 THE COURT: Received.
 11 BY MR. PARSONS:
 12 Q. All right. Now, this has been previously marked as another
 13 exhibit. But this time we have some handwritten notes from
 14 you dated June 27, '07. In the margin, and down in the
 15 bottom of that margin, it is signed Peter B., correct?
 16 A. Yes.
 17 Q. And can you read just the first sentence in this
 18 handwritten document?
 19 A. Tom, I strongly urge you to talk to Peter Cohl before
 20 opening this can of worms.
 21 Q. Now, you're giving advice to a fellow named Tom, and what
 22 is his last name?
 23 A. I believe that was Tom Kelley.
 24 Q. And Tom Kelley is also a --
 25 A. Board member.

1 Q. -- MBCMH board member. And is Tom Kelley a retired
 2 detective from Manistee County?
 3 A. Not that I know of. He's a current county commissioner
 4 from Benzie County.
 5 Q. Oh, Benzie County. All right.
 6 THE COURT: Why don't you ask him if he's a
 7 retired detective from --
 8 BY MR. PARSONS:
 9 Q. Benzie County. Is he a retired detective from Benzie
 10 County?
 11 A. I believe -- I don't know that he's a detective, but from
 12 the sheriff's department.
 13 Q. Okay. What's the can of worms?
 14 A. I don't remember. I really don't remember.
 15 Q. It's Michael Moran's firing, isn't it?
 16 A. I don't think so.
 17 MR. COOKE: No foundation. He said he didn't
 18 remember what that was about.
 19 THE COURT: But he can ask the question.
 20 BY MR. PARSONS:
 21 Q. We've seen you communicating, up to this point, at least,
 22 with Mr. O'Shea, a fellow named Frank Greco, Teresa
 23 Pechacek, Tom Kelley, and you've communicated with Jeff
 24 Rose concerning the interviews with the police, correct?
 25 A. And Peter Cohl.

1 Q. And Peter Cohl. Now, let me ask you this question again,
 2 is it fair to say that you were coordinating the
 3 termination and the after-termination actions of that
 4 board?
 5 A. **After the termination, I was appointed to a series of**
 6 **assignments by the board. And subsequent -- therefore**
 7 **subsequent, I was coordinating things, because that was my**
 8 **assignment. And that's documented in the minutes. Prior**
 9 **to that, I was acting in the role of a board member that**
 10 **has a responsibility for oversight and taking actions**
 11 **appropriate to the best interests of the board.**
 12 Q. You were coordinating events after the termination of
 13 Mr. Moran?
 14 A. **To the extent that I was directed to do so by board action.**
 15 Q. But do you maintain before the termination you were not
 16 coordinating the termination of Michael Moran?
 17 A. **No. I don't believe so.**
 18 Q. Let me show you what I'm -- I've marked as plaintiff's
 19 proposed exhibit 49?
 20 A. **Uh-huh.**
 21 Q. Do you recall Bates stamped page 82, which is the first
 22 page of exhibit 49?
 23 A. **Yes.**
 24 Q. Do you recall Bates stamped page 83, which is the second
 25 page?

1 A. **Yes.**
 2 Q. Do you recall Bates stamped page 84, which is the third
 3 page?
 4 A. **Yes.**
 5 Q. Do you recall Bates stamped page 85, which is the fourth
 6 page?
 7 A. **Yes.**
 8 Q. And Bates stamped page 102, which is the fifth page?
 9 A. **I don't recall the handwritten note, but I recall the**
 10 **printed content.**
 11 Q. You wrote these, correct?
 12 A. **I did.**
 13 Q. And they're dated June 27, 2007, right?
 14 A. **Correct.**
 15 **MR. PARSONS: I'm going to move the introduction**
 16 **of plaintiff's proposed exhibit 49, Your Honor.**
 17 **MR. COOKE: I object to the relevance of Bates**
 18 **stamped number 82, Bates stamped number 83. 82 and 83.**
 19 **They're not relevant to any issue in the litigation. This**
 20 **is after the termination of Mr. Moran. And the issues**
 21 **discussed in here are far more prejudicial than probative.**
 22 **And adequate foundation hasn't been laid for the issues**
 23 **discussed in those two memos as being relevant at all for**
 24 **any purposes in front of the jury.**
 25 **MR. PARSONS: Your Honor, the issue of motive, of**

1 mitigation, and of damages, Your Honor.
 2 **THE COURT: The objection is overruled.**
 3 **BY MR. PARSONS:**
 4 Q. Your Honor -- or Mr. Barnes, showing you what's marked
 5 exhibit 49?
 6 A. **I see that.**
 7 Q. This is, again, produced by you on your computer, right?
 8 A. **It is.**
 9 Q. June 27, 2007, this is reference memo 01, correct?
 10 A. **That's correct.**
 11 Q. And this is concerning some more contacts with other board
 12 members, right?
 13 A. **I think it's self-explanatory.**
 14 Q. Does it say after the MBCMH board meeting, called to
 15 primarily review and approve Moran's termination details
 16 and related issues, I had coffee with Frank Greco, Nipper
 17 Wisniski and Terri Pechacek, correct?
 18 A. **Yes.**
 19 Q. We discussed a wide range of interests, including general
 20 satisfaction about the conduct and results of the board
 21 meeting, correct?
 22 A. **Yes.**
 23 Q. And then it says, does it not, two things of peculiar
 24 interest and surprise to me were that Mr. Moran had
 25 apparently been a draft dodger in the 1960s, and had gone

1 to Canada to live for a number of years, returning only
 2 after an amnesty was declared in the mid 1970s, period.
 3 **In addition, the conversation included belief**
 4 **that Michael Moran had been an active user of drugs,**
 5 **although it was not specific as to which drugs or how to**
 6 **define "active," period.**
 7 **Finally, it was stated that Michael Moran and**
 8 **Jeff Rose had talked openly for years about a hope to**
 9 **establish a partnership or corporation to provide CMH**
 10 **consultancy in the State of Michigan and perhaps elsewhere.**
 11 **Have I accurately read that?**
 12 A. **I believe so.**
 13 Q. And that's signed Peter S. Barnes, correct?
 14 A. **Correct.**
 15 Q. Now, do you know of anything that is actually true about
 16 the going to Canada, or the drug use, or the consultancy?
 17 A. **No. I wasn't here. I wasn't even close.**
 18 Q. Now, why do you think a governmental official such as
 19 yourself who has terminated somebody would be writing a
 20 memo about a person's alleged but untrue drug use, and
 21 draft dodging, these things?
 22 **MR. COOKE: Object to the form. I didn't hear**
 23 **alleged, but what, I didn't hear.**
 24 **BY MR. PARSONS:**
 25 Q. Why would a governmental --

1 THE COURT: Just -- the reporter will read back
 2 the question.
 3 THE REPORTER: Now, why do you think a
 4 governmental official such as yourself who has terminated
 5 somebody would be writing a memo about a person's alleged
 6 but untrue drug use, and draft dodging, these things?
 7 MR. COOKE: Object to the form of the question
 8 because the truth of the statement hasn't been
 9 established -- the truth or untruth. So I object to the
 10 form.
 11 MR. PARSONS: I'm asking -- it's irrelevant, to
 12 me. I'm asking why he's doing this.
 13 MR. COOKE: That's --
 14 THE COURT: Well, you've made a statement in there
 15 that isn't in evidence either. Now, I don't know if we're
 16 going to have --
 17 MR. PARSONS: All right. Would you like me to --
 18 okay, rephrase it?
 19 THE COURT: Yes.
 20 BY MR. PARSONS:
 21 Q. Why do you think a governmental official such as yourself
 22 would create a memo about a former employee alleging drug
 23 use, draft dodging, these things?
 24 A. I kept memos on a lot of different subjects and things.
 25 Q. A lot of different people in the community?

1 A. Things that I was interested in, or curious about, or
 2 surprised at. I think you have evidence, and you've shown
 3 evidence here that I kept a lot of memos. And that's my
 4 style. It's been my style all my life.
 5 Q. You were making a file to use against Michael Moran,
 6 weren't you?
 7 A. No, not at all.
 8 Q. You weren't making a file to use against him?
 9 A. No, sir.
 10 Q. And the next page. Reference memo 02, Bates stamped page
 11 83. Do you see that?
 12 A. Yes.
 13 Q. Subsequent discussion, Mr. O'Shea mentioned he had received
 14 an anonymous call that related a story which may be
 15 relevant to the current MBCMH circumstance. Do you see
 16 where that is?
 17 A. Yes.
 18 Q. He was told that a corporation was formed using the
 19 Hispanic wife of a member of the community as a founder,
 20 et cetera. The story continues that Michael Moran was a
 21 cofounder, or in some other way involved personally in this
 22 business. Down here, Mr. O'Shea said the anonymous call
 23 stated that the Hispanic woman was now divorced and might
 24 be willing to discuss the arrangement as she understood it
 25 then and now. This is your writing, right?

1 A. Yes.
 2 Q. Now, this is your former employee, Michael Moran, right?
 3 A. Yes.
 4 Q. And you're maintaining you aren't creating a file to hurt
 5 his character when you're doing this?
 6 A. Not at all.
 7 Q. And then you repeat the peculiar interests that you had
 8 regarding drug use, and the draft dodging, right?
 9 A. Yes.
 10 Q. Page 3. Another memo. Oh, that's -- forget page 3. Page
 11 4. You don't believe you're starting a file on Mr. Moran,
 12 you've testified to that, correct?
 13 A. That's correct.
 14 Q. Look at this page. June 27, 2007. Does this say, after my
 15 telephone discussion with Alan O'Shea, I called Tom Kelley,
 16 MBCMH board member, Benzie County commissioner, retired
 17 Benzie County detective, to share all the data not yet
 18 confirmed facts that had accumulated. And he advised that
 19 I start a file for reference to be used and available if
 20 needed. It says that, right?
 21 A. It says that.
 22 Q. And then you say, I assured him I would do this, and add
 23 things from others if they became available?
 24 A. I said that.
 25 Q. And you in fact -- you went out into the community to

1 create damage to Michael Moran's reputation after you fired
 2 him, didn't you?
 3 A. No.
 4 Q. You and Frank Greco, Nipper Wisniski, Theresa Pechacek, and
 5 Alan O'Shea worked together to destroy Michael Moran's
 6 character in the community, didn't you?
 7 A. No.
 8 Q. Did people acting on your behalf obtain Mr. Moran's tax
 9 records?
 10 A. Not to my knowledge.
 11 Q. Did people acting on your behalf obtain Mr. Moran's medical
 12 records?
 13 A. No. Not to my knowledge. I know nothing about that.
 14 Q. Here's a question. In the last two years, since Mr. Moran
 15 was fired, you've stayed on that board, right?
 16 A. My appointment was for three years.
 17 Q. And occasionally, you've -- you've attended meetings with
 18 other CMHs around the state, right?
 19 A. Yes, sir.
 20 Q. How many times have you attended meetings with other CMHs?
 21 A. CMH board meetings, can you be specific?
 22 Q. I'm saying from other agencies. You know, what you'd call
 23 a cross pollination, or just meeting and talking with
 24 people from other CMH agencies?
 25 A. That's a different question. How many times? Oh.

1 Probably ten or more.

2 Q. And have those taken place locally, or they've taken place

3 down state, or where?

4 A. Generally out of the area.

5 Q. And the same question I would ask if you know about

6 Mr. O'Shea, how many times do you think he's -- he's been

7 in meetings with other governmental agencies around the

8 state in the last couple years? Do you have any idea?

9 MR. COOKE: Object, relevance.

10 THE WITNESS: No, I don't.

11 MR. COOKE: Object to relevance of questions

12 regarding Alan O'Shea going to other board meetings. Alan

13 O'Shea, it has been established that he is a member of a

14 different board than the one that is currently being sued.

15 I don't see the relevance as to what Mr. O'Shea is doing or

16 not doing as it pertains to my client.

17 MR. PARSONS: I'll move on from Mr. O'Shea. But

18 the relevance is, we're going to mitigation.

19 THE COURT: I know what the relevance is.

20 MR. PARSONS: Okay. Thank you, Your Honor.

21 BY MR. PARSONS:

22 Q. You don't know how many times Mr. O'Shea has been --

23 A. I wouldn't even hazard a guess.

24 Q. How about Ms. Pechacek, Mr. Kelley, Mr. Wisniski?

25 A. How many --

610

1 Q. Have they attended meetings with other CMH boards?

2 A. Most likely.

3 Q. And when you've talked with these other boards, Michael

4 Moran's name has come up, right?

5 A. From time to time.

6 Q. And have you always put in a good word for Michael Moran?

7 A. I have on a number of times.

8 Q. You haven't used these allegations with anybody outside

9 your little group?

