

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TREVA THOMPSON, et al.,

Plaintiffs,

V.

JOHN MERRILL, in his Official Capacity
as Secretary of State of Alabama, et al.,

Defendants.

CIVIL ACTION NO.
2:16-cv-783-ECM-WMD

NOTICE OF EVIDENTIARY SUBMISSION

Attached herein are the exhibits in support of Plaintiffs' Brief in Opposition to Defendants'

Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 29, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record as listed below.

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Treva Thompson, Timothy Lanier,
Pamela King, Darius Gamble,
and Greater Birmingham Ministries,

Plaintiffs,

v.

John H. Merrill, in his official capacity
as Secretary of State, Cindy Sahlie, in
her official capacity as Chair of the
Montgomery County Board of Registrars,
and Leigh Gwathney, in her official
capacity as Chair of the Board of Pardons
and Paroles,

Defendants.

Civil Action No.
2:16-cv-783-ECM-SMD

**STATE DEFENDANTS OBJECTIONS AND RESPONSES TO
PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Fed. R. Civ. P. 26 and Fed. R. Civ. P. 36, Alabama Secretary of State John Merrill, Montgomery County Board of Registrars Chair Cindy Sahlie, and Alabama Board of Pardons and Paroles Chair Leigh Gwathney, collectively the State Defendants, hereby respond to Plaintiffs' First Set of Requests for Admissions.

General Statement

The State Defendants have relied on the information presently available to them. Further or different information may be discovered during this phase of the litigation. The State Defendants will amend their Objections and Responses to the extent required under Fed. R. Civ. P. 26.

The State Defendants Responses to each Request are made subject to all objections as to privilege, competence, relevance, materiality, propriety, and admissibility, as well as any and all

other objections and grounds that would require the exclusion of evidence. The State Defendants reserve the right to make any and all such objections at the appropriate time.

General Objections

The State Defendants object to Plaintiff's *Introduction* and each and every one of Plaintiffs' *Definitions* and *Instructions* to the extent they purport to impose any requirements or obligation beyond those contained in the Federal Rules of Civil Procedure, applicable orders of the Court, and/or related agreements.

The State Defendants object to responding to these Requests "under oath," as that is not required by Fed. R. Civ. P. 36. These Requests will be signed by counsel as is standard, *cf.* Fed. R. Civ. P. 26(g); Fed. R. Civ. P. 36(a)(3), and as Plaintiffs responded to the Requests for Admission propounded to them.

The State Defendants object to Plaintiffs' use of the phrase "HB 282" in *Definition nos. 1 & 2* and throughout the Requests to refer to Ala. Act No. 2017-378. It is highly unlikely that there is any Regular Session of the Alabama Legislature in which there is not a bill introduced bearing the designation HB 282 and, further, if the legislation had not been passed by the Legislature and signed into law by the Governor (or otherwise become law), it would be irrelevant. The legislation became Ala. Act No. 2017-378 and should be so cited, or, when appropriate, a citation to the codification at Ala. Code § 17-3-30.1 may be used.

The State Defendants object to *Definitions nos. 3, 4, 5, 6, 7 & 8* as inconsistent with the GUIDELINES TO CIVIL DISCOVERY PRACTICE IN THE MIDDLE DISTRICT OF ALABAMA which provide that "Lengthy and complex preambles and definitions in discovery requests are discouraged, particularly where they operate to give unexpected breadth or inappropriate effect to the meaning

of words which are otherwise reasonably clear.” GUIDELINES TO CIVIL DISCOVERY PRACTICE IN THE MIDDLE DISTRICT OF ALABAMA at § I. C.

The State Defendants object to Plaintiffs *Definition no. 6* which purports to include the State of Alabama within the definition of “Defendant” or “Defendants,” and the State Defendants further object to any subsequent use of the terms “Defendant” or “Defendants” where the Plaintiffs intend to include the State of Alabama. The State of Alabama has been dismissed as a party. Doc. 179-1 at 8, 25. Requests for Admission may only be served on a party. Fed. R. Civ. P. 36(a)(1). The State does not respond to the Requests.

The State Defendants object to Plaintiffs *Definition no. 7* which purports to demand responses of the State Defendants in their individual capacities. The State Defendants have been sued only in their official capacities. To the extent that Plaintiffs intended to demand a set of responses from each separate State Defendant, the State Defendants object because the Plaintiffs failed to propound separate Requests to each State Defendant (sometimes creating non-sensical situations, *e.g.*, Request Nos. 19, 20 & 21), instead propounding one set to them all, and because, despite a few non-sensical situations, the bulk of the State Defendants’ Objections and Responses will be the same such that producing three sets of Objections and Responses would be inconsistent with Fed. R. Civ. P. 1.

Finally, the State Defendants note that multiple Requests for Admission fail to comply with the requirement that “[e]ach matter must be separately stated.” Fed. R. Civ. P. 36(a)(2). They reserve the right to object to any subsequently-propounded Requests that they believe take the Plaintiffs beyond the 30 permitted by the Court.

Request for Admission No. 1:

Admit that Alabama has a long and unconscionable history of discrimination against Black Americans, including maintaining a system of enslavement of Black Americans until forced to abandon the practice after the loss of the Confederacy in the Civil War.

Response:

The State Defendants object to this Request as harassing and beyond the scope of discovery pursuant to Fed. R. Civ. P. 26(b)(1). *Cf. Grayson v. Comm’r, Ala. Dep’t of Corr.*, 869 F.3d 1204, 1245 (11th Cir. 2017) (“... Rule 36 ... constrains the drafter to seek admission of only that information which falls within the scope of discovery pursuant to Rule 26(b)(1), requires each proposed admission to be separately stated, and provides the opposing party a proper opportunity to admit or deny the information.”). The Supreme Court admonishes that “history did not end in 1965” and that the purpose of the Fifteenth Amendment is “not to punish the past.” *Shelby Co. v. Holder*, 570 U.S. 529, 552-53 (2013). Moreover, “past discrimination cannot, in the matter of original sin, condemn governmental action that is not itself unlawful.” *City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980). Similarly, the Middle District of Alabama has recently recognized that “... Alabama history did not begin and end with the Civil Rights Movement.” *Ala. State Conference of the N.A.A.C.P. v. Alabama*, ___ F.Supp.3d ___, 2020 WL 583803, *3 (M.D. Ala. Feb. 5, 2020). “As the United States Supreme Court has recognized, Alabama today is a vastly different place than it was even a half-century ago. *See generally Shelby Cty. v. Holder*, 570 U.S. 529 (2013). Overt discriminatory election devices have long been eliminated. Voter registration and turnout rates among African-Americans and whites have reached parity. In 2010 in Alabama, 74.38% of the black, voting-age population was registered to vote, compared to 74.35% of the white, voting-age population. In 2017, Doug Jones became the first Democrat to win a U.S. Senate seat in Alabama in a quarter century, in an election in which African-American votes were decisive.” *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *41 (citations omitted). In conclusion, the Court explained: “Alabama has come a long way because it had a long way to go. Much of Plaintiffs’ evidence was of the ‘turn back the clock’ variety which, while undeniable as

historical fact, must have an evidentiary connection to present realities” if it is to support Plaintiffs’ claims. *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *77.

The State Defendants further object to this Request as harassing in violation of Fed. R. Civ.

P. 26(g)(1)(B)(ii). The Eleventh Circuit has explained:

... Essentially, Rule 36 is a time-saver, designed “to expedite the trial and to relieve the parties of the cost of proving *facts that will not be disputed at trial*.” 8A Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, *Federal Practice and Procedure* § 2252 (2d ed.1994) (emphasis added). That is, when a party uses the rule to establish uncontested facts and to narrow the issues for trial, then the rule functions properly. When a party like Perez, however, uses the rule to harass the other side or, as in this case, with the wild-eyed hope that the other side will fail to answer and therefore admit essential elements (that the party has already denied in its answer), the rule’s time-saving function ceases; the rule instead becomes a weapon, dragging out the litigation and wasting valuable resources.

... Once a defendant has answered, moreover, it continues to be inappropriate for a plaintiff to re-serve the complaint in the form of a request for admissions in order to “require the defendant to admit or deny nearly every paragraph [of a complaint it has already answered].” ...

Perez v. Miami-Dade Cty., 297 F.3d 1255, 1268-69 (11th Cir. 2002) (citations omitted). This Request is substantially similar to elements of paragraph 83 of the original complaint, doc. 1 at ¶ 83.

Subject to the foregoing objections, the State Defendants admit that Alabama has a long history of discrimination against black Americans, including maintaining a system of slavery until the Union’s 1865 victory in the Civil War, and that these historic actions were unconscionable.

Request for Admission No. 2:

Admit that in the aftermath of the Civil War Alabama engaged in an “unrelenting historical agenda, spanning from the late 1800’s to the 1980’s, to keep its black citizens economically, socially, and politically downtrodden, from the cradle to the grave.”¹

¹ Plaintiffs’ footnote: *Dillard v. Crenshaw Cnty.*, 640 F.Supp. 1347, 1357 (M.D. [Ala.] 1986).

Response:

The State Defendants object to Plaintiffs' attempt to convert factual findings in prior litigation into established facts in the current litigation. *Cf. Grayson v. Comm'r, Ala. Dep't of Corr.*, 869 F.3d 1204, 1224-25 (11th Cir. 2017) (a district court cannot take judicial notice of the factual findings of another district court).

The State Defendants object to this Request as harassing and beyond the scope of discovery pursuant to Fed. R. Civ. P. 26(b)(1). *Cf. Grayson v. Comm'r, Ala. Dep't of Corr.*, 869 F.3d 1204, 1245 (11th Cir. 2017) (“... Rule 36 ... constrains the drafter to seek admission of only that information which falls within the scope of discovery pursuant to Rule 26(b)(1), requires each proposed admission to be separately stated, and provides the opposing party a proper opportunity to admit or deny the information.”). The Supreme Court admonishes that “history did not end in 1965” and that the purpose of the Fifteenth Amendment is “not to punish the past.” *Shelby Co. v. Holder*, 570 U.S. 529, 552-53 (2013). Moreover, “past discrimination cannot, in the matter of original sin, condemn governmental action that is not itself unlawful.” *City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980). Similarly, the Middle District of Alabama has recently recognized that “... Alabama history did not begin and end with the Civil Rights Movement.” *Ala. State Conference of the N.A.A.C.P v. Alabama*, ___ F.Supp.3d ___, 2020 WL 583803, *3 (M.D. Ala. Feb. 5, 2020). “As the United States Supreme Court has recognized, Alabama today is a vastly different place than it was even a half-century ago. *See generally Shelby Cty. v. Holder*, 570 U.S. 529 (2013). Overt discriminatory election devices have long been eliminated. Voter registration and turnout rates among African-Americans and whites have reached parity. In 2010 in Alabama, 74.38% of the black, voting-age population was registered to vote, compared to 74.35% of the white, voting-age population. In 2017, Doug Jones became the first Democrat to win a U.S. Senate

seat in Alabama in a quarter century, in an election in which African-American votes were decisive.” *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *41 (citations omitted). In conclusion, the Court explained: “Alabama has come a long way because it had a long way to go. Much of Plaintiffs’ evidence was of the ‘turn back the clock’ variety which, while undeniable as historical fact, must have an evidentiary connection to present realities” if it is to support Plaintiffs’ claims. *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *77.

