THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

JASON E. COBB,

PLAINTIFF,

VS.

ERNEST BREDE, et al.,

DEFENDANT.

CASE NO. CIV508137

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE HONORABLE JONATHAN E. KARESH
DEPARTMENT 20
WEDNESDAY, FEBRUARY 22, 2012

A P P E A R A N C E S:

FOR THE PLAINTIFF: APPEARING IN PRO PER

FOR THE DEFENDANTS: ANTHONY SMITH, ESQ.

FOR ERNEST BREDE: CALVIN ROUSE, ESQ.

REPORTED BY: JOAN WOODS, CSR 4573

WITNESSES FOR THE PEOPLE

	Page
ARLEN ST. CLAIR	
DIRECT EXAMINATION BY MR. COBB	44
JONATHAN DAVID COBB, SR.	
DIRECT EXAMINATION BY MR. COBB	46
CROSS EXAMINATION BY MR. ROUSE	61
REDIRECT EXAMINATION BY MR. COBB	67
ERNEST BREDE	
DIRECT EXAMINATION BY MR. ROUSE	90
CROSS EXAMINATION BY MR. COBB	103
REDIRECT EXAMINATION BY MR. ROUSE	129
RECROSS EXAMINATION BY MR. COBB	132

-oOo-

Redwood City, CA Wednesday, February 22, 2012

P R O C E E D I N G S

- - - - - - - - - - - -

THE COURT: Good morning, everybody. Calling the matter sent to us from Master Calendar, Cobb versus Brede.

MR. SMITH: Good morning, Your Honor. Anthony Smith appearing on behalf of defendants.

MR. ROUSE: Calvin Rouse on behalf of one of the defendants, Mr. Brede.

THE COURT: And where is Mr. Cobb?

MR. COBB: I am Mr. Cobb. I am appearing pro per plaintiff.

THE COURT: Did you have a chance -- taking a position on whether or not Mr. Rouse can come in and participate in this hearing, did they file an application pro hoc vice?

MR. SMITH: That was granted this morning by Judge Swope. I do have a copy of the order if you would like to see it.

THE COURT: Not at all. I didn't see it in the file. So, he must have it. I was prepared to grant it. So, that's not an issue.

The issue that I have for the hearing is how you wish to proceed. Who wants to argue this, Mr. Rouse or Mr. Smith? Maybe educate me a little bit on how this

hearing is suppose to go.

MR. ROUSE: I will do it if you want me to, Your Honor.

MR. SMITH: I was going to say, we do have two witnesses here. We have parties here, but we do have two individuals who are non-parties who may be called as witnesses at some point. I imagine they would need to step outside however the Court deems appropriate.

THE COURT: When there is testimony we will send them out.

MR. ROUSE: Your Honor, a complaint was filed against these three named party defendants who are ministers in a local Menlo Park Congregation of Jehovah's Witnesses. They are the current ministers of the congregation. And the complaint was filed by our ex-minister, one that has been removed by the organization.

And I say "organization." I am general counsel for the National Organization of Jehovah's Witnesses out of Brooklyn, New York. Ordinarily, I wouldn't be here, but this is one of our 13,000 congregations in the United States. We are a hierarchal religion structured just like the Catholic Church. And when the order from the Pope comes down in the church defrocking a priest and kicking him out, he no longer has any say in any matter in the local parish priest -- in the parish.

The same situation as here. In his complaint he brings one claim. He claims that he wants to be reinstated as a director and an officer in the Menlo Park Congregation. This is contrary to our church rules and regulations and bylaws.

We brought our organizational bylaws book, our rule book here, and we are prepared to present witnesses that this is a hierarchal organization. It is governed from the top down. We are protective of property rights and office holding rights of any degree at all in any of our churches.

And I am representing the presiding minister, Mr. Brede here. And so we challenge that. We say that that is a matter of First Amendment constitutional law. He can't do an end run as a defrocked minister and try to get his toe back in the administrative structure of our religion and by means of a court order. So, that's one point we are going to show through the evidence.

The other is that he let the statute of limitations run clearly in regard -- even under California law for a bringing a challenge like this.

THE COURT: Mr. Cobb, do you want to tell me anything before we start the hearing?

MR. COBB: Well, I will do the best I can under the circumstances, Your Honor. I am pro per. It was not my expectation that there would be a hearing today.

So, I am only partially prepared. Ideally there would be a continuance or consideration given on that basis.

THE COURT: That is something that should have been done in front of the presiding judge. I am here to hear the hearing. That continuance request is denied.

MR. COBB: No problem.

So, I will be prepared to speak to the points as represented today as best I can. I have evidence that I can share. I too may call upon any number of witnesses to the extent that they can cooperate and support points provided herein.

THE COURT: Okay. That is fine. Let me just set up my computer, which I use to take notes.

MR. COBB: May I retrieve something from my seat?

THE COURT: Sure. Please.

Mr. Rouse or Mr. Smith, which one of you wants to call the first witness? Who will be doing the examination?

MR. SMITH: Well, it is my understanding that Mr. Cobb has the burden here.

THE COURT: Right.

MR. SMITH: So, we were kind of going to see how he was going to present his case. And then Mr. Rouse will handle the direct of Mr. Brede I would imagine. But it is somewhat dependant upon plaintiff's

case.

That raises another housekeeping concern, Your Honor. Mr. Cobb is in pro per. And so as to not try to get the hearing -- unnecessarily delay the hearing, is there a way you would suggest we handle any objections that may be presented? There is a possibility being he is not trained in the law that could be an issue.

THE COURT: I will leave it to whoever one of you wants to object. But I prefer to just one. So, you can make that decision.

Mr. Cobb, did you have any evidence you wanted to present about what's going on here? Who do you wish to call as a witness?

MR. COBB: Well, I would like to begin my initial statement in response to what was presented by Mr. Rouse.

THE COURT: Do you want to testify yourself basically?

MR. COBB: I will need to do that at some point in the morning.

THE COURT: That is fine, but if you essentially want to present an opening statement, please do.

MR. COBB: So, in reviewing the defendant's hearing brief we are identifying arguments that have been presented previously through any number of venues,

circumstances, points that has been presented previously at the constitutional law defense citing the organization is a religion organization, Jehovah's Witnesses as being a hierarchal organization or a hierarchy.

So, certainly the Court is probably familiar with the fact that the term "hierarchy" is one of any number of forms of church government. And they have a particular implication as it relates to legal matters.

The reality of the situation is that Jehovah's Witnesses as a religious organization are not a hierarchy. Jehovah's Witnesses do not use that terminology in any area relative to its beliefs. The beliefs that we hold as individuals are beliefs we promote by virtue of our preaching and teaching work in our community.

Presbyterian, hierarchy, congregational, all three of these terms are irrelevant when it comes to the organization known as Jehovah's Witnesses. The term that is utilized to describe the manner of structure and government, if you will, is theocratic. So, in some respects that might be more akin to congregational for a lay person to immediately embrace.

But one of the things that we will address is the reality that Jehovah's Witnesses are not a hierarchal religious organization. There is an

organizational structure with different points of responsibilities. But we do not view ourselves as a hierarchy and I do have evidence to present from the flagship journal of Jehovah's Witnesses in the entire world, The Watch Tower magazine, which will clearly support the statements I have just made.

The next point, too, that we will want to consider in the proceeding is the point of ecclesiastical abstention. That concept does not apply in this particular case. There is no question of religion belief or doctrine, so forth.

What we have here at the most basic level is two different considerations. There are the religious considerations and everything that Mr. Rouse stated is correct. I and others were removed from positions of spiritual oversight in the congregation. However, as we all know, corporation is a separate legal entity. And the only way to create a marriage between any philosophical or religious point of view and that legal entity would be by and through the bylaws. So, one of the key points here is that there were no bylaws that had ever been formed for our corporation in existence. We have articles of incorporation from 1980, but we never had any bylaws. So, in the absence of bylaws California Corporations Code repeatedly establishes time and again throughout that in the absence of bylaws

essentially all considerations default to the letter of the law.

The letter of the law establishes a process to remove directors from office. The letter of the law establishes a process for directors to be voted in and those rules, regulations and formalities were not adhered to.

There is a recognition of that fact on the part of the defendants, but their attempt here today is to essentially take advantage of the Court's ignorance, if I may use that expression, so that you will default to the frame work of decision making based on the term "hierarchy" over and above reality of the structure that exists for Jehovah's Witnesses.

So, we will speak to that. And to a great extent if hierarchy is not used as a basis to invoke privilege, then their argument largely fails.

As far as the last point, statute of limitations, there was an attempt to hold a corporate meeting again without the benefit of having the former directors removed by law and without the benefit of them really having the basis since the actual directors, myself, Mr. St. Clair, and Mr. Stock, removed.

The meeting held on September 16th was not legally viable. They voted themselves into a nonexistent legal entity. They did not employ the

actual name of the legal entity for the corporation. And they recognized that themselves. So, it is interesting to note that the paperwork that they represent as being valid from September 16th never was filed with the State of California because they knew they had made certain errors in how they went through that process and document process.

I have a copy of the actual restatement of articles that they did file with the State of California, which will establish a recognition on their part that they did not vote themselves into the correct and legal existing entity. They had to make that adjustment. They made the adjustment December 16th and filed those documents pursuant to the meeting on December 30th.

So, my challenge is timely because it is predicated on the fact that they had a corporate meeting or an attempt to conduct a corporate meeting on December 16th, 2010, which was essentially a do-over because of their errors from September 16th, 2010.

THE COURT: Do you have some witnesses to present or testimony from yourself?

MR. COBB: I will present testimony primarily from myself. Again, I'm not well prepared today. I am not exactly sure if I would call upon these individuals here. Do I have to give that answer right now?

THE COURT: Well, no, but they should stay outside while you are testifying just because there is a general witness exclusion order in cases. So, you don't need to decide, but if there is a possibility they will be called as a witness, they need to be outside.

MR. COBB: Okay. Then I better protect myself.

THE COURT: Okay. So, I guess we will have you step on out.

THE COURT: Any witnesses who may be testifying should be waiting outside.

Mr. Cobb, do you wish to testify as yourself right now and tell me what's going on?

MR. COBB: Yeah. I mention --

THE COURT: We need to swear you in before you actually testify. So, please stand and raise your right hand.

(Plaintiff sworn.)

THE COURT: Mr. Rouse, enlighten me a little bit. What exactly has to be proved here by the plaintiff?

MR. ROUSE: Well, the plaintiff in his complaint essentially says he is challenging the validity of the appointments of Ernest Brede, Luis Contreras and Larry Laverdure as directors and officers in the Menlo Park Congregation of Jehovah's Witnesses. So, it would seem to me that he has to prove that these

people that he is challenging here are not the proper officers and directors in this church.

If it is -- if the case law structures two types of churches in the United States, there is only two types of churches talked about in case law, congregational churches and and hierarchal churches. A hierarchal church is governed by one set of first amendment laws, and congregational structured churches are governed by another set of case law that is applicable to them.

So, he is saying here Menlo Park Congregation of Jehovah's Witnesses. So, I think he needs to establish what law entitles him to get these men -- challenge the appointment of these men, what law is going to govern here. Is it First Amendment going to govern or is it California Corporate Code going to govern? If California Corporate Code is going to be supreme, then maybe he has got a point. But if this is a hierarchal church, then this is governed by church law. Church law determines. Then I think he needs to evaluate that and disprove that.

THE COURT: I see in the file -- I don't see the outcome -- there was a summary judgment motion filed at some point.

MR. ROUSE: There was a federal case that they brought that is parallel to this and the motion was

filed in that and that was dismissed. A federal case ruled in our favor.

THE COURT: So, there's not been a summary judgment in this particular --

MR. ROUSE: Not in this one, but we wanted to benefit this Court with a ruling by a federal judge in this case. So, I mean, the same principles apply in that case as this.

THE COURT: All right, Mr. Cobb, why don't you go ahead and testify.

MR. COBB: The first statement is simply to create the base line. I have a letter from the Watch Tower Bible and Tract Society of New York, Incorporated, dated January 1st, 1980 to all congregations in the State of California.

I won't burden the Court by reading it. I am happy to reference it if you like, but essentially this letter was sent in anticipation of reformation of the Corporations Code for California.

MR. SMITH: Your Honor, he is referring to a document that he is reading into evidence. So, we have a hearsay objection. We perhaps have a foundational issue with regards to its admission. And so he is not testifying from his own personal knowledge. He is reading from a document.

THE COURT: That is hearsay, Mr. Cobb. So,

unless you have a way to authenticate it and get around the hearsay exception, I can't receive that as evidence now that there is an objection.

MR. COBB: Well, I can speak to it based on my knowledge. It is something that was furnished directly from the agency as stated. And it helps to establish the recognition of corporate law within the parameters of our activities engaging in our religious activity.

THE COURT: There is still the hearsay problem, Mr. Cobb. You are trying to prove the content of the document. That document would be hearsay. So, if I am to consider the substance of the documents there has to be a hearsay exception. And just because you are familiar with it, that's not a hearsay exception.

MR. COBB: Well, this is a letter that was maintained within the files of policy letters and directives and that was maintained at the congregation itself. It is a copy of a document maintained in the file and readily viewable with all pertinent information at that point in time from which it was sent. And we even have some subsequent actions were performed relative to what was being called for.

The significance of it is that there were changes to corporate law in California in 1980 that necessitated filing of statements of information. And this letter essentially is confirming our compliance

with that law.

Again, we have to maintain the distinction between when we talk about the Menlo Park Congregation of Jehovah's Witnesses, a religious agency, or if we are talking about Menlo Park Congregation of Jehovah's Witnesses Incorporated, a legal entity in the State of California.

So, the letter here establishes that state law is not subject to our religious views, but rather our religious views taking into consideration the laws of the land. And we are here is a discussion that we will comply with the corporate formalities and requirements.

THE COURT: When was that document made?

MR. COBB: January 1st -- when was it made?

THE COURT: Right.

MR. COBB: The date for the letter is January 1st, 1980. This is a photocopy of the document. If given the opportunity, I can produce the original.

THE COURT: No. I will trust you. The problem is it still is a hearsay document. So, I will sustain the objection.

MR. COBB: Okay.

THE COURT: It's been improperly authenticated -- insufficiently authenticated.

Please, continue with your testimony.

MR. COBB: So, what we are referring to here is

that we have statements of information from 2008, also 2010, that show positions of officers being maintained in the Menlo Park corporation.

Is it all right for me to refer to the Menlo Park corporation in short?

THE COURT: Okay.

MR. SMITH: Your Honor, same objection. Hearsay objection. He appears to be reading from a document and it has not been properly authenticated.

THE COURT: That is true. It hasn't been authenticated at this point. I will give you the chance to try to authenticate it.

That's unfortunately one of the draw backs of your being in pro per. You are not familiar with the Evidence Code which I am bound to follow. There are all these rules that can't be just waived away just because you represent yourself. So, unless you can properly authenticate that document, it is hearsay.

MR. COBB: Would you be willing to consider a short continuance so I can do that?

THE COURT: No. I'm not prepared to do that. That should have been done at the presiding judge this morning. We are here to hear the case. Mr. Rouse is already here from New York City. I am not going to make him come back.

MR. COBB: This is a document certified by

Deborah Bowling. It is a certified document from the Secretary of State.

THE COURT: Let me take a look at it.

I will allow this in because it is a certified government record.

Counsel, do you have an objection?

MR. SMITH: I haven't had a chance to see it.

THE COURT: Please approach.

MR. SMITH: Well, same objection. I don't think he met the hearsay exception.

THE COURT: That one is overruled. It's a government document.

You can refer to that, Mr. Cobb.

MR. SMITH: Do you have an extra copy of that?

MR. COBB: I don't know if I do. Give me one moment. I don't think I have an extra copy.

THE COURT: We will deal with it as best we can.

MR. COBB: I am willing to share it. I want to refer to it briefly.

Basically this is the statement of information form that is used in California. Very typical. It establishes that I was serving as a chief executive officer for the Menlo Park Congregation of Jehovah's Witnesses Incorporated.

We should enter into the record entity number

for the corporation is C0983980.

So, as of this filing, dated March 30th, 2010, I served as the CEO of the corporation. W. Arlen St. Clair served as secretary for the corporation. And George T. Stock served as the chief financial officer.

THE COURT: Could you spell his last name, please.

MR. COBB: S-T-O-C-K.

So, this is significant -- thank you for accepting it, Your Honor -- because whether they held a corporate meeting September 16th, 2010 or whether they held a corporate meeting December 16th, 2010, both of those meetings where they endeavored to appoint themselves as directors and then officers of the corporation, occurred within the tenure, the established tenure for myself, Mr. St. Clair and Mr. Stock.