10 A. I haven't even repeated them.

11 Q. Do you know -- are you aware whether Michael Moran has been

12 trying to find work in other agencies?

13 A. He doesn't keep me posted, sir. I assume he is. But I

14 don't know.

15 Q. Okay. And I'll show you exhibit -- proposed exhibit 46.

16 Do you recognize this document?

17 A. Yes, I do.

18 Q. You wrote it, right?

19 A. Actually, it was a standard letter sent to all the people

20 who didn't meet this criteria of the application.

21 Q. Did you write it?

22 A. No. I --

23 Q. You signed it?

24 A. I signed it. I didn't write it.

25 Q. And this one is on MBCMH letterhead. Is this -- this is

611

1 the real letterhead, or is this one you --

2 A. No. This is the real letterhead. It's got Board of

3 Directors printed in there as well. But that's added.

4 MR. PARSONS: I'm going to move the introduction

5 of plaintiff's proposed exhibit 6?

6 MR. COOKE: No objection.

7 MR. PARSONS: I'm sorry. 46.

8 MR. COOKE: 46, no objection.

9 THE COURT: Received.

10 BY MR. PARSONS:

11 Q. What's the date of exhibit 46?

12 A. June 27, 2008.

13 Q. And it's from Mr. Barnes to Mr. Moran, correct?

14 A. That is correct.

15 Q. And would you tell the jury, did Mr. -- after Mr. Moran was

16 terminated, another person was appointed as interim

17 director, correct?

18 A. Correct.

19 Q. And then that person left?

20 A. That's correct.

21 Q. And Mr. Moran tried to apply for his old position, correct?

22 A. Your trace is incomplete, I believe.

23 Q. Well, after Mr. Moran's successor, Mr. Rose, left the

24 employment, did Mr. Moran send his resume in to apply to

25 come back to work?

612

1 A. Yes.

2 Q. And that's what his letter is about, right?

3 A. Yes.

4 Q. Exhibit 46, you signed this letter, thank you for your

5 interest in the executive director position. The search

6 committee has completed its initial review -- and this is

7 just after the initial review, right?

8 A. Correct.

9 Q. We haven't even gotten to the final review, right?

10 A. Right.

11 Q. The search committee has completed its initial review of

12 all of the applications, and has decided to move forward in

13 the selection process with only a few of the most qualified

14 applicants for this role, right?

15 A. Right.

16 Q. I regret to inform you that your application has not been

17 selected for consideration at the next stage, correct?

18 A. Yes.

19 Q. So Mr. Moran -- and this is not about a dispute over the

20 amount of money he would be paid, right?

21 A. No.

22 Q. It's not a dispute about terms. He was just applying for

23 the job and wanted the job, right?

24 A. He was competing with others for it, yes.

25 Q. And he would have had to compete to maybe take a reduced

613

1 wage, or maybe take reduced benefits, or different terms,
 2 who knows?
 3 **A. That was to be determined.**
 4 **Q.** But Mr. Moran wasn't even objecting to different terms. He
 5 wanted the job, right?
 6 **A. His application came in like everybody else's, and was**
 7 **treated that way.**
 8 **Q.** And you found that his application didn't even make the
 9 final cut, right?
 10 **A. Correct.**
 11 **Q.** And is it fair to say that the April 18 letter that was a
 12 factor then was also a factor in Mr. Moran not even getting
 13 considered for the job?
 14 **A. No.**
 15 **MR. COOKE:** Wait a minute. That's not relevant.
 16 He's not an employee. And to mix those terms together on
 17 the whistle blower protection act is not relevant.
 18 **BY MR. PARSONS:**
 19 **Q.** Well, you understand the concept of mitigation, right,
 20 "Mr. Moran?"
 21 **A. My name is Barnes. And --**
 22 **Q.** Jeez.
 23 **A. That's okay.**
 24 **Q.** Must be something in my genes or my blood sugar.
 25 **A. That's all right. I hold no grudge.**

1 **Q.** Mr. Barnes, you understand the term "mitigation?"
 2 **A. Not really.**
 3 **Q.** Well --
 4 **A. I've heard you use it many times.**
 5 **Q.** Let me ask you, you are a prospective employer of executive
 6 directors and other people at this agency, right?
 7 **A. I'm a member of a group of employers, yeah.**
 8 **Q.** And if you were to hire somebody -- if somebody were to put
 9 in their application, and they'd been at a job for 32
 10 years, 18 as executive director, would you want to know why
 11 they were no longer there?
 12 **A. I've been in that position in another job. And the answer**
 13 **is, no, I don't want to know.**
 14 **Q.** So you don't even -- you -- you're not interested in why a
 15 person leaves, or gets fired out of a 32-year position?
 16 **A. I -- in my previous employment, I would have a police check**
 17 **to make sure it wasn't a legal issue. And if it wasn't a**
 18 **legal issue, very likely I didn't want to know. I want to**
 19 **give a person a clean slate.**
 20 **Q.** Can you imagine other employers wanting to know?
 21 **A. Some do, some don't. Various practice.**
 22 **Q.** And can you imagine that would hurt a person like
 23 Mr. Moran's chance of getting a new job to have it on his
 24 record that he was fired?
 25 **A. Sometimes it actually helps. So I can't tell you the**

1 **answer to that question.**
 2 **MR. PARSONS: Okay. I have a last issue.**
 3 **THE COURT:** It helps if you're a baseball manager.
 4 **MR. PARSONS:** Yeah. It's hard to --
 5 **BY MR. PARSONS:**
 6 **Q.** All right. Mr. Barnes, at the meeting when Mr. Moran was
 7 terminated, June 14, 2007, isn't it true that at least one
 8 board member who voted to fire Mr. Moran specifically
 9 referenced his letter about Mr. Risser and the local match?
 10 **A. If that's the case, I don't recall it at all.**
 11 **Q.** I'd like to play an excerpt from that meeting.
 12 **A. Is it an audio excerpt?**
 13 **Q.** Yes, it is. It's an audio and a visual.
 14 **A. We didn't even know that it was being taped or videoed.**
 15 **Q.** Well, did you know that people were saying the truth,
 16 apparently?
 17 **A. Oh, I presume they were saying their truth.**
 18 **Q.** Yes. And so -- now, see, again, you've got a board that
 19 votes 7-5, right, to fire -- or terminate Mr. Moran, right?
 20 **A. That's the way it happened.**
 21 **Q.** If just one vote changes, that would make a 6-6 tie, right?
 22 **A. Correct.**
 23 **Q.** And you said the other day that you had to talk to these
 24 people in advance because it was the only way it could be
 25 handled, right?

1 **A. When I walked into that meeting --**
 2 **Q.** Did you say that the other day?
 3 **MR. COOKE:** Could he be allowed to answer the
 4 question, instead of being cut off my counsel.
 5 **MR. PARSONS:** I asked a question, though, your
 6 Honor, and I would like an answer to my question.
 7 **THE WITNESS:** I don't recall whether I said that
 8 the other day or not. I don't remember every darn word I
 9 said. If that's a matter of record, then certainly I did
 10 say it.
 11 **BY MR. PARSONS:**
 12 **Q.** All right. Would you agree with the jury that if the vote
 13 to fire him winds up a 6-6 tie, Mr. Moran -- that
 14 resolution fails Mr. Moran's stays at work?
 15 **A. Oh, absolutely correct, yes.**
 16 **Q.** So for example, if Mr. Risser had, instead of voting no, if
 17 Mr. Risser votes yes; if Ms. Pechacek votes yes; if
 18 Mr. Kelley votes yes --
 19 **A. Or if I vote yes.**
 20 **Q.** Yeah. I'm not going to go there. But --
 21 **A. I'm one of those seven.**
 22 **Q.** Let's -- yeah. One vote's changed. So if one person --
 23 other -- says it was a factor, that means Mr. Moran got
 24 fired in part because of that letter?
 25 **MR. COOKE:** Now I object to that question because

1 that is within the purview of the jury whether or not
 2 there's a factor involved. That's not a proper subject for
 3 a witness.
 4 THE WITNESS: The --
 5 THE COURT: He can ask the question.
 6 BY MR. PARSONS:
 7 Q. Would you agree with that, Mr. Barnes?
 8 A. **No. The content of the letter didn't have anything to do**
 9 **with that action.**
 10 Q. My question is --
 11 A. **In my view.**
 12 Q. -- if the content of that letter did have something to do
 13 with the firing of Mr. Moran, then it was a factor,
 14 correct? If it did. If somebody said it did.
 15 A. **In an individual's view.**
 16 Q. And if one of those -- okay. And your memory right now is
 17 that nobody said it was a factor, right?
 18 A. **I don't recall it.**
 19 Q. Okay. Let me see if this refreshes your recollection.
 20 (Tape played at 12:00 noon.)
 21 BY MR. PARSONS:
 22 Q. Can you identify that voice?
 23 A. **I suspect that was Tom Kelley.**
 24 Q. Tom Kelley?
 25 A. **Well, I don't know.**

1 Q. That's your estimate at this point?
 2 A. **My guess.**
 3 Q. All right. The county's being put to the -- you hear he's
 4 saying, this is about one of our members being put to the
 5 iron. Do you recall that now?
 6 A. **That's the words I heard, yes, on the tape.**
 7 Q. Yeah. And who would that -- who would that member of the
 8 county board probably be -- the member being put to the
 9 iron?
 10 A. **I told you who I think was saying those words. Are you**
 11 **asking that question again?**
 12 Q. I'm asking you who he's referring to?
 13 MR. COOKE: I think it's better asked of the
 14 person who made the statement.
 15 THE WITNESS: I don't have -- I'm not inside
 16 somebody else's head.
 17 BY MR. PARSONS:
 18 Q. No. But you -- you may be able to answer this. Putting
 19 these two things -- putting up one of our members to the
 20 iron and putting the counties to the stake for the local
 21 match. That sounds suspiciously like Mr. Risser and the
 22 local match issue are important to the speaker, wouldn't
 23 you say?
 24 MR. COOKE: Object to the form of the question,
 25 when you don't put the complete sentence on the board and

1 you pick this out of context. At least we should have the
 2 complete sentence on the board.
 3 THE COURT: He can ask the question.
 4 THE WITNESS: Are you asking --
 5 THE COURT: If the witness doesn't understand the
 6 question, the witness can say he doesn't understand the
 7 question.
 8 BY MR. PARSONS:
 9 Q. Let's play this clip again. And I'm going to say we're
 10 going to play this clip again so that you have a fair
 11 opportunity to react. And the question I'm going to ask
 12 you at the end --
 13 A. **Yes.**
 14 Q. -- is don't you think that the speaker is talking about
 15 putting Mr. Risser to the iron and putting the counties to
 16 the stake for the local match refers to the Moran letter of
 17 April 18.
 18 Would you play it again, please?
 19 (Tape played at 12:03 p.m.)
 20 THE WITNESS: Ask the question again.
 21 BY MR. PARSONS:
 22 Q. Mr. Kelley, the speaker, is talking about putting Dennis
 23 Risser to the iron, and the counties to the stake for the
 24 local match. He's talking about Mr. Moran's April 18
 25 letter, isn't he?

1 A. **I think he's talking about his trust of the leadership and**
 2 **what is in the best interest of the board. I think he used**
 3 **those two, along with two others that he mentioned in that,**
 4 **as illustrative of that lack of trust, or that diminished**
 5 **trust, or that unacceptable level of trust. But I believe**
 6 **what he was saying was trust as opposed to --**
 7 THE COURT: Could you answer the question? His
 8 question is very simple. It can be answered "yes" or "no."
 9 THE WITNESS: Okay.
 10 BY MR. PARSONS:
 11 Q. Do you think he's talking about the contents of Mr. Moran's
 12 April 18 letter?
 13 A. **No. No.**
 14 Q. Do you remember all those exhibits about the local match
 15 being discussed in 2006-2007? Do you remember all those
 16 exhibits in front of you?
 17 MR. COOKE: I object to the form.
 18 THE WITNESS: I remember exhibits.
 19 BY MR. PARSONS:
 20 Q. Mr. Kelley, the speaker, says, this is about the counties
 21 being put to the stake for the local match without
 22 discussing it. That's not really accurate, is it?
 23 MR. COOKE: Well, I object to the foundation.
 24 Talking about accuracy of somebody else's --
 25 THE COURT: He can answer the question.