The State Defendants further object to this Request as harassing in violation of Fed. R. Civ.

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. . . Once a defendant has answered, moreover, it continues to be inappropriate for a plaintiff to re-serve the complaint in the form of a request for admissions in order to “require the defendant to admit or deny nearly every paragraph [of a complaint it has already answered].” . . .

Perez v. Miami-Dade Cty, 297 F.3d 1255, 1268-69 (11th Cir. 2002) (citations omitted). This Request is substantially similar to elements of paragraph 83 of the original complaint, doc. 1 at ¶ 83.

Subject to the foregoing objections, denied.

Request for Admission No. 3:

Admit that Alabama’s history of racial discrimination in voting includes, among other things, the use of the following tactics for the purpose of disenfranchising Black citizens: terror and violence, economic intimidation, all-white primaries, bans on single-shot voting, at-large elections, vote dilution, literacy tests, poll taxes, grandfather clauses, criminal disenfranchisement, and good character tests.

Response:

The State Defendants object to this Request as harassing and beyond the scope of discovery pursuant to Fed. R. Civ. P. 26(b)(1). *Cf. Grayson v. Comm’r, Ala. Dep’t of Corr.*, 869 F.3d 1204, 1245 (11th Cir. 2017) (“... Rule 36 ... constrains the drafter to seek admission of only that information which falls within the scope of discovery pursuant to Rule 26(b)(1), requires each proposed admission to be separately stated, and provides the opposing party a proper opportunity to admit or deny the information.”). The Supreme Court admonishes that “history did not end in 1965” and that the purpose of the Fifteenth Amendment is “not to punish the past.” *Shelby Co. v. Holder*, 570 U.S. 529, 552-53 (2013). Moreover, “past discrimination cannot, in the matter of original sin, condemn governmental action that is not itself unlawful.” *City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980). Similarly, the Middle District of Alabama has recently recognized that “... Alabama history did not begin and end with the Civil Rights Movement.” *Ala. State Conference of the N.A.A.C.P. v. Alabama*, ___ F.Supp.3d ___, 2020 WL 583803, *3 (M.D. Ala. Feb. 5, 2020). “As the United States Supreme Court has recognized, Alabama today is a vastly different place than it was even a half-century ago. *See generally Shelby Cty. v. Holder*, 570 U.S. 529 (2013). Overt discriminatory election devices have long been eliminated. Voter registration and turnout rates among African-Americans and whites have reached parity. In 2010 in Alabama, 74.38% of the black, voting-age population was registered to vote, compared to 74.35% of the white, voting-age population. In 2017, Doug Jones became the first Democrat to win a U.S. Senate seat in Alabama in a quarter century, in an election in which African-American votes were decisive.” *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *41 (citations omitted). In conclusion, the Court explained: “Alabama has come a long way because it had a long way to go. Much of Plaintiffs’ evidence was of the ‘turn back the clock’ variety which, while undeniable as

historical fact, must have an evidentiary connection to present realities” if it is to support Plaintiffs’ claims. *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *77.

The State Defendants further object to this Request as harassing in violation of Fed. R. Civ.

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... Essentially, Rule 36 is a time-saver, designed “to expedite the trial and to relieve the parties of the cost of proving *facts that will not be disputed at trial*.” 8A Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, *Federal Practice and Procedure* § 2252 (2d ed.1994) (emphasis added). That is, when a party uses the rule to establish uncontested facts and to narrow the issues for trial, then the rule functions properly. When a party like Perez, however, uses the rule to harass the other side or, as in this case, with the wild-eyed hope that the other side will fail to answer and therefore admit essential elements (that the party has already denied in its answer), the rule’s time-saving function ceases; the rule instead becomes a weapon, dragging out the litigation and wasting valuable resources.

... Once a defendant has answered, moreover, it continues to be inappropriate for a plaintiff to re-serve the complaint in the form of a request for admissions in order to “require the defendant to admit or deny nearly every paragraph [of a complaint it has already answered].” ...

Perez v. Miami-Dade Cty., 297 F.3d 1255, 1268-69 (11th Cir. 2002) (citations omitted). This Request is substantially similar to elements of paragraph 83 of the original complaint, doc. 1 at ¶ 83.

The State Defendants object on grounds that the Request is ambiguous as to whether it is asking about State action or actions committed by anyone within the borders of the State.

The State Defendants object on grounds that the Request does not comply with the requirement in Fed. R. Civ. P. 36(a)(2) that “[e]ach matter must be separately stated.”

Subject to the foregoing objections, the State Defendants:

- Deny the Request as it pertains to criminal disenfranchisement;
- Deny the Request as it pertains to at-large elections, if the Request concerns actions by the State;

- Admit the Request as it pertains to at-large elections, if the Request concerns actions occurring within the borders of the State; and,
- Construe the remaining listed items in the Request to concerns action occurring within the borders of the State and not necessarily State action and, on that understanding, admit the same.

Request for Admission No. 4:

Admit that many criminal provisions adopted in Alabama during the post-Civil War era were adopted with the purpose and effect of facilitating the arrest of freed Black citizens, re-subjecting them to involuntary servitude through the system of convict leasing, and stripping from them the right to vote through criminal disenfranchisement.

Response:

The State Defendants object to this Request as harassing and beyond the scope of discovery pursuant to Fed. R. Civ. P. 26(b)(1). *Cf. Grayson v. Comm’r, Ala. Dep’t of Corr.*, 869 F.3d 1204, 1245 (11th Cir. 2017) (“... Rule 36 ... constrains the drafter to seek admission of only that information which falls within the scope of discovery pursuant to Rule 26(b)(1), requires each proposed admission to be separately stated, and provides the opposing party a proper opportunity to admit or deny the information.”). The Supreme Court admonishes that “history did not end in 1965” and that the purpose of the Fifteenth Amendment is “not to punish the past.” *Shelby Co. v. Holder*, 570 U.S. 529, 552-53 (2013). Moreover, “past discrimination cannot, in the matter of original sin, condemn governmental action that is not itself unlawful.” *City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980). Similarly, the Middle District of Alabama has recently recognized that “... Alabama history did not begin and end with the Civil Rights Movement.” *Ala. State Conference of the N.A.A.C.P v. Alabama*, ___ F.Supp.3d ___, 2020 WL 583803, *3 (M.D. Ala. Feb. 5, 2020). “As the United States Supreme Court has recognized, Alabama today is a vastly different place than it was even a half-century ago. *See generally Shelby Cty. v. Holder*, 570 U.S.

529 (2013). Overt discriminatory election devices have long been eliminated. Voter registration and turnout rates among African-Americans and whites have reached parity. In 2010 in Alabama, 74.38% of the black, voting-age population was registered to vote, compared to 74.35% of the white, voting-age population. In 2017, Doug Jones became the first Democrat to win a U.S. Senate seat in Alabama in a quarter century, in an election in which African-American votes were decisive.” *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *41 (citations omitted). In conclusion, the Court explained: “Alabama has come a long way because it had a long way to go. Much of Plaintiffs’ evidence was of the ‘turn back the clock’ variety which, while undeniable as historical fact, must have an evidentiary connection to present realities” if it is to support Plaintiffs’ claims. *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *77.

The State Defendants further object to this Request as harassing in violation of Fed. R. Civ.

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. . . Once a defendant has answered, moreover, it continues to be inappropriate for a plaintiff to re-serve the complaint in the form of a request for admissions in order to “require the defendant to admit or deny nearly every paragraph [of a complaint it has already answered].” . . .

Perez v. Miami-Dade Cty, 297 F.3d 1255, 1268-69 (11th Cir. 2002) (citations omitted). This Request may be read to capture the bottom line of paragraphs 101 through 105 of the original complaint, doc. 1 at ¶ 101-05.

The State Defendants object to the Request as vague in that it does not identify any criminal provisions.

The State Defendants object that the Request is unduly burdensome and not proportional to the needs of the case insofar as it asks about the purpose and effect of “many” unidentified criminal provisions—each of which could presumably occupy a lawsuit in itself—and all of which would appear to pre-date the enactment of any laws challenged in this litigation by more than a century.

The State Defendants object on grounds that the Request does not comply with the requirement in Fed. R. Civ. P. 36(a)(2) that “[e]ach matter must be separately stated.”

Subject to the foregoing objections, the State Defendants have made reasonable inquiry and the information they know or can readily obtain is insufficient to enable them to admit or deny, and thus the State Defendants assert lack of knowledge or information as the reason for failing to admit or deny.

Request for Admission No. 5:

Admit that the 1901 Alabama Constitution was adopted with the purpose of preserving white supremacy in Alabama and disenfranchising Black citizens.

Response:

The State Defendants object to this Request as harassing and beyond the scope of discovery pursuant to Fed. R. Civ. P. 26(b)(1). *Cf. Grayson v. Comm’r, Ala. Dep’t of Corr.*, 869 F.3d 1204, 1245 (11th Cir. 2017) (“... Rule 36 ... constrains the drafter to seek admission of only that information which falls within the scope of discovery pursuant to Rule 26(b)(1), requires each proposed admission to be separately stated, and provides the opposing party a proper opportunity to admit or deny the information.”). The Supreme Court admonishes that “history did not end in 1965” and that the purpose of the Fifteenth Amendment is “not to punish the past.” *Shelby Co. v.*

Holder, 570 U.S. 529, 552-53 (2013). Moreover, “past discrimination cannot, in the matter of original sin, condemn governmental action that is not itself unlawful.” *City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980). Similarly, the Middle District of Alabama has recently recognized that “. . . Alabama history did not begin and end with the Civil Rights Movement.” *Ala. State Conference of the N.A.A.C.P. v. Alabama*, ___ F.Supp.3d ___, 2020 WL 583803, *3 (M.D. Ala. Feb. 5, 2020). “As the United States Supreme Court has recognized, Alabama today is a vastly different place than it was even a half-century ago. *See generally Shelby Cty. v. Holder*, 570 U.S. 529 (2013). Overt discriminatory election devices have long been eliminated. Voter registration and turnout rates among African-Americans and whites have reached parity. In 2010 in Alabama, 74.38% of the black, voting-age population was registered to vote, compared to 74.35% of the white, voting-age population. In 2017, Doug Jones became the first Democrat to win a U.S. Senate seat in Alabama in a quarter century, in an election in which African-American votes were decisive.” *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *41 (citations omitted). In conclusion, the Court explained: “Alabama has come a long way because it had a long way to go. Much of Plaintiffs’ evidence was of the ‘turn back the clock’ variety which, while undeniable as historical fact, must have an evidentiary connection to present realities” if it is to support Plaintiffs’ claims. *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *77.

The State Defendants further object to this Request as harassing in violation of Fed. R. Civ.

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. . . Once a defendant has answered, moreover, it continues to be inappropriate for a plaintiff to re-serve the complaint in the form of a request for admissions in order to “require the defendant to admit or deny nearly every paragraph [of a complaint it has already answered].” . . .

Perez v. Miami-Dade Cty, 297 F.3d 1255, 1268-69 (11th Cir. 2002) (citations omitted). This Request is substantially similar to paragraph 95 of the original complaint, doc. 1 at ¶ 95.