So, in the absence of bylaws the term for any director is one year -- forgive me, I can't refer to the specific code on that. But I believe that is fairly common knowledge. In the absence of bylaws the term of any director is one year.

So, their initial attempt, which was erroneous in September 16th, was within the year, their follow-up attempt to make up for their errors was December 16th within the same year.

So, the only basis according to law for them to

proceed forward with appointments and so forth, is to formally remove the existing directors, which is something that can be done by a vote of the members at any time of their choosing. But that never occurred. The directors were never removed. They did not abandon the corporation. And they did not resign from their positions as directors of the corporation.

So, that is a prerequisite for any subsequent activities of the corporation and those formalities were never performed or satisfied.

So, the fundamental point that we have --

THE COURT: You said vote of --

MR. COBB: Section 5034 of the Corporations Code. I mentioned that within the first couple of pages of the complaint. Again, I apologize. I am not well prepared today. But I believe that it is section 5034 that establishes a vote of members being required to execute such decisions and actions.

So, there would need to be a specific motion presented to the members that the existing directors, myself, Mr. St. Clair and Mr. Stock be removed from their standing positions as directors.

THE COURT: So, you are saying it has to be the members of the Menlo Park Congregation as opposed to the national organization?

MR. COBB: That is absolutely correct.

THE COURT: Okay. Anything else you want to tell me?

MR. COBB: Just that that never took place. That requirement was never satisfied. We have established that we held those positions as directors and we have established that the two meetings that they attempted to execute for voting purposes were within the one year tenure as established by law for each of the directors. So, they would have had to remove the existing directors as a prerequisite for any subsequent voting activity and they did not do so.

THE COURT: Okay.

Do you have any other witnesses you want to present or evidence before we hear from the other side.

MR. COBB: I can call -- yes. I would like to call Arlen St. Clair. And I would actually call John Cobb as well.

THE COURT: Who do you want to call first?

MR. COBB: I will call Arlen St. Clair first.

MR. ROUSE: Your Honor, if I may to the extent that he just testified we have a chance to cross examine him?

THE COURT: That's a great point. You have testified. So, you have to be cross examined.

So, Mr. Rouse, I will leave it to you.

CROSS EXAMINATION BY MR. ROUSE

MR. ROUSE: Thank you. May I see the document?
Q. Now, I am referring to -- I don't think it has been marked but --
THE COURT: Let's mark it as Plaintiff's 1.
MR. ROUSE: For the record I am referring to Plaintiff's 1 that has been handed to me by Mr. Cobb.
Q. Mr. Cobb, isn't it true that this document has a filed stamp date March 30th, 2010?
A. Correct.
Q. And at the time of March 30th, 2010 you occupied the position of an elder in the congregation in Menlo Park?
A. Correct.
Q. You occupied that position because a letter came to the congregation from who appointing you as an elder in the congregation?
A. A letter was sent from the Christian Congregation of Jehovah's Witnesses Incorporated, Patterson, New York.
Q. Yes. And from the time that letter was received through the date of this form, you still occupied that position as an elder; isn't that true?
A. True.
THE COURT: What was date that you were appointed?
MR. COBB: 2003.

MR. ROUSE: Q. And isn't it true that after this -- after you filed this letter with the Secretary of State on or about July the 1st, another letter came from the national headquarters in Patterson, New York removing you as an elder in the congregation; isn't that true?

A. Yes. Yes.

Q. Now, do you recognize this green book right here?

A. Yes.

Q. What's the name of this book?

A. Organized To Do Jehovah's Will.

Q. Isn't that the rule book of all 13,000 congregations of Jehovah's Witnesses in the United States?

A. I am not sure I would call it a "rule book," but generally speaking it provides direction for how to keep things organized.

Q. Doesn't the book say on the opening remarks that it is a direction, an organizational direction for the congregations in the United States; doesn't it say that?

A. It says that.

Q. You are familiar with it; aren't you?

A. I am.

Q. And the book also plainly states that unless

you are an appointed elder and ministerial servant in the congregation that you cannot occupy any other position unless you are permitted by the elders to do that; isn't that so?

A. Can you restate that, please?

Q. Doesn't the book say, that organizational book say -- well, let me strike that.

Let me put it like his: Who published this book? Do you know who published the book?

A. Published by Watch Tower Bible and Tract Society of Pennsylvania.

Q. Yes. Isn't this book used by all 13,000 congregations in the United States as a guide for organizations?

A. It is.

Q. Didn't you at one time take an oath to be submissive to those organizational arrangements?

A. In being baptized I made a dedication of my life to do Jehovah's will.

Q. Didn't you take a vow to be submissive? Doesn't this book say you in fact took a vow to be submissive to those organizational arrangements?

A. That is a byproduct of my dedicating myself and my life to the doing of Jehovah's God's will.

Q. Doesn't it -- let me give you a copy of the book just so I make sure you understand. We might give

one to the judge, too.

THE COURT: Let's mark this as Defense A.

MR. ROUSE: Q. Doesn't it state, Mr. Cobb, on Page 121 of the book that an elder or -- I am quoting now on Page 121 if you want to look at it.

A. 121 the paragraph?

Q. Paragraph 2 in the middle of the paragraph doesn't it say, "An elder or a ministerial servant is usually assigned to see that necessary work is cared for." Does the book state that?

A. Are you confirming -- what chapter --

Q. I am talking about Page 121 where it talks about the Kingdom Hall.

A. So, that would be Chapter 11, "Arrangements for places of worship"?

Q. Yes.

A. It is my understanding this chapter is addressing matters of doctrinal belief, scriptural teachings and the role of the Kingdom Hall or church buildings in that overall arrangement; is that correct?

Q. Mr. Cobb, would you answer my question. It says here under section "Kingdom Hall" -- what is the Kingdom Hall?

A. Is this still Paragraph 2?

Q. Now I'm asking you the question: What is Kingdom Hall?

A. Kingdom Hall is the name that is used specific to places of worship.
Q. Doesn't it say directly under the word "Kingdom Hall" on Page 121, "It is a principal meeting place of Jehovah's Witnesses"? Doesn't it say that?
A. It says that.
Q. Do you believe that to be true?
A. I do.
Q. Directly across from that on the next page, does it or does it not say directly across from the word, "Kingdom Hall," running your finger across the next page, doesn't the rule book say, "An elder or ministerial servant is usually assigned to see that necessary work is cared for." Now, is that true or not?
A. The reference -- the truth of the reference is amplified by the contents. Here it is talking about arrangements to clean the Kingdom Hall, to care for the maintenance of the Kingdom Hall. And so there are any number of responsibilities that are needed to get that done. So, when it talks about an elder or ministerial servant being assigned to see that necessary work is cared for or done, it is within the context of the maintenance and general administrators of the building.
Q. Who's it that does the assigning, Mr. Cobb?
A. That is done by the local overseer, spiritual overseer, body of elders -- go ahead.

Q. Isn't it true it's the appointed elders? That's what it is talking about here, the appointed elders in the congregation appointed by the national organization. That's true; isn't it?
A. Appointed theocratically by means of Jehovah's Holy Spirit.
Q. The letter comes from where, Mr. Cobb?
A. The letter comes from the corporation, but the governing body of Jehovah's Witnesses stated time and again that the appointments are not by and through the corporation. Individuals are appointed by the Holy Spirit as emanating from Jehovah God. So, the functional execution of that is supported and facilitated by and through the entity referenced, but the appointments do not come from that entity.
Q. Isn't it true, Mr. Cobb, that the true understanding of this and the actual wording of it is this: A member of the congregation cannot even sweep the floor in the Kingdom Hall without being assigned by an arrangement controlled and managed by the elders; isn't that true?
A. Well, I have --
Q. Isn't that -- isn't that what it says?
A. Well, let me be clear about what you are referring to, please. If you want to pull out the sentence.

Q. Mr. Cobb, I just got you to read, "An elder or ministerial servant is usually assigned to see that necessary work is cared for." Then it has -- it can be a list of things, anything; isn't that true? Anything in the congregation?

A. Cleaning, maintenance, things of that nature. So, you follow that up by saying, "Isn't it true that a person would not be able to sweep the floor without first receiving direction"?

Q. Yes. And ultimately controlled by elders.

A. It is an expression of their faith in God and their appreciation for them to contribute to the well being and maintenance of the Kingdom Hall. As a person who has been born and raised in our religious organization, it's not consistent with my experience that if a 60 year old sister in congregation of her own free will picked up a broom to sweep the floor that she would be reprimanded or that she would be in violation of some protocol.

Q. All right. I don't want wear this out, but I want you to gc up to the last sentence in the first paragraph about Kingdom Hall ownership. It starts with the sentence "elders." Do you see that, Mr. Cobb?

A. I do.

THE COURT: What page is that, Mr. Rouse?

MR. ROUSE: Page 121, Paragraph 1, the last

sentence.
Q. It says -- who's it -- Mr. Cobb, Page 121, Paragraph 1, the last sentence. Who is it, directors and officers, or who's it that is generally familiar with information regarding ownership and operation of the Kingdom Hall?
A. It says elders are generally familiar with information regarding ownership and operation.
Q. Where do they get their information? Besides this book, where else do they get their information?
A. The information will be made available through any number of publications.
Q. No, but the rule book says where do they get it? The sentence tells you there. Where do they get it?
A. It says here "hierarchy ministries," which is an organization of publications, memorandums and letters provided by the branch office.
Q. Provided by who?
A. The branch office.
Q. Where is the branch office?
A. United States branch office is located in Patterson, New York.
Q. Yes, and that's the same office that the letter comes from appointing you or deleting you as an elder; isn't that true?

A. That is true.
Q. Now, did you respect the elder that the letter that came from them deleting you as elder?
A. Did I respect it?
Q. Yes.
A. Yes.
Q. So, why did you file this lawsuit trying to get yourself appointed as a director again?
A. The reason why that was done was pursuant to the adjustments in the spiritual oversight in the congregation.

There's been a concern with unlawful, dishonest and/or criminal activity. And the objective in filing the action has been to reestablish the basis to have visibility to the banking accounts in question where there is concern of efforts to evade taxes, money laundering. There is also concern as far as mis-appropriation of funds, conversion, things of that nature.

So, in order to have practical basis to identify the problems therein and have them addressed lawfully, then I would need to reaffirm my standing legally to do so.

Q. Mr. Cobb, isn't it true -- isn't it true these reference works that are cited here as well as this book, isn't it true that they say and, in fact you know,

that when that letter came deleting you as an elder, kicking you out of the church, in other words, from that point forward as kicking you out in terms of administration, from that minute that you got that letter from them you had no responsibility to serve in any capacity, any corporate capacity, any capacity at all in the congregation; isn't that true?

A. No.

Q. Don't you know that to be true?

A. I do not know that to be true. There's actually a dual line of responsibility relative to, No. 1, occupying a position of spiritual oversight in the congregation.

And it should be noted, too, that any number of references from the branch office have outlined that an elder can hold standing relative to the legal entities employed by the congregation or administerial servant -- that's the lower rank for you, Your Honor, and the Court -- can hold that. So, it's not tied into being an elder per se.

The other thing that is true here as well is there is an effort to represent points of policy and procedure pursuant to the erroneous assertion that Jehovah's Witnesses are a hierarchal religious organization. That is being done to essentially obscure a very important fact which has been alluded to time and

again in my filings with the Court for this action.

The reality of what occurs is when a person is removed as an elder they are just that. Removed as an elder. They are removed from a position of spiritual oversight. That does not automatically address, resolve or terminate their legal standing relative to the corporation.

Do they have a basis according to the beliefs, views or philosophies employed within the religious organization to hold office, that can be argued. But being removed from a position of spiritual oversight of and in itself does not remove a person from a legal -- from their standing in a legal entity. And the reality of what occurs here for the benefit of the Court, who will not be familiar with the inner workings of Jehovah's Witnesses or customs, the reality is if individuals are identified for removal pursuant to the desire to effectively assume operational control of the corporation, and by extension of that, operational control of the property. Let's be real. That's what we are talking about here, property value of two point five million dollars.

So, the process to go ahead and pursue that is accomplished by and through removals at a spiritual level or spiritual capacity. And what occurs thereafter is one of two things --

MR. SMITH: Your Honor, I'm not --

MR. ROUSE: I think he has answered my question. I am about to wrap this up.

Q. Isn't it true at the same time the letter came removing you that a letter also came appointing the three defendants as elders in Menlo Park Congregation? Isn't that true? The letter came from national headquarters appointing the three persons that you named as defendants in this lawsuit, Ernest Brede, Luis Contreras and Larry Laverdure.

A. The letter was sent appointing them to positions of spiritual oversight in the English Menlo Park Congregation of Jehovah's Witnesses. However, that letter did not by the same virtue provide legal standing in the corporation of a separate entity under the laws of provisions of State of California. The governing body of Jehovah's Witnesses would be first to say that.

Q. Isn't it true that if the letter had come instead of stating the names of the defendants, Ernest Brede, Luis Contreras and Larry Laverdure, suppose the letter said "John Doe, Henry Smith." If the letter had said that instead of these present defendants being named as parties in your suit, you would have named whoever else the national headquarters appointed as elders? You would have probably named them; wouldn't you?

A. Not necessarily true.

The point has been made within the memorandums and notifications that an elder or a ministerial servant and at times in view of the history of the organization even non-servants have occupied positions within the corporations that are utilized by local congregations to maintain ownership of property. So, it's not a given that if it said "John," "Joe" or "Sally," that they would be the ones standing here today. It could be that way if in fact they proceeded to occupy those legal positions. But it's not automatic that they would. We have two disparate lines of responsibility.

Q. You don't deny that they are currently more than 45,000 appointed elders in the United States branch? You don't deny that; do you?

A. I have no basis to approve or deny your -- you are at the branch. So, I will defer to your knowledge.

Q. You can't name right now -- the 45,000, you can't name a single person, can you, that is in violation of the rule in this book that you have to be an appointed elder to be a director in a congregation? Out of 45,000 people you have been associated with them 20 years, you can't call a name right now; can you?

A. I want to make sure I am understanding your question.

Q. My question is: With more than 45,000 people

appointed in these 13,000 congregations, and considering your 20 year -- excess of 20 year association with this group, you can't name a single person that is in violation of the rule that I have cited here today; can you? You can't call a single name; can you?

A. Please help me be clear of the rule you are citing today.

Q. That if you are not an appointed elder in the congregation you cannot serve any time, anywhere, in any congregation in this branch as a director, an officer or hold any position of fiduciary trust. It has not happened, it will not happen and you can't call the name sitting here today.

A.. There are elders that have held positions and there are ministerial servants that have held positions and there are individuals who have had neither station hold position of corporate responsibility for legal entities emplcyed by local congregations of Jehovah's Witnesses. That's a fact.

Q. Mr. Cobb, do you know what the rule is and you can't give us a name except that you want to be that, though; don't you? You want to be reinstated; don't you?

A. I'm not viewing the rule as an absolute. I am speaking from my experience. And my experience establishes to your point that elders have occupied

positions with corporations. Ministerial servants have occupied positions with corporations. And publishers, individuals who are neither public or private have occupied positions with corporations.

Is there a point of custom? I think any group you can have that, but that in and of itself doesn't dictate points of law. There are still realities to deal with from the standpoint of corporate law. That is accepted in the organizations.

MR. ROUSE: I am through with cross, Your Honor.

MR. SMITH: I would like to move Defendant's 1 in evidence.

THE COURT: Defendant's A. Objection, Mr. Cobb, this being received?

MR. COBB: No.

THE COURT: It will be received then.

Did you have anything else to say, Mr. Cobb?

MR. COBB: May have a moment, please?

THE COURT: Of course.

MR. COBB: Am I permitted to ask questions of counsel?

THE COURT: No, not unless they are witnesses.

So, you either tell me some more stuff or you can call another witness or you can rest and leave it up to them to call their witnesses.

MR. COBB: Thanks. I will refer to Page 22 of the book that you have been handed. I didn't catch number.

THE COURT: Exhibit A.

MR. COBB: So, Page 22, second paragraph, under the heading, "Organized theocratically." This will help provide a basis for the term that I used earlier when I contrasted the terms Presbyterian, hierarchal and even congregational.

So, it says there Christian congregation was established in 33 C. E. and the Congregation as they function today operate within the same structure.