1 THE WITNESS: The answer to that -- if I
 2 understand the question correctly, the answer is, yes.
 3 That's in the perception of the person who's speaking.
 4 You're asking me to make a judgment on his perception. And
 5 I don't have the scope of his perception.
 6 THE COURT: No. He's asking you whether it was
 7 discussed or not. That's what he's asking you.
 8 THE WITNESS: If that's the simple question, were
 9 there discussions on county local match, if that's the
 10 question, the answer is yes.
 11 BY MR. PARSONS:
 12 Q. So Mr. Kelley's statement is just not accurate, right?
 13 A. If that's the -- if that's the full amount of his
 14 statement, it's incomplete.
 15 Q. Mr. Moran has sued for reinstatement as well as damages.
 16 Would you ever consider rehiring Mr. Moran?
 17 A. Certainly would consider it.
 18 Q. Have you made that known to him?
 19 A. I have no way to do that. Why would I?
 20 THE COURT: Why would you consider hiring someone
 21 again that you got rid of?
 22 THE WITNESS: I didn't say I would agree. I said
 23 I would consider it.
 24 THE COURT: Why would you consider hiring someone
 25 again that you got rid of?

622

1 THE WITNESS: In the same context that I reviewed
 2 his -- his application when he made his application. I
 3 reviewed it, compared it to the alternative -- the other
 4 applications that came in, against the criteria we had
 5 established. And it was lacking. And therefore I signed a
 6 letter that said he was no longer in consideration.
 7 THE COURT: Are you saying you would consider an
 8 applicant who you fired the same way as you would consider
 9 any other applicant?
 10 THE WITNESS: I believe in second chances. I
 11 sincerely believe in second chances. And I believe anybody
 12 who -- has a right to a second chance. But a second chance
 13 is not easy to come by. And therefore, you've got to give
 14 him an opportunity. That's why I said I'd consider it. I
 15 didn't make a commitment that I would go all the way.
 16 Depends on who else is there, and the circumstance. But if
 17 you're going to be absolutely fair, you know, I -- people
 18 with disabilities need to be considered for things, too.
 19 And they often are discounted and just disallowed out of
 20 hand. I think second chances are fair.
 21 BY MR. PARSONS:
 22 Q. Last question. Do you think second chances get a little
 23 harder when you're at age 62, 63?
 24 A. I might have said yes a few years ago. But I'm now almost
 25 68. They do get harder, yes. There's no question.

623

1 MR. PARSONS: Thank you. That's all the questions
 2 I have.
 3 MR. COOKE: May we approach, Your Honor?
 4 THE COURT: Yes.
 5 (A Bench conference was held off the record 12:09 p.m.)
 6 THE COURT: Members of the Jury, we'll recess now
 7 for lunch. We'll resume in about an hour. It's going to be
 8 about -- it might be about 15 minutes, but your lunch will
 9 arrive there at about 12:30. Don't discuss the case. And
 10 we'll resume in about an hour.
 11 I want to tell you, I've got -- I've got an
 12 emergency hearing I have to conduct in Benzie County this
 13 afternoon. So we'll recess this afternoon. We'll adjourn
 14 for the day at about 3:15 this afternoon. So you'll get out
 15 of here a little bit early today.
 16 (Jury exits courtroom at 12:11 p.m.)
 17 THE COURT: Thank you, Mr. Barnes. You may step
 18 down.
 19 THE WITNESS: Thank you, sir.
 20 THE COURT: And we'll recess.
 21 (Witness steps down at 12:12 p.m.)
 22 (Court in recess at 12:12 p.m.)
 23 THE COURT: Anything before we have the jury?
 24 MR. PARSONS: No.
 25 MR. COOKE: No, Your Honor.

624

1 THE COURT: All right. We're ready for the jury.
 2 (Jury enters courtroom at 1:39 p.m.)
 3 THE COURT: Mr. Cooke.
 4 MR. COOKE: Thank you, Your Honor.
 5 **CROSS-EXAMINATION**
 6 BY MR. COOKE:
 7 Q. Good afternoon, Mr. Barnes.
 8 A. Good afternoon.
 9 Q. Mr. Barnes, I want to direct your attention to the May
 10 10th, 2007, meeting of the board. Do you recall that
 11 meeting, sir?
 12 A. I do.
 13 Q. And I provided an exhibit book in front of you, sir. If
 14 you would open to defendant's proposed exhibit O for me.
 15 A. Yes, sir.
 16 Q. And take a minute and confirm that these are the minutes of
 17 the May 10, 2007, board?
 18 A. Yes, sir.
 19 MR. COOKE: Move admission of defendant's O, Your
 20 Honor.
 21 MR. PARSONS: I don't think I have any objection
 22 except it's already been -- I believe it's been admitted.
 23 Maybe not. Let me check. No, I don't have any objection,
 24 Your Honor.
 25 THE COURT: Received.

625

1 MR. COOKE: If the Court would allow the jury,
 2 then, to open their exhibit books to exhibit O.
 3 THE COURT: All right.
 4 MR. PARSONS: That was exhibit 34 from -- that's
 5 already been admitted.
 6 THE COURT: Are we agreed defendant's O and
 7 plaintiff's 34 are the same?
 8 MR. COOKE: They're the same.
 9 THE COURT: Okay.
 10 BY MR. COOKE:
 11 Q. Now exhibit O, what we're looking at there is the minutes
 12 of the meeting; is that true?
 13 A. Yes.
 14 Q. And they pretty much all have the same format; is that
 15 correct?
 16 A. Yes.
 17 Q. They're on Manistee/Benzie letterhead. They talk about the
 18 date of the meeting, and that the meeting is held at the
 19 administrative offices; is that true?
 20 A. Yes.
 21 Q. And then on the left, we have an indication who's present,
 22 who's absent, what staff are there, what guests are there.
 23 And then we get into the crux of the meeting; is that true?
 24 A. Yes.
 25 Q. Now I want you to take a look at this board member packet

626

1 material area. And if you'd go down to, oh, five sentences
 2 from the bottom of that first paragraph. You see where it
 3 says, letter regarding recommendations from the executive
 4 board re: CEO contract?
 5 A. Yes.
 6 Q. All right. And that is the proposed resolution that the
 7 executive committee came in with to extend Mr. Moran's
 8 contract; is that true?
 9 MR. PARSONS: Object based upon -- it's a letter,
 10 not a resolution. It's a misstatement of the evidence.
 11 MR. COOKE: I think counsel can cross-examine on
 12 this. Let me rephrase.
 13 BY MR. COOKE:
 14 Q. This was a resolution, as we'll see later in the minutes --
 15 a resolution -- that was attempted to be passed to extend
 16 the contract?
 17 A. Yes.
 18 Q. All right. And that resolution that we've seen a copy of
 19 that was not sent out to anybody, to your knowledge, before
 20 the meeting; is that true?
 21 A. Yes.
 22 Q. You didn't receive it?
 23 A. No.
 24 Q. As far as you know, none of your fellow board members
 25 received it?

627

1 A. Correct.
 2 Q. All right. So when it says, board member packet material,
 3 that doesn't necessarily mean that all of the documents
 4 listed in this paragraph were actually sent out to the
 5 members ahead of time, does it?
 6 A. That's correct.
 7 Q. What it means is it's a compilation of those documents that
 8 were sent out ahead of time, and whatever other documents
 9 were introduced during the meeting that are relevant to the
 10 board packet?
 11 A. That's correct.
 12 Q. So when we talk about, for instance, up here, Mr. Parsons
 13 has been writing on the board throughout your testimony;
 14 have you seen that?
 15 A. Yes, sir.
 16 Q. And right here he puts down exhibit 40 false minutes, end
 17 quote. Do you recall that discussion?
 18 A. Yes.
 19 Q. The situation with these minutes is that there is -- these
 20 aren't false minutes, are they?
 21 A. No.
 22 Q. What it says -- seems to infer, is that some -- in some
 23 board packet, this resolution went out ahead of time, but
 24 that's not true?
 25 A. That's correct.

628

1 Q. Okay. Now, if you would turn with me to page 4 of 6 of the
 2 minutes.
 3 A. Yes.
 4 Q. Now, this May 10th of 2007, that's a regularly scheduled
 5 meeting; is that true?
 6 A. Yes.
 7 Q. All right. Open to the public, correct?
 8 A. Yes.
 9 Q. And the notice of that meeting is posted ahead of time; is
 10 that correct?
 11 A. Yes.
 12 Q. All right. And that's true for all of your regularly
 13 scheduled meetings as a matter of routine, true?
 14 A. Yes.
 15 Q. All right. Now, page 4 of 6 says a heading, executive
 16 committee; do you see that, sir?
 17 A. Yes.
 18 Q. And it says, the executive committee presented a
 19 recommendation to the board that it will pull the CEO
 20 position from the compensation recalculation study, and to
 21 extend the contract of the CEO with the following
 22 conditions: One, for three years with the base salary
 23 remaining the same as the 2005 level with a freeze for the
 24 remaining three years. Two, whatever cost index adjustment
 25 is given to all other salaried employees, the CEO will

629

1 receive in a lump sum. Three, on each year beginning 1-1
 2 of 08, one month will be added to the severance clause as
 3 stated in the existing contract. All other benefits will
 4 remain as currently described in the contract. Correct?
 5 A. Yes.
 6 Q. And that was this -- actually Kathy Fenstermacher then
 7 moved that in as a resolution; is that right?
 8 A. Yes.
 9 Q. Okay. That was supported by Ray Nichols, true?
 10 A. Yes.
 11 Q. And Ray Nichols supported to accept the executive
 12 committee's recommendation to the CEO's contract. Then it
 13 says, discussion ensued, true?
 14 A. Yes.
 15 Q. Now, there's more to that note than just "discussion
 16 ensued," that was a pretty heated discussion, right?
 17 A. Yes, sir.
 18 Q. And the reason it was a heated discussion is because
 19 members of the board thought that the executive committee
 20 had met without notice to discuss a matter that had
 21 financial impact on the board; is that true?
 22 A. Yes.
 23 Q. And the executive committee, as far as you understand the
 24 Open Meetings Act, when a standing committee of a board
 25 meets, they have to give notice, true?

630

1 A. Yes.
 2 Q. And your own bylaws at the board say that when the
 3 executive committee meets to talk about matters of
 4 financial concern, they're supposed to noticed entire
 5 board; is that true?
 6 A. That's right.
 7 Q. So the entire board, if they want to, can come to the
 8 meeting, correct?
 9 A. Yes.
 10 Q. All right. So the board, when this motion to extend
 11 Mr. Moran's contract came into the board session, there was
 12 an uproar?
 13 A. Yes.
 14 Q. And the other reason why there was this uproar is because
 15 of this recalibration study that the minutes talk about,
 16 right?
 17 A. Right.
 18 Q. There was a study that the board had agreed to conduct and
 19 hire an outside agency, Sullivan Cotter, to look at
 20 everybody's salary in the organization; is that correct?
 21 A. That's correct.
 22 Q. And you, as a responsible member of mental health board,
 23 have a responsibility under the statute to assure that the
 24 money of the agency is spent wisely?
 25 A. Yes.

631

1 Q. Okay. And there was some concerns, some already
 2 preexisting concerns, that Mr. Moran's salary was too high;
 3 is that true?
 4 A. Yes.
 5 Q. All right. And also there was some concerns that the
 6 administration salaries were too high; is that right?
 7 A. Yes.
 8 Q. And you had just gone through -- in 2005, you had gone
 9 through a \$2.5 million budget cut; is that true?
 10 A. Yes.
 11 Q. And services had been cut; is that true?
 12 A. Yes.
 13 Q. And even though those services had been cut, you saw that
 14 the administration salaries continued to increase; is that
 15 correct?
 16 A. Yes.
 17 Q. And so one of the reasons why you wanted to have this study
 18 was to see how does Manistee/Benzie Community Mental Health
 19 agency stack up around -- really around the country -- as
 20 far as salary structures; is that true?
 21 A. Especially in Michigan, yes.
 22 Q. Especially in Michigan, correct?
 23 A. Yes.
 24 Q. And so by the May 10th meeting, nothing had been decided
 25 about everybody else's salary, true?