Subject to the foregoing objections, the State Defendants deny that the 1901 Alabama Constitution was adopted with “*the* purpose of preserving white supremacy in Alabama and disenfranchising Black citizens,” but the State Defendants admit that was *a* purpose.

Request for Admission No. 6:

Admit that disenfranchisement based on the commission of a crime of moral turpitude, as enacted in the 1901 Alabama Constitution, was adopted to preserve white supremacy in Alabama politics.

Response:

The State Defendants object to this Request as harassing and beyond the scope of discovery pursuant to Fed. R. Civ. P. 26(b)(1). *Cf. Grayson v. Comm’r, Ala. Dep’t of Corr.*, 869 F.3d 1204, 1245 (11th Cir. 2017) (“... Rule 36 ... constrains the drafter to seek admission of only that information which falls within the scope of discovery pursuant to Rule 26(b)(1), requires each proposed admission to be separately stated, and provides the opposing party a proper opportunity to admit or deny the information.”). The Supreme Court admonishes that “history did not end in 1965” and that the purpose of the Fifteenth Amendment is “not to punish the past.” *Shelby Co. v. Holder*, 570 U.S. 529, 552-53 (2013). Moreover, “past discrimination cannot, in the matter of original sin, condemn governmental action that is not itself unlawful.” *City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980). Similarly, the Middle District of Alabama has recently recognized that “... Alabama history did not begin and end with the Civil Rights Movement.” *Ala. State*

Conference of the N.A.A.C.P. v. Alabama, ___ F.Supp.3d ___, 2020 WL 583803, *3 (M.D. Ala. Feb. 5, 2020). “As the United States Supreme Court has recognized, Alabama today is a vastly different place than it was even a half-century ago. *See generally Shelby Cty. v. Holder*, 570 U.S. 529 (2013). Overt discriminatory election devices have long been eliminated. Voter registration and turnout rates among African-Americans and whites have reached parity. In 2010 in Alabama, 74.38% of the black, voting-age population was registered to vote, compared to 74.35% of the white, voting-age population. In 2017, Doug Jones became the first Democrat to win a U.S. Senate seat in Alabama in a quarter century, in an election in which African-American votes were decisive.” *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *41 (citations omitted). In conclusion, the Court explained: “Alabama has come a long way because it had a long way to go. Much of Plaintiffs’ evidence was of the ‘turn back the clock’ variety which, while undeniable as historical fact, must have an evidentiary connection to present realities” if it is to support Plaintiffs’ claims. *Ala. State Conference of the N.A.A.C.P.*, 2020 WL 583803, *77.

Subject to the foregoing objection, denied.

Request for Admission No. 7:

Admit that when *Hunter v. Underwood* was decided, Black Alabamians were nearly twice as likely to be disenfranchised due to a criminal conviction than white Alabamians.²

Response:

The State Defendants have made reasonable inquiry and the information they know or can readily obtain is insufficient to enable them to admit or deny, and thus the State Defendants assert lack of knowledge or information as the reason for failing to admit or deny.

² Plaintiffs’ footnote: *Hunter v. Underwood*, 471 U.S. 222, 227 (1985).

Request for Admission No. 8:

Admit that only ten years after the Supreme Court held that Alabama had intentionally discriminated against black citizens by disenfranchising people on the basis of crimes of moral turpitude, the majority-white Alabama Legislature proposed a constitutional amendment, Amendment 579, to re-insert the term “moral turpitude” into the criminal disenfranchisement provision of the Alabama Constitution.

Response:

The State Defendants object on grounds that the Request does not comply with the requirement in Fed. R. Civ. P. 36(a)(2) that “[e]ach matter must be separately stated.”

The State Defendants deny that “the Supreme Court held that Alabama had intentionally discriminated against black citizens by disenfranchising people on the basis of crimes of moral turpitude.”

The State Defendants deny that the phrase “moral turpitude” was ever stricken from the Alabama Constitution.

The State Defendants admit that *Hunter v. Underwood* held former Section 182 of the Alabama Constitution unconstitutional insofar as it applied to misdemeanants; all felonies remained disenfranchising following that holding.

The State Defendants further admit that the 1995 Alabama Legislature proposed a constitutional amendment to the people for consideration and that the amendment was adopted by the voters and became Constitutional Amendment 579.

The State Defendants further admit that Constitutional Amendment 579 repealed the Suffrage and Elections article adopted in 1901 and replaced it with new provisions that, *inter alia*, reduced the scope of disqualifying felonies *from* all felonies *to* only those felonies which involve moral turpitude.

The State Defendants finally admit that blacks comprised approximately 23% of the Members of the 1995 Alabama Legislature, and thus the majority of the Members were white.

Request for Admission No. 9:

Admit that in 1995, approximately 70 percent of imprisoned Alabamians were Black.³

Response:

Denied.

Request for Admission No. 10:

Admit that at the time of its passage, Amendment 579 disenfranchised ten times as many Black Alabamians as white Alabamians.

Response:

The State Defendants have made reasonable inquiry and the information they know or can readily obtain is insufficient to enable them to admit or deny, and thus the State Defendants assert lack of knowledge or information as the reason for failing to admit or deny.

Request for Admission No. 11:

Admit that Black Alabamians are more likely to have a non-zero balance for the fines, fees, and restitution imposed at the time of their sentencing.

Response:

Pursuant to Fed. R. Civ. P. 26(b)(1), the State Defendants object that the Request is unduly burdensome and not proportional to the needs of the case insofar as it seeks non-probative information.

Certificates of Eligibility to Register to Vote are available to felons who have been disenfranchised based on their conviction for a felony involving moral turpitude and who meet certain requirements. Ala. Code § 15-22-36.1. Among the requirements are that the felon “has paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on disqualifying cases.” Ala. Code § 15-22-36.1(a). This Request does not consider

³ Plaintiffs’ footnote: Anne Hull, *Chained to a New Kind of Justice*, St. Petersburg Times, June 25, 1995, at A1.

court costs. Further, this Request does not limit itself to convictions for felonies of moral turpitude, but instead encompasses felons who are not disenfranchised as well as felons who are disenfranchised for a felony with no associated court-ordered monies and who also have non-disqualifying felony convictions with court-ordered monies. Further, this Request does not exclude felons who are ineligible for a Certificate either based on conviction for specifically-delineated felonies, Ala. Code § 15-22-36.1(g), or for non-compliance with other Certificate requirements, *e.g.*, completion of sentence including parole, Ala. Code § 15-22-36.1(a). Thus, no response will reveal anything about who is eligible for a Certificate. (This objection should not be read to suggest that the appropriate analysis is even possible to perform; but inappropriate analyses are not a valid substitute.)

Count 13 specifically challenges the requirement in Ala. Code § 15-22-36.1(a) that a felon needs to have “paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on disqualifying cases” to be eligible for a Certificate. It is brought on behalf of Plaintiff Thompson and Plaintiff Gamble alone, and no facts concerning the eligibility of others is relevant to resolving this Count. To the extent that this Request is propounded in support of Plaintiffs’ Count 13, the State Defendants object on grounds that is “grossly disproportional to the needs of the case,” doc. 200 at 4, pursuant to Fed. R. Civ. P. 26(b)(1). Moreover, this Count does not have a racial component at all. Doc. 1 at ¶¶ 245-252; doc. 93 at ¶¶ 65-69.

To the extent that Plaintiffs propounded this Request in search of evidence concerning Counts 1 and 2, which allege intentional racial discrimination, the information sought remains not probative. It is not probative because Counts 1 and 2 challenge a constitutional amendment that was proposed by the Alabama Legislature in 1995 and adopted by the Alabama electorate in 1996.

Doc. 1 at ¶¶ 161-168; doc. 93 at ¶¶ 44-51. When the Alabama electorate approved the constitutional amendment—which reduced the scope of disqualifying felonies from all felonies to only those of moral turpitude and which eliminated racist language from the Alabama Constitution—they could not know that the Alabama Legislature would create a restoration process in 2003 that considered payment of court-ordered monies, Ala. Act No. 2003-145, or that it would revise that program in 2016 to reduce the court-ordered monies that needed to be paid to those imposed on the disqualifying convictions at the time of sentencing, Ala. Act No. 2016-387. Moreover, even if one wants to view these actions on a continuum, this Request would not be helpful because, for the reasons explained above, it does not capture anything about who is eligible for a Certificate.

Finally, Plaintiffs’ attempt to impugn intent across decades and actors is deliberately oblivious to the enfranchising nature of the changes Alabama has been making over the years, while seeking racial data that there is no evidence were ever considered. In this way, the Request is also harassing. Fed. R. Civ. P. 26(g)(1)(B)(ii).

Request for Admission No. 12:

Admit that Black Alabamians are less likely than white Alabamians to have the financial and economic resources to pay the fines, fees, or restitution imposed at the time of their sentencing.

Response:

Pursuant to Fed. R. Civ. P. 26(b)(1), the State Defendants object that the Request is unduly burdensome and not proportional to the needs of the case insofar as it seeks non-probative information.

Certificates of Eligibility to Register to Vote are available to felons who have been disenfranchised based on their conviction for a felony involving moral turpitude and who meet certain requirements. Ala. Code § 15-22-36.1. Among the requirements are that the felon “has

paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on disqualifying cases.” Ala. Code § 15-22-36.1(a). This Request does not consider court costs. Further, this Request does not limit itself to convictions for felonies of moral turpitude, but instead encompasses felons who are not disenfranchised as well as felons who are disenfranchised for a felony with no associated court-ordered monies and who also have non-disqualifying felony convictions with court-ordered monies. Further, this Request does not exclude felons who are ineligible for a Certificate either based on conviction for specifically-delineated felonies, Ala. Code § 15-22-36.1(g), or for non-compliance with other Certificate requirements, *e.g.*, completion of sentence including parole, Ala. Code § 15-22-36.1(a). Thus, no response will reveal anything about who is eligible for a Certificate. (This objection should not be read to suggest that the appropriate analysis is even possible to perform; but inappropriate analyses are not a valid substitute.)

Count 13 specifically challenges the requirement in Ala. Code § 15-22-36.1(a) that a felon needs to have “paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on disqualifying cases” to be eligible for a Certificate. It is brought on behalf of Plaintiff Thompson and Plaintiff Gamble alone, and no facts concerning the eligibility of others is relevant to resolving this Count. To the extent that this Request is propounded in support of Plaintiffs’ Count 13, the State Defendants object on grounds that is “grossly disproportional to the needs of the case,” doc. 200 at 4, pursuant to Fed. R. Civ. P. 26(b)(1). Moreover, this Count does not have a racial component at all. Doc. 1 at ¶¶ 245-252; doc. 93 at ¶¶ 65-69.