The structure is identified in this paragraph, and you will not find the word "hierarchy" or "hierarchal" in this paragraph. What it says in this paragraph is congregation was organized and governed theocratically. So, the question is: What does that mean "theocratically"? It's not an everyday term.

Here it says under Greek the word "theos" means rule -- sorry. "Theos" means God. The word "cratos" means rule. So, these terms establish the frame work of how Jehovah's Witnesses as a religious organization are governed.

And when they talk about the top down, they are not referring to anyone in New York City. The top down is Jehovah God as the supreme universal sovereign, his

son the Chris Jesus, and delegated authorities of varying levels of responsibility from that point.

But the term "theocratic" means a rule by God. That means the standards that are contained in the bible which forms the basis of all of our beliefs, those standards are from God. They are not from men. They are not from anyone in New York or Nebraska or anywhere else. So, each individual has the responsibility to God to adhere to his standards and his directives. So, we do not have a hierarchal arrangement.

And it should be noted that the term "hierarchy" is not viewed in a good light within Jehovah's Witnesses -- or among Jehovah's Witnesses. The reason for that is that's a term that is associated with "aposes," the term associated with false teachings that do not conform to the foundational teachings of Christ.

I won't burden the Court further on the point, but I wanted you to be to clear that in the book that Mr. Rouse is referring to validates the initial statement that I made as far as the form of government that is employed in reality in the religious organization known as Jehovah's Witnesses. It is not hierarchal.

THE COURT: Well, let me just clarify and get sort of what I think is the heart of the matter.

How did you get to be in the position in the first place. Because it is the national organization that appointed you; was it not?

MR. COBB: The direct answer to the question is that I or anyone else who occupies such as position is appointed by the Holy Spirit, by God. That becomes apparent to individuals who --

THE COURT: Well, I understand that, but who's the person that appointed you? Obviously if -- God doesn't come out and specifically tell you you are appointed. Somebody appointed you. Wasn't that the national organization?

MR. COBB: The governing body of the Jehovah's Witnesses or any individuals associated with it. Not to be a stickler, but they wouldn't be able to say "yes" to that. We are not appointed by any organization.

THE COURT: How did you get on the board then? How did you get this position?

MR. COBB: So, that's two different questions. How did I become an elder?

THE COURT: Yes. How did you become an elder? Because you were appointed by the top down by the national organization; isn't that true?

MR. COBB: I am sorry, Your Honor. I can't say "yes" to that because that's not the reality based upon my beliefs and based on our beliefs based on the

scriptures.

Individuals are appointed by God's Holy Spirit and that becomes manifest by virtue of how they are living their life. That becomes the indication to individuals here within the organization that they are fit to serve.

THE COURT: How did you find out you were appointed?

MR. COBB: To Mr. Rouse's point, a letter sent. There was a recommendation made and a letter sent establishing that.

THE COURT: By whom?

MR. COBB: From the Christian Congregation of Jehovah's Witnesses.

THE COURT: That is the national organization, correct?

MR. COBB: That is the United States branch office.

THE COURT: Right.

Is there anything else you wanted to add?

MR. COBB: Yes. The thing to add is being appointed an as elder is a spiritual or congregational appointment.

That's it.

THE COURT: Did the local congregation have anything to do? Do they confirm it or vote on it at

all?

MR. COBB: Absolutely not.

The local congregation -- thank you for that question. The local congregation, the members who equate to the members of the corporation, they will in turn vote individuals in as directors of the corporation. That is not done by the United States branch office. That is not done by the governing body of Jehovah's Witnesses. The appointment is to spiritual position of oversight, aka "elders." That is done by and through the branch office. And once that is done, whomever is in turn appointed to positions in the legal corporation, that's handled at a local level by the members under the laws of a particular state in question, in this case California.

THE COURT: Anything else you want to tell me?

MR. COBB: To round that point out, I just wanted to clarify or amplify the point that a person being appointed as an elder of and in itself does not appoint them as an officer or director of the corporation. That is an entirely separate process. The only point that can be made as a matter of custom, there may be a statement made that individuals occupying certain spiritual positions have a leading basis of eligibility to occupy legal positions in corporations. But the appointments of individuals to spiritual

positions of oversight of and in itself is not unequivocally equate to establish standing in a legal entity. It's a process governed by the State of California and that is a process that Jehovah's Witnesses are submissive to.

THE COURT: Okay. Did you want to call in any witnesses at this point or are you resting?

MR. ROUSE: Your Honor --

THE COURT: Do you have more cross exam?

RECROSS EXAMINATION BY MR. ROUSE

MR. ROUSE: I just want to recross him on this one point here.

Q. Turnover to Page 26. It says under the sub-heading, "Structure of branch organization." You understand what it is talking about here, structure of branch organization?

A. I believe I do.

Q. The second paragraph under there says, "Local congregations under each branch are organized into circuits, and a number of circuits make up districts."

Then skip a sentence and then it says, "A circle overseer is appointed to serve the congregations in each circuit. A district overseer visits the different circuits and serves circuit assemblies," etc. You understand that to be the truth; don't you?

A. I do.

Q. Now, the beginning of the -- drop down to the last paragraph. Isn't it true, Mr. Cobb, that the rule book says that, "All in the organization recognize God's administration the congregations acknowledge and conform to organizational arrangements that are outlined for the benefit of all." And then it says they accept the appointment of older men who oversee the work in branches, districts, circuits and congregations.

Now, you know that to be the practice of Jehovah's Witnesses; don't you?

A. I do.

Q. And the book is true when it says that; doesn't it?

A. I believe that it is true when it says that, but I would like to clarify.

Q. But the book says "appointed older man oversee the work"; doesn't it say that?

A. Uh-huh.

Q. "Appointed." Men who are not appointed or men who have been removed do not do that; do they?

A. They do not provide spiritual oversight and direction congregation, you are correct.

Q. It doesn't say that, Mr. Cobb. It says "the work." It says the work in the branches, districts, circuits and congregations.

A. By "the work," I am understanding the pursuit

of our spiritual vocations and activities, preaching, teaching, baptizing. And on that basis I would agree with your point.

THE COURT: Anything else, Mr. Cobb? Anything that you want to tell me?

MR. COBB: No.

THE COURT: What is your next step? Do you wish to call somebody as a witness or do you wish to rest and give them a chance to call their witnesses?

MR. COBB: I would like to call Arlen St. Clair first of all.

(Witness sworn.)

THE CLERK: Would you state and spell your name for the record, please.

THE WITNESS: Walter Arlen St. Clair, A-R-L-E-N, S-T period C-L-A-I-R

MR. COBB: Am I at liberty to approach and hand that exhibit to Mr. St. Clair?

THE COURT: Sure. You can do that.

DIRECT EXAMINATION BY MR. COBB

MR. COBB: Q. Have you ever seen that document before?

A. Many times.

Q. Do you see your name on the document?

A. Yes, I am the second one, secretary.

Q. Can you confirm the name of the corporation

please? Near the top.
A. Yes.
Q. Can you read it.
A. Menlo Park Congregation of Jehovah's Witnesses Incorporated.
Q. Can you confirm the date of the filing of the document?
A. Yes.
Q. Read it.
A. March 30th, 2010.
Q. At any time after March 30th, 2010 did you resign from your position in the corporation?
A. I never resigned.
Q. Were you voted out? Were you specifically removed by a vote of the members in accordance with Corporations Code 5034? Were you removed by a vote of the members of director and officers?
A. No.
Q. Very good. Have you ever formally joined a different congregation?
A. No.
Q. Do you recall a statement from myself in and around the time when defendant, Brede, et al., began associating or attending the Menlo Park congregation? It would be around May, late May. There was a statement made that there was a desire to have a meeting with Paul

Kohler. There was a desire for all of these individuals to be present, all of the new appointed elders and all of the former elders to come together and have a meeting. Does that ring a bell with you?

A. No, it doesn't.

Q. It has been a while.

A. Yes. I have been there two years.

MR. SMITH: Excuse me, Your Honor. Can we have Mr. Cobb speak up a little bit.

THE COURT: Yes. Both of you speak up.

MR. COBB: I would like to strike the last question as far as his recollection.

THE COURT: Overruled. That is denied.

MR. COBB: I think that's good for now. No further questions.

THE COURT: Mr. Rouse, do you have any questions for this gentleman?

MR. ROUSE: No, Your Honor.

THE COURT: Thank you, sir.

MR. COBB: And I wanted to call John Cobb

(Witness sworn.)

THE CLERK: Would you state and spell your name for the record, please.

THE WITNESS: Jonathan David Cobb, Sr., J-O-N-A-T-H-A-N C-O-B-B, Sr.

DIRECT EXAMINATION BY MR. COBB

MR. COBB: Was the exhibit returned?

THE COURT: Please approach.

MR. COBB: I may not need it.

Am I permitted to ask a question about something that has yet to be admitted?

THE COURT: Sure.

MR. COBB: Q. How long have you been one of Jehovah's Witnesses?

A. I was baptized in 1955, July 20th. So, however many years that is.

Q. From 1955 to present have you belonged to any other religious organizations?

A. No.

Q., So, you have been one of Jehovah's Witnesses your entire life?

A. Yes.

Q. I would like to present a question to you that was presented earlier. When we reflect on the importance of maintaining the Kingdom Halls that we use, general maintenance and so forth, there are different lines of responsibility to get that done. Are those responsibilities, for example, to trim the shrubs, do those assignments come from the United States branch office?

A. No.

Q. If a person were to pick up a broom and begin

sweeping at a local Kingdom Hall would they be in violation, would they be overstepping their bounds in doing so?

A. Not at all.

Q. There is a statement that was referred to in this publication Organize To Do Jehovah's Will. Are you familiar with it?

A. Yes.

Q. On Page 121 it says, "An elder or a ministerial servant is usually assigned to see that necessary work is cared for in accord with the list of things to be done each week." In that statement being read does it appear to you that only the elders or ministerial servants are able to care for the facility as an act of faith?

A. No. That responsibility is shared by the entire membership.

THE COURT: Entire what?

THE WITNESS: Entire membership.

THE COURT: Move forward and speak into the mike, please.

MR. COBB: Q. How are elders and ministerial servants appointed?

A. The understanding I have is they are appointed by the Holy Spirit, which means that recommendations are sent in, but they have to be qualified by adhering to

the spiritual qualifications. And then the elders recommending them are the individuals that are letting the branch know that they are qualified. And generally their recommendations are accepted and they are appointed.

Q. Isn't it true that when individuals at the branch office review these recommendations do they vote?

MR. SMITH: I couldn't hear that.

MR. COBB: Q. When individuals at the branch office receive these recommendations as far as appointments of elders, do members at the branch vote?

MR. SMITH: I will object to the question as lacking foundation.

THE COURT: Sustained.

MR. COBB: Q. The thrust of it is how -- what in turn will individuals at the branch office do once they receive any recommendation that an individual serve as an elder or ministerial servant?

MR. SMITH: Same objection, Your Honor.

THE COURT: See if he can answer if he has knowledge enough to do that.

Can you answer that question?

THE WITNESS: As far as I know they would consider those qualifications, generally accept the recommendation of the elders, and comply with appointing them.

MR. COBB: Okay. Thank you.

THE COURT: Let me ask this: In your experience as a member of Jehovah's Witnesses has there ever been a time when an elder has been appointed or recommended by the national organization where the local organizations has thrown that out or disagreed with it?

THE WITNESS: You mean overriding the local --

THE COURT: Where the local congregation ever overridden national recommendation when it comes to the appointment of an elder in your knowledge?

THE WITNESS: Not that know of.

MR. COBB: Q. To run out the previous point, what do we typically understand as far as the process of appointments with individuals at the branch. They will review the recommendation, they will read it obviously. But what important step do they complete prior to making or reaching a conclusion in view of the fact that the organization is a theocracy, a rule by God?

MR. SMITH: I will object to the question as ambiguous.

THE COURT: Sustained. Sustained.

MR. COBB: Q. Before they complete their review of any recommendation for an elder ministerial servant, what will brothers at the branch typically do?

MR. SMITH: Object again for lack of foundation.

THE COURT: Overruled.

THE WITNESS: They would take into consideration the recommendation that has been made. The understanding I have is they will pray over the matter in order to -- at least that's what has been stated -- pray over the matter to make the recommendation -- accept the recommendation that has been made.

THE COURT: What you call a "recommendation," does it come in the form of a letter or a piece of paper from the national?

THE WITNESS: Yes.

THE COURT: Have you read these before?

THE WITNESS: Yes.

THE COURT: Does the language in these documents, do they say an elder is appointed or do they say, "We recommend to the local organization that this person be accepted in as an elder"? What does it say?

THE WITNESS: It says we are recommending him to be appointed as an elder and then the appointment comes from --

THE COURT: You have actually seen that in the document using the word "recommendation"?

THE WITNESS: Yes.

THE COURT: Okay.

MR. COBB: Let me re-gather myself. I am

sorry.

THE COURT: Sure.

MR. COBB: Q. Why would individuals at the branch office pray before approving any recommendation?

MR. SMITH: Your Honor, I will object because it calls for speculation.

THE COURT: Sustained.

MR. COBB: Q. Do you feel based on your knowledge of the scriptures and your experience as one of Jehovah's Witnesses, do you feel that it is appropriate for individuals at the branch office to pray before approving any recommendation?

A. Yes. I think it is. I know it is in fact.

Q. Are you familiar with the term "theocratic"?

A. Yes.

Q. Can you define it, please.

A. It is rule by God.

Q. Do you see churches of Christendom who would come under the designation of Presbyterian or hierarchal or even congregational as being theocratic organizations?

A. No.

MR. SMITH: I will object as vague and ambiguous.

THE COURT: Sustained. The answer is stricken.

MR. COBB: Q. Do you recognize -- what would

be the primary difference between hierarchal religious organization and the organization known as Jehovah's Witnesses as far as governance and structure and practice?

MR. SMITH: Your Honor, I will object. It is almost seeking an expert opinion.

THE COURT: Yes, it is. And there is no foundation for it.

Have you ever been an elder, sir, in one of the congregations?

THE WITNESS: Yes.

THE COURT: Okay.

MR. COBB: Q. Do you believe based on your years of experience as one of Jehovah's Witnesses that Jehovah's Witnesses are a hierarchal religious organization?

MR. SMITH: Again, objection. Asking for a legal conclusion.

THE COURT: Yes. Sustained.

MR. COBB: I will make a different reference here. Am I permitted to have him read something?

THE COURT: What is it?

MR. COBB: It's a -- I will show it to you. It's an excerpt from one of the documents I filed for the action.

THE COURT: It is hearsay. So, no.

MR. COBB: Would I be able to read a brief statement and ask a question pursuant to that?

THE COURT: You can ask the question, but they may object to it. So, we will see what it is.

MR. COBB: Q. There is a statement here from January 15th, 2001 Watch Tower. It says, "Jehovah's Witnesses do not decide for themselves the form of spiritual government under which they operate the sincere Christian endeavor to stick to Jehovah's standards. Overseers among them are not put into office by some congregational, hierarchal or Presbyterian form of church government."

Is that statement taken from the Watch Tower, which is the flagship publication for the organization known as Jehovah's Witnesses?

MR. SMITH: Object. Calling for hearsay.

THE COURT: Sustained.

MR. SMITH: Lack of foundation.

THE COURT: Sustained.

MR. COBB: Q. Is that statement as read consistent with your beliefs?

MR. SMITH: Same objection, Your Honor.

THE COURT: Sustained.

MR. COBB: Personal beliefs, Your Honor?

THE COURT: That is even less relevant.

MR. COBB: Q. Another reference. This

reference is from the January 15th, '94 Watch Tower.

THE COURT: The same thing, Mr. Cobb. It will be hearsay and no foundation. So, I'm not going to let you do it.

MR. COBB: Q. Do you feel it is appropriate for members of the branch to pray prior to approving recommendations for elders?

A. Yes.

Q. Why is that?

MR. SMITH: Objection, Your Honor.

THE COURT: Sustained.

MR. COBB: Q. Do you feel that appointments are made by the Christian Congregation of Jehovah's Witnesses as a legal entity, are they the individuals or that entity that appoints elders or ministerial servants?

MR. SMITH: Objection. Lacking foundation.

THE COURT: Sustained.

MR. COBB: Q. When -- we will shift.

Do you recall approximately when defendant Brede, et al., began attending the Menlo Park congregation?

A. Yes. It was about sometime before July 1st, approximately a month before.

Q. Late May? Early --

A. Uh-huh.

Q. About that time frame.

Do you recall being advised of a meeting that was called by Paul Kohler after their arrival in late May, early June?