632

1 A. That's correct.
 2 Q. In fact, the study was in the process of being completed,
 3 but wasn't yet done; is that true?
 4 A. Yes.
 5 Q. And you sat on a board that was looking at this study as
 6 well?
 7 A. Yes.
 8 Q. So Mr. Moran's contract was also, as of May 10th of 2007,
 9 was scheduled to expire by its own terms on December of
 10 2007; is that right?
 11 A. Yes.
 12 Q. So it had about six months to go?
 13 A. Yes.
 14 Q. And there was no other contract between you and -- between
 15 the board and Mr. Moran?
 16 A. Yes.
 17 Q. Is that true? And so if that contract had expired on its
 18 own terms, he would no longer be with the agency; is that
 19 true?
 20 A. (No response.)
 21 Q. Is that true?
 22 A. No.
 23 Q. Well, there was with an evergreen clause; you had to act on
 24 it, right?
 25 A. Yes, yes.

633

1 Q. But if the board didn't -- if the board did not act on that
 2 contract, it would continue for a period of time?
 3 A. Yes.
 4 Q. Is that true? But you -- and we saw the memo about a month
 5 before that -- were raising this issue with this contract;
 6 is that correct?
 7 A. Yes.
 8 Q. You wanted the board to start looking at Mr. Moran's
 9 contract to see if that is the kind of contract this board
 10 wants to sign on for?
 11 A. Yes.
 12 Q. And one of your concerns was, look, if this evergreen
 13 clause was a problem for you; is that true?
 14 A. That is true.
 15 Q. And you, as a board, have the obligation under the Mental
 16 Health Code to approve all contracts; is that right?
 17 A. Yes, sir.
 18 Q. And you felt that just letting somebody's contract roll
 19 over every three years would not be consistent with your
 20 obligation?
 21 A. That's correct.
 22 Q. So there was clearly, in your mind, going to be some action
 23 taken with respect to Mr. Moran's contract, either
 24 rewriting it, considering it, approving it, not approving
 25 it, before December 2007?

634

1 A. Yes.
 2 Q. All right. Okay. So when Mr. Moran came in, and you
 3 learned that there had been a meeting of the executive
 4 committee that you felt was a violation of the Open
 5 Meetings Act, and a violation of the bylaws, and that he
 6 was trying to get his contract extended even though no
 7 other employees knew what their salary is going to be, that
 8 was upsetting to you; was it not?
 9 A. Yes.
 10 Q. Did you feel like your trust had been violated?
 11 A. Oh, yes.
 12 Q. Sir, and that -- we'll take a look at the minutes of that
 13 meeting, page 4 of 6. And it says, about the middle of the
 14 executive committee paragraph, Fenstermacher moved it,
 15 Nichols supported it, discussion ensued. A role call vote
 16 was taken with the following yes votes: Janice McCraner,
 17 Ray Nichols, Betty Noteware, Ray Kadlec, Kathy
 18 Fenstermacher; is that correct?
 19 A. Yes.
 20 Q. And those five, McCraner, Nichols, Noteware, Kadlec, and
 21 Fenstermacher, routinely voted in a favorable way with
 22 Mr. Moran; is that true?
 23 A. Yes.
 24 Q. They were part of the majority that voted with Mr. Moran at
 25 one point in time?

635

1 A. Yes.
 2 Q. And you made mention of a couple other things regarding
 3 Mr. Moran's interaction with the board. He told you he
 4 would only act if the board voted as a majority to direct
 5 him to do something; is that right?
 6 A. Yes.
 7 Q. So in order to get Mr. Moran to do anything, you have to
 8 have a majority of the board pass a resolution to get him
 9 to do something, right?
 10 A. Yes.
 11 Q. For instance, you wanted to take a look at some of the
 12 financial pictures of the organization prior to this
 13 meeting; is that --
 14 A. When I was treasurer.
 15 Q. You were appointed as treasurer of the board, and you felt
 16 it was incumbent on you to look at the financial picture of
 17 the organization?
 18 A. Yes.
 19 Q. Because this organization deals with mentally impaired and
 20 developmentally disabled people?
 21 A. Yes.
 22 Q. And that was -- that's your prime motivation for being on
 23 the board; is that right?
 24 A. Yes.
 25 Q. You want to do some good for this group of people?

636

1 A. Yes.
 2 Q. And one of the roles you felt you had was to look at how
 3 we're spending our money; is that right?
 4 A. Yes.
 5 Q. And the code requires you to do that?
 6 A. Yes.
 7 Q. And when you had tried to get information from Mr. Moran,
 8 didn't he dress you down and tell you that that wasn't your
 9 job?
 10 A. I was told, if I had questions, I had to ask, or have the
 11 board approve the questions before I could ask them, and I
 12 had no right for follow-up questions until I had the board
 13 approve those questions, which would be a month between
 14 each process, because we met only once a month as a full
 15 board. We had no committees at all.
 16 Q. And so if you didn't have a majority of the board agreeing
 17 to say, for instance, Mr. Moran, we'd like to know your
 18 salary structures of this organization, unless the majority
 19 said, pass that as a resolution, Mr. Moran told you it
 20 wasn't incumbent on him to give that to you; is that right?
 21 A. That's what he said.
 22 Q. All right. So these five people voted to extend
 23 Mr. Moran's contract. And we see there's "no" votes
 24 recorded, correct? Peter Barnes; Jean Bowers; Therese
 25 Pechacek; Don Smeltzer; Dennis Risser; James Wisniski, who

637

1 is Nipper, right?
 2 A. Yes.
 3 Q. And Tom Kelley, correct?
 4 A. Correct.
 5 Q. Now, that's seven members voting not to extend the
 6 contract; is that true?
 7 A. That's true.
 8 Q. And this vote took place before you received this letter
 9 dated April 18 of '07; is that correct?
 10 A. Yes.
 11 Q. So before you had any inkling that Mr. Moran was saying,
 12 I'm going to report the counties for not making their local
 13 match, and I'm going to report Mr. Risser for trying to
 14 influence multi million dollar contracts, before that
 15 letter was received by you, you'd already voted not to
 16 extend Mr. Moran's contract, true?
 17 A. Yes.
 18 Q. So that was action taken by the board not to extend the
 19 contract of '07, true?
 20 A. Yes.
 21 Q. So this evergreen clause wouldn't let that contract roll
 22 over; is that correct?
 23 A. Yes.
 24 Q. You had taken action, and so as of December of '07, based
 25 on this May 10th of '07 vote of the board, there was no

638

1 contract for Mr. Moran beyond December of '07, true?
 2 A. Yes.
 3 Q. All right. And that wasn't influenced by any April 18 of
 4 '07 letter; is that correct?
 5 A. It hadn't been received. Correct.
 6 Q. Was this the first time since you've been on the board
 7 where a majority of the board had stood up against
 8 something that Mr. Moran presented to the board?
 9 A. As I recall, it was the first time. And I didn't expect it
 10 to happen. I was surprised.
 11 Q. You didn't expect it to happen; you were surprised?
 12 A. Yes. Very much.
 13 Q. After this meeting, you remained upset about the fact that
 14 this executive committee had met without notice to anybody?
 15 A. Yes.
 16 Q. And you felt that was a violation of the Open Meetings Act?
 17 A. Yes.
 18 Q. And you felt that deprived the board of their ability to
 19 have a role in this -- formation of this contract?
 20 A. Yes.
 21 Q. And so you, as a board member, decided you were going to
 22 take some steps to do something?
 23 A. Yes.
 24 Q. And one of the first things you decided to do was some sort
 25 of administrative leave of some kind?

639

1 A. That's correct.
 2 Q. But these notes that we see, a lot of these notes and
 3 memos, a lot of these things, you never published to
 4 anybody; is that right?
 5 A. If "published" means gave -- showed to anybody or
 6 distributed, I never did either of those things.
 7 Q. So lots of these things are your own personal reflections
 8 as to what you think you should do?
 9 A. It's the way I do things.
 10 Q. For instance, there's an April 27 -- I think it's in front
 11 of you -- April 27 letter I had that pulled away -- did
 12 you --
 13 A. April 17.
 14 Q. 17th. Yeah. And this is exhibit -- plaintiff's exhibit
 15 68. Do you see this?
 16 A. Yes.
 17 Q. All right. Actually that's not the one I'm looking for.
 18 Here it is right here. It's this May 24th, 2007, document.
 19 And it's exhibit what, sir? Plaintiffs exhibit?
 20 A. Exhibit 47.
 21 Q. 47. 47 is a memo that says, "to," and it names various
 22 board members. And there's seven there; is that right?
 23 A. It does not name the board members. It says -- it's to
 24 Mr. Kadlec.
 25 Q. To Mr. Kadlec. And it says from seven board members; is

640

1 that true?
 2 A. That's true.
 3 Q. All right. Now, this document was calling for a special
 4 board meeting; is that right?
 5 A. It was, yes.
 6 Q. And did you ever even send this out?
 7 A. No.
 8 Q. All right. So the fact that it says from seven board
 9 members, did seven board members get together and agree to
 10 send a letter to Kadlec?
 11 A. No.
 12 Q. This was your own memo, internal to your own documents,
 13 that you were considering?
 14 A. Yes.
 15 Q. All right. So some of these documents never get published;
 16 is that true? They're out of your own personal notes?
 17 A. That's right.
 18 Q. So after the May meeting, and between the June 14th meeting
 19 where the resolution to terminate was enacted, did you --
 20 let me ask this question first -- what's a quorum of your
 21 board?
 22 A. The board quorum is seven.
 23 Q. A simple majority?
 24 A. Seven members.
 25 Q. Twelve members, a quorum is seven members; is that right?

641

1 A. Even if only ten people are appointed by the county
 2 commission, it's still only seven members.
 3 Q. Did you at any time from the May 10th meeting to the June
 4 14th meeting get together personally with seven members of
 5 the board?
 6 A. No.
 7 Q. Did you ever get together with a quorum of the board?
 8 A. No.
 9 Q. All right. What is the largest group of people you talked
 10 to about your thought process as associated with what had
 11 happened on May 10th?
 12 A. In face-to-face meetings?
 13 Q. Face-to-face meetings?
 14 A. Two other people. Two other board members.
 15 Q. Two other board members. Who were they?
 16 A. Don and Tom at Rosie's.
 17 Q. Don Smeltzer?
 18 A. Don Smeltzer and Tom Kelley at Rosie's, which is in
 19 Copemish.
 20 Q. So three people?
 21 A. That's three. And I believe Terri and Dennis at the Blue
 22 Slipper Bakery, whatever the heck it's called, in Onekama,
 23 sometime in there. I believe the three of us met there --
 24 Q. Three of you?
 25 A. -- for a cup of coffee.

642

1 Q. And you're not the executive committee, right?
 2 A. No. I'm not even an officer.
 3 Q. All right. So no quorum ever got together to talk about
 4 anything with respect to Mr. Moran's contract?
 5 A. No. We had no standing committees.
 6 Q. Now, you also made some phone calls to people; is that
 7 right?
 8 A. Yes, sir.
 9 Q. Were those phone calls one-on-one phone calls?
 10 A. Yes, sir.
 11 Q. Did you ever have them on speakerphone together --
 12 A. No.
 13 Q. -- where you're talking to seven at one time?
 14 A. No.
 15 Q. At any time did you ask any one of those group, either the
 16 two groups of three, or the people on the phone,
 17 individually on the phone, to commit to a resolution
 18 terminating Mr. Moran's contract?
 19 A. No.
 20 Q. All right. Did you ever deliberate towards a vote with
 21 those people?
 22 A. No.
 23 Q. Directing your attention, then, to -- and without the jury
 24 turning to this exhibit until it's admitted -- exhibit U.
 25 Is that a letter you sent May 31 of '07 to Mr. Kadlec?

643

1 A. Yes.
 2 MR. COOKE: I'll move its admission. That is
 3 defendant's U.
 4 MR. PARSONS: I believe that has been admitted
 5 already, Your Honor. I only object if it's cumulative
 6 because -- we don't two copies of everything.
 7 MR. COOKE: The only reason I need it as my
 8 exhibit, Your Honor, is because my book is sequential.
 9 THE COURT: I understand. So you can have it as
 10 defendant's U, and it's also been received into evidence as
 11 one of plaintiff's exhibits.
 12 MR. COOKE: Thank you, Your Honor.
 13 MR. COOKE: Now the jury, with the Court's
 14 permission, may turn to exhibit U?
 15 MR. PARSONS: That's exhibit 93 from the
 16 plaintiff's side.
 17 THE COURT: All right.
 18 MR. COOKE: All right.
 19 BY MR. COOKE:
 20 Q. And exhibit U is a May 31st, 2007, letter that you drafted
 21 to Mr. Kadlec; is that right?
 22 A. Yes, sir.
 23 Q. And in this letter, you're asking for three things to be
 24 added to the upcoming agenda for the June 2007 meeting?
 25 A. Yes, sir.