To the extent that Plaintiffs propounded this Request in search of evidence concerning Counts 1 and 2, which allege intentional racial discrimination, the information sought remains not

probative. It is not probative because Counts 1 and 2 challenge a constitutional amendment that was proposed by the Alabama Legislature in 1995 and adopted by the Alabama electorate in 1996. Doc. 1 at ¶¶ 161-168; doc. 93 at ¶¶ 44-51. When the Alabama electorate approved the constitutional amendment—which reduced the scope of disqualifying felonies from all felonies to only those of moral turpitude and which eliminated racist language from the Alabama Constitution—they could not know that the Alabama Legislature would create a restoration process in 2003 that considered payment of court-ordered monies, Ala. Act No. 2003-145, or that it would revise that program in 2016 to reduce the court-ordered monies that needed to be paid to those imposed on the disqualifying convictions at the time of sentencing, Ala. Act No. 2016-387. Moreover, even if one wants to view these actions on a continuum, this Request would not be helpful because, for the reasons explained above, it does not capture anything about who is eligible for a Certificate.

Plaintiffs’ attempt to impugn intent across decades and actors is deliberately oblivious to the enfranchising nature of the changes Alabama has been making over the years, while seeking racial data that there is no evidence were ever considered. In this way, the Request is also harassing. Fed. R. Civ. P. 26(g)(1)(B)(ii).

Finally, the State Defendants object because the Request is ambiguous and unclear insofar as it refers to “financial and economic resources,” without explaining how those two terms are defined to capture different concepts.

Subject to the foregoing objections, the State Defendants have made reasonable inquiry and the information they know or can readily obtain is insufficient to enable them to admit or deny, and thus the State Defendants assert lack of knowledge or information as the reason for failing to admit or deny.

Request for Admission No. 13:

Admit that Black Alabamians are more likely than white Alabamians to have their Certificate of Eligibility to Register to Vote applications denied because of outstanding fines, fees, or restitution.

Response:

Count 13 specifically challenges the requirement in Ala. Code § 15-22-36.1(a) that a felon needs to have “paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on disqualifying cases” to be eligible for a Certificate. It is brought on behalf of Plaintiff Thompson and Plaintiff Gamble alone, and no facts concerning the eligibility of others is relevant to resolving this Count. To the extent that this Request is propounded in support of Plaintiffs’ Count 13, the State Defendants object on grounds that is “grossly disproportional to the needs of the case,” doc. 200 at 4, pursuant to Fed. R. Civ. P. 26(b)(1). Moreover, this Count does not have a racial component at all, doc. 1 at ¶¶ 245-252; doc. 93 at ¶¶ 65-69, which makes any response non-probative as to Count 13, and thus beyond the proper scope of discovery, *see* Fed. R. Civ. P. 26(b)(1).

To the extent that Plaintiffs propounded this Request in search of evidence concerning Counts 1 and 2, which allege intentional racial discrimination, the information sought is not probative and thus is beyond the proper scope of discovery, *see* Fed. R. Civ. P. 26(b)(1). It is not probative because Counts 1 and 2 challenge a constitutional amendment that was proposed by the Alabama Legislature in 1995 and adopted by the Alabama electorate in 1996. Doc. 1 at ¶¶ 161-168; doc. 93 at ¶¶ 44-51. When the Alabama electorate approved the constitutional amendment—which reduced the scope of disqualifying felonies from all felonies to only those of moral turpitude and which eliminated racist language from the Alabama Constitution—they could not know that the Alabama Legislature would create a restoration process in 2003 that considered payment of court-ordered monies, Ala. Act No. 2003-145, or that it would revise that program in 2016 to

reduce the court-ordered monies that needed to be paid to those imposed on the disqualifying convictions at the time of sentencing, Ala. Act No. 2016-387.

Plaintiffs' attempt to impugn intent across decades and actors is deliberately oblivious to the enfranchising nature of the changes Alabama has been making over the years, while seeking racial data that there is no evidence were ever considered. In this way, the Request is also harassing. Fed. R. Civ. P. 26(g)(1)(B)(ii).

Subject to the foregoing objections, the State Defendants have made reasonable inquiry and the information they know or can readily obtain is insufficient to enable them to admit or deny, and thus the State Defendants assert lack of knowledge or information as the reason for failing to admit or deny.

Request for Admission No. 14:

Admit that until HB 282 was enacted, there was no single, defined, authoritative list of "felon[ies] involving moral turpitude."

Response:

The State Defendants object on grounds that the Request does not comply with the requirement in Fed. R. Civ. P. 36(a)(2) that "[e]ach matter must be separately stated." In the alternative, the Request is vague and ambiguous.

The State Defendants further object to this Request as harassing in violation of Fed. R. Civ. P. 26(g)(1)(B)(ii). The Eleventh Circuit has explained:

. . . Essentially, Rule 36 is a time-saver, designed "to expedite the trial and to relieve the parties of the cost of proving *facts that will not be disputed at trial*." 8A Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, Federal Practice and Procedure § 2252 (2d ed.1994) (emphasis added). That is, when a party uses the rule to establish uncontested facts and to narrow the issues for trial, then the rule functions properly. When a party like Perez, however, uses the rule to harass the other side or, as in this case, with the wild-eyed hope that the other side will fail to answer and therefore admit essential elements (that the party has already denied in its answer), the rule's time-saving function ceases; the rule instead becomes a weapon, dragging out the litigation and wasting valuable resources.

. . . Once a defendant has answered, moreover, it continues to be inappropriate for a plaintiff to re-serve the complaint in the form of a request for admissions in order to “require the defendant to admit or deny nearly every paragraph [of a complaint it has already answered].” . . .

Perez v. Miami-Dade Cty, 297 F.3d 1255, 1268-69 (11th Cir. 2002) (citations omitted). This Request is substantially similar to paragraph 5 of the supplemental complaint, doc. 93 at ¶ 5.

Subject to the foregoing objections, the State Defendants deny that moral turpitude (and thus felonies of moral turpitude) was not defined prior to Ala. Act No. 2017-378, and further deny that there were not lists which cited to, and/or, were derived from authorities.

Subject to the foregoing objections, the State Defendants admit that, prior to Ala. Act No. 2017-378, there was no comprehensive and authoritative list of which felonies involve moral turpitude.

Request for Admission No. 15:

Admit that because “felony involving moral turpitude” was undefined prior to the enactment of HB 282, whether an individual with a criminal conviction was able to register and vote depended on the decision of the registrar that reviewed his or her registration application.

Response:

Denied.

Request for Admission No. 16:

Admit that pre-HB 282, the treatment of some felonies as disqualifying or not differed from county registrar to county registrar, leading the ability of some individuals with felony convictions to vote to depend on the county of their residence.

Response: The State Defendants object on grounds that the Request is so broad and vague that any response would not be probative, and therefore the Request is beyond the scope of discovery pursuant to Fed. R. Civ. P. 26(b)(1).

Subject to the foregoing objection, the State Defendants deny that the ability to vote depended on the county of residence; felons had the right to appeal to the court system and could

ultimately receive a definitive answer from the Supreme Court of Alabama, which answer would apply statewide. The State Defendants admit that it is possible that the Boards of Registrars in the different counties and over the time span from 1996 to 2017 might not have always reached the same determinations, and it was for this reason that the Secretary of State pushed for a legislative list—beginning before this lawsuit was filed and culminating in the passage and implementation of Ala. Act No. 2017-378.

Request for Admission No. 17:

Admit that the official policy of the Secretary of State is that the definition of crimes of moral turpitude adopted in HB 282 applies retroactively to those with felony convictions predating the passage of HB 282.

Response:

The State Defendants object to this Request as harassing in violation of Fed. R. Civ. P.

26(g)(1)(B)(ii). The Eleventh Circuit has explained:

... Essentially, Rule 36 is a time-saver, designed “to expedite the trial and to relieve the parties of the cost of proving *facts that will not be disputed at trial*.” 8A Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, Federal Practice and Procedure § 2252 (2d ed.1994) (emphasis added). That is, when a party uses the rule to establish uncontested facts and to narrow the issues for trial, then the rule functions properly. When a party like Perez, however, uses the rule to harass the other side or, as in this case, with the wild-eyed hope that the other side will fail to answer and therefore admit essential elements (that the party has already denied in its answer), the rule’s time-saving function ceases; the rule instead becomes a weapon, dragging out the litigation and wasting valuable resources.

... Once a defendant has answered, moreover, it continues to be inappropriate for a plaintiff to re-serve the complaint in the form of a request for admissions in order to “require the defendant to admit or deny nearly every paragraph [of a complaint it has already answered].” ...

Perez v. Miami-Dade Cty, 297 F.3d 1255, 1268-69 (11th Cir. 2002) (citations omitted). This Request is substantially similar to paragraph 14 of the supplemental complaint, doc. 93 at ¶ 14.

The State Defendants further object to this Request as beyond the scope of discovery pursuant to Fed. R. Civ. P. 26(b)(1) because each individual Plaintiff’s felony was disenfranchising

at the time it was committed. Plaintiff Treva Thompson was convicted of theft of property (1st degree) in 2005, years after it was established that theft is a crime of moral turpitude. *Stahlman v. Griffith*, 456 So.2d 287 (Ala. 1984). Plaintiff Timothy Lanier and Plaintiff Pamela King were convicted of felonies (burglary 1st and murder, respectively) before the 1996 Constitutional Amendment; at the time they committed their felonies, all felonies were disenfranchising. Finally, Plaintiff Darius Gamble trafficked in cannabis in 2006, years after it was established that this was a felony of moral turpitude. *Ex parte McIntosh*, 443 So.2d 1283 (Ala. 1983). Thus, none of the individual Plaintiffs are disqualified based on felonies that had not been determined to be disqualifying at the time of the offense.

Subject to the foregoing objection, the State Defendants admit (again) that the Secretary of State has interpreted Ala. Act No. 2017-378, as codified and amended at Ala. Code § 17-3-30.1, to be an elections statute which governs elections held after its effective date. This has the effect Plaintiffs describe as retroactive application to felons who wish to vote in current and future elections but who committed felonies involving moral turpitude before Ala. Act No. 2017-378 took effect.

Request for Admission No. 18:

Admit that the Readmission Act for Alabama limits Alabama's power to disenfranchise to deprive any citizen or class of citizens "except as punishment for such crimes as are now felonies at common law" and that Alabama relies on this exception to justify Amendment 579 and HB 282.

Response:

The State Defendants object on grounds that the Request does not comply with the requirement in Fed. R. Civ. P. 36(a)(2) that "[e]ach matter must be separately stated."

The State Defendants object to the first portion of the Request (concerning the legal impact of the Readmission Act) as it calls for admission of a question of law, which is an impermissible subject for a Request for Admission. *See* Fed. R. Civ. P. 36 (limiting Requests for Admission to

“facts, the application of law to fact, or opinions about either”), *see also In re Tobkin*, 578 Fed. App’x 962, 964 (11th Cir. 2014) (*per curiam*) (“A party may not request an admission of a legal conclusion under Rule 36, but only ‘facts, the application of law to fact, or opinions about either.’ Fed.R.Civ.P. 36(a)(1); *cf. Playboy Enters., Inc. v. Welles*, 60 F.Supp.2d 1050, 1057 (S.D.Cal.1999) (‘Requests for admissions cannot be used to compel an admission of a conclusion of law.’).”

Subject to the foregoing objection, denied.

Request for Admission No. 19:

Admit that Alabama’s voter registration form does not specify which felonies are disqualifying for voter eligibility.