A. I do.

Q. Did you ever speak to Paul Kohler in regards to this meeting?

A. I was called and he asked me was I going to attend.

MR. SMITH: I will object as hearsay.

THE COURT: Overruled.

MR. SMITH: Also relevance.

THE COURT: What's the relevance?

MR. COBB: The relevance, Your Honor, is Mr. Rouse was endeavoring to create an unequivocal association between being appointed as an elder and thereby by extension being designated to serve or have legal standing in the corporation.

The line of questioning here is to simply call out the practical considerations that came to the floor subsequent to their being appointed as elders.

The point here is that when they were appointed as elders to positions of spiritual oversight in the congregation, that in and of itself did not resolve and address the legal considerations.

THE COURT: But this witness can't qualify as

to that. That's something you can argue from the evidence itself. But you are trying to get him to be an expert witness it seems.

MR. COBB: Well, I am wanting him to speak to the fact that there was an effort on the part of the defendants to address the reality that there were legal considerations of the corporation.

THE COURT: How did they try to address that?

MR. COBB: In calling the meeting. The purpose of the meeting was to facilitate a smooth transition, I believe was the phrasing that was used by Ernest Brede, defendant Brede. And Mr. Cobb spoke directly to Paul Kohler on the phone.

THE COURT: Who's Paul Kohler?

MR. COBB: Paul Kohler is an individual who's one of the -- he occupies a position of traveling elder in the organization. So, he will make semiannual visits to the congregations in San Francisco Bay Area as an example.

THE COURT: Let me try to cut to the chase.

What do you recall happening at that meeting?

THE WITNESS: I didn't attend the meeting. He was trying to get me to attend that meeting so as to sign over responsibility of the corporation.

THE COURT: Okay. This is Mr. Kohler that did that?

THE WITNESS: Yes.

THE COURT: Why would he ask you to sign that over? What was your position at the time that you could sign something --

THE WITNESS: I wasn't one of the officers. I had since transferred that responsibility to Mr. St. Clair. He wanted me at the meeting maybe to give support.

THE COURT: If you weren't at the meeting I don't see the relevance of it. So, I will sustain the objection.

MR. SMITH: Thank you, Your Honor.

MR. COBB: Your Honor, can I interject on that point myself --

THE COURT: Sure.

MR. COBB: -- as a witness?

THE COURT: You are not testifying yet. You can testify again at some point if you want, but this is just question and answer for Mr. Cobb.

MR. COBB: I will reserve that then. Thank you.

THE COURT: Anything else for Mr. Cobb?

MR. COBB: Q. When a person is appointed as an elder in the congregation do they automatically begin -- are they automatically appointed to positions in the corporation?

A. No. No, they are not.
Q. And you have been part of the organization, you said, since you were baptized in 1955?
A. Yes.
Q. Have you ever seen a situation where a person is appointed to a spiritual position of oversight and by virtue of that appointment they have began operating in a legal capacity for the corporation?
A. It has never worked that way, no.
Q. In your experience how does it work?
A. The way it works is a person is appointed as an elder in the congregation. They have spiritual responsibilities. Later, if they qualify, they become an officer.
THE COURT: Who decides if they qualify?
THE WITNESS: Based upon the -- the congregation actually appoints the individual as an officer. They are the shareholders in a sense. So, they would -- since the corporation needs to be manned by someone, they would appoint the brother and the brother qualifies as to that position.
MR. COBB: Q. When it comes to a position of secretary for the corporation, if a person had very poor organizational skills would they be appointed simply because they are an elder?
A. No.

MR. SMITH: Your Honor, object to the question as ambiguous and lacks foundation.

THE COURT: Sustained.

MR. COBB: Q. What are the considerations for a person to hold a position of responsibility in the corporation used by these local congregations? What are the characteristics? What are the skill sets? What are the things that factor into the decision for them to occupy a position?

MR. SMITH: Your Honor, I don't mean to be a pest, but he is talking about these local congregations. I object to the question as overbroad, beyond the scope of this witness' personal knowledge as phrased.

MR. COBB: Your Honor, it is a fair question in the sense that we have already established that legal appointments to legal entities are not performed by the United States branch.

THE COURT: Well, you haven't established that. That's what you hope to establish. That's for me to decide.

MR. COBB: Thank you. But that point has been raised.

THE COURT: Did you ever know anybody who has been appointed to this corporation who wasn't an elder?

THE WITNESS: No.

THE COURT: They are always elders; right?

THE WITNESS: Yes.

MR. COBB: Redirect on that, Your Honor?

THE COURT: Sure.

MR. COBB: Q. Have you ever known a ministerial servant to be voted as an officer of the corporation? Is that allowable?

A. I don't know of any instance. And I'm not sure -- I don't believe it is allowable.

Q. Have you ever known in situations where non-servants have held corporate positions at any point in the history of the church?

MR. SMITH: I am sorry. Can we have the question read back.

(Question read back.)

MR. SMITH: Again, overbroad.

THE COURT: Sustained.

MR. COBB: I think that's it for now.

THE COURT: Any questions, Mr. Rouse?

CROSS EXAMINATION BY MR. ROUSE

MR. ROUSE: Yes, just to clarify some things.

Q. Isn't it a fact that --

MR. COBB: Should I hand him?

MR. ROUSE: If you want to hand that to him.

Q. Mr. Cobb, isn't it a fact that proper procedure among your congregation as well as the rest of them is that the body of elders can make a recommendation --

they use the word "recommendation" -- to the branch officer who might serve as an appointed elder? Isn't that true the word "recommendation" is used in the letter that local body sends to the branch office?

A. Correct.

Q. Isn't it true that when the letter comes back from the branch office they use the word "appointed" or "appointment"; isn't that correct?

A. Yes, sir.

Q. Now, the branch office doesn't recommend or use the word "recommendation" when they come back and make a suggestion to a body of elders? It doesn't work that way; does it?

A. Depends on what you are talking about.

Q. What I am talking about is the appointment of elders in the congregation.

A. No, it doesn't work that way.

Q. Because the local body of elders does not have the authority to make that appointment; do they?

A. No.

Q. Only the governing body and the branch office can do that; isn't that a fact?

A. I'm not sure about that.

Q. Well, look at the rule book there you have been handed. Page 18. See page 18?

A. I have got it.

Q. Beginning the third line it says, "The governing body." You see the third line on top of Page 18, "The governing body"?
A. Yes.
Q. Would you tell us who the governing body are?
A. The governing body is made up of an anointed Christians, a group of anointed Christians, who have -- who are really Christ's brothers. So, they have a position of seeing that the spiritual food that comes down, information comes down from the governing body to those in the congregation.
Q. They oversee the operations of the organization of Jehovah's Witnesses; don't they?
A. They oversee the spiritual aspect of it.
Q. Well, let's see now. Let's look at what the sentence says here. It says, "The governing body also continues to carry the responsibility of overseeing the preaching work producing bible study material." You agree with that; don't you?
A. I do.
Q. And Jehovah's Witnesses go out and distribute literature, don't they? Bibles and tracts and magazines as part of their ministry work they do that; don't they?
A. That's true.
Q. It says here they oversee producing that. They have factories, don't they? They produce bible

literature and they oversee that; don't they?
A. As far as I know that's correct, yes.
Q. You get shipments of that literature from the factories; don't you?
A. That's true.
Q. And it says, "And arranging for the appointment of" who? See the rest of the sentence? They arrange for the appointment of who?
A. Of overseers.
Q. These are the overmen, the elders we are talking about. That's who it says?
A. Yes.
Q. "To serve in various capacities in the organization"; isn't that true?
A. That's true.
Q. And that has been the truth as long as you have been associated with them; isn't that true?
A. That's as far as I remember, yes.
Q. Sitting here today you can't call the name of a single individual who has not been an appointed elder by the governing body who has ever served as a position of fiduciary trust in a congregation? You can't call a name; can you?
A. Well, I do know of instances of it. It has happened.
Q. Mr. Cobb, do you know the date of this rule

book?
A. Yes.
Q. What's the date of it?
A. Well, I can look at it.
Q. 2005?
A. Yeah.
Q. It is true since -- we will just simply read using the book here. From 2005 to the present that governed the operation of Menlo Park congregation; didn't it?
A. Yes, that's true.
Q. This book -- and there is no other book whose purpose it is to give the rules like this book; is there? We don't have three or four organizational books; do we?
A. I can agree with that, yes.
Q. This is the only one; isn't it?
A. Yes.
Q. And you don't know of any other statements in any other authoritative organizational publications at Jehovah's Witnesses that would overrule this statement in this book; do you?
A. No.
Q. All right. Now, we mentioned Mr. Kohler a while ago. Isn't it true that Mr. Kohler is the circuit overseer?

A. That's correct.
Q. That means he is the overseer of 20 something congregations in the circuit that Menlo Park Congregation is in?
A. That's correct.
Q. He is like the archbishop of the diocese, isn't he, if you want to put it in that term?
A. No, I don't want to put in it those terms.
Q. I know you don't, but he is the overseer of 20 something congregations; isn't he?
A. That is true.
Q. And didn't he in fact tell you before the letter came from New York that you were going to be deleted? Didn't at a meeting he tell you -- informed you of that?
A. Correct.
Q. You didn't like that; did you?
A. It wasn't a matter of whether I liked it or not. I knew it was not correct.
Q. Well, now, did you go along with it?
A. No.
Q. So, is it very surprising then, Mr. Cobb, really isn't surprising to you that the letter would come removing you as an appointed elder if you didn't like what the circuit overseer said and you didn't go along with it? Is that a surprise?

A. You will have to restate your question.
Q. Is it surprising to you that the letter would come from the branch office removing you as an elder if you didn't go along with the circuit overseer and you didn't like what he said when he came around and had a meeting with you?
A. The truth is it was surprising to me.
MR. ROUSE: Nothing further.
THE COURT: Redirect?

REDIRECT EXAMINATION BY MR. COBB

MR. COBB: Q. As an elder are you at liberty to disagree with the stated position of a circuit overseer?
A. Yes.
MR. SMITH: Objection to the question. Lacking foundation in terms of a point in time. Are you talking about Mr. Cobb?
THE COURT: Yeah. Sustained.
MR. COBB: Q. Are circuit overseers perfect?
A. No.
Q. So, they make mistakes?
A. Yes.
Q. When they do make mistakes what options are available to you to address them or raise your concerns?
A. You can raise concerns to the district overseer who's over the circuit overseer. The district

overseer has the responsibility of coming in and finding out what occurred in the situation and then rendering some kind of decision.

Q. Isn't it true that you also have the option of writing a letter --

A. Yes.

Q. -- of complaint?

A. Uh-huh.

Q. Did you ever do that?

A. Yes.

Q. Did you ever write a letter of complaint about Paul Kohler?

A. Yes.

THE COURT: Who did you write it to?

THE WITNESS: Wrote a letter to the branch office.

THE COURT: Which branch office?

THE WITNESS: It's in Patterson, New York, United States.

THE COURT: New Jersey -- New York; right?

THE WITNESS: Yes.

THE COURT: Okay.

MR. COBB: Q. Was a copy of the letter sent to anyone else?

A. I believe it was sent to the district overseer as well.

Q. His name?
A. Charles Velors.
Q. If there is ever a disagreement or problem are you at liberty to approach the circuit overseer and discuss it?
A. Problem with him or problem with --
Q. In general. Could be with him.
A. Yes. Yes, I am at liberty.
THE COURT: Ultimately isn't the ultimate responsibility up to the district office in New York?
THE WITNESS: I beg your pardon?
THE COURT: Isn't the ultimate responsibility for such a complaint, addressing it, up to the national office in New York?
THE WITNESS: Not necessarily. Depending upon the nature of it.
THE COURT: So, who would it go to?
THE WITNESS: If there is a problem within the congregation that were mentioned, then, circuit overseer would have responsibility of dealing with that problem.
THE COURT: But if you complain about the circuit overseer, that complaint is going to go up to the national organization. They decide what to do about it?
THE WITNESS: It goes to the district -- if you

go through the chain of events, it goes to the district overseer. He has the responsibility over the circuit overseer.

THE COURT: And then the district overseer, if you have a problem with that person, it goes up; correct?

THE WITNESS: Yes.

More than likely, the district overseer would contact the branch office about the problem and --

THE COURT: Aren't you basically referring to a hierarchal structure here?

THE WITNESS: No. We have never been.

THE COURT: Okay. Anything else, Mr. Cobb?

MR. COBB: Q. I hate to put you on the spot, but maybe I can refer to it quickly. Acts 529. The scripture says that we must obey God as ruler rather than men.

When it comes to resolving issues and problems, what is the standard, what is the basis to do that, whether you are talking to a circuit overseer, your friend or anyone else associated with you in the faith?

A. Well, we have been instructed from the scriptures as to approach the individual to resolve the problem. Try to resolve it on that level if you can. Those are the instructions given. It could be a circuit overseer. It could be anyone. If we had a problem with

someone, we would approach them personally.
Q. Now, keeping with this theme of organizational structure, circuit overseer, the district overseer, and also keeping in mind that according to Acts 529 we must obey God as a ruler rather than men, if the circuit overseer gives you a directive are you bound to follow it?
A. No.
Q. If he gives you a directive stating that you will go into the ministry in Palo Alto would you be inclined to follow that?
A. Yes.
Q. If he gave you a directive that you would conduct a bible study with someone in Menlo Park, would you be inclined to follow that or join him in that effort?
A. More than likely, yes.
MR. SMITH: Your Honor, I am not sure of the relevance.
THE COURT: This is going too far afield, Mr. Cobb.
MR. COBB: I will cut it off.
Q. If you were given a directive that conflicted with bible standards and principals by a circuit overseer in this organization would you be obligated to follow it?

A. No.
Q. Why?
A. Because our obedience is to God not to man. So, we do obey God as ruler rather than man. So, consequently if something went contrary to what the bible instructed, then, of course, it wouldn't matter who gave that order. We would not comply.
Q. And with you holding that position based on the bible, solidly based on the bible, would you be in line for any discipline?
MR. SMITH: Objection, Your Honor. Can I have the question heard back?
(Question read back.)
MR. SMITH: Objection as vague.
THE COURT: Overruled.
MR. COBB: Q. So, your response previously establishes that the basis of decision making and the basis of the choices that you make is the bible; correct?
A. Correct, yes.
Q. So, we do have varying levels of responsibility amongst Jehovah's Witnesses; correct?
A. Yes.
Q. But our ultimate responsibility in obedience is to who?
A. Is tc our creator, Jehovah God.

Q. Is there anyone in the organizations that would presume to supercede that?

A. None.

Q. Would the governing body say we are the highest ecclesiastical authority and so if we give you certain directions that do not conform to scripture you are obligated to follow them?

MR. SMITH: Object. Relevance.

THE COURT: Sustained.

Let's wrap it up, Mr. Cobb. Wrap it up.

MR. COBB: The questions as presented to you establish that in a hierarchy orders and directives are absolute and that theocracy they are not.

THE COURT: I get your point. It's already been established.

MR. COBB: Okay.

THE COURT: Or you have tried to establish it.

MR. COBB: Thank you.

No further questions.

THE COURT: Cross?

MR. ROUSE: No.

THE COURT: Thank you, sir. You are excused.

Any other evidence, Mr. Cobb?

MR. COBB: I did actually, yeah. I was premature saying "No further questions." If I could round out one point with Mr. Cobb.

Do you have any --

THE COURT: Show it to counsel.

MR. COBB: Sure. This is actually something they provided to us. This came from Mr. Smith.

MR. SMITH: We have two separate documents. Are you going to mark these now?

MR. COBB: Sure. Why don't we.

MR. SMITH: It is marked next in order, a set of bylaws. Next in order will be articles of incorporation.

MR. SMITH: Restated articles of incorporation are next in order.

THE CLERK: 4.

THE COURT: These are the bylaws of the congregation; correct?

MR. COBB: Well, that's a copy of the documentation that was produced pursuant to the meeting in question of September 16th, 2010.

THE COURT: But are you -- what's the reason you are introducing these?

MR. COBB: I am introducing them because we are wanting to get input from Mr. Cobb regarding the viability of those documents pursuant to his knowledge of those events and his acceptance of such.

MR. SMITH: Your Honor, if I could, that actually may help us move this along. We are willing to

stipulate to the admission of those documents.

THE COURT: Okay. They will be admitted.

But I don't see how this witness has any knowledge or how his testimony is going to help me decide this, Mr. Cobb.

MR. COBB: Okay.

THE COURT: There has not been a sufficient offer of proof to have this, Mr. Cobb, continue on with this testimony. So, I will excuse him.