644

1 Q. And that's some bylaw updates, correct?
 2 A. Yes.
 3 Q. Executive committee responsibilities, correct?
 4 A. Yes.
 5 Q. And executive director contract; is that true?
 6 A. Yes.
 7 Q. At that point in time, had you, as a board member,
 8 formulated your final decision as to what you're going to
 9 propose to the board?
 10 A. No.
 11 Q. All right. But there was going to be something proposed to
 12 the board?
 13 A. Yes.
 14 Q. You were still in the process of figuring out how you were
 15 going to address that?
 16 A. Yes. That's right.
 17 Q. Without the jury turning to this exhibit, I'd like you to
 18 look at exhibit V -- defendant's V. And do you recognize
 19 that as the draft agenda of the June 14th, 2007, meeting,
 20 sir?
 21 A. I do.
 22 MR. COOKE: Move its admission.
 23 THE COURT: And that's one of yours also.
 24 MR. COOKE: It is.
 25 MR. PARSONS: That's right. That's been admitted

645

1 as -- that's previously been admitted anyway. I'll come up
 2 with a number in a second.
 3 THE COURT: All right. I'll receive it also as
 4 defendant's V. And Members of the Jury, the reason I'm
 5 doing this, it's already into evidence, but Mr. Cooke has
 6 his sequence with his booklet of exhibits, and Mr. Parsons
 7 has a sequence with his book of exhibits. And so we'll let
 8 him do that even though they're both talking about the same
 9 exhibit in examining the witness on the same exhibit.
 10 MR. COOKE: Thank you.
 11 MR. COOKE: With the Court's permission, I'd like
 12 to turn to exhibit V, then.
 13 THE COURT: All right.
 14 BY MR. COOKE:
 15 Q. Now, exhibit V, Mr. Barnes, if you could look at the second
 16 page of that?
 17 A. Yes.
 18 Q. Exhibit B is the agenda for the June 14th meeting; is that
 19 correct?
 20 A. Yes.
 21 Q. And the second page of the agenda under new business?
 22 A. Yes.
 23 Q. 13-C, it says, executive director contract?
 24 A. Yes.
 25 Q. All right. And in fact, you did discuss the executive

1 director contract at that meeting?
 2 A. We did.
 3 Q. And by June 14th, however, of 2007, you felt it was
 4 incumbent on you as a board member to move to terminate
 5 that contract; is that true?
 6 A. Yes.
 7 Q. And you'd already prepared a draft resolution terminating
 8 that contract; is that correct?
 9 A. That's correct.
 10 Q. If you'd look in the same exhibit X, there's Bates numbers,
 11 and it's 187?
 12 A. Did you say exhibit X?
 13 MR. PARSONS: Exhibit X or V?
 14 MR. COOKE: I'm sorry. Let's look at X, without
 15 the jury turning to X.
 16 BY MR. COOKE:
 17 Q. Now is X the minutes of the meeting from June 14, sir?
 18 A. Yes, sir.
 19 Q. And if you'd page through the minutes, you see there's some
 20 attachments to those?
 21 A. Yes.
 22 MR. COOKE: I'll move the admission of X.
 23 MR. PARSONS: Exhibit -- it's exhibit 40 from
 24 plaintiffs. I have no objection to 40 being viewed as X.
 25 THE COURT: All right. So defendant's X is

1 received. It's already in evidence as plaintiff's 40.
 2 MR. COOKE: All right. And with the Court's
 3 permission if the jury could turn to X, please.
 4 THE COURT: Yes.
 5 BY MR. COOKE:
 6 Q. All right. Now, defendant's exhibit X, those are the
 7 minutes of the June 14th, 2007 meeting; is that correct,
 8 sir?
 9 A. Yes.
 10 Q. All right. And this meeting was a regularly-scheduled
 11 meeting; is that true?
 12 A. It was.
 13 Q. Open to the public?
 14 A. Yes.
 15 Q. And noticed as a regularly scheduled meeting for the
 16 public?
 17 A. Yes.
 18 Q. And once again, we see who was present, and staff, and
 19 guests, and I want to look down at the bottom of the
 20 page -- first page there. The last two and a half lines
 21 say resolution concerning the MBCMH executive committee
 22 resolution concerning the MBCMH executive director,
 23 resolution concerning the MBCMH interim board
 24 administrative guidance. Do you see that?
 25 A. Yes.

1 Q. And those were the resolutions that you had drafted; is
 2 that true?
 3 A. That's correct.
 4 Q. But you hadn't disseminated those to everybody as a part of
 5 a packet?
 6 A. That's correct.
 7 Q. Even though it says board member packet material, this
 8 section is handled very similar to what we've seen
 9 previously?
 10 A. Yes.
 11 Q. It doesn't necessarily mean documents that are given to the
 12 membership ahead of time. It's documents they have ahead
 13 of time and during the meeting?
 14 MR. PARSONS: Objection to the compound question.
 15 THE COURT: Well, there's more than one question
 16 there. So either -- do you want him to answer the last one,
 17 the first one, everything in between, or do you want to
 18 propound another?
 19 MR. COOKE: I'll ask --
 20 MR. PARSONS: Thank you.
 21 MR. COOKE: -- a different question.
 22 BY MR. COOKE:
 23 Q. This board member packet material includes both information
 24 received before the meeting, and at the meeting; is that
 25 true?

1 A. That's correct.
 2 Q. And that's the way we've seen it occurring in the past
 3 minutes; is that correct?
 4 A. That's correct.
 5 Q. Now, if you turn to page 187, Bates number on the bottom of
 6 that exhibit, sir?
 7 A. Yes, sir.
 8 Q. And is this the resolution terminating the contract of
 9 Mr. Moran?
 10 A. It is.
 11 Q. And is this a resolution you drafted?
 12 A. It is.
 13 Q. Now, it's dated June 10th of 2007. Do you see that at the
 14 bottom?
 15 A. Yes.
 16 Q. And is that when you created the document?
 17 A. That's the date I printed it, yes.
 18 Q. On the date you printed this document, did you have a
 19 commitment from seven members of the board to vote in favor
 20 of this?
 21 A. No.
 22 Q. Did you have any idea if this resolution would pass, sir?
 23 A. No.
 24 Q. And it says, though, at the top, it is the opinion of the
 25 majority of the MBCMH Board of Directors that the service

650

1 and administrative leadership and management, executive
 2 director, also referred to as chief executive officer, CEO,
 3 should be changed effective immediately, true?
 4 A. Yes.
 5 Q. Why did you put down "it is the opinion of the majority" if
 6 you didn't know if the majority would support this?
 7 A. Because if the motion -- or if the resolution is adopted by
 8 the board, then it will be a majority, because only the
 9 majority can adopt it. If the -- if the resolution is not
 10 adopted by the board, it's trashed. It's history. It's
 11 smoke. It doesn't exist.
 12 Q. All right. So you drafted this with the thought that if it
 13 gets passed by the majority, that's the way it's going to
 14 be?
 15 A. Yes.
 16 Q. The opinion of the majority. All right.
 17 Now, the second paragraph says, effective upon
 18 adoption of this resolution, the employment contract
 19 between the MBCMH board and Mr. Michael P. Moran is
 20 terminated under the at will termination clause of said
 21 contract. The severance pay and dollar value of accrued
 22 but unused benefits will be paid per the current contract,
 23 correct?
 24 A. Yes.
 25 Q. All right. I'd ask you to look back, without the jury

651

1 flipping for a moment, to defendant's proposed exhibit A,
 2 which I also think actually has been already admitted?
 3 A. Double A?
 4 Q. No. A. The beginning of the book.
 5 A. Okay.
 6 Q. Is that a copy of the contract of Mr. Moran that was
 7 effective up until December of 2007?
 8 A. Yes.
 9 MR. COOKE: Move the admission of exhibit --
 10 defendant's A.
 11 MR. PARSONS: No objection. I just note that it
 12 was already admitted as exhibit 2.
 13 THE COURT: All right. Defendant's A is also
 14 plaintiff's 2.
 15 MR. COOKE: With the Court's permission, I'd like
 16 the jury to turn to A, then, in the exhibit book.
 17 THE COURT: Yes.
 18 BY MR. COOKE:
 19 Q. We've kind of gone through this a little bit in the case.
 20 But this contract sets forth that it's the employment
 21 contract between the board and Mr. Moran; is that true?
 22 A. Yes.
 23 Q. Were there any other contractual documents that the board
 24 approved or authorized as it pertains to Mr. Moran?
 25 A. Not that I know of.

652

1 Q. All right. Is this the contract that you were referring to
 2 in the resolution of termination?
 3 A. It is.
 4 Q. I'd like you to flip to page 2 of the contract, sir.
 5 A. Yes.
 6 Q. And there's a clause C there; is that true?
 7 A. Yes.
 8 Q. It says "at will termination?"
 9 A. In bold type.
 10 Q. Now, your resolution that we just looked at said that the
 11 Michael Moran's contract is terminated under the at will
 12 termination clause of said contract, correct?
 13 A. Correct.
 14 Q. And this is the clause that you were referencing; is that
 15 right?
 16 A. Absolutely.
 17 Q. And this clause says, the board may terminate this
 18 agreement and the CEO's compensation for any other reason
 19 not specified in section B above, including but not limited
 20 to the reason that the board in its sole discretion deems
 21 to be in the best interest of the board. True?
 22 A. Yes.
 23 Q. And then it goes on.
 24 And did your resolution of termination
 25 incorporate this at will language in it?

653

1 **A. That was my intent.**
 2 **Q.** Did you terminate -- did you vote to terminate Mr. Moran's
 3 contract because you felt it was in the best interest of
 4 the board to do so?
 5 **A. Absolutely.**
 6 **Q.** If you look down to the last two sentences of this at will
 7 termination, it says, under this, quote, at will
 8 subparagraph, at the end of employment, the board shall
 9 provide the CEO with severance pay at a rate equal to one
 10 month gross current salary for each year the CEO has served
 11 the board in that capacity up to a limit of 12 months. The
 12 severance pay shall be in addition to accrued but unused
 13 benefits. Do you see that language?
 14 **A. Yes, sir.**
 15 **Q.** And as part of the vote to terminate Mr. Moran's contract,
 16 did the board also pay himself severance?
 17 **A. We did, yes.**
 18 **Q.** Did you pay him 12 months of severance pay?
 19 **A. We did, yes.**
 20 **Q.** Did you pay him roughly \$144,000 in severance pay.
 21 **A. In severance pay.**
 22 **Q.** Did you also give him all of his accrued but unused
 23 benefits at that point?
 24 **A. Yes, sir.**
 25 **Q.** Now, I want you to look above that clause to clause B; do

654

1 you see that?
 2 **A. Termination for cause.**
 3 **Q.** Termination for cause. And I want you to look at that and
 4 tell me if you terminated Mr. Moran under this contract for
 5 cause, would he be entitled to any severance pay?
 6 **A. No.**
 7 **Q.** So if you had terminated him for cause, he would have
 8 forfeited his \$144,000?
 9 **A. Yes.**
 10 **Q.** But you, in your resolution, terminated him specifically
 11 under the at will clause; is that true?
 12 **A. That is true.**
 13 **Q.** And he got his \$144,000 of severance?
 14 **A. He did.**
 15 **Q.** I'd like to turn to, without the jury turning ahead, to
 16 exhibit Z, Mr. Barnes, if you'd look at that, please?
 17 **A. Z?**
 18 **Q. Z.**
 19 **A. Got it.**
 20 **Q.** And this may already be an exhibit, but this is the minutes
 21 of the July 12, 2007 meeting; is that correct?
 22 **A. Yes.**
 23 **MR. COOKE: Move the admission.**
 24 **MR. PARSONS: No objection. That was plaintiff's**
 25 36.