Response:

The State Defendants object to this Request as harassing in violation of Fed. R. Civ. P. 26(g)(1)(B)(ii). The Eleventh Circuit has explained: “Essentially, Rule 36 is a time-saver, designed ‘to expedite the trial and to relieve the parties of the cost of proving *facts that will not be disputed at trial.*’ 8A Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, Federal Practice and Procedure § 2252 (2d ed.1994) (emphasis added). That is, when a party uses the rule to establish uncontested facts and to narrow the issues for trial, then the rule functions properly.” *Perez v. Miami-Dade Cty*, 297 F.3d 1255, 1268 (11th Cir. 2002). Plaintiffs are not so using Fed. R. Civ. P. 36 to establish uncontested facts in this Request. Plaintiffs know full well the content of Alabama’s voter registration form. It is a public document. The STATE OF ALABAMA MAIL-IN VOTER REGISTRATION FORM is available online from the Secretary of State’s *Alabama Votes* website (sos.alabama.gov/alabama-votes) at https://www.sos.alabama.gov/sites/default/files/voter-pdfs/nvra-2.pdf?_ga=2.258237964.702304799.1585433142-118809247.1463675496, and a copy of that

form and the STATE OF ALABAMA AGENCY BASED VOTER REGISTRATION APPLICATION were filed with the Court last summer, doc. 171-1 at 4-7. This Request is not about establishing facts.

The State Defendants object to Plaintiffs' use of the word "specify" in this Request because Plaintiffs intend the use of this word to call for admission of a question of law, *see, e.g.*, doc. 97 at 35-36, doc. 179-1 at 21, which is an impermissible subject for a Request for Admission, *see* Fed. R. Civ. P. 36 (limiting Requests for Admission to "facts, the application of law to fact, or opinions about either"), *see also In re Tobkin*, 578 Fed. App'x 962, 964 (11th Cir. 2014) (*per curiam*) ("A party may not request an admission of a legal conclusion under Rule 36, but only 'facts, the application of law to fact, or opinions about either.' Fed.R.Civ.P. 36(a)(1); *cf. Playboy Enters., Inc. v. Welles*, 60 F.Supp.2d 1050, 1057 (S.D.Cal.1999) ('Requests for admissions cannot be used to compel an admission of a conclusion of law.')."

The State Defendants further object to this Request as harassing in violation of Fed. R. Civ. P. 26(g)(1)(B)(ii) because there can be no doubt that the Secretary of State (against whom Count 18 is directed) intends to defend against that Count and denies that the State's voter registration forms violate the National Voter Registration Act of 1993. *Cf. Perez v. Miami-Dade Cty*, 297 F.3d 1255, 1269 (11th Cir. 2002) ("[W]here the defendants had denied Perez's core allegations, . . . Perez's continued service of the same request for admissions in the face of these denials was an abuse of Rule 36.").

Given that this Request improperly calls for an admission of a question of law, and one which the Secretary of State has clearly disputed, the State Defendants further object to this Request as harassing and improper in violation of Fed. R. Civ. P. 26(g)(1)(B)(ii) to the extent that it has been propounded "with the wild-eyed hope that the other side will fail to answer and

therefore admit essential elements (that the party has already denied in its answer).” *Perez v. Miami-Dade Cty*, 297 F.3d 1255, 1268 (11th Cir. 2002).

Subject to the foregoing objections, the State Defendants admit that Alabama’s voter registration form does not *list* which felonies involve moral turpitude, and thus are disenfranchising, and instead provides:



Request for Admission No. 20:

Admit that some Board of Pardons and Paroles officials advise people with felony convictions not to apply for a pardon until they have paid their outstanding legal financial obligations.

Response:

The State Defendants object to this Request to the extent it is directed at the Secretary of State and the Montgomery County Board of Registrars Chair as neither of them oversee the Board of Pardons and Paroles.

To the extent that this Request is propounded in support of Plaintiffs’ Count 13, the State Defendants object on grounds that it is “grossly disproportional to the needs of the case,” doc. 200 at 4, pursuant to Fed. R. Civ. P. 26(b)(1).

Subject to the foregoing objection, denied.

Request for Admission No. 21:

Admit that YOUR office does not consider ability to pay outstanding fines, fees, or restitution when deciding whether to deny an application for a CERV.

Response:

The State Defendants object to this Request to the extent it is directed at the Secretary of State and the Montgomery County Board of Registrars Chair as neither of them oversee an office which grants or denies Certificates of Eligibility to Register to Vote.

The State Defendants further object to the extent that the Request suggests that there is decision-making in the sense of discretion involved in the grant or denial of Certificates of Eligibility to Register to Vote. Ala. Code § 15-22-36.1(b) provides that the Certificates “shall be granted upon a determination that all of the requirements in subsection (a) are fulfilled.”

Subject to the foregoing objections, admitted.

Respectfully submitted,

Steve Marshall
Attorney General

James W. Davis (ASB-4063-I58J)
Deputy Attorney General

s/ Misty S. Fairbanks Messick
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Certificate of Service

Pursuant to an agreement memorialized in the Report of the Parties' Planning Meeting, electronic service is acceptable for this document. I hereby certify that I have served a copy of the foregoing document on Danielle Lang (dlang@campaignlegalcenter.org), Mark P. Gaber (mgaber@campaignlegal_center.org), Molly Danahy (mdanahy@campaignlegal.org); Jim Blacksher (jblacksher@ns.sympatico.ca), Jason P. Hipp (JHipp@jenner.com), and J. Mitch McGuire (jmcguire@mandabusinesslaw.com), six of the counsel for Plaintiffs, *via* email on this the 10th day of April 2020.

s/ Misty S. Fairbanks Messick
Of Counsel

EXHIBIT 2

1 KAREN OWEN, Ph.D.

2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE MIDDLE DISTRICT OF ALABAMA

4 NORTHERN DIVISION

5
6 TREVA THOMPSON, et al.,

7 Plaintiffs,

8 vs.

CIVIL ACTION NO.
2:16-cv-783-ECM-WMD

9 JOHN MERRILL, in his official
10 capacity as Secretary of
State of Alabama, et al.,

11 Defendants.

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18 * * * * *

19 The remote deposition of KAREN OWEN,
20 Ph.D., was taken before Greta H. Duckett, Certified
21 Court Reporter, Registered Professional Reporter,
22 and Certified Realtime Reporter, as Commissioner,
23 on Friday, July 10, 2020, commencing at
24 approximately 9:43 a.m., pursuant to the
25 stipulations set forth herein. JOB NO. 181474

1	KAREN OWEN, Ph.D.	Page 2
2	* * * * *	
3		
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21		
22	ALSO PRESENT:	
23	Danny Li	
24	Caleb Jackson	
25	Ellen Boettcher	
	Lindsey Ricchi	

1	KAREN OWEN, Ph.D.	Page 4
2	EXHIBIT INDEX	
3		
4		
5	NUMBER	PAGE
6	EXHIBIT 1 Declaration of Karen L. Owen, Ph.D.	37
7		
8	EXHIBIT 2 Deporting Undesirable Women by Pooja R. Dadhanian	66
9	EXHIBIT 3 Hunter v. Underwood, 471 U.S. 222 (1985)	149
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

1	KAREN OWEN, Ph.D.	Page 3
2	* * * * *	
3	INDEX	
4		
5	EXAMINATION INDEX	
6		
7	KAREN OWEN, Ph.D.	
8	BY MR. GABER	6
9	BY MS. MESSICK	215
10	BY MR. GABER	228
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

1	KAREN OWEN, Ph.D.	Page 5
2	* * * * *	
3		
4	STIPULATIONS	
5	It is hereby stipulated and agreed by and	
6	between counsel representing the parties that the	
7	deposition of KAREN OWEN, Ph.D., is taken pursuant	
8	to the Federal Rules of Civil Procedure and that	
9	said deposition may be taken before Greta H.	
10	Duckett, Certified Court Reporter, Registered	
11	Professional Reporter, Certified Realtime Reporter,	
12	and Commissioner for the State of Alabama at Large,	
13	without the formality of a commission; that	
14	objections to questions other than objections as to	
15	the form of the questions need not be made at this	
16	time but may be reserved for a ruling at such time	
17	as the deposition may be offered in evidence or	
18	used for any other purpose as provided for by the	
19	Federal Rules of Civil Procedure.	
20	It is further stipulated and agreed by	
21	and between counsel representing the parties in	
22	this case that said deposition may be introduced at	
23	the trial of this case or used in any manner by	
24	either party hereto provided for by the Federal	
25	Rules of Civil Procedure.	

Page 6 1 KAREN OWEN, Ph.D. 2 COURT REPORTER: Counsel, would 3 you like the usual stipulations? 4 MS. MESSICK: I believe that we 5 are agreeing to the usual stipulations, 6 with the exception that we do want to 7 read and sign. Traditionally, a waiver 8 of that is part of the usual 9 stipulations. The other thing that we 10 made clear on the record was that it's 11 not just objections to form. Of 12 course, we are also going to object to 13 privilege, where there's a privilege. 14 So I believe that actually is the usual 15 stipulations, and that is how we 16 proceeded yesterday. 17 MR. GABER: Okay. That's fine 18 with me. 19 KAREN OWEN, Ph.D., 20 the witness, having first been duly sworn 21 to speak the truth, the whole truth and nothing but 22 the truth, testified as follows: 23 EXAMINATION 24 BY MR. GABER: 25 Q. Good morning, Dr. Owen. My name is	Page 7 1 KAREN OWEN, Ph.D. 2 Mark Gaber, and I represent the plaintiffs in this 3 action. I'm going to ask you some questions today. 4 Have you been deposed before? 5 A. Yes. 6 Q. How many times? 7 A. I believe five, perhaps six times. 8 Q. And what were the nature of those 9 cases? 10 A. I have worked on several different 11 cases at the state level and at the federal level, 12 either involving, like, a Section 2 voting rights 13 case or a statutorial path of a voter photo ID 14 case; and I testified by deposition before those 15 cases went to trial. 16 Q. And which particular cases were those? 17 A. I would have to look exactly at the 18 case. But the first case I was involved in was 19 Wright v. Sumter County in Georgia, and then I was 20 involved in the State Conference of the NAACP 21 versus Fayette County Board of Education in 22 Georgia. I was involved in the Lee versus the 23 Virginia State Board of Elections, and I was 24 involved in and testified in the Common Cause 25 versus Lewis case in North Carolina.
Page 8 1 KAREN OWEN, Ph.D. 2 Q. And in those cases, were you testifying 3 on behalf of plaintiffs or defendants? 4 A. I was involved with the defense, the 5 State. 6 Q. Have you ever testified on behalf of a 7 plaintiff in a case? 8 A. No. I was contacted by plaintiffs to 9 be involved in a case in Hancock County, Georgia, 10 but they settled before expert testimony needed to 11 be filed. 12 Q. What was the nature of the plaintiffs' 13 claim in that case? 14 A. In Hancock County, it was about voter 15 registrations and voter files, where individuals 16 were being purged from the voter rolls. And I did 17 not -- 18 Q. And was -- 19 A. And I did not -- I'm sorry. I was just 20 going to say I did not actually sign a contract. 21 It was just discussion with the attorneys about 22 moving forward. 23 Q. What was the organization that 24 contacted you in that case? 25 A. I was contacted by -- I believe it was	Page 9 1 KAREN OWEN, Ph.D. 2 the State NAACP. 3 Q. And they were concerned that people 4 were being purged from the rolls? 5 A. I believe that's correct, but it was a 6 couple of years ago. And I don't recall the exact 7 nature of it, since we did not engage in a formal 8 contract to work since they then settled the case. 9 Q. What was the nature of your at least 10 initial discussion as to your retention? What was 11 the work that you were to do for them? 12 A. I was -- 13 MS. MESSICK: Object to the form. 14 Go ahead and answer. 15 A. I was asked to basically look at the 16 voter registration files and to look at who was 17 registered to vote and do some preliminary analysis 18 on registration and who was eligible to vote, but I 19 did not -- again, I didn't look at any data. I 20 didn't move forward. 21 Q. Okay. So it sounds like there's the 22 four lawsuits, and in each case, that was on behalf 23 of the defendant, the State? 24 A. Correct. 25 Q. When was the most recent testimony you