MR. COBB: Would I be able to include one more item here?

THE COURT: Sure. Any objection to that being introduced?

MR. SMITH: I don't think so, Your Honor. No objection.

THE COURT: So, Mr. Cobb, I have a question.

Looking at the bylaws, Exhibit 2 item No. 4, doesn't that -- this part of the bylaws of Menlo Park seems to kind of knock your case out of the box. Are you familiar with it? Exhibit 4.

MR. COBB: I am familiar with it. I should clarify.

Again, what I am mentioned earlier that Menlo Park Congregation of Jehovah's Witnesses Incorporated for the entirety of its history prior to that meeting and prior to the arrival of defendant Brede et al., did

not have bylaws. I am simply -- the intent of bringing that in was to create a basis of discussion with regards to their attempt to execute a corporate meeting without having a legal basis for such.

THE COURT: What was the date that you were removed?

MR. COBB: July 1st, 2010.

THE COURT: These bylaws are actually adopted after that?

MR. COBB: Correct. There were no bylaws in existence for the corporation prior to the arrival of these individuals.

THE COURT: Okay.

MR. COBB: Which goes to the point of the original directors or officers being midterm.

THE COURT: Did you have anything else want to add before we move onto the next witness?

MR. COBB: No.

THE COURT: Are you gentlemen available this afternoon? There is something I have to do before lunch. So, let's take an early lunch and resume at 1:30 and conclude the case at that point.

(Lunch break taken.)

THE COURT: We are back in session.

MR. COBB: Since books are allowed as references, would a CD ROM be allowable?

THE COURT: Depends what is on it.

MR. COBB: It is a production CD ROM from the Watch Tower Bible and Tract Society. It is an encyclopedia basically. It is just to give me access to additional publications like what is being used today.

THE COURT: Let's see what the defense says about this.

MR. SMITH: Your Honor, I'm not sure where he is going with it. I don't see relevance.

THE COURT: What is your offer of proof? What can you tell me that you are going to use that to show?

MR. COBB: It is actually something that will be helpful to me kind of progressively through the remaining of the proceedings.

THE COURT: You can boot it up and refer to it yourself if you want.

MR. COBB: Would I be able to ask questions?

THE COURT: You can ask a question and I may overrule it. I may sustain it. I don't know what the question is.

MR. COBB: Okay. Just so it is not totally off limits. We will just deal with it.

THE COURT: We will deal with it one at a time.

MR. SMITH: Couple of housekeeping measures.

We still have Mr. Cobb and St. Clair in the courtroom. Can we request they step outside in case

they will be called as witnesses.

THE COURT: Step outside. We will call you if we need you.

MR. SMITH: One other housekeeping matter. I wasn't too clear Mr. Cobb rested this morning.

THE COURT: I think he did.

MR. SMITH: That was my understanding that he did. We wanted to make sure about that.

MR. COBB: I think when I responded earlier -- and thanks for asking -- my understanding is if it was resting on the particular point for consideration it was not my understanding that that would count as final resting for the whole matter.

THE COURT: I don't know what else you wanted to establish, but you called your witnesses. You testified yourself. What else is there?

MR. COBB: I do have information that I can now legally refer to that is relevant to this case and I would like the opportunity to include it.

THE COURT: Do you want to testify some more?

MR. COBB: I guess you can say that, yes.

THE COURT: Well, it is up to you.

MR. COBB: I anticipated them calling additional witnesses and I anticipate having an opportunity to cross examine.

THE COURT: You will.

The thing is we are not going to do some sort of biblical trial based upon the bible or other things like that. That's not what this is all about. What is at issue is the bylaws and do I have the right to even be in this dispute. I am not going to mediate a theological dispute as to what is proper and what's not.

The issue seems fairly clear to me. So, I want to give you the opportunity to finish presenting your evidence, but we need you to be economical in doing it as best you can.

So, if you want to continue testifying, that is fine. You can do it from there so we don't have to have you go up there, but you are still under oath.

Okay. So, what else would you like to tell me?

MR. COBB: I wasn't able to present information earlier because I didn't have it in the proper format. So, I just wanted to establish a couple of points because I don't see this so much as a religious discussion as a secular one.

The defense has talked at length about the organization being a hierarchal organization or structure. So, I think it is important and necessary in view of the free exercise clause to firmly establish what the prevailing view is by religious organization itself. It is one thing to have a couple of individuals make assertions as to a structure, but it is better to

refer to a point of authority.

THE COURT: What's the point of authority?

MR. COBB: The point of authority will be two different issues of the Watch Tower magazine. So, I have a volume here. This is the same book and same cannon as what was referred to earlier.

THE COURT: There may be an objection if that is hearsay.

MR. SMITH: There will be an objection, Your Honor.

THE COURT: That is sustained.

MR. COBB: How could that be hearsay if it is an official publication from various organizations?

THE COURT: It is hearsay because it is an out of court statement made for the truth of the matter asserted in it. That's what hearsay is. There are certain exceptions in the way you can get hearsay into evidence, but there's no hearsay exception I am hearing at this point as to that.

MR. COBB: Even if it is material to whether or not it is a hierarchal organization?

THE COURT: The issue is not what is in the material. The issue is: Is there a hearsay exception? I am not even sure who publishes this, publishes the Watch Tower. Who publishes that? Do you know? Is it the --

MR. COBB: There is a statement of publication here that I can refer to if that's helpful.

MR. SMITH: I will make sure we are clear here.

Mr. Cobb has actually mischaracterized what was discussed earlier. There has been no testimony that Jehovah's Witnesses use the term "hierarchal" in their theological beliefs and religious beliefs. That's a term used by the courts. The courts have used that term based upon United States Constitution and California Constitution. So, to the extent he says that, that's a mischaracterization.

THE COURT: Who's that published by?

MR. COBB: There are two different references. Christian -- at the bottom of this page for this year, 2012, Christian Congregation of Jehovah's Witnesses, Patterson, New York. And this is a similar statement from a different journal. That applies to any of these publications that have been used, the rule book that Mr. Rouse referred to earlier. Same source.

THE COURT: These are the two that you will refer to; correct?

MR. COBB: I was showing this to answer your question about who publishes. The same things goes for the bound volume that I specifically wanted to refer to just for a moment. I can show that to you.

MR. SMITH: Can I see those?

MR. COBB: Sure.

THE COURT: The way to do this, Mr. Cobb, you can -- if the witnesses come in and testify, you can try to impeach them, read that stuff to them to essentially impeach it. But as far as coming in through you, I don't see any hearsay exception.

MR. COBB: That was exactly the idea what you just said. So, you can look here.

THE COURT: That is okay. I will take your word for it. But at this point it doesn't seem to be relevant in your case in chief, but it may be once they testify.

Is there anything else you want to tell me or do you rest at this point? "Resting" doesn't mean you can't cross examine the other witnesses for the other side.

MR. COBB: I did want to introduce an additional point. This is an official letter in the Christian current issue of Jehovah's Witnesses dated May 21st, 2010. This is a letter that was sent to defendant Brede, et al. and is specific to the transition that was discussed in congregation. There is information in the letter that I think is pertinent and I wanted to just make reference to it.

I imagine that's a letter that they already would have any way.

MR. SMITH: There is two different letters. You have two different letters.

MR. COBB: That was -- I guess that was attached to the one that we had. So, it is this guy right here. That's what I am concerned about. I can take that back.

THE COURT: What do you want to use those letters for, Mr. Cobb?

MR. COBB: The letters will help establish the recognition that the religious organization has corporate law, corporate procedure and helps to establish that a single act relative to the changing of the spiritual appointment doesn't automatically take care of subsequent legal consideration. That is a separate process, a separate process that never occurred in this particular case.

THE COURT: Okay.

MR. SMITH: We will stipulate to admitting it.

THE COURT: We will mark those as defendant's next in order.

MR. SMITH: It is just one letter. He withdrew the other.

THE COURT: Just one letter.

MR. COBB: Would I be able to leverage any information for an item that is already contained in the file for the case?

THE COURT: It depends on what it is.

Let me take a look at the letter.

I will admit it.

This should be Plaintiff's, not Defendant's. I am sorry. That was my mistake. Plaintiff's next in order, Plaintiff's 6.

MR. COBB: Actually one paragraph.

MR. SMITH: We will object as relevance and lack of foundation.

THE COURT: Let's keep going. What did you want to do next?

MR. COBB: I just showed them this one page.

MR. SMITH: We object to it, Your Honor.

THE COURT: When you testify?

MR. COBB: Yes.

THE COURT: Then wait until they testify, Mr. Cobb. Let's do it that way.

MR. COBB: But this is okay?

THE COURT: Well, they stipulated to it being admissible. So, I will let it in.

So, anything else? Otherwise, are you resting so they can present their evidence.

MR. COBB: Yeah. I would like to just make reference to one more point. I wanted to make a point regarding the law of abstention and free exercise clause.

something.

In his complaint he stated that there were several reasons why he challenged the validity of the corporate, current corporate elected offices. And we want to make sure that he has had full and fair opportunity he raised the issue that he thought it was a hostile takeover of some kind, that there was -- he raised the issue that he didn't like certain financial reports, fund raising practices.

When he was removed as an elder, according to our rule book here, an announcement was made of that to the entire congregation so that they knew he was out. He didn't like that. He raised that issue there are some grounds for wanting back in.

He has claimed in his complaint that we -- the current directors have disregard for the California Corporations Code. And these are the things that he listed here as reasons that we want on the record they are precluded. He has had a full chance to raise these issues and present evidence and now he said he has rested. So, we don't have to go into that if he is rested.

THE COURT: Yeah. I guess the issue that I have is: This has essentially turned into a trial on merits of this case.

MR. ROUSE: Yes.

THE COURT: It's gone beyond just a hearing over the Corporations Code, although I could probably limit myself decision to that.

But I was talking to Judge Swope about this as well. It does seem like what we were going through is the trial now. I don't know if Mr. -- otherwise, I'm not sure if the form of directed verdict would be appropriate. But there's got to be some sort of a measure to allow the defendant to make a motion to close the People's evidence to stop the case at this point, whatever the venue or whatever the title of it is called.

So, maybe you can give me some guidance as to this.

MR. ROUSE: We don't think he has met his burden of proof. He hasn't presented evidence here in any form or fashion that this is anything other than a complete defense. In other words, to oppose and successfully undermine the complete defense we feel we have. And all the issues that he has raised in his complaint, he has presented no evidence to substantiate these issues factually.

THE COURT: Let's take a look in his complaint again.

MR. ROUSE: We are sort of doing a little housekeeping here but we have witnesses that we can put

up that will refute all of these issues, but we don't know whether we need to go into it. But if the Court would like for us to go into it so that we don't have to come back --

THE COURT: I think it is better to have a complete record to go ahead and put your evidence on the record so I can make a decision.

MR. COBB: Your Honor, I am sorry. I don't mean be a fifth wheel, but I have endeavored to present as best I can argument today. I did not expect we would be in trial. I was not prepared.

THE COURT: This isn't strictly a trial. That's the issue. The issue is dealing with the Corporations Code, I guess. And the issue is also does this dispute belong in a courtroom to begin with. That's really the issue I need to decide.

MR. COBB: And that's why I wasn't --

THE COURT: Along with the statute of limitations as well.

MR. ROUSE: Yes. So, we would like the complaint dismissed, Judge. We would like to do whatever we need to do to get the complaint dismissed.

But judging what he says he is bringing as his one complaint here, a challenge to the validity of the appointment, 5527 motion, however you -- I am having difficulty trying to give the exact California law legal

name for the proceeding, but I am trying to make the most of what it is while we are here.

THE COURT: Right.

MR. COBB: Your Honor, I wish to respond to part of that.

THE COURT: Okay.

MR. COBB: If I may.

The purpose was to evaluate the transition and directors for corporation. So, as I mentioned at the outset, there are points of law that factor into how matters are to be handled. And one thing I have not heard today is any response to the fact that there was never a motion presented to the members specifically and expressly for the removal of the existing directors who were serving midterm, whether the hearing -- whether the corporation meeting was valid on September 16th or December 16th.

THE COURT: I think I need to hear from the defense on this. So, let's call the witnesses. Then we will evaluate it.

MR. ROUSE: We would like to call Ernest Brede

(Witness sworn.)

THE CLERK: State and spell your full name for the record.

THE WITNESS: Ernest Brede, E-R-N-E-S-T B-R-E-D-E.

DIRECT EXAMINATION BY MR. ROUSE

MR. ROUSE: Q. Mr. Brede, would you tell us how long you have been a member of the faith of Jehovah's Witnesses.

A. Well, I was born this way, but I was baptized in 1959.

Q. How long have you been regularly attending the meetings?

A. Since about 1948.

Q. Would you tell us a little bit about -- let me ask you this: How long have you served in some kind of official capacity with the organization?

A. Including ministerial servant?

Q. Yes.

A. Probably about 40 years.

Q. When you use the term "ministerial servant," that is an official appointment that comes from headquarters; is it?

A. Yes, it is.

Q. Would you tell us a little bit about how the organization -- before we get to that, how long have you served as an appointed -- what they called "elder" in various congregations?

A. Probably around 22 years.

Q. In addition to that, what other responsibilities have you had so that you can speak

authoritatively about it?
A. I work under the direction of the liaison committee, the regional building committee. I worked for about fifteen years.
Q. Explain that. What do they do?
A. What they do is they build and maintain Kingdom Halls around the world, but in this case there is a Region 7 which covers most of the Bay Area.
Q. How many of these buildings have you participated in overseeing construction?
A. Ten or fifteen, I guess. I haven't been with RBC for about the last eight years, but I use to be with them.
Q. So, what other duties did you perform?
A. Circuit assignments when we have circuit assemblies. I have been on district committees when we have district conventions. I worked at Bethel.
Q. When you say "Bethel" --
A. In New York, Patterson, when it was being built. I worked there in 1989 and 1990.
Q. Would you tell us about how it is structured.
A. The organization?
Q. Yes, congregation, circuits and districts.
A. First of all, we start with the congregation. It can be 30 publishers, maybe 100 or 150 or so.
Q. When you say "publishers," you mean --

A. Members, yes. So, there could be -- keep it small, each congregation. In the congregation you have ministerial servants who take care of various assignments and then the elders who oversee the congregation.

Q. Who makes all the assignments in the congregation?

A. That would be the body of elders, not just one.

And then you have a circuit overseer who comes by twice a year to make sure that the congregation is being run properly. This is dealing with spiritual activities as well as financial.

Q. Who keeps the books for the local -- each congregation?

A. We have an account servant under the direction of the secretary.

Q. Who appoints him?

A. The body of elders.

Q. How often are the books audited?

A. Every three months the books are audited.

Q. Then when the circuit overseer comes along, what is one of his jobs?

A. He makes sure that we give him the books so he can also audit the books and make sure they are correct and up to date.

Q. So, a fair statement he audits the auditors?

A. Yes, he does.
Q. Then once a year who comes around and audits the circuit overseers?
A. We have a district overseer who has certain amount of circuit overseers in his district, depending on where that's located.
Q. And then who checks on the district overseer?
A. We have the branch, which is in Patterson, and also the governing body.
Q. What about the belief system of Jehovah's Witnesses? How -- how would you describe that? Do they have the same beliefs or freedom of belief or how would you talk about that?
A. No. We are directed by the governing body. We are baptized. We appreciate we are unified throughout the world, 236,000 congregations around the world. We have the same unified beliefs and scripture.
Q. Who has the ultimate ecclesiastical authority over all the congregations?
A. The governing body.
Q. Who makes the appointments of the elders in the congregation and all these intermediary officials?
A. It is the governing body which is passed down to the congregation.
Q. Now, I am going to ask you some questions about Mr. Cobb's complaint.

When did you -- when were you appointed by the branch office as one of the elders in the Menlo Park congregation?

A. July 1st, 2010.

Q. At the same time would you tell us who was removed?

A. By name?

Q. Yes.

A. Jason Cobb, Jonathan Cobb, George Stock and Arlen St. Clair.

THE COURT: Wait one moment.

MR. ROUSE: Q. Mr. Stock was one of the elders who was removed?