655

1 THE COURT: All right. So defendant's Z is
 2 already in evidence as plaintiff's 36.
 3 **MR. COOKE: Thank you. Thank you, Your Honor.**
 4 **BY MR. COOKE:**
 5 **Q.** All right. Now, this July 12, 2007, meeting, was that a --
 6 that's exhibit Z, if the jury would turn to Z, please.
 7 Exhibit Z are the minutes from the July 12, 2007, meeting
 8 of the board; is that true?
 9 **A. Yes.**
 10 **Q.** And that was a regularly scheduled meeting of the board?
 11 **A. Yes.**
 12 **Q.** And that was a meeting that was posted ahead of time
 13 according to the law, is that --
 14 **A. Yes.**
 15 **Q.** All right. And this is a meeting open to the public; is
 16 that true?
 17 **A. Yes.**
 18 **Q.** There was no attempt to hide this meeting from Mr. Moran,
 19 or anybody associated with him?
 20 **A. That's correct.**
 21 **Q.** All right. Now I'd like to turn to page 5 of 8 under
 22 section small (e). And small (e) on page 5 of 8 says,
 23 Peter Barnes moved, supported by Jean Bowers, that the
 24 resolution concerning the MBCMH executive director, passed
 25 by the MBCMH board action on June 14th, 2007, be ratified,

656

1 confirmed, and approved at this regularly scheduled MBCMH
 2 board meeting; is that correct?
 3 **A. That's correct.**
 4 **Q.** So this is a motion that you made with notice to ratify
 5 what the board had done June 14th of 2007?
 6 **A. That is correct.**
 7 **Q.** And you're ratifying the resolution that terminated
 8 Mr. Moran's contract; is that correct?
 9 **A. Yes.**
 10 **Q.** And we heard a lot of discussion about Peter Cohl's advice
 11 on doing this; is that true?
 12 **A. That's true.**
 13 **Q.** Were you taking his advice in ratifying this resolution?
 14 **MR. PARSONS: Let me --**
 15 **THE WITNESS: Yes.**
 16 **MR. PARSONS: -- object. If they're going to get**
 17 **into what Mr. Cohl's advice was, then I should be allowed to**
 18 **ask questions about the attorney comments also.**
 19 **THE COURT: This is his examination. He's asked**
 20 **the question.**
 21 **MR. PARSONS: Right.**
 22 **THE COURT: You get a chance.**
 23 **MR. PARSONS: All right. They're not asserting**
 24 **privilege anymore on Mr. Cohl's advice then. That's the**
 25 **only question I want to have clearly at this point.**

657

1 MR. COOKE: I'm talking about what was brought in
 2 in front of this jury regarding what Mr. Cohl said.
 3 BY MR. COOKE:
 4 Q. Do you remember those discussions that Mr. Parsons brought
 5 up?
 6 A. Yes.
 7 Q. And your answers were Mr. Cohl was advising you to ratify
 8 these resolutions?
 9 A. Yes.
 10 Q. And did you do this, sir -- did you vote to ratify it
 11 because you felt there had been a violation of the Open
 12 Meetings Act?
 13 A. No. Not at all.
 14 Q. All right. Did you vote to ratify the resolution because
 15 some members of the board had raised questions about the
 16 Open Meetings Act?
 17 A. No.
 18 Q. All right. But by this point in time, Janice McCraner had
 19 accused the board of violating the Open Meetings Act; is
 20 that true?
 21 A. That's true.
 22 Q. And by this point in time she'd gone to the police and made
 23 a report claiming that the board had violated the Open
 24 Meetings Act, true?
 25 A. That's true.

658

1 Q. And was it Mr. Cohl -- in any event, was it your -- was any
 2 part of your decision to ratify based on the fact that
 3 there was this ongoing question about the violation of the
 4 Open Meetings Act?
 5 A. No.
 6 Q. All right. By the way, that police investigation, as a
 7 board member, have you ever had people objecting, either
 8 other board members, or members of the public, that a
 9 meeting was in violation of the Open Meetings Act?
 10 A. Oh, God. I don't recall one.
 11 Q. So you haven't been in a situation where police come around
 12 and ask questions because a report's been filed?
 13 A. No, no. I haven't.
 14 Q. When it came out, we saw this letter from Ms. McCraner
 15 where she withdrew her complaint regarding the violation of
 16 the Open Meetings Act, correct?
 17 A. Yes.
 18 Q. All right. Did you in fact want that investigation to go
 19 forward?
 20 A. Yes.
 21 Q. Did you have any fear that the --
 22 A. No.
 23 Q. -- police would determine that there was some violation?
 24 A. No.
 25 Q. One other thing, Mr. Barnes, there was -- near the end of

659

1 your examination with Mr. Parsons, he asked you about
 2 Mr. Moran's reapplication to the board, I think, in 2008;
 3 is that correct?
 4 A. That's correct.
 5 Q. And you signed a letter where you essentially said that he
 6 didn't make the first cut?
 7 A. Correct.
 8 Q. When you went through these applications for the open board
 9 position, were those applications submitted to you by a
 10 blind draw?
 11 A. I'm not sure what you mean by a blind draw.
 12 Q. When the information came to you regarding applications,
 13 and you reviewed those applications, you yourself, were
 14 there names on the applications?
 15 A. No. Names, addresses, anything that would identify the
 16 person -- and we're talking 20 or 30, maybe 40
 17 applications -- there was a whole slug of them -- were
 18 marked out with a black -- what do you call it -- marker
 19 that you couldn't see through, even if you held it up to
 20 the light, by a human resources person independent of us.
 21 Q. So those were blacked out?
 22 A. They were blacked out, yes.
 23 Q. And you couldn't see names, you couldn't see addresses, you
 24 couldn't see identifying information at all?
 25 A. That's correct.

660

1 Q. And so when you looked at application, you compared apples
 2 to apples as far as what was submitted?
 3 A. To our criteria of -- yes.
 4 Q. And then after that, applications were weeded out that --
 5 on that first round based on education, and --
 6 A. Meeting the criteria that was established, which the board
 7 had adopted.
 8 Q. All right. So when you signed that letter rejecting
 9 Mr. Moran's application, you'd signed a fair number of
 10 letters rejecting applications?
 11 A. Quite a few, yes.
 12 Q. And those letters had been prepared to you ahead of time?
 13 A. Yes. I hadn't even seen who they were addressed to until I
 14 saw the letter to sign.
 15 Q. So the decision to reject Mr. Moran's application had been
 16 already made when you signed this letter to him?
 17 A. Yes.
 18 MR. COOKE: All right. I don't have any further
 19 questions at this time. Thank you.
 20 **RECROSS-EXAMINATION**
 21 BY MR. PARSONS:
 22 Q. On his last question, you didn't know whose application you
 23 were looking at when you looked at the resumes that came in
 24 to you?
 25 A. That's correct.

661

1 Q. Mr. Moran's resume had 32 years working at MBCMH, 18 years
 2 as CEO of MBCMH. You didn't -- you mean, you wouldn't
 3 think --
 4 A. That was marked out. I couldn't see that.
 5 Q. Well, so somebody went through and wiped out --
 6 A. Yes.
 7 Q. -- all of his experience, right? Is that what you're
 8 saying?
 9 A. No. Somebody went through and marked out anything that
 10 would allow me to identify the name, and the other people
 11 who looked at it. And that applied equally to all the
 12 applications that we had received.
 13 THE COURT: And you couldn't figure out that that
 14 was his resume with the name marked out? You couldn't
 15 figure out that was his?
 16 THE WITNESS: I might have been able to. I don't
 17 know. As I recall, I don't recall that I figured it out.
 18 Maybe other people who reviewed it did. But I don't recall
 19 doing that. I went through, I'm going to guess, 20-plus
 20 applications, and I don't know that many people, and didn't
 21 expect to know them. Some of them came from Ohio and Texas.
 22 I know that, because I found that out later, one of the
 23 applicants that was actually selected.
 24 BY MR. PARSONS:
 25 Q. I think you were just trying to answer Mr. Cooke's question

1 that you were blind as to Mr. Moran's identity, and
 2 therefore you didn't even know you were rejecting him; is
 3 that what you're telling the jury?
 4 A. When I went through the applications, everything was
 5 removed. Had I spent a lot of time on a given application,
 6 I might have been able to narrow it down, but I don't
 7 recall doing that with Mr. Moran, or anyone else.
 8 THE COURT: Was it removed where they went to
 9 school? Was it removed what degrees they had?
 10 THE WITNESS: Probably where they went to school
 11 wasn't removed, or when they got their degree, or what their
 12 degree was in. The experience -- I don't know how to say
 13 anything general, because each application was different. I
 14 mean, each application was unique to the person who
 15 submitted it.
 16 THE COURT: Did it say where they'd worked? Was
 17 that removed?
 18 THE WITNESS: I believe so. I believe so. If
 19 there was -- yeah. I think I know where you're going, or at
 20 least I think I can speculate. I think it was removed if
 21 there was any reason to think we would be able to figure out
 22 who it was that was making the application. For example, I
 23 remember somebody had worked at some equivalent to a mental
 24 health services organization in Ohio, and that was not
 25 removed. But I didn't know anything about it except for the

1 fact that it was in Ohio and it was a mental health
 2 organization.
 3 THE COURT: Go ahead.
 4 THE WITNESS: I didn't know the person.
 5 MR. PARSONS: I'm going to mark plaintiff's
 6 proposed exhibit -- we'll call this plaintiff's proposed
 7 exhibit 123.
 8 MR. COOKE: No objection to this.
 9 THE COURT: Received.
 10 BY MR. PARSONS:
 11 Q. I'm going to show you -- I only have one copy -- Michael
 12 Moran's resume?
 13 A. Uh-huh.
 14 Q. Exhibit 123. Do you see that in front of you?
 15 A. Yes, sir.
 16 Q. If you marked out any identifying characteristics of his
 17 name, and his school, his residence, and his work
 18 experience, it would be blank, right?
 19 A. A lot of it would be, yes.
 20 Q. How could you write Mr. Moran saying his qualifications
 21 didn't meet other peoples' if you wiped out his whole
 22 resume? That's a little -- that's a little disingenuous,
 23 isn't it?
 24 A. There was another factor involved in Mr. Moran's that I
 25 recall. And that factor is that he applied as if he were

1 an internal employee. And at that point in time that the
 2 application was made, there was a process for internal
 3 applicants, and a process different for external
 4 applicants. I don't remember the precise difference.
 5 Q. Would you tell the jury an internal applicant, that would
 6 be a person who already was working at MBCMH?
 7 A. That's the intent of the word, yes.
 8 Q. So you've got an applicant who's in the internal part of
 9 the application process, and that applicant says he's got
 10 32 years experience, 18 years as executive director, and
 11 you don't know that's Michael Moran?
 12 A. He was no longer an employee at the time. So his
 13 application didn't fit the internal -- the -- he didn't
 14 have a right to use an internal process. He was an
 15 external applicant.
 16 THE COURT: Well, wait a minute. Wait a minute.
 17 Was it -- did you see the -- did you see the ads for this
 18 position that ran?
 19 THE WITNESS: I'm sure I did, sir.
 20 THE COURT: Okay. Did they say internal
 21 applicants apply this way, people who are not employed
 22 currently at Manistee/Benzie CMH, who have never been so
 23 employed, apply another way?
 24 THE WITNESS: Sir, I -- as I recall, they said for
 25 external applicants, the advertisement, contact the

1 personnel office at MBCMH to get your application form. The
 2 application form or packet, or whatever they called it, was
 3 for external applicants.
 4 BY MR. PARSONS:
 5 Q. So then, if the ad says external applicants apply, then why
 6 would -- how did you sort them out to external and internal
 7 so that you could be blind to Mr. --
 8 A. I didn't do it.
 9 Q. Are you saying that Mr. Moran was actually rejected because
 10 he was applying through the internal process, and he wasn't
 11 allowed to do that?
 12 A. He's not an internal employee, sir.
 13 Q. That's not what you originally testified to. You
 14 originally testified that you were blind to anybody.
 15 A. I was blind. But this was done before the blind reviews
 16 were even begun. This was done by the administrative staff
 17 that received the applications, and did the markouts and so
 18 forth.
 19 Q. Okay. So now --
 20 THE COURT: It doesn't say, Dear Mr. Moran, we're
 21 rejecting you because you applied the wrong way.
 22 MR. PARSONS: Right.
 23 THE COURT: Does it? It says we're rejecting you
 24 because your qualifications aren't up to what others are, or
 25 something to that effect; does it not?

666

1 THE WITNESS: I think -- I think that was -- yes,
 2 that's what the letter says. And I think it was true,
 3 anonymous at the time. I think both facts are true.
 4 BY MR. PARSONS:
 5 Q. Are you saying -- I think you just said that administrative
 6 staff took out Mr. Moran's application before it even got
 7 to you --
 8 A. No, no.
 9 Q. -- because he was not allowed to apply as an internal
 10 person, is that -- that is what you said?
 11 A. That may have been what you heard. It may be what I said.
 12 But that's not correct.
 13 Q. Do you want to reconsider that answer now?
 14 A. They didn't take it out.
 15 Q. Mr. Barnes, are you asking me to let you reconsider your
 16 answer?
 17 MR. COOKE: You've asked two back-to-back without
 18 letting him answer.
 19 MR. PARSONS: I want the record to be clear, your
 20 Honor. If I could ask this question.
 21 BY MR. PARSONS:
 22 Q. Do you want the jury to reconsider that answer?
 23 A. Yes.
 24 Q. All right. Now, would you clearly state at what point in
 25 the process Mr. Moran's application was rejected?