Page 10 1 KAREN OWEN, Ph.D. 2 gave in a deposition? 3 A. I gave a deposition in June of 2019 in 4 the North Carolina case. 5 Q. In any of these cases, then, did you 6 proceed to testify at trial? 7 A. Yes. 8 Q. And which of them? 9 A. I testified in the Sumter County case 10 in Georgia; I testified in court for the Virginia 11 voter ID case; and I testified in Common Cause 12 versus Lewis, which was the North Carolina case. 13 Q. In any of these cases, did the court 14 ever conclude that your testimony was unpersuasive? 15 A. I would have to go and look at the 16 opinion, but I don't recall. 17 Q. Did you read the Court's opinion 18 following the conclusion of your testimony in each 19 of these cases? 20 A. I probably did at the time, but sitting 21 here today, I don't recall each component of those 22 opinions. 23 Q. Okay. Do you have a recollection from 24 the Common Cause North Carolina case, whether your 25 testimony was credited by the Court?	Page 11 1 KAREN OWEN, Ph.D. 2 A. I don't recall. 3 Q. There are some ground rules I probably 4 should have gone over before that line, but -- and 5 since you've done this before, this won't be new, 6 but we are doing this on videoconference, which 7 makes it a little bit more important that -- that 8 we follow these. 9 So as you know, the -- the court 10 reporter is transcribing everything that we say, so 11 it's important -- and I'll -- I'll do my best to do 12 this as well -- that we talk slowly and that you 13 let me finish my question. I will then let you 14 finish your answer. I'll do my best to do that. 15 Unlike a normal conversation, it can be a little 16 stilted and odd, but -- and the video adds a little 17 extra component of that, so please do wait until I 18 finish my question. 19 The -- the court reporter can only 20 record a verbal response, not a head shake or a, 21 you know, "uh-huh," so if you could please do that. 22 Does that sound okay to you? 23 A. Yes. 24 Q. We can take a break whenever it is 25 convenient for you, whenever you need it. I only
Page 12 1 KAREN OWEN, Ph.D. 2 ask that if there is a pending question, that you 3 answer that question and then let me know, and we 4 can -- we can then take a break. Okay? 5 A. Yes. 6 Q. You understand that you're under oath 7 today? 8 A. Yes. 9 Q. Are you taking any medications that 10 would impair your ability to testify? 11 A. No. 12 Q. And is there any reason that you can 13 think of why you would not be able to give me 14 truthful answers today? 15 A. I'm sorry. You cut off. Could you 16 re-ask that question? 17 Q. Sure. The question was: Is there any 18 reason that you can think of that would prevent you 19 from giving truthful answers today? 20 A. No. 21 Q. And I will do my best to ask cogent 22 questions, but I don't always succeed in that. So, 23 please, if you don't understand something, tell me, 24 and I'll clarify it or seek to clarify it. But if 25 you don't say that, I will -- will assume that you	Page 13 1 KAREN OWEN, Ph.D. 2 understood the question that was asked. 3 Does that sound fair? 4 A. Yes. 5 Q. Who first contacted you about 6 testifying -- testifying in this case? 7 A. Misty Messick contacted me. 8 Q. And when were you contacted by 9 Ms. Messick? 10 A. At the beginning of 2019. 11 Q. What is your understanding of the scope 12 of the work that you were assigned to conduct in 13 this case? 14 A. When the attorneys and I discussed the 15 work, they asked me if I -- 16 MS. MESSICK: Whoa, whoa, whoa, 17 whoa. Please do not describe the 18 content of any conversations we had. 19 Those are privileged. Just let him 20 know your understanding of the scope of 21 your work without revealing anything 22 that we said to you. 23 THE WITNESS: Okay. 24 MS. MESSICK: Your understanding 25 of the scope without reciting

Page 14 1 KAREN OWEN, Ph.D. 2 conversations. 3 A. So when -- 4 Q. I'm sorry. This is just -- just to be 5 clear, if my question ever raises the issue of a 6 conversation you've had with your attorney, it will 7 only be about the fact of that conversation. So 8 I'm not asking you in any of my questions to tell 9 me what your attorneys said to you. 10 Does that make sense? 11 A. Yes. 12 Q. Okay. 13 A. So my understanding, when I was asked 14 about being an expert, was could I provide a 15 written expert opinion related to legislative 16 history, could I discuss constitutional history of 17 legislative enactment and reform, did I feel that 18 that was something that I could provide expert 19 knowledge on, given my background involved in 20 legislative politics and legislative work. 21 Q. Was there anything else? 22 MS. MESSICK: Object to the form. 23 She just answered a different 24 question than you asked, so I would 25 like you to please be clear if you are	Page 15 1 KAREN OWEN, Ph.D. 2 asking her to follow up on her answer 3 or your question. 4 BY MR. GABER: 5 Q. Was there anything else in your answer 6 to my question that you wanted to add? 7 MS. MESSICK: I'm going to 8 object, because I think that her answer 9 was more revealing conversations than 10 the scope of her work. The question 11 was what was the scope of your work in 12 this case, ultimately. 13 BY MR. GABER: 14 Q. What ended up being the scope of your 15 work? 16 A. I was to provide an expert report. 17 Q. And what were the opinions that you 18 were asked to proffer in the expert report? 19 MS. MESSICK: Object to the form. 20 A. I'm sorry. Could you restate your 21 question? 22 Q. Yeah. What were the opinions that you 23 were asked to proffer in the expert report? 24 MS. MESSICK: Object to the form. 25 A. So in my report, if you have an exact
Page 16 1 KAREN OWEN, Ph.D. 2 place where you would like me to testify about or 3 answer your question on the report, I can. My 4 opinions are in my report. 5 Q. Are there any opinions that you intend 6 to offer in this case that are not contained in 7 your report? 8 A. No. 9 Q. Do you know why you were approached to 10 serve as an expert? 11 A. No, I do not. 12 Q. Do you have any prior relationship with 13 the attorneys from the Alabama Attorney General's 14 Office? 15 A. No. 16 Q. Had you met Ms. Messick before in any 17 setting? 18 A. I'm not sure what you mean by "before." 19 Q. Before she contacted you to become, 20 potentially, an expert witness. 21 A. No. 22 Q. Did you sign a retention agreement 23 regarding your work in this case? 24 A. Yes. 25 Q. And do you still have a copy of that	Page 17 1 KAREN OWEN, Ph.D. 2 retention agreement? 3 A. Yes, at my home. 4 Q. Do you submit invoices for your work in 5 this case? 6 A. Yes. 7 Q. And who do you submit those invoices 8 to? 9 A. I submit those to Ms. Messick. 10 Q. And how are your invoices paid? 11 A. They are paid from the State of 12 Alabama. 13 Q. I mean, more logistically than that. 14 Do you get a check or is it a direct deposit? Or 15 what's the method that you receive payment? 16 A. I received a check. 17 Q. You're being paid \$300 per hour for 18 review and preparation of your report; is that 19 correct? 20 A. Yes. 21 Q. And does that include the time you 22 spend testifying here today? 23 A. I'm compensated at the 300 an hour for 24 this type of work, but the contract is I was paid 25 \$150 an hour for travel.

Page 18 1 KAREN OWEN, Ph.D. 2 Q. How many hours have you spent -- 3 excluding the travel aspect of it, how many hours 4 have you spent working on this case? 5 A. I have not finalized what I did in June 6 and now July. But prior to that, I probably -- and 7 at this time, I'm just recalling, I don't have the 8 specifics in front of me -- maybe about 50 hours. 9 That might be a little high. I can't recall 10 exactly. 11 Q. How much have you been paid for your 12 work on this case so far? 13 MS. MESSICK: Object to the form. 14 A. I am not exactly sure the total amount. 15 I have recently received a check that was for about 16 \$4,000, but, again, I don't recall all of the 17 different ones I have received. 18 Q. And you'll be billing for the time you 19 spend at this deposition; is that right? 20 A. Yes. Yes. 21 Q. Is there any cap on the total amount 22 that you can spend -- that you can bill for this 23 case? 24 A. I would have to go back and look at the 25 exact contract. I believe we did discuss that	Page 19 1 KAREN OWEN, Ph.D. 2 there was a cap, but I don't recall -- and I 3 apologize, because I haven't looked at that 4 agreement in over a year. The cap was \$50,000, I 5 believe. It could have been more than that, 6 including the travel aspect. 7 Q. And has that cap been adjusted at any 8 time since then? 9 A. No. 10 Q. If you spend more time on the case than 11 the cap would allow, is it your understanding that 12 you won't get paid for that time? 13 A. That's not been a discussion I've had. 14 Q. Have you ever lived in Alabama? 15 A. No. 16 Q. Did you travel to Alabama to conduct 17 your work on preparing your report in this case? 18 A. I have visited Alabama, yes. I have 19 interviewed individuals, and I have visited the 20 State Archives. 21 Q. How many times did you come to Alabama? 22 How many trips did you make for your work in this 23 case? 24 A. I -- sorry. I -- so there's two 25 things: I have made one trip related specifically
Page 20 1 KAREN OWEN, Ph.D. 2 to the Archives for this case. The interviews are 3 related to an academic project I'm working on, and 4 so those interviews were conducted on my own time 5 and with the project that I was working on for the 6 book. A colleague and I are working on that 7 project together. 8 Q. Starting with the Archives trip, how -- 9 where is the Archives located? 10 A. It's here in Montgomery. 11 Q. And when did you make that trip? 12 A. Last summer, 2019. 13 Q. How long were you in Montgomery for 14 that trip? 15 A. It was just a day. 16 Q. And about how long did you spend at the 17 Archives? 18 A. I believe I was there about six hours. 19 Q. Did you -- when you were here on the 20 trip, did you meet with anyone else to assist in 21 preparation for your report? 22 A. No. 23 Q. You didn't conduct any interviews 24 during that trip? 25 A. No.	Page 21 1 KAREN OWEN, Ph.D. 2 Q. What is the topic of the -- the project 3 that's unrelated to this case, what is the topic of 4 that report? 5 MS. MESSICK: Object to the form. 6 A. My colleague and I are working on 7 investigating and looking into some women who 8 served in Alabama politics from the 1930s to the 9 1970s. 10 Q. You are currently a professor of 11 political science at the University of West 12 Georgia; is that correct? 13 A. Yes. 14 Q. What is your current salary for that 15 position at West Georgia? 16 A. It's public record. It's available. I 17 make, I believe, 56,000. 18 Q. Do you have any other sources of income 19 besides your salary at West Georgia? 20 A. No. 21 Q. Other, that is, than your testimony -- 22 your work on this case; is that right? 23 A. I don't have any additional income. 24 Q. What led you to decide to become an 25 expert witness in this case?