A. Correct.

Q. Is he outside in the hallway to testify?

A. Yes, he is.

Q. Now, did you know anything about the books and records of the congregation before you got there?

A. No, not at all. They were never turned over to us.

Q. Where had you been before you were appointed in Menlo Park?

A. I was in the Redwood City South Congregation of Jehovah's Witnesses.

Q. What position did you have there?

A. I was the coordinator of the body officers.

Q. That means chief --
A. I had oversight of that congregation, yes.
Q. Were you -- did you hold any corporate office?
A. Yes, I was -- yes, I was the president, I guess you would say.
Q. Now, once you come over to -- well, before you came over, before you were still over at Redwood, did you have any knowledge at all or any -- participate in any way with anything that went on in Menlo Park?
A. No. That is confidential. We have no idea what was going on there.
Q. After you came over, we are talking about from that was July 1 of 2010.
A. Yes.
Q. From that time forward did you participate in any way sort of a hostile takeover, whatever that means? Did you participate in any kind of a hostile takeover of Menlo Park in terms of the corporation there?
A. No. We were just asked to merge with that congregation by the branch.
Q. All that came in a letter?
A. Yes.
Q. In other words, the letter -- is it fair to say the letter removed all their elders and appointed you all as elders in place of theirs?
A. Yes.

Q. Explain that.
A. We were received a letter. I think it was in May. The letter was -- the letter that was sent to us was sent to Menlo Park, their body of elders saying we were going to merge. We were going to be moving over to Menlo Park as of July 1st. And they recommended that the elder body, the elders in Redwood City, start attending their meetings before the merge came about.
Q. All right. So, at the point that you were appointed, you and the other two defendants were appointed, from that time forward is that the first time -- when was it that you all assumed oversight of the duties of a corporate officer in Menlo Park?
A. First of all, we went by the direction of the branch. Usually when a -- for years in our bylaws if you -- it mentions in there that all the elders or ministerial servants serve as officers on any corporation in the United States.

So, when we came over usually if a body is deleted or an officer, they just basically agree with that and go on. And so the branch assumed that it would be a smooth transition for the new elders to take over that corporation.

That wasn't the case. There was a lawsuit filed. So, the branch said now put into place the forming of the new corporation. And so we have a

corporate attorney, Leon Opolsky, who takes care of corporations for the Jehovah's Witnesses. And he is the one --

MR. COBB: Objection, Your Honor. Seems like an extended narration.

THE COURT: Overruled.

THE WITNESS: So, he is the one that gives us all the information we need for the State of California to form the new corporation. So --

MR. ROUSE: Q. Let me make this clear to the Court.

MR. COBB: Objection. Can we clarify the relevance?

THE COURT: Overruled.

MR. ROUSE: Q. The Congregation -- who's it that supplies the corporate paperwork for the Menlo Park Congregations and the other congregations in the State of California?

A. The Watch Tower Bible and Tract Society.

Q. Which lawyer in the State of California do they use to provide these forms?

A. Leon Opolsky. He is out of, I think, San Diego.

Q. Based on where you were before and where you are now, where did you all get your forms from so that the corporate affairs are in order?

A. From Leon Opolsky.
Q. And did you do that because -- tell me: Do you know, do you have direct knowledge that he provides these -- whether or not he provides these forms on instructions from the branch office in New York?
A. Yes, he does.
Q. Do you know what the forms say positively because you have read them and signed them?
A. There is a few pages, but I know the one paragraph because we are familiar with it with this situation. It mentions that only elders or ministerials can serve as officers in the corporation.
Q. Is that in the -- that paragraph in the documents it was put into the judge this morning?
A. Well, I know it's in our bylaws.
Q. All right. Now --
THE COURT: "Our bylaws"?
THE WITNESS: Menlo Park Congregation's bylaws.
MR. ROUSE: Q. Now, why is it that there was no bylaws before you all got there if you know?
A. I have no idea.
Q. Now, if the organization -- if you know -- or do you know whether the circuit overseer when he came by Menlo Park and checked Menlo Park, do you know whether or not he was pleased that they had no bylaws?
A. I don't know. I wasn't there. I couldn't

answer that. I know he wouldn't be pleased if we didn't have them.

MR. COBB: Objection. Speculative.

THE COURT: Sustained.

MR. ROUSE: Q. All right. Once you got there, though, what was one of the first things you all did in terms of bylaws?

A. Well, that's when we got a hold of Leon Opolsky.

THE COURT: How do you spell his name?

THE WITNESS: O-P-O-L-S-K-Y.

And then we called the branch, the service department. They mentioned to-get a hold of Leon so we could draw up the corporate papers.

MR. ROUSE: Q. All right. Let me ask you this: Since you were there and since you set up the corporate papers and they got bylaws, what do you say about this allegation of a hostile takeover of Menlo Park? Is there anything -- any more hostile than what you have described here in court today? I don't think it is hostile, but I am using their word. Anything more adverse or that you could call "hostile" that occurred that we haven't mentioned?

A. Well, I know one thing that was I think in the complaint. They mentioned that we changed the locks on the Kingdom Hall on the doors because we weren't sure

who still had keys or what was going to take place and so forth. But besides that, we don't think there was any hostile takeover.

Q. Now, since you have been there have there been any false financial reports created, generated, filed or submitted to the congregation? Anything like that that has occurred?

A. No, not at all. The only financial records we have is from July 1st until now. Before that we had no financial records of Menlo Park.

Q. So, the bylaws, they have been marked and admitted as Plaintiff's 2 in this case here today. All right.

Do you know of any funds -- since you been there do you know of any fundraising practices that you three defendants have engaged in whatsoever in this congregation?

A. No. I have raised funds for a remodel, but that's all we have done. And that's on record.

Q. The funds, have they been accounted for and posted on the information board in the congregation so everybody can see?

A. Yes, they have.

Q. Have they been the subject of audits by the auditor and by the circuit overseer and district overseer on terms of the circuit?

A. Yes, they have.
Q. Do you know of any conspiracy that has taken place by anybody to do anything adverse to the plaintiff in this case?
A. No.
MR. COBB: Objection. That is speculative.
THE COURT: Overruled.
MR. ROUSE: Q. Let me ask you this: Now, I believe -- do you have the organization book, the rule book there with you?
A. Yes, I do.
Q. The rule book requires on Page 40 that -- do you see the first sentence in Paragraph 1, "Whenever there are appointments or deletions"?
A. Yes.
Q. Do you see that? It says there, "Announcements are made to the congregation."
A. Yes.
Q. Was that done in this case?
A. Yes, it was.
Q. So, what announcement was made to the congregation?
A. We received a letter from the branch, a letter of deletion. And it is up to the coordinator usually to make the announcement that these different elders have been deleted as serving in their positions.

Q. Was that done?
A. Yes, it was.
MR. COBB: Object, Your Honor. We are off subject with this line of questioning.
THE COURT: No, we are not. Overruled.
MR. COBB: Your Honor, are we not here to evaluate the appointment of officers for the corporation and how that complies or does not comply with the law?
THE COURT: That's what we are talking about right now. So, overruled.
MR. ROUSE: Q. Now, other than that announcement that was made to the congregation, has the defendants -- have they done anything else that you know of ,that could be characterized as defamatory, publicly defamatory?
A. Not that I am aware of.
Q. Now, was the statement that was made, the announcement was made, was it true?
A. Yes.
Q. Were in fact these men removed?
A. Yes, they were.
Q. Do you all have any disregard that you know of for the California Corporations Code?
A. No.
Q. What is your understanding -- I know you are not a lawyer, but he has charged you with disregard of

the code. Based on your understanding, what is it -- what is your understanding of your requirement as a corporate officer in Menlo Park that you are suppose to do legally so that everything is appropriate?

A. The congregation legally is to have a corporation to handle matters and so forth. So, with certain, I guess, businesses and procedures it is handled by the corporation. The officers basically have a meeting each year to continue that corporation. Basically, I guess, it is a legal entity. So, we just follow that direction.

MR. COBB: Your Honor, are we able to progress?

THE COURT: Are you finished, counsel?

MR. ROUSE: Just one moment.

MR. COBB: Your Honor, will I be able to present questions based on the information in the complaint?

THE COURT: It depends on -- just ask your questions and we will rule on the objections.

MR. ROUSE: I think that I am done what I wanted to do, Your Honor.

THE COURT: Okay. Mr. Cobb?

CROSS EXAMINATION BY MR. COBB

MR. COBB: Just one moment, please.

Will I be able to call witnesses in response to testimony?

THE COURT: If it is rebuttal witnesses, yes, but it has to be in rebuttal to what this witness has testified to. Not just repeat what has been said earlier.

MR. COBB: Understood.

Q. First, let me make sure that I heard correctly. You said when you were presented a question in that dissertation you made the statement that books and records were never turned over to you from the time prior to your arrival in Menlo Park. Can you clarify what you meant when you said books and records?

A. Yeah. We never -- in other words, paperwork or whatever before we came over to Menlo Park, we never received anything from Menlo Park.

Q. Before you came over?

A. Yes.

Q. What about after?

A. We received some documentation, but not all.

Q. What did you receive?

A. First of all, we didn't receive anything. But then conversations with you or --

Q. The question was: What did you receive?

A. What did I finally receive? We received some record cards.

A record card is each publisher has a record card of their ministry history, birth of -- date of

baptism, so forth. Then there are also some files dealing with congregation reports from the past.

Q. So, you received that?

A. Some, yes.

THE COURT: Before we move on, I need to get something in chambers. I will be right back.

(Short break taken.)

THE COURT: I have 5617(c), at least the version I have gives me pretty wide range of remedies. It talks about, "The Court consistent with provisions of this court and in conformity with the articles and any bylaws to the extent feasible may determine a person entitled to the office of director or may order a new election to be held or appointment to be made may determine the validity of the issuance of memberships and the right of persons to vote, may direct such other relief as may be just and proper."

So, I have a lot of authority here. Just to clarify that.

That is California Corporations Code 5617(d).

So, Mr. Cobb, go ahead.

MR. COBB: Q. We were talking about records earlier. You made the statement, Defendant Brede, books and records were never turned over. At this juncture we have established records have been turned over.

Did you ever receive any financial records?

A. No.
Q. You didn't receive any financial records of any kind?
A. Not that I recall, no, I don't remember getting those records.
Q. Did anyone else who came over with the transition, did anyone else receive --
A. I'm not aware of that.
Q. The question was presented as far as hostile takeover. Are you able to verify your understanding of that term?
A. Yes. Like, I would call it a forceful takeover. Something like that. I guess forceful.
Q., Would you -- do you in fact recall using that word "takeover" in a sentence speaking with Arlen St. Clair? "We are taking over." Does that phrase ring a bell with you?
A. No, it doesn't ring a bell at all.
MR. SMITH: Objection.
THE COURT: Overruled.
THE WITNESS: We might have had a conversation, but I don't remember saying that word. Maybe taking over the corporation you are referring to? I don't remember.
MR. COBB: Q. My understanding, having spoken with Arlen St. Clair -- we will bring him in for

rebuttal momentarily -- but my understanding is that you did make the statement to him in general. I don't think there was a delineation between corporate or congregational. You just said you are "taking over."

A. No, I don't remember that.

Q. Earlier during the discussion there was a question about elders being deleted or removed from --

A. Uh-huh.

Q. -- position of a spiritual oversight. I am struggling with the exact words of Mr. Rouse. Please feel free to interject. But the short of it is, you made the statement pursuant to his discussion of that subject. You made the statement that individuals who are deleted essentially agree and go on, may agree and they go on. Can you elaborate on that a little further, please?

MR. SMITH: I will object to the question. Calling for a narrative.

MR. COBB: I am just trying to gain clarity.

THE COURT: Why don't you rephrase the question, Mr. Cobb.

MR. COBB: Q. Can you help us appreciate more fully what you meant or what you mean by making the statement when a person is deleted that they accept it and they go on?

A. Well, from time to time elders are deleted.

And because of that, they lose any position. I might use the term "position in the organization to serve" or "take the lead in the congregation." So, that would be anything to do with acts of the Watch Tower Bible and Tract Society.

So, usually when a parent -- the circuit overseer or district overseer sit down or they receive a letter or sit down and talk to them or the body of elders, and let them know they are deleted. Then usually they understand why and accept the deletion. And they understand that at that point they are no longer part of the elder body or the corporation. So, basically we tell them that we are going to either have new officers or we are going to vote in officers or whatever the situation. Then they usually just agree with that and accept the discipline and they continue to reach out again to receive that position back.

Q. Okay. Thank you for that response. It helps to clarify.

So, essentially they are deleted as an elder, removed from a position, so to speak, of spiritual oversight. And you made the statement right now that they understand that that automatically removes them from any position of standing in the corporation.

With that in mind, I would like to reflect on your transition in the congregation. So, there was a

letter describing that. And you were appointed to serve as an elder in Menlo Park on what day? What point?

A. July 1st.

Q. July 1st, 2010?

A. Right.

Q. Correct?

If that is the case, using the logic that you just employed a moment ago, if a person is deleted as an elder they are automatically deleted from any standing in the corporation. So, let's apply that in reverse.

You were appointed as an elder July 1st, 2010. In view of that, why was there an effort on September 16th and December 16th to hold a meeting of the corporation to vote directors and officers?

MR. SMITH: Your Honor, I am going to object. Ambiguous, argumentative.

THE COURT: It is argumentative. Sustained.

MR. COBB: Q. In transitioning into the congregation and being appointed as an elder, what was the next step for you relative to the corporation?

MR. ROUSE: I will object as vague as to time. I'm not sure where we are at.

THE COURT: Neither am I.

MR. SMITH: Or where we are going with this.

MR. COBB: What we are trying to clarify, Your Honor, is the act of being deleted or the act of being

appointed as an elder relates to a position of spiritual oversight in a congregation. It creates the basis to proceed to dealing with the reality of a legal appointment for the legal entity of the corporation. So, there is a break in the logic with what defendant really said a moment ago.

THE COURT: But I understand the point, but going on is really just arguing. So, I will sustain the objection.

MR. COBB: I just wanted to clarify is it a true statement that after you were appointed as an elder on July 1st an effort was made for you and others to be appointed as directors in the corporation?

A. Yes.

Q. Are you stating that the meeting that was held September 16th satisfies that requirement of being appointed to serve as a director in the corporation?

A. Yes.

Q. Why did you have a second meeting December 16th essentially going through the exact same process of voting again directors and officers?

A. Well, because that was the direction of the Watch Tower Bible and Tract Society and as well as also Leon Opolsky. They said they have another meeting on November 1st -- or November 16th.

Q. December?

A. Or December, yeah.
Q. So, you have a meeting to get yourself voted in on September 16th, 2010, and then three months later you received direction to have a second meeting to vote yourself in on December 16th; is that correct?
MR. SMITH: Your Honor, I am going to object. Argumentative.
MR. COBB: Your Honor, I am just trying to clarify --
THE COURT: Hang on. Don't speak at the same time.
What's the objection?
MR. ROUSE: The objection is argumentative and actually unintelligible as phrased.
THE COURT: Let me try clarify.
On September 16th, that is when you were -- you said you were voted in as an officer of the corporation?
THE WITNESS: Yes. What we did is we brought it before the congregation and we had a vote. We handled it according to California corporate law. We had a vote. They raise their hands to approve the new corporate officers.
THE COURT: Is that what is reflected in the articles of incorporation with your name on it and executed September 30th, 2010? Is that what followed from that meeting?

THE WITNESS: Yes.

THE COURT: Just a moment.

MR. COBB: Your Honor, is that September or December?

THE COURT: September 30.

There is an article of incorporation with three are coming in as directors. Mr. Brede, Mr. Contreras, and Mr. Laverdure. It is initial directors of the corporation. September 30th, 2010 is when it was actually executed, the documents. But I understand the meeting where this took place was September 16th?

THE WITNESS: Correct. I think that should have been on a Thursday.

THE COURT: Okay.

MR. COBB: So, to proceed forward, September 16th is the established date the judge has a copy of documentation in hand.

THE COURT: I guess the issue then if that was a good document, which I am holding in my hand, the articles of incorporation, why did you feel it was necessary to have another vote on December 30th, 2010, which is reflected in Petitioner's Exhibit 4, which is restated articles of incorporation? Can you explain that for me?

THE WITNESS: I don't really know, Your Honor. We just followed direction from the Watch Tower Bible

and Tract Society. I would have to see if there was -- almost two years ago. I would have to see if there was a letter with that. I don't remember.

THE COURT: Okay.

THE WITNESS: But we were following the direction. And I know I could get that from Leon Opolsky.

THE COURT: That is okay.

MR. COBB: At this point, Your Honor, I want to draw upon one of the previously submitted exhibits. I will grab a copy of it here. I am sorry. I am struggling with what exhibit number it may have been given. But essentially I'm looking for this guy here.

THE COURT: I think I have a copy of that.

Do you have an extra copy of it? Are these both the same?