667

1 A. Mr. Moran's application was received along with everybody
 2 else's application. You know, through the mail. In his
 3 case, I don't know if it came through the mail or the
 4 internal mail. I just don't know.
 5 Q. Could you answer my question, sir? At what point in the
 6 application process was Mr. Moran's application rejected?
 7 A. When it reached the committee that reviewed -- the
 8 three-member committee -- that received the applications.
 9 Q. Who was that?
 10 A. Oh, gosh. I was one of them. I don't remember who the
 11 other two were, but we can find out.
 12 Q. But you said the administrative staff took his application
 13 out because he wasn't entitled to apply as an internal
 14 application?
 15 A. I said that, and then I asked to expand upon it, or explain
 16 it better.
 17 Q. All right. So now you say the committee rejected his
 18 application, correct?
 19 A. When the committee received all the applications together,
 20 all the -- yeah, applications -- together, they had been
 21 marked out as I described with a magic marker, or whatever
 22 it is, so that you couldn't see names and things like that.
 23 And Mr. Moran's, it was marked up a great deal. It was
 24 handed to us, and we were told that in addition to the fact
 25 that you couldn't read very much there, was because it

668

1 was -- it didn't say whose name it was. But they said it
 2 was because it didn't meet the requirements of the
 3 application form for a non employee. A full application
 4 had not been completed.
 5 Q. Okay. Who --
 6 A. Who's "they?"
 7 Q. Who is "they?"
 8 A. Ceela (phon) -- I want to say Ward. That's wrong. We had
 9 a contract employee from Ludington CMH who is an expert in
 10 human resources and who remains there and is available, I
 11 presume, who led us through this process. And what I'm
 12 trying to describe to you is that process.
 13 Q. Who is the committee? You said you were on the committee?
 14 A. I was on the committee. And we'll have to go back and look
 15 to find out who the other members were that were on the
 16 committee. They were board members.
 17 Q. Were they MBCMH board members?
 18 A. Yes, sir.
 19 Q. Were they all board members who voted to fire Mr. Moran?
 20 A. That -- I can't tell you that. I don't remember.
 21 Q. Excuse me. Just one second. All right. I'm going to
 22 pull -- exhibit 46 is the rejection letter. June 27, 2008.
 23 Do you see that?
 24 A. Yes, sir.
 25 Q. Now, let me ask you again. Were all three of the committee

669

1 members board members who had voted to fire Mr. Moran?
 2 **A. I've answered that. I've told you. I don't remember who**
 3 **the committee members were; therefore, I can't tell you**
 4 **from memory whether they were -- fit your criteria. But we**
 5 **can find that out.**
 6 **Q.** Let me ask you this. Mr. Moran's application, his resume,
 7 take out his name, take -- did you take out his education
 8 identifier?
 9 MR. COOKE: Well, I object to the form. Because
 10 he didn't take out anything.
 11 THE WITNESS: I can't remember.
 12 MR. COOKE: It was presented to him. He didn't
 13 remove anything.
 14 THE WITNESS: I didn't -- yeah.
 15 BY MR. PARSONS:
 16 **Q.** Did you state that you took out -- this, I think, was in
 17 response to a question by Judge Batzer. I thought you
 18 indicated you took out educational background?
 19 THE COURT: He meant -- when he said "I," he's
 20 apparently not meaning himself personally.
 21 THE WITNESS: Not me.
 22 MR. PARSONS: Somebody did.
 23 THE COURT: Somebody on staff, or this person they
 24 brought up from -- from Mason.
 25 THE WITNESS: Ludington, yeah.

670

1 THE COURT: Okay. One or more of the board's
 2 agents.
 3 MR. PARSONS: Okay.
 4 THE COURT: And that's, I think, what the witness
 5 meant. Is that fair?
 6 THE WITNESS: Yes, sir.
 7 BY MR. PARSONS:
 8 **Q.** Okay. Somebody took out the educational identifiers?
 9 **A. Took out the -- the intent was to take out any identifiers.**
 10 **That would include anything that that person felt like**
 11 **would identify that person -- or the applicant to the**
 12 **panel.**
 13 **Q.** So what Mr. Moran listed under professional experience was
 14 Mental Health Aide, Manistee County Mental Health Services;
 15 Administrative Assistant Supervisor, Manistee County Mental
 16 Health Services; Director of Programs, Assistant to Board
 17 Director, Manistee/Benzie Community Mental Health;
 18 Associate Director of Manistee/Benzie Community Mental
 19 Health; Chief Executive Officer of Manistee/Benzie
 20 Community Mental Health.
 21 If you took out the identifiers, he wouldn't have
 22 any resume left, would he?
 23 **A. I can't --**
 24 **Q.** If somebody did?
 25 **A. I don't remember how it had been marked. I honestly don't.**

671

1 **It was marked up a lot, I'm sure. Any time it said**
 2 **Manistee, it's probably going to be marked up.**
 3 **Q.** So when you were asked to sign the letter saying,
 4 Mr. Moran, you're not qualified, were you surprised to see
 5 that he had applied?
 6 **A. No, I wasn't. I thought he would apply. But I thought**
 7 **he'd apply with a full application, and apparently he**
 8 **didn't.**
 9 **Q.** Let me go to something. Exhibit 40. False minutes. This
 10 reference -- Mr. Cooke just made a reference to that as
 11 being the May 10 meeting minutes. Will you look at what
 12 exhibit 40 is, please, in fact?
 13 **A. If I can find it.**
 14 **Q.** Tell you what, Mr. Barnes, if you can see this. Exhibit
 15 40?
 16 **A. Go ahead.**
 17 **Q.** It's not the May 10 meeting minutes, it's the June 14
 18 minutes, correct?
 19 **A. I haven't found it yet, sir. Not that I'm not looking. I**
 20 **don't think it's there. But they were in order. Here's**
 21 **40. Did you say 40?**
 22 **Q.** Yes.
 23 **A. Okay.**
 24 **Q.** Do you remember the part --
 25 **A. June 14.**

672

1 **Q.** Do you remember the part of exhibit 40 that I had asked you
 2 whether it was true or false? Do you remember that?
 3 **A. Perhaps you could refresh my memory.**
 4 **Q.** Exhibit 40 seems to say there's a resolution concerning the
 5 MBCMH executive director in the board packet. And you
 6 agreed that's not true, right?
 7 **A. Your definition of the board packet and mine are not**
 8 **necessarily the same, and so it's difficult to answer your**
 9 **question.**
 10 **Q.** I thought you testified to the jury that in fact -- you
 11 said it was an error. I said it was false.
 12 **A. I did. I -- the error I was referring to you didn't allow**
 13 **me to describe. The error is that this packet material**
 14 **list includes things that are sent in advance, plus things**
 15 **that are brought at the time of the meeting. And that**
 16 **wasn't coming across in our conversation earlier.**
 17 **Q.** Didn't you say yesterday, sir, that it was an error and you
 18 couldn't describe why, and you were going to look into it.
 19 Didn't you say that?
 20 **A. Did I? What was in error?**
 21 **Q.** All right. You did not mean to say that -- I was talking
 22 about the May 10 minutes in response to Mr. Cooke's
 23 question, correct?
 24 **A. I -- I cannot say correct, or not. I don't even understand**
 25 **the question.**

673

1 Q. On -- let me ask you this. I'm moving to another issue.
 2 On May 10, you did not vote down a contract for Mr. Moran,
 3 correct?
 4 A. We voted not to extend his contract.
 5 Q. Did you vote not --
 6 A. The resolution was to extend his contract. We voted that
 7 down.
 8 Q. The resolution on the May 10 was certain recommendations by
 9 the executive committee, correct?
 10 A. To extend his contract.
 11 Q. This is -- I'll use Mr. Cooke's version. This is
 12 exhibit O. Executive committee. This is May 10, 2007.
 13 The question remains, you say -- are you testifying that
 14 the board voted to not extend Mr. Moran's contract on any
 15 terms?
 16 A. No. What I'm testifying is that the resolution given to us
 17 by the executive committee was voted down.
 18 Q. Right. That does not mean that the contract of Michael
 19 Moran could not be adopted and signed on other terms,
 20 correct?
 21 A. A different contract, you mean?
 22 Q. Yes.
 23 A. You mean the action of May 10 doesn't preclude the
 24 possibility of doing something different?
 25 Q. Correct.

674

1 A. I think I can say yes to that. It doesn't preclude it.
 2 Q. Okay. May do something different. And by something
 3 different, you mean that vote does not mean you can't
 4 negotiate different terms?
 5 A. At that moment in time.
 6 Q. So this contract -- this motion here simply says we're not
 7 going to vote to approve these terms, right?
 8 A. If I had the motion -- the resolution in front of me, I
 9 could be more articulate.
 10 Q. I think you have two versions up there. You've got an
 11 exhibit O?
 12 A. I know I did; I can't find them. Do you know what the
 13 exhibit number is? Exhibit O, did you say?
 14 Q. Yes.
 15 A. Oh, sure. I'll find it.
 16 Q. Okay.
 17 A. Exhibit O --
 18 Q. Yeah.
 19 A. -- does not have the resolution that I'm referring to.
 20 Q. On page 4 out of 6?
 21 A. Where is the one that was distributed to the board at the
 22 meeting? That's not in here.
 23 Q. Both the defense counsel and I have put in this -- the
 24 minutes. And the minutes do not say --
 25 A. The minutes were after the fact.

675

1 MR. COOKE: He's looking for the resolution,
 2 counsel.
 3 THE WITNESS: Yes. The resolution. We voted on.
 4 BY MR. PARSONS:
 5 Q. I'm going to ask you -- these are the official minutes,
 6 correct?
 7 A. These are the official minutes.
 8 Q. And it says, the executive committee presented a
 9 recommendation to the board that it pull the CEO position
 10 from the compensation recalibration study and to extend the
 11 contract of the CEO with the following conditions. And
 12 there's one, two, three. All other benefits will remain as
 13 currently described in contract.
 14 That's a motion to approve specific terms for the
 15 extension of contract, correct?
 16 A. To extend the contract, and with these terms.
 17 Q. And with those terms. And that motion is just not
 18 accepted, right?
 19 A. That's correct.
 20 Q. And it doesn't say -- it doesn't say, we are not going to
 21 sign a contract with Mr. Moran, does it?
 22 A. That's correct. It does not say that.
 23 Q. So your process, which -- do you remember those meeting --
 24 those notes of yours, you said, we're going to try and get
 25 him a contract by July 7. We are going to have -- try to

676

1 have a finished contract by October 10, 2007, so if there's
 2 impasse, we can take board action?
 3 A. I believe --
 4 Q. Correct?
 5 A. That's what the notes said.
 6 Q. And so you anticipated that you might have a situation like
 7 the recommendations for certain terms that the board would
 8 reject, right?
 9 A. No. Those notes were built before the recommendation
 10 executive committee came in. Executive committee
 11 recommendation happened after I had built those notes. And
 12 those notes were just internal to me the way I thought the
 13 process might work.
 14 Q. Can we agree on May 10 you did not vote down any contract
 15 for Mr. Moran?
 16 MR. COOKE: Asked and answered several times --
 17 several times.
 18 THE COURT: He can ask him.
 19 BY MR. PARSONS:
 20 Q. The door was still -- well, let me -- how can I put it?
 21 The door was still open for further contract negotiations,
 22 correct?
 23 A. The contract negotiations hadn't even begun.
 24 Q. Negotiations had not begun, as of May 10. At what point
 25 were the negotiations planned to begin for Mr. Moran's

677

1 contract?

2 A. I didn't have a plan aside from the notes that you've

3 mentioned. And those notes were not adopted by the board.

4 Q. Are these your -- exhibit 68. Excuse me.

5 A. That's not the one that I was referring to, no.

6 Q. Well, exhibit 68 does set forth a plan that your

7 suggestions -- a board-approved starting point should be

8 provided to the incumbent no later than July 7?

9 A. That's a summary of my thoughts.

10 Q. Okay. So other than this plan to start negotiations by

11 July 7, are you aware of any other plan for the

12 negotiations to start?

13 A. I'm not. But the executive committee might have been.

14 Q. They might have been. But for our purposes here,

15 negotiations start July of 2007 --

16 A. Wow.

17 Q. -- for Michael Moran's contract?

18 A. No. You're trying to make me the dictator on the board.

19 I'm not. That's my note on what I thought might make

20 sense. It was not adopted by the board.