Page 22 1 KAREN OWEN, Ph.D. 2 A. I believe that I had the knowledge and 3 the ability to provide information that would be 4 helpful in explaining and looking at the scope of 5 what I was asked to look at. 6 Q. Did you -- in deciding to become an 7 expert, did you consider whether you agreed with 8 the positions that are being taken by the State in 9 this case? 10 A. No, I didn't look exactly at what the 11 position of the State of Alabama was or what they 12 were defending. I looked at specifically what they 13 were asking me to provide in my expert report, if I 14 could do the research and if I could provide an 15 analysis. 16 Q. So did you -- you didn't consult any 17 newspaper stories or any other public records about 18 the nature of this lawsuit or the claims or the 19 defenses that are raised in it? 20 A. No. 21 Q. Presumably, you were aware that the 22 State was defending its disenfranchisement law; is 23 that fair? 24 A. Yes. 25 Q. In preparing for today's deposition,	Page 23 1 KAREN OWEN, Ph.D. 2 did you speak to anyone besides the defendants' 3 attorneys to prepare for today's deposition? 4 A. No. 5 Q. What about in preparing for your -- in 6 producing your -- your expert report? Who did you 7 speak to, to assist in gathering information or 8 preparing your report? 9 MS. MESSICK: Object to the form. 10 A. I wrote this report. It is my work. I 11 did interview individuals in relation to the 12 report, and I spoke to the attorneys about when the 13 report would be due and, you know, submitting it to 14 them. 15 Q. Who did you interview? 16 A. I interviewed speaker Seth Hammett of 17 the Alabama House, former speaker, and I 18 interviewed Lieutenant Governor and former Attorney 19 General Bill Baxley. And I did speak to former 20 governor Don Siegelman, but the latter of those 21 two, Baxley and Siegelman, I was scheduled to 22 interview them related to my book project on women 23 in Alabama politics. And then I had already been 24 under contract with this case, so I asked them just 25 a brief question if they even recalled the 1996
Page 24 1 KAREN OWEN, Ph.D. 2 amendment. 3 Q. What did the former Lieutenant governor 4 say to you in your conversation? 5 A. I would have to go back to look -- 6 MS. MESSICK: Object to the form. 7 A. -- exactly to those notes that I took, 8 and then I don't -- in my report, I don't quote 9 Lieutenant Governor Bill Baxley related to the 10 actual 1996 amendment. 11 Q. Did your conversation with -- is it 12 Baxley? Is that what you said? 13 A. Yes. 14 Q. B-A-X-L-E-Y? 15 A. Correct. 16 Q. Did your conversation with Lieutenant 17 Governor Baxley inform in any way the -- your 18 analysis or your conclusions? 19 A. So my conversation with him did help me 20 understand more of who he is and what he stood for. 21 At the time, he was lieutenant governor and wanting 22 to see constitutional reform efforts. So I 23 definitely understood more about him, his 24 philosophy at that time, and I do put this in the 25 report, that he shared with me the story and showed	Page 25 1 KAREN OWEN, Ph.D. 2 me how he had a letter from white supremacists and 3 how he had responded back on formal letterhead from 4 the attorney general's office, you know, saying 5 they could kiss his, with an expletive. And, you 6 know, that was part of our conversation we had, 7 which then informed, you know, my analysis and 8 understanding, again, of who he was and what ideas 9 he was standing for. 10 Q. How long was your conversation with 11 Lieutenant -- former Lieutenant Governor Baxley? 12 A. We had about a three-and-a-half-hour 13 interview. 14 Q. And you said that you took notes. Do 15 you still have a copy of those notes? 16 A. Yes. 17 Q. Why didn't you quote anything that 18 Lieutenant Governor Baxley said in his conversation 19 with you in your report? 20 MS. MESSICK: Object to the form. 21 A. As I recall right now, I'm not sure 22 why. Perhaps I didn't find anything he said 23 directly related to what I needed to put in. And, 24 again, just to clarify, my intentions for 25 interviewing Lieutenant Governor Bill Baxley were

Page 26 1 KAREN OWEN, Ph.D. 2 not to interview him related to this case, it was 3 related to a project -- an academic project on 4 women in politics, and he had served with many of 5 these women in constitutional offices and we were 6 trying to understand his relationship with those 7 women. 8 And it was just an aside that I asked 9 about the 1996. And it actually came up after he 10 shared with me, if I recall, the letter from the 11 white supremacists in that time. But I didn't feel 12 like -- again, the interview was for this specific 13 purpose to be included in this expert report. 14 Q. Did Lieutenant Governor Baxley say 15 anything that, in your view, contradicted your 16 analysis or opinion in this case? 17 MS. MESSICK: Object to the form. 18 A. I don't recall sitting here at the 19 time. 20 Q. Your notes would assist in 21 understanding whether that was the case? 22 MS. MESSICK: Object to the form. 23 A. No. 24 Q. Why not? 25 A. I don't think my notes have very much	Page 27 1 KAREN OWEN, Ph.D. 2 detail related to this part of the conversation, as 3 I recall. It was, again, about the academic pieces 4 for the book project. 5 Q. Do you recall sitting here whether your 6 notes contain any information about your 7 conversation about this case? 8 A. I don't recall that they have any 9 details related to this. 10 Q. They may, you just don't recall; is 11 that your testimony? 12 A. No, I don't think they do have anything 13 related to this. 14 Q. What about -- one more question. The 15 notes, are they -- did you type them on your 16 computer, or were they handwritten notes? 17 A. They are handwritten notes. 18 Q. Have you provided those notes to 19 Ms. Messick in this case? 20 A. No. 21 Q. What about your conversation with 22 former Governor Don Siegelman? When did you have 23 that conversation? 24 A. Last summer, 2019. 25 Q. And what was the purpose of that
Page 28 1 KAREN OWEN, Ph.D. 2 conversation? 3 A. We -- my colleague and I interviewed 4 former Governor Siegelman about his role when he 5 first ran in Alabama for secretary of state, 6 because one of the constitutional offices that we 7 are interested in is the secretary of state's 8 position, because it was held by women for numerous 9 years, and he would have relationships with many of 10 these women that we were investigating and 11 analyzing. And so we talked to him about those 12 women and his work and that office, the secretary 13 of state. 14 Q. And how did the subject of this case 15 come up in that conversation? 16 A. I don't recall that we specifically 17 discussed this case. I asked if he recalled the 18 1996 amendment and if it passed and if there was -- 19 (Simultaneous speakers.) 20 BY MR. GABER: 21 Q. I'm sorry. Continue. 22 A. -- and if there was support in Alabama. 23 Q. And what did Governor Siegelman say? 24 A. At this -- today, I don't recall his 25 exact answer. I couldn't directly quote what he	Page 29 1 KAREN OWEN, Ph.D. 2 said, and I don't have notes from that interview 3 with him. As I remember, he said -- and I'm 4 paraphrasing something here -- he didn't really 5 remember much about the amendment and he -- 6 interesting about that conversation was that former 7 Governor Siegelman spent a lot of time being a 8 politician and trying to get us to buy a new book 9 he was writing. 10 Q. Did you buy it? 11 A. No. 12 Q. How long was your conversation with 13 Governor Siegelman? 14 A. I don't recall specifically, but maybe 15 about an hour. 16 Q. That was a phone conversation -- yeah, 17 a phone conversation? 18 A. No, it was an in-person interview. 19 Q. Where did that happen? 20 A. We met in Birmingham. 21 Q. And where did -- was your conversation 22 with Lieutenant Governor Baxley phone or in person? 23 A. It was an in-person interview in his 24 office in Birmingham. 25 Q. Did you interview anyone else in

Page 30 1 KAREN OWEN, Ph.D. 2 preparation for your report in this case? 3 MS. MESSICK: Object to the form. 4 A. As I said earlier, I spoke to Seth 5 Hammett in relation to this report. 6 Q. Have you spoken to anyone else other 7 than Seth Hammett, Lieutenant Governor Baxley, and 8 Don Siegelman, to either learn anything or include 9 their information in your report? 10 A. I did not verbally speak, but I did 11 have an email correspondence with an individual at 12 the Archives, or maybe -- I'm sorry -- maybe she 13 worked for Legislative Services. I don't recall. 14 But I was asking for a particular journal 15 transcript, and she sent it to me via email. 16 Q. Did you talk to any current legislators 17 in -- related to your work in this case? 18 A. No. 19 Q. Have you ever spoken to any of the 20 current legislators in the Alabama legislature? 21 MS. MESSICK: Object to the form. 22 A. I'm not sure, as I sit here, that I 23 haven't at some point spoken to a member of the 24 Alabama legislature, but I can't recall right now 25 the conversation. I mean, in the line of work I	Page 31 1 KAREN OWEN, Ph.D. 2 am, doing political science research, we talk to 3 different members at different times from different 4 legislatures. 5 Q. Did you communicate in any way with 6 David Beito about this deposition? 7 A. No, I'm not sure of that name. 8 Q. Okay. Do you know who Dr. Beito is? 9 A. No. 10 Q. Did you read his expert report in this 11 case? 12 MS. MESSICK: Object to the form. 13 A. No. 14 Q. Did you communicate in any way with 15 Quentin Kidd about this deposition? 16 A. No. 17 Q. What about in preparing for your expert 18 report? 19 A. No. 20 Q. Do you know who Quentin Kidd is? 21 A. I know him from political science 22 conferences, but I don't know him well. 23 Q. Okay. Did you read Dr. Kidd's expert 24 report in this case? 25 A. No.
Page 32 1 KAREN OWEN, Ph.D. 2 Q. Have you reviewed the expert report of 3 Dr. Riser in this case? 4 A. Yes. 5 Q. Do you know Dr. Riser outside of 6 reviewing his report in this case? 7 A. No. 8 Q. Did you review the expert report of 9 Dr. McCrary? 10 A. Yes. 11 Q. And do you know Dr. McCrary outside of 12 the context in this case? 13 A. No. 14 Q. What is your opinion of Dr. Riser's 15 work? 16 MS. MESSICK: Object to the form. 17 Are you asking her just about this 18 report? 19 BY MR. GABER: 20 Q. Well, are you familiar with any of his 21 work outside of the report? 22 A. I'm sorry. Could you ask what question 23 you would like me to answer? What is your 24 question? 25 Q. Are you familiar with Dr. -- any of	Page 33 1 KAREN OWEN, Ph.D. 2 Dr. Riser's work, other than his report in this 3 case? 4 A. No. 5 Q. Okay. So what is your opinion of his 6 work on this case? 7 A. I've written in my expert report a line 8 or two about his expert report. Is there something 9 specific that you would like to know? 10 Q. Is that -- do those lines -- is that 11 the total of your opinions with respect to his 12 work? 13 A. That is my expert opinion, yes, it's in 14 that report, related to his work. 15 Q. And with respect to Dr. McCrary, is it 16 also the case that what you said in your report is 17 the total sum of your opinions with respect to his 18 report? 19 A. Yes. 20 Q. Did you review the expert report of 21 Professor Dan Smith in this case? 22 A. I read it very -- very cursory, very 23 shortly. I didn't offer any type of expert opinion 24 on his report. 25 Q. And so you have no opinion that you