MR. COBB: This is a different one. I just want him to see it. I will hand it back. I promise

THE COURT: I do see that there's an October 13th corporation -- dated October 13th, 2010.

MR. COBB: That is a certificate of status from State of California. So, as of October 13th, 2010, what you see on that sheet is the actual name of the corporation. That name is different than the documentation -- or the name of the corporation that is included in the documentation for September 16th, 2010.

The short of it, Your Honor, is when they conducted that meeting --

MR. SMITH: Your Honor --

THE COURT: You are arguing, sir.

MR. SMITH: Can I clarify? Is there a different exhibit he is about to use?

THE COURT: One of them is dated -- Menlo Park Congregation of Jehovah's Witnesses and then the English Congregation of -- English Menlo Park Congregation.

It looks like there is two different certificates of status, one for the articles, which were filed on September 30th, 2010, and then there is another one for the restated articles, which is Plaintiff's 4.

MR. COBB: There should be an exhibit there that shows --

THE COURT: I think what happens is that the Secretary of State seems to think that there is two different entities, because the title on the Petitioner's Exhibit 3 is different -- well, no, that doesn't make sense.

It is confusing.

MR. COBB: That's actually the truth. That's what I am trying to clarify with the line of questioning.

THE COURT: I'm not sure he is going to be able to do it.

MR. COBB: Do you have the document -- I want to make sure I gave it to you -- of what they did actually file with the Secretary of State on January 12th, 2012?

MR. SMITH: There is Plaintiff's 3, if that's what he is thinking about. There is a restated -- are you talking about the restated articles of incorporation?

THE COURT: There is restated articles.

MR. COBB: Yes. That's what was actually filed because the important clarification, if I may, I don't know --

MR. SMITH: I think we are moving into the area of argument, but --

MR. COBB: Okay. Okay. I just want to be clear for all of us because I have questions along this line.

MR. SMITH: I just want to know what documents you are going to use. I am frankly a little lost.

THE COURT: Let's mark this as Plaintiff's exhibit next in order. This is another certificate of status from the Secretary of State.

MR. COBB: That helps us to appreciate actually what happened.

THE CLERK: 7.

THE COURT: I'm not sure necessarily that 5 and

7 really matter.

What I am interested in are 3 of 4, the actual articles of incorporation, the restated ones and the normal ones. That's what I am interested in.

MR. COBB: I will be moving quickly in that direction.

THE COURT: Quickly, please. I am kind of figuring out where I need to go now.

MR. COBB: Q. So, you had a meeting to vote in directors September 16th, 2010.

Can you confirm the name of the corporation?

A. Yes. It was English Menlo Park Congregation of Jehovah's Witnesses.

Q.. I am asking about the corporation not the congregation.

THE COURT: Well, that is the corporation.

THE WITNESS: That is the corporation. Isn't that the corporation? I don't have it in front of me.

THE COURT: Right. It says -- Petitioner Exhibit 2, signed September 30th, 2010, adopted at the meeting of the board of directors on September 16th. This is the English Menlo Park Congregation of Jehovah's Witnesses, Inc., a California non-profit religious organization.

MR. COBB: Actually, Your Honor, there is a difference. That's the point of the questioning.

THE COURT: What is the point of the questioning?

MR. COBB: The point of the questioning is they basically voted themselves in as officers of a nonexistent legal entity at the time. There is no such thing as the English Menlo Park Congregation, etc. as a legal entity for the State of California. And that's what occurred on September 16th, 2010. That is the reason why they needed to have a follow-up.

THE COURT: That is more argument. So, I don't think -- the witness has testified he doesn't know the reason why an additional meeting was held a few months later on December 30th, although he thinks it might have been coming from the Watch Tower publisher; correct?

THE WITNESS: Yes.

THE COURT: That's out there. I don't think he really knows anything more on this point. So, let's move to a different area.

MR. COBB: Q. Well, just move to the next point. That will be based on Exhibit 4. So, again, restated articles of incorporation filed January 12th.

Did you file the documentation from September 16th, 2010 with State of California?

A. I would have to check because -- I personally did not.

Q. The reason why --

A. There is a procedure for that.
Q. The reason why I have certified copies of this documentation is because I did request that from the Secretary of State. And the short of it is the meeting that was held September 16th, 2010 where you and others were voted into a nonexistent corporate entity --
MR. SMITH: Move to strike.
THE COURT: I will strike that. You are just testifying. You are cross examining. That's what you need to do. Let's move along. We have covered this area. So, let's move onto completely different area.
MR. COBB: Your Honor, I have just one final point.
THE COURT: One final question.
MR. COBB: Okay. May I hand this to him?
THE COURT: Sure.
MR. COBB: Q. I am handing him Exhibit, I believe, 4. Exhibit 4. I am going to also hand him Exhibit 3.
Exhibit 3, can you confirm the date for that document, please? It is probably on the last page.
MR. SMITH: Your Honor --
THE COURT: The document speaks for itself. So, there is no need to ask that question.
THE WITNESS: September 30th, 2010.
THE COURT: There is no question.

MR. COBB: Q. And the corporate name?

MR. SMITH: I believe it was one question, Your Honor.

THE COURT: Yes. You are asking what is on the documents, Mr. Cobb.

MR. COBB: I will cut to the one question.

Q. Is it to your understanding that for the meeting that was held December 30th, 2010 that there was a change in the name of the corporation from the Menlo Park Congregation of Jehovah's Witnesses Incorporated to English Congregation of Jehovah's Witnesses Menlo Park, California?

MR. ROUSE: Object to the question. Calling for a legal conclusion.

THE COURT: Sustained.

Move to another area if you have any more.

MR. COBB: Okay. I do.

I am sorry. I will return these.

Q. Did you ever receive any communication from Leon Opolsky either verbally or in writing regarding the corporate meeting of September 16th, 2010?

MR. SMITH: Object to the question. It is a violation of attorney client privilege.

THE COURT: Overruled.

THE WITNESS: I didn't hear.

MR. COBB: I will restate it.

Q. Did you ever receive any communication from Leon Opolsky, either verbally or in writing, regarding the corporate meeting that was held September 16th, 2010?

A. Yes.

MR. SMITH: I was going to object. Vague as to time. So, we could have --

MR. COBB: He answered "yes."

THE COURT: He answered "yes."

MR. COBB: Q. Can you inform us of the content of that communication regarding the meeting on September 16th, 2010, the corporate meeting on September 16th, 2010? What did Mr. Opolsky have to say?

THE COURT: It is hearsay.

MR. COBB: Or --

THE COURT: So, I will sustain that. That is essentially my own objection.

MR. COBB: I am sorry?

THE COURT: That's hearsay you are calling for. So, I will not allow it.

MR. COBB: He is not able to speak to what he would have heard since he stated he did receive communication from Mr. Opolsky?

THE COURT: Did you testify to that? You did. Okay. I will let you mention --

THE WITNESS: I don't remember the exact

conversation and I would have to look at -- we have one of our other elders that have been taking care of that one on one with him because he handles so many cases. So, I would have to look up -- we have all of the letters in our files. So, I would have to look that up.

MR. COBB: Q. Do you have any recollection at all as to overall thrust or import of communication?

A. I rather not -- I don't remember but --

Q. You would rather not or don't remember? Which is it?

THE COURT: Well, if you don't remember then that's fine. We will move on. If you do remember, there may be another objection.

MR. COBB: Well, we essentially got two responses to one question.

THE COURT: I know. Is it you don't remember?

MR. COBB: Q. Remember you are under oath.

A. I can't respond to it because I would be guessing. So --

THE COURT: Don't guess. Don't respond. Don't guess.

Next question, please.

MR. COBB: Q. Is it fair to say that that communication regarding the corporate meeting on September 16th, 2010 contributed towards the effort to have the follow-up on December 16th, 2010?

MR. SMITH: Your Honor, he already testified --

THE COURT: He doesn't remember. So, move on please.

MR. COBB: Q. Back to the point of hostile takeover. You described it in brief what you believe that means. In addition to changing of locks, do you recall that there was an arbitrary effort to throw away different items?

MR. SMITH: Object as argumentative.

THE COURT: Sustained.

MR. COBB: Q. You stated earlier in the line of questioning from Mr. Rouse that you were not aware of any bylaws in existence for the Menlo Park Congregation of Jehovah's Witnesses Incorporated prior to your arrival?

A. That's true. I never saw those.

Q. Okay. I want to refer to a point now relative to the questioning about financial reports. So, the complaint draws attention -- I am trying to find the specific reference. Page 6 is part of it. Page 6 of the complaint. Actually Page 5 at paragraph 22.

So, the point of concern here is that there was a service meeting the second week of November, 2010. You were on stage during the meeting and you provided an update to the congregation regarding available funds on hand --

MR. SMITH: Your Honor, I will object to this.

THE COURT: It is not relevant. We are not -- we are dealing with the issue of the incorporation and whether or not this defendant or other defendants were properly elected. We need to narrow the focus because now that I have reviewed the Corporations Code as I indicated, section 5617, this hearing -- I think we probably went a little bit broader than it was suppose to be. I want to focus on that issue, which is the validity of the election of Mr. Brede as well as the other two. That's the issue. I need you to focus on that.

MR. COBB: Very good. I would be happy to do that. I am looking at the complaint.

THE COURT: Just because it's in the complaint, doesn't necessarily make it relevant to this hearing.

MR. COBB: Understood.

Part of it to me is just a reference because you have the code book there, Corporations Code section 9222(a).

MR. ROUSE: Your Honor, is that a question? I am getting a little --

THE COURT: This is argument, sir.

MR. COBB: I would like to present a question to you, Defendant Brede. I apologize.

Q. When the effort was made to hold a corporate

meeting whether on September 16th or the do-over on December 16th, which is the subject of this hearing, was there a motion presented to the congregation for the express removal of the existing directors, Jason Cobb, George Stock, Arlen St. Clair?

A. No, there was not.

MR. SMITH: I will object. Compound, argumentative.

THE COURT: No. Overruled.

MR. COBB: Q. So, for my clarity, there was no motion presented to the members of the corporation for them to be presented with the motion to remove the existing directors? That did not occur; correct?

A. Correct.

Q. Was there a motion presented to remove the existing officers of the corporation that happened to be the same individuals, Jason Cobb, George Stock, Arlen St. Clair? Was that presented to the members?

A. No, I guess that's the same thing.

Q. Just -- it is two different designations in corporation directors and officers. So, on both counts there was no motion presented to members for the express removal of such, particularly as they are serving mid-term, which in the absence of bylaws --

MR. SMITH: Your Honor, is this a question?

THE COURT: You are arguing again, sir.

MR. COBB: Okay. I am sorry. I just wanted to clarify those two points.

Q. Do you have financial records here today?

MR. SMITH: Objection. Relevance.

THE COURT: Sustained.

MR. COBB: Am I able to -- Your Honor, the defendant Brede has made statements regarding the inter-relationship between holding the office of elder and holding the office of a corporate director or officer. Would I be able to probe that a little?

MR. SMITH: Your Honor, that is not a question for -- I imagine he is seeking guidance, but I hope he is not trying to elicit the Court's help.

THE COURT: I can't help you try your case, sir.

MR. COBB: That's fine. That was just out of respect because I just wanted to clarify a point.

In the letters that you received, Defendant Brede, we have entered some of those into the exhibits here, was there any statements as far as a specific directive regarding the Menlo Park corporation, the directors, the officers, were you advised you would be appointed as an elder in Menlo Park?

THE COURT: You Honor, I don't think that -- that is unintelligible.

THE COURT: That is unintelligible.

MR. COBB: Q. Were you given specific directives regarding the transition of directors and officers for the Menlo Park corporation?

MR. SMITH: Your Honor, I am going to object again as I believe -- can I have it read back?

(Question read back.)

MR. SMITH: If you can answer it.

THE WITNESS: Not before we came. When -- I'm sorry.

MR. COBB: Q. Not before you came. What about after? Was there a specific statement as far as vacating the office of CEO, CFO, secretary, the directors? Any letter from the branch regarding that process?

A. Not that I recall.

Q. One moment, please.

A follow-up question relative to the previous point.

Was there a statement made to the corporation members at any time after your arrival that any of the existing directors or officers resigned?

A. No.

Q. Was there any statement to any members at any time after your arrival that any of the directors or officers abandoned the corporation?

A. No.

Q. We have already established that there was never a motion presented to the members in accord with California Corporations Code 9222 as supported by 5034.

MR. SMITH: Objection. Asking for a legal conclusion.

THE COURT: Sustained.

MR. COBB: Q. We have already established there was never any presentation of a motion calling for -- expressly calling for the removal of the existing directors and officers; correct?

MR. SMITH: Objection. Asked and answered.

THE COURT: Sustained.

MR. COBB: Q. Was there an effort to specifically not allow elders and previous elders and their families to participate in the religious discussions?

MR. ROUSE: I will object to the question as relevant.

THE COURT: Sustained.

MR. COBB: The question is relevant specifically to the point that was actually introduced by Mr. Rouse as regards to a hostile takeover. A hostile takeover or hostile environment can entail any number of --

THE COURT: That's not relevant. I will sustain it. You should have objected to that issue of

the hostile takeover at the time anyway when Mr. Rouse was talking about it or questioning the witness about it.

MR. COBB: The point of relevance, Your Honor, is there is an assertion before the Court that when a person is removed from a position of spiritual oversight that that automatically removes their standing with the corporation. But the reality is very different.

MR. SMITH: Your Honor, objection. He is arguing again.

THE COURT: Is it your understanding that when someone is removed from a position of spiritual responsibility they are automatically removed from the corporation?

THE WITNESS: Yes.

THE COURT: Okay.

MR. COBB: But the point of truth that we are endeavoring to pursue here is that there were coercive push-out tactics employed --

MR. ROUSE: Objection, Your Honor. Argumentative.

THE COURT: Sustained.

MR. COBB: Okay. I would like to get one rebuttal.

THE COURT: Do you want a chance for redirect?

MR. ROUSE: Just one or two questions, Your

Honor.

REDIRECT EXAMINATION BY MR. ROUSE

MR. ROUSE: Q. Mr. Brede, my questions, two or three of them here, are exclusively limited to your coming to home corporate office in Menlo Park. That's my time frame to you. My question is: What did you see happening in this process of your coming to hold corporate office in Menlo Park? What did you see happen, if anything, that was contrary to the instructions that came from national headquarters in New York?

A. Well, we just totally followed their direction. So, we didn't deviate from their direction whatsoever.

Q. What did you see happen in that process that was contrary to any of the provisions in the rule book here?

A. Well, what happened was -- I'm not sure, but the ones that were deleted were -- well, they refused to be removed from the corporation. And it mentions that they disqualified themselves once they were deleted and so --

Q. You are talking about Mr. Cobb here?

A. Yes. And then the direction was -- is that you form a new corporation with the new officers. And we followed the direction of the governing body.

Q. Now, what did you see happen, if anything, that

was out of harmony with the paperwork, pattern paperwork provided to you by Leon Opolsky, the corporate lawyer? What did you see or observe that was out of harmony with that?

A. Well, from all of his -- I didn't see anything that was out of harmony.

Q. Tell us whether or not you all complied with what he provided?

A. Absolutely, yes.

Q. Tell us whether or not the filings that you made, where did you get the papers to do that with?

A. From the Leon Opolsky.

Q. Did you follow his instructions?

A.. Yes, we did.

THE COURT: Can you remind me again about his position at the Watch Tower.

THE WITNESS: He is a corporate attorney in California and he is directed by them, Your Honor, to take care of corporate set-ups in the congregations.

MR. ROUSE: Q. Now, the actual physical building where Menlo Congregation meets, this corporation, how many corporations meet there, congregations?

A. Two congregations, a Japanese and an English.

Q. Do you know whether or not they have their corporations formed?

A. I don't think it is necessary because they might call it the home congregation would carry the corporation for that particular building.
Q. And that corporation would hold title to the property?
A. Yes.
Q. Even though there may be several congregations meet there, there is just one corporation that holds title to the property; is that what you are saying?
A. Correct.
Q. Do you know or tell us what you know, if anything, about instructions that came from the head-quarters about a name change. Do you know anything about that?
A. Well, all we know is that it did come from New York that it was now going to be the English Congregation of Jehovah's Witnesses -- or Menlo Park Congregation of Jehovah's Witnesses.
THE COURT: It was going to be what?
THE WITNESS: The English Menlo Park Congregation of Jehovah's Witnesses.
MR. ROUSE: Q. Do you know why they wanted the name change?
A. Well, I think one of the reasons is because there are sometimes different -- like, for instance, in Burlingame there is Arabic and other congregations that

meet in the same building. So, I think it was more for identification purpose because Japanese congregation meet there also. So, I don't know exactly. I would have to look that up.