21 Q. That's all I'm saying. I was -- I'm sorry, sir. This was

22 your plan, Peter Barnes' plan, was it would start July,

23 2007. And you're not aware of any other particular

24 starting date. That's all I'm asking.

25 A. That's correct.

678

1 Q. But as of May 10, negotiations have not started on that

2 date. Mr. Barnes didn't hear any train leaving on May 10?

3 A. Not true.

4 Q. Defense counsel asked you whether you met face-to-face with

5 a quorum, six other board members, to discuss the firing

6 resolution. Do you remember him asking you the questions?

7 A. Yes, sir.

8 Q. You said you didn't meet face-to-face, correct?

9 A. Yes.

10 Q. But you recall you did talk with each of the six others by

11 telephone, correct?

12 A. I believe I did. Though I may have not talked to one and

13 thought I did. I talked to them on a routine basis.

14 Q. Defense counsel asked you whether or not -- I believe I'm

15 correct -- whether or not a contract -- the employment

16 contract with Mr. Moran referenced other documents. And --

17 MR. COOKE: I object to the form of the question.

18 BY MR. PARSONS:

19 Q. Well, let me just put it to you. The contract of

20 Mr. Moran -- it's exhibit 2, or exhibit A, doesn't have any

21 monetary figure. It's got no salary in it, right?

22 MR. COOKE: It's been asked and answered in direct

23 examination. We're going over a ground that Mr. Parson's

24 already plowed several days ago.

25 THE COURT: Well, this amounts to a

679

1 cross-examination. He's an adverse witness.

2 BY MR. PARSONS:

3 Q. It doesn't have --

4 A. A dollar number.

5 Q. It doesn't have a dollar number. And it doesn't have any

6 number -- it doesn't talk about vacations. It doesn't talk

7 about benefits. It doesn't talk about a lot of key things,

8 does it?

9 A. The contract has a dollar number in it by reference because

10 it references where the dollar number will be found.

11 Q. And that's -- that's the point exactly that I'm making.

12 This contract refers to other documents?

13 A. One document, I think. Just one.

14 Q. The compensation plan?

15 A. Yes. And that was by his election. It was not that way

16 earlier. But by his choice, his selection. He chose to

17 have it included --

18 THE COURT: Yeah. But that's not the question

19 before you.

20 MR. PARSONS: Yeah.

21 THE WITNESS: Just the one document that I know

22 of.

23 BY MR. PARSONS:

24 Q. And do you know to interpret the compensation plan in terms

25 of vacations, accrued sick time, all that stuff, you have

680

1 to look at the personnel manual which defines those other

2 terms?

3 A. No, I didn't know that.

4 Q. All right. But you are clear now that this contract -- you

5 have to look at other documents to understand the contract,

6 right?

7 A. The compensation part I understand.

8 Q. Defense counsel asked you about the at will clause. He

9 said you remain clear no other reason was given regarding

10 the firing of Mike Moran -- or the termination of Michael

11 Moran, right? No reason was ever given?

12 A. That's correct.

13 MR. PARSONS: That's all I have. Thank you.

14 MR. COOKE: Nothing further. Thanks.

15 THE COURT: Thank you, Mr. Barnes, you may step

16 down.

17 THE WITNESS: Thank you, sir.

18 (Witness steps down at 2:53 p.m.)

19 MR. PARSONS: We're going to -- you know what, we

20 could get a witness completely done here. Mr. Rooker.

21 We're going to read this deposition. How many minutes is

22 it? I think it's 25 minutes.

23 MR. COOKE: Mr. Rooker hasn't been established as

24 having been unavailable. He was out here in the courtroom

25 in the hallway the second day of trial. I don't think

681

1 there's any foundation for reading in a deposition at this
 2 point.
 3 MR. PARSONS: At the time we took Mr. -- actually,
 4 Mr. Cooke -- Mr. Barnes, you're welcome to stand down.
 5 THE WITNESS: Can I go around?
 6 THE COURT: All right.
 7 MR. PARSONS: Your Honor, at the time Mr. Cooke
 8 took the deposition of Mr. Rooker, he said, this is the
 9 deposition of --
 10 THE COURT: Wait, wait. Are you going to argue
 11 about something here?
 12 MR. PARSONS: No.
 13 MR. COOKE: Yes.
 14 MR. PARSONS: I've got a letter from Mr. Rooker
 15 saying he can't be here.
 16 THE COURT: I'm going to let the jury go for the
 17 day at this point. I have to go to Benzie County to hear a
 18 matter.
 19 Members of the Jury, don't discuss the case.
 20 Avoid any news accounts of the case. Leave your notes there
 21 in the jury room. Do we have everything in the booklets
 22 yet, or not?
 23 MR. COOKE: Not everything is in evidence.
 24 THE COURT: Then you'll hold onto those yet. Your
 25 notes will be secured. No one's going to read them.

682

1 They'll be back there for you tomorrow. I'll ask you to be
 2 back at 9:15. And we'll get started shortly thereafter.
 3 Have a pleasant rest of the afternoon, and have a good
 4 evening.
 5 (Jury exits courtroom at 2:55 p.m.)
 6 MR. PARSONS: Your Honor, Mr. Rooker is a witness
 7 in this case. Mr. Cooke took his deposition, and Mr. Cooke
 8 stated the following as his deposition began: This is the
 9 deposition of Jim Rooker taken pursuant to notice in the
 10 above captioned matter to be used for any and all purposes
 11 permissible under the rules.
 12 THE COURT: Look, you haven't shown that he's
 13 unavailable.
 14 MR. PARSONS: He's more than 100 miles, Your
 15 Honor. I cannot force a subpoena on somebody more than 100
 16 miles away. He said he's unavailable. But more
 17 importantly, Mr. Cooke --
 18 THE COURT: You can't subpoena someone more than
 19 100 miles away?
 20 MR. COOKE: That's the Federal rule.
 21 MR. PARSONS: No, I don't think I can.
 22 THE COURT: Sure, you can. Sure, you can.
 23 MR. COOKE: He was here second day of trial out in
 24 the hallway.
 25 MR. PARSONS: I know, he was. And I was.

683

1 MR. COOKE: Per Mr. Parsons's subpoena.
 2 MR. PARSONS: Your Honor, this would be helpful if
 3 you give us a ruling on this. Because we have other
 4 witnesses who are saying the same thing.
 5 THE COURT: I just did. Look, I don't care. If
 6 it's agreeable with Mr. Cooke, you can use his deposition.
 7 But because he's working in Lansing doesn't make him
 8 unavailable. Because he doesn't care to drive to Manistee
 9 County doesn't make him unavailable. Subpoena him.
 10 MR. PARSONS: How about Mr. Cooke saying -- this
 11 is Mr. Cooke's words. He said for use for any permissible
 12 purpose when he took his deposition.
 13 THE COURT: Okay.
 14 MR. PARSONS: That means Mr. Cooke agreed on the
 15 record, and now I'm surprised --
 16 THE COURT: No, he didn't agree to a de bene esse
 17 deposition.
 18 MR. PARSONS: Yes, he did. Yeah, he did.
 19 THE COURT: No.
 20 MR. PARSONS: He said, this is the deposition of
 21 Jim Rooker taken pursuant to notice in the above-captioned
 22 matter to be used --
 23 THE COURT: Right.
 24 MR. PARSONS: -- for any and all purposes
 25 permissible under the rules.

684

1 THE COURT: Right. I heard it the first time.
 2 But the rules allow him to exclude his deposition as
 3 substantive testimony unless he's unavailable.
 4 MR. PARSONS: Doesn't that leave us prejudiced by
 5 a lack of notice that he's going to claim that if he says
 6 for any and all reasons.
 7 THE COURT: It doesn't prejudice you. You know
 8 which witnesses you want. Subpoena them.
 9 MR. PARSONS: All right. All right.
 10 Can I ask whether we have agreement on the record,
 11 Mr. Cooke will stipulate to Mr. Kielhorn's deposition being
 12 played at trial, or Mr. Sheehan's deposition. Mr. Kadlec is
 13 with his wife who is extremely ill in Indiana.
 14 THE COURT: Now, you may have an unavailable
 15 witness there, see?
 16 MR. PARSONS: Mr. Kadlec.
 17 THE COURT: The Court, in such a circumstance, may
 18 indeed rule -- in fact be compelled to rule -- that he's not
 19 available.
 20 MR. PARSONS: All right. Could I ask, just --
 21 just a couple minutes -- we won't hold you then, judge --
 22 we've gotten letters from Mr. Sheehan and Mr. Kielhorn
 23 saying they're in Lansing, they got official business, they
 24 cannot --
 25 THE COURT: Look, a lot of people don't like to

685

1 testify at -- you know, it's a pain. It's disruptive of
 2 their life. It's not a very comfortable process, as
 3 Mr. Barnes has found out. That's what subpoenas are for.
 4 Subpoenas can bring in people who say, you know, gee, I'd --
 5 as the late W.C. Fields once said, I'd really rather be in
 6 Philadelphia. I think maybe that's on his tombstone.
 7 MR. PARSONS: All right. I think Mr. Cohl, and
 8 Mr. Kielhorn, and Mr. Sheehan are not going to like me very
 9 much, but I'll subpoena them.
 10 THE COURT: Sure. Look, I understand. You'd
 11 rather have your witnesses come in voluntarily without a
 12 subpoena. I understand. You hand someone a subpoena,
 13 that's the first giant step in getting them into a foul
 14 mood.
 15 MR. PARSONS: Making enemies. It is. It is. And
 16 they're a long ways away. All right. We have a -- we're
 17 going to start -- we're going to have a full day tomorrow,
 18 so I will call these folks right now, tell them they have to
 19 be here. Thank you, Your Honor.
 20 MR. COOKE: Thank you, Your Honor.
 21 May I ask, since we have so many witnesses, if I
 22 could have some sort of list of witnesses ahead of time, at
 23 least the night before. I have board members that have been
 24 sitting around for four days now that probably we could
 25 schedule them more efficiently.

686

1 THE COURT: Look, I'll tell you this with all of
 2 your witnesses. I've said it before. Maybe no one was
 3 listening. All named defendants have a right to be here,
 4 but I'm not ordering that they be here, except all witnesses
 5 who are under subpoena, you don't have to keep them all
 6 waiting out in the hallway. Particularly -- I mean, local
 7 witnesses. If they're reasonably available on a phone call.
 8 Now, if you're at that point where you think they're going
 9 to be your next witness and it could be within the next 15
 10 minutes, have someone give them a call.
 11 Okay. One other thing. I don't have in
 12 defendant's booklets, whatever Z was, I have something
 13 entirely different as Z.
 14 MR. COOKE: Z is the July 12 minutes.
 15 THE COURT: I have as defendant's exhibit Z a memo
 16 to Charles Clarke from Ruth Meikle, the subject is the 2006
 17 budget request. I do not have double -- what -- double F,
 18 and everything beyond. So if you can take care of that for
 19 me by tomorrow, I'd appreciate it.
 20 MR. COOKE: May I see your book, then, and I'll
 21 turn it back in?
 22 THE COURT: Sure. Oh, am I in the wrong --
 23 MR. COOKE: This is Mr. Parsons'.
 24 MR. PARSONS: That must have been what you brought
 25 to the final settlement conference.

687

1 THE COURT: Okay. All right.
 2 MR. COOKE: So these are yours. It's the white
 3 book.
 4 THE COURT: This is Mr. Parsons'. What's that one
 5 say?
 6 MR. COOKE: On the front it says Parsons
 7 Ringsmuth. The white one underneath your left hand.
 8 THE COURT: This is defendant's exhibits produced
 9 to plaintiff.
 10 MR. PARSONS: Okay.
 11 THE COURT: I just saw defendant's exhibits. All
 12 right. Okay. Then this is probably right, then.
 13 MR. COOKE: All right. So this one isn't -- this
 14 one isn't plaintiff's exhibits either.
 15 MR. PARSONS: He must have switched them. I'm
 16 sorry. I don't know why we gave you that.
 17 THE COURT: This isn't plaintiff's exhibits. The
 18 big one is plaintiff's exhibits.
 19 THE CLERK: Do you want that one, judge?
 20 THE COURT: No. I'll just leave this one on the
 21 desk. So we're set.
 22 MR. PARSONS: Thank you, Your Honor.
 23 THE COURT: Other than that, it matches up pretty
 24 good.
 25 MR. COOKE: Thank you.

688

1 THE COURT: All right. We're adjourned.
 2 (Court adjourned at 3:05 p.m.)
 3 (Proceedings concluded.)
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

689