MR. ROUSE: I think that's it.

THE COURT: Recross examination limited to those areas on redirect?

RECROSS EXAMINATION BY MR. COBB

MR. COBB: Q. Do you know the corporate entity number --

A. No.

Q. -- of the corporation?

A. It's pretty hard to remember, I guess.

Q. According to the exhibit that was presented to the Court, the corporation name as of October 2010 was Menlo Park Congregation of Jehovah's Witnesses, Incorporated. However, you and your fellow individuals promoted into the English or variant thereof or variant of that corporate name.

MR. SMITH: Is that a question?

THE COURT: This is not a question.

MR. COBB: Q. The question: Do you feel that would account for the second meeting in December to make that correction to the name as so stated since there was a directive to change it?

A. I don't know.

THE COURT: He doesn't know.

MR. COBB: Q. Okay. But you do acknowledge according to the exhibits we have in hand and what you filed January 12th, 2010, with the Secretary of the State, that the name as stated on that filing was the original name Menlo Park Congregation of Jehovah's Witnesses in court --

THE COURT: You don't have to ask him what's on the form. I have the forms; okay?

MR. COBB: All right.

Q. So, that is the point in time when the name of the corporation --

THE COURT: You are asking the same thing again. I have got the documents, Mr. Cobb.

MR. COBB: What I am wanting to verify, Your Honor -- please forgive me as I am a layman -- what I am trying to verify here is that that was the point -- that filing as of January 12th, 2012 was the point in time when the name of the corporation was changed.

THE COURT: I have the documents. And what doesn't make sense to me is that, and I don't think there is a way to know, which is the September 30th articles of incorporation are for the English Menlo Park Congregation of Jehovah's Witnesses. However, when the Secretary of State got it on October 13th, they certified it as Menlo Park Congregation of Jehovah's

Witnesses.

Then when we have the next petitioner's Exhibit 4 -- plaintiff's rather -- which was the articles of incorporation on December 30th, it says, "Restated articles of incorporation of the Menlo Park Congregation of Jehovah's Witnesses." But then when Secretary of State gets it, they change it to the English Congregation of Jehovah's Witnesses. So, it is -- they are not tracking.

MR. SMITH: Can I see that exhibit you are referring to, Your Honor, because the answer may be in there.

THE COURT: Of course.

MR. SMITH: It is his examination right now, but just to bring to the Court's attention on Exhibit 4 and Paragraph 1 where the name is changed and confirmed to "English" in restated articles.

MR. COBB: That essentially makes my point. Paperwork for September 16th and 30th makes reference to English Menlo Park Congregation as if that was a legal entity by name in existence at that time. And it was not. The filing as recorded there in that exhibit filed with the State was a different legal name.

They are acknowledging that the name Menlo Park Congregation, etc., was valid as of that filing December 30th. They then changed it from that point on. So,

that just establishes the point of timeliness.

THE COURT: You are arguing again.

MR. COBB: I am sorry. Sorry.

I do have an additional question I wanted to now ask if this pre-qualified reference can be leveraged to ask a question.

THE COURT: You can ask him about it. It may be objected to, but you can ask him about it.

MR. COBB: So, I have --

THE COURT: What is that?

MR. COBB: This is what we call a bound volume. So, it is a collection of every issue of the Watch Tower magazine printed for 1995.

THE COURT: What's your question?

MR. COBB: The question -- it needs to be a point of record, Your Honor, in view of the extended discussion of hierarchy and such earlier this morning. We must round it out at this point. The Watch Tower Magazine is drawing attention to the form of government for Jehovah's Witnesses.

MR. SMITH: Object. Hearsay.

THE COURT: It is hearsay. The only thing you can -- you can use it to cross examine, but I don't see that there is anything --

MR. COBB: I just want to read it and ask him a question.

MR. SMITH: Objection. Hearsay.

THE COURT: Let's read it.

MR. COBB: He verified the publishers earlier.

THE COURT: That's not necessarily appropriate. Read the statement. Then I will tell you if can ask him a question about it.

MR. COBB: "To get away from the hierarchal structure prevalent in Christendom" -- I will stop the there.

THE COURT: No. That's not admissible. The objection is sustained.

MR. COBB: Your Honor, has not a context been created from earlier discussions?

THE COURT: No. Objection sustained.

MR. COBB: Q. Can I ask him directly: Do you believe that the religious organization known as Jehovah's Witnesses is a hierarchal religious organization within the meaning of hierarchy as employed in Christendom?

MR. SMITH: Object to the question.

THE COURT: His belief -- it doesn't matter. What we have is the evidence we have.

MR. COBB: Very good.

I wanted to, when it is time, have one rebuttal on point.

THE COURT: Okay. You can step down unless

there is any redirect.

MR. SMITH: No, Your Honor.

MR. ROUSE: No, Your Honor.

THE COURT: Let's take our fifteen minute break. Then we will come back and finish.

(Short break taken.)

THE COURT: Rebuttal witness, Mr. Cobb?

Does the defense rest at this point?

MR. ROUSE: No. We had one more witness.

THE COURT: I don't think that is really necessary to be honest. If it is necessary after rebuttal, I will call him.

Nothing else? So, just argument.

MR. SMITH: Just by point of reference, the one witness we were going to call was one of the elders who was removed along with Mr. Cobb and Mr. St. Clair who was serving also as a board member. If the Court finds there would be any other probative value out of that.

THE COURT: It might be. Can you give me -- proffer as to testimony.

MR. SMITH: Essentially he will testify that Jehovah's Witnesses are a hierarchal religion, that his appointment came from the national office. His removal came from the national office. And that he participated in and supported the election of new officers in September of 2010 and subsequently. And as based upon

his many years as one of Jehovah's Witnesses and also as an appointed elder, those steps were consistent with the guidelines from the national organization.

THE COURT: I am thinking that may be duplicative. I think we have enough evidence of that. So, I think it would be -- yeah, I think it would be duplicative. I think the evidence is quite clear that it is, at least in my view, structured or hierarchal organization, that appointments do come from the top down. And so that is, I think, where I am looking at. We are getting into sort of the argument and I have a few questions.

MR. SMITH: If I can just let him know that he is dismissed.

THE COURT: Sure.

MR. COBB: We are agreeable to this.

MR. SMITH: No. We are objecting to its admission.

MR. COBB: I am sorry. I thought up you were --

MR. SMITH: I said we are not.

THE COURT: So, nobody to make a foundation for it. So, what is it, Mr. Cobb?

MR. COBB: This is a highly significant document.

THE COURT: What is it?

MR. COBB: It is a letter from Watch Tower Bible and Tract Society. Highly relevant to these proceedings. Establishing our recognition of corporate law and our submission to it.

THE COURT: It is hearsay. It is 30 something years ago. There is nobody from this organization to present it. So, I can't consider it.

MR. COBB: I think, Mr. Rouse -- well --

MR. ROUSE: We objected to it.

THE COURT: There is just no foundation for it. I will not receive it into evidence.

MR. COBB: Okay.

THE COURT: I think the arguments are fairly clear. I think what you are claiming, Mr. Cobb, is that this is not a really hierarchal organization that California corporate law controls, that you and the others should have been voted out by the members before the other people were voted in. I assume that is pretty much what you are saying. Does that sort of distill it into --

MR. COBB: Yes, that is a very key part of it is basically because that's a requirement of the code itself. Part of what we are talking to, whether directly or indirectly, is what supersedes. So, the code says if you do not have bylaws, which we did not have bylaws, you default to the code. The code was not

followed. That prompts the basis of this review. The code doesn't allow for any other interpretation beyond that.

THE COURT: Let's hear what Mr. Rouse has to say.

MR. ROUSE: Well, essentially I just read a couple of sentences from Watson v. Jones, U. S. Supreme Court, said about this. We sort of rest on that, that -- I am quoting. It says, "The right to organize voluntary religious associations for ecclesiastical government of all the individual members, congregations and officers within the general association is unquestioned. All that unite themselves to such a body do so with an implied consent to this government and are bound to submit to it. It would be a vein consent and would lead to the total subversion of such religious bodies if someone agreed by one of their decisions could appeal to the secular courts to have them reversed."

So, that's sort of where we leave it.

THE COURT: Mr. Cobb, that is the state of the law. How do you get around that?

MR. COBB: Well, it is not too difficult because what balances that particular statement, which I do agree with, obviously how can you not, but without that statement is what we get out of the Employment Division versus Smith, Supreme Court case examining how

to apply neutral points of law in the case of religious conviction, which is precisely the element that exists here.

So, that is binding regardless of the level of consideration. The point that came out of there essentially is in the case of a neutral point of law that is not aimed specifically at the restriction or inhibition of a religious group or belief, then state courts are free to regulate that law.

So, there are a set of beliefs that exist amongst Jehovah's Witnesses. However, there is an acceptance of the importance of being in compliance with law that is a feature of our communication and a way that we live. It is a point of our religious beliefs, compliance of the law, and the directives that we receive about ownership incorporation, which was significance of documents that I tried to show, that we are in adherence to those things.

So, the Supreme Court established if it is a neutral point of law it applies. And if it has the tendency to marginally inconvenience religious custom or practice or point of view, basically the Court in Scalia said, "Too bac. Go by what the law saws."

So, we have neutral point of law here, corporate law. It was not followed on any level. And the defendant wants to essentially brush that to the

side on the face of religious belief.

THE COURT: What's the citation for the case you are indicating?

MR. COBB: I have it right here. 494 U. S. 872, 1990.

THE COURT: What do you claim that case stands for?

MR. COBB: The short name of it?

THE COURT: No. What is the principal that it stands for?

MR. COBB: Basic point --

THE COURT: What is the name of the title of the case?

MR. COBB: Long or short?

THE COURT: Short is fine.

MR. COBB: Employment Division versus Smith.

This is standing constitutional law on this very subject. It is highly significant in view of these proceedings.

The Supreme Court has established that the laws are in effect for anyone, irrespective of religious views, as long as the laws are not targeting or seeking to oppress by singling out a specific belief or group. If that is not occurring, and I think it is obvious that the California Corporations Code was not developed to target Jehovah's Witnesses, then any corporations

employed by local congregations of Jehovah's Witnesses are subject to the laws as stated just like anybody else. So, if this was a consideration of a transition of board members for Apple Computer --

THE COURT: Doesn't that deal with actually employment issues though?

MR. COBB: No. What it deals with is application of neutral law. Neutral law. As it may potentially infringe upon religious belief. This is going back, you know, Mr. --

THE COURT: Let me just take a quick look at the case. So, just stand by, everybody.

(Short break taken.)

THE COURT: The case you mentioned, Mr. Cobb, is not applicable. This involves firing of employees of a rehabilitation program for peyote use. It does not involve at all what the structural organization of a particular religion, which is what this case is about.

MR. COBB: Would you not agree it is about the application of corporate law as stated in state level?

THE COURT: No. It does not apply to -- in all the evidence of case law I am familiar with is talking about religious institutions structure, especially hierarchal organization. Clearly the First Amendment trumps that.

MR. COBB: But the free exercise clause merits

freedom of belief. And so I find it interesting that Jehovah's Witnesses as a religious organization do not view to find them as a hierarchal organization.

THE COURT: I am sorry. That they what?

MR. COBB: The religious organization known as Jehovah's Witnesses does not view or define itself as hierarchal.

THE COURT: I respectfully disagree. I find based upon the presentation of the evidence that it is a hierarchal organization.

MR. COBB: To the exclusion of specific assertions to the contrary by the religious organization itself?

THE COURT: That's my finding of fact which is binding. That's what my view of the evidence is, that it is a hierarchal organization essentially controlled top down from the top.

I mean, I can tell you where I'm going and you can try to get me to change my mind, that is: It's -- you are appointed by -- ultimately by the governing bodies you said that you were. You are subject to their removal. And it's not for me to get involved in the middle of how the Jehovah's Witnesses group wants to organize their body of -- their organizational body. To me that's right in the heart of the First Amendment and not for this court, a secular court, to be involved in

that.

MR. COBB: But would not the free exercise clause create a point of constraint for the courts if the entity itself, the religious entity itself, specifically does not define itself?

THE COURT: I am finding the evidence shows it is a hierarchal organization. Even if it weren't, I'm not sure it would make a huge difference. But this is clearly from all the testimony, and especially the testimony of the last witness, that it is a hierarchal organization. I think the defense would agree, am I correct, to point that out?

MR. SMITH: Yes.

MR. ROUSE: They don't like the term "hierarchy." They don't use it in the literature, but the point I made the courts use it. The courts use that term.

THE COURT: Right. They may not specifically use that term, but it is clearly a hierarchal organization. I mean, that's what all the evidence is. You were appointed by them. You serve at their pleasure. You can be removed by them. And they did. It's not for me to get in the middle of that dispute and get the secular courts involved in it.

MR. COBB: And there is no effort to create that impasse from a religious standpoint and just focus

the reality the corporate law of the State of California.

THE COURT: But that is trumped by the First Amendment, Mr. Cobb. It is. So, that is far more important than a simple corporation law in California.

And the thing is, what I have to do is I have to read in this 5617 hearing I think I have to view it not in a vacuum, but along with the First Amendment. And that gives me ultimately the decision as to what to do in this case. And my decision is going to be -- I will let you make one last shot at it -- but my tentative decision is to dismiss the case under the provision of the Corporations Code and in light of the First Amendment. Is there any other way I need to phrase that, counsel?

MR. ROUSE: I wouldn't, Your Honor.

THE COURT: I want to give you the last word, Mr. Cobb. I understand that it has been very difficult for you, what has happened and what you have gone through. But the point is, it is like this Court just can't intervene in disputes like this. Specifically the one you are involved in.

There is also -- I could even without the First Amendment I think it is realistic to say that based upon these articles of incorporation and the bylaws that you are not eligible to serve in there anyway, and that

essentially worked as the de facto removal of you, even if the First Amendment did not apply.

MR. COBB: Even though those bylaws were not in effect for the corporation?

THE COURT: Well, they are in effect now.

MR. COBB: By virtue of individuals who didn't necessarily have legal standing to perform said actions?

THE COURT: Well, that I disagree with. So, that is another ground for my holding, which is the articles of incorporation and the bylaws themselves. They -- that is what happened. At this point you don't have standing to contest it out of that corporation. You are not eligible even according to the paragraph of bylaws -- I believe Paragraph 4. So, that is alternative ground to rule against you.

I understand what you are arguing. You are arguing these were not in effect at the time, but I am interested in what's happening now. You are not eligible to serve any more. You have been removed. And by the fact that you were removed to me is -- and no longer eligible is important under the meaning of these bylaws and articles of incorporation.

So, based upon those grounds I am going to dismiss the case, as I said, under both section 5617 of the Financial -- 5617 of the Corporations Code, as well as the First Amendment of the United States

Constitution.

I don't know if you need an order for me to --

MR. SMITH: Yes, we do, Your Honor.

THE COURT: If you want to submit an order to me, please submit it to plaintiff first to get his approval as to form, and then submit it to me within five days or so.

MR. SMITH: If I get some clarity. Is it an order or are we talking judgment since it is dismissal?

THE COURT: That's a great question because the Corporations Code doesn't specifically say whether it is an order or a judgment or a judgment. Maybe you can do some research and see if you can find out. But if you can put something together that you approve of, show it to Mr. Cobb, and see if it meets with his approval. Whether or not it does, he has a right to look at it before I actually sign it.

MR. SMITH: Five days?

THE COURT: Five days to look at it with the understanding I am gone between March 2nd and March 9th. So, if you don't get it to me by a week from today, it will have to wait until I get back.

Okay. So, that is it, everybody. Thank you.

-oOo-

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN MATEO)

I, JOAN WOODS, CERTIFIED SHORTHAND REPORTER, HEREBY CERTIFY:

THAT THE FOREGOING CONTAINS A TRUE, FULL AND CORRECT TRANSCRIPT OF THE PROCEEDINGS GIVEN AND HAD IN THE WITHIN ENTITLED MATTER, AND WAS REPORTED BY ME AT THE TIME AND PLACE MENTIONED, AND THEREAFTER TRANSCRIBED BY ME INTO LONGHAND TYPEWRITING, AND THAT THE SAME IS A CORRECT TRANSCRIPT OF THE PROCEEDINGS.

DATED: 3.14.12

REDWOOD CITY, CALIFORNIA.

_____

JOAN WOODS, CSR. 4573

-oOo-