Page 34 1 KAREN OWEN, Ph.D. 2 intend to offer with respect to Professor Smith's 3 report; is that correct? 4 A. I would comment that I did not agree 5 with everything I saw in his report, but I don't 6 have in my expert report any opinion on his report, 7 nor was I provided any data to actually analyze or 8 look at what he did, so my report has my expert 9 opinion. And, again, I reviewed his -- there could 10 have been problems, but that was not the focus of 11 what I was writing on in my report. 12 Q. So you didn't undertake any sort of 13 peer review of his methodologies or analysis; is 14 that correct? 15 A. No. 16 Q. You didn't try to reproduce his work in 17 any way; is that correct? 18 A. No, because I didn't have access to the 19 data. 20 Q. And you don't intend -- 21 MS. MESSICK: Can we go off the 22 record for just one second? 23 MR. GABER: Sure. 24 (Off-the-record discussion from 25 10:19 a.m. to 10:20 a.m.)	Page 35 1 KAREN OWEN, Ph.D. 2 BY MR. GABER: 3 Q. Dr. Owen, did you undertake any effort 4 to replicate Dr. Smith's methodologies or analysis? 5 A. No, I did not analyze or do any type of 6 work related to Professor Smith's report. 7 Q. And do you intend to offer any opinion 8 about Professor Smith's report? 9 A. No, I'm not offering an opinion on his 10 report. 11 Q. Other than the expert reports, have you 12 done any other work for defendants since submitting 13 your report? 14 MS. MESSICK: The first part of 15 your question cut off. Can you repeat 16 that? 17 BY MR. GABER: 18 Q. Other than reviewing expert reports, 19 have you done any other work for the defendants 20 since you submitted your report in this case? 21 A. No. 22 MR. GABER: We can take a break 23 now. How long would you like? 24 A. Can I just clarify that my report has 25 opinions on Dr. Riser's, Dr. McCrary's, but I have
Page 36 1 KAREN OWEN, Ph.D. 2 no expert report -- no expert opinion in my report 3 on Dr. Smith. I just want to clarify that. Now, I 4 read his report, but I don't have any comment or 5 expert analysis of his report. 6 MR. GABER: Good. 7 (Recess from 10:22 a.m. to 8 10:30 a.m.) 9 MR. GABER: I do want to say on 10 the record that, you know, you haven't 11 and we haven't received a copy of the 12 notes regarding the conversation with 13 Lieutenant Governor Baxley. It sounds 14 from the testimony that they may 15 contain, you know, information relevant 16 to her conversation with him as it was 17 related to the report. So I just ask 18 that you review those and to the extent 19 they contain relevant information to 20 the report, that those be produced. 21 And we can follow up afterwards. But I 22 figured since it's July 10th, I wanted 23 to give you that as soon as possible. 24 BY MR. GABER: 25 Q. Do you have a copy of your report there	Page 37 1 KAREN OWEN, Ph.D. 2 with you, Dr. Owen? 3 A. Yes. 4 MR. GABER: So we'll mark that as 5 Exhibit 1. 6 (Exhibit 1 was marked for 7 identification.) 8 BY MR. GABER: 9 Q. And I'd like you to turn to your CV, 10 which is on -- which is in the appendix, 11 Appendix C, starting on page 72. 12 Is this your most recent CV? 13 A. Yes. 14 Q. Are there any updates that aren't -- 15 that you would want to add that aren't currently 16 reflected on this version? 17 A. I don't think so. 18 Q. Are there any corrections that need to 19 be made? 20 A. Not that I'm aware of. 21 Q. Do you currently teach classes at West 22 Georgia? 23 A. Yes. 24 Q. And what classes do you teach? 25 A. I teach public administration courses

Page 38 1 KAREN OWEN, Ph.D. 2 at the graduate level and undergraduate courses in 3 American government, legislative politics, gender 4 in politics. 5 Q. You may have just told me this, but 6 were these at the undergraduate or graduate level? 7 Both? 8 A. I teach courses at both levels, 9 graduate and undergraduate. 10 Q. Is there a rough percentage of how much 11 are graduate and how much are undergraduate? 12 A. It fluctuates per semester. I teach 13 three courses first semester, and it can vary. 14 Q. Have you ever taught a case on 15 voting -- I'm sorry -- a class -- a class on 16 voting? 17 A. Not a specific titled class on voting, 18 but we cover voting and voting issues in American 19 government courses and in legislative politics. 20 Q. What about laws related to voting? Is 21 that -- 22 MS. MESSICK: Is your -- 23 (Simultaneous speakers.) 24 MR. GABER: Sorry, Misty. I 25 couldn't hear you.	Page 39 1 KAREN OWEN, Ph.D. 2 MS. MESSICK: Would you repeat 3 the question, please? 4 MR. GABER: Sure. 5 BY MR. GABER: 6 Q. Do you cover -- in your classes that 7 you teach where voting comes up, do you teach any 8 laws related to voting and voting rights? 9 A. So, in the courses, we do talk about 10 different statutes and laws related to voting. For 11 instance, we talk about the Voting Rights Act. 12 Q. Have you ever taught any classes on the 13 U.S. Constitution? 14 A. Yes. 15 Q. Which class? 16 A. In American government, and in any 17 upper level political science course, we talk about 18 the U.S. Constitution. 19 Q. What about racial discrimination and 20 voting? 21 A. I don't understand your question. 22 Q. Do any of your classes address the 23 topic of racial discrimination with respect to 24 voting? 25 A. So I don't teach a class specifically
Page 40 1 KAREN OWEN, Ph.D. 2 on that, but in the course of teaching American 3 government and other courses, we do have 4 conversations about voting, we have conversations 5 about the Voting Rights Act, we have conversations 6 about the history related to racial discrimination 7 or other practices, particularly, against, you 8 know, whether one ethnicity or against women prior 9 to the 19th Amendment. 10 Q. Is there any focus in these classes on 11 the access to the franchise in the South during the 12 post-Civil War era? 13 A. Again, my answer would be the same. 14 Like, in the course of teaching American government 15 and different aspects of voting, we may discuss 16 those, but it's not something that is laid out on 17 the syllabus that we will discuss. 18 Q. And this is a general American 19 government class that we're talking about; is that 20 right? 21 A. So I teach an introduction to American 22 government, yes, and then I also teach, like, an 23 introduction to political science, which is an 24 introduction to the major, which we do then cover 25 the Constitution, American Constitution, and then	Page 41 1 KAREN OWEN, Ph.D. 2 we cover that in relation to a global perspective 3 and comparative perspective. And we talk about, 4 you know, different issues of voting, who's 5 participating, who's actively involved, et cetera. 6 Q. Are these generally freshmen or 7 sophomores who are taking these intro level 8 courses? 9 MS. MESSICK: Object to the form. 10 A. I would say that's difficult to say 11 that they're generally freshman and sophomores, 12 because we're finding now, with changes in core 13 curriculum, that our upper-level juniors and 14 seniors are coming back to take core classes 15 because they're encouraged in freshman and 16 sophomore years to get in their major courses. 17 Q. Do you teach felony disenfranchisement 18 law or history in the United States in any of your 19 courses? 20 A. No, I would not say I specifically 21 teach that. 22 Q. Have you ever taught about the Alabama 23 Constitution in any of your courses? 24 A. I would say we mention the Alabama 25 Constitution as a comparative perspective of the

Page 42 1 KAREN OWEN, Ph.D. 2 states, but I don't -- in any state constitution, 3 it depends on what -- where the students are from, 4 number one, who are in the class; if they're 5 familiar with that state, they have an interest, 6 then we will dig in deeper. But it all varies 7 based on the semester, the students, their 8 interests. But I will definitely discuss state 9 constitutions in a comparative sense compared to 10 the United States Constitution. 11 Q. And what do you recall in particular 12 about the Alabama Constitution that you have 13 discussed in your classes? 14 MS. MESSICK: Object to the form. 15 A. So I will first say that, because I 16 teach at the University of West Georgia, it is 17 required by our legislature that we discuss the 18 Georgia Constitution. We have to teach that 19 constitution, and we have to teach it in comparison 20 to the United States Constitution. So my students 21 are required to read the Georgia Constitution, and 22 that -- a conversation related to anything related 23 to Alabama's Constitution that comes up in the 24 course of teaching or talking about constitutions 25 is usually about the length of the Alabama	Page 43 1 KAREN OWEN, Ph.D. 2 Constitution, that it's the longest -- you know, 3 one of the longest in the nation, the world, and 4 how it has multiple amendments and that's different 5 in, like, the Georgia's perspective, where, you 6 know, how they're voted on and different -- we talk 7 about it in those terms. We look at whether there 8 are similarities and differences in the 9 constitutions. 10 Q. Do you recall any discussions in class 11 about the felony disenfranchisement provision in 12 the Alabama Constitution? 13 A. I don't recall from my classes the 14 specific amendment sections that we talk about. 15 Q. Have you had any conversations with 16 students in your classes that you recall on the 17 history of voting rights in Alabama? 18 A. Not that I can recall that we 19 specifically discuss this, as I sit here today. I 20 don't recall that we have those specific 21 conversations. 22 Q. Have you ever written any peer-reviewed 23 articles about felony disenfranchisement laws? 24 A. No. 25 Q. Have you written any peer-reviewed
Page 44 1 KAREN OWEN, Ph.D. 2 articles on the topic of voting rights as it 3 relates to Alabama in any way? 4 A. No. 5 Q. Have you published any articles, 6 whether peer-reviewed or not, on the topic of 7 felony disenfranchisement in the United States? 8 A. No. 9 Q. And with respect to Alabama in 10 particular? 11 MS. MESSICK: I'm sorry. Could 12 you ask your question again? 13 MR. GABER: Sure. 14 BY MR. GABER: 15 Q. It was that whether you have published 16 any articles, regardless of whether they have been 17 peer reviewed, with respect to the history of 18 felony disenfranchisement in -- with respect to 19 Alabama in particular. 20 A. No. 21 Q. Do you have any particular era of 22 politics that you focus on in your courses or in 23 your academic career? 24 A. I'm sorry. Did you say the word "era"? 25 Q. Yeah, like historical period.	Page 45 1 KAREN OWEN, Ph.D. 2 A. I don't say that I have a specific one 3 that I focus just on. In American government, 4 obviously, it's an introductory course, we cover 5 from the founding through current events. And my 6 research is varied. I look at different historical 7 periods and focus on, you know, what I think is 8 interesting and fills a niche of, you know, the 9 questions I have and want answered. 10 Q. Is there any particular focus within 11 the topic of political science that you focus on? 12 And I'm talking about your -- not your classes, but 13 your -- you know, your research in your academic 14 professional development. 15 A. I would say that, in political science, 16 I'm much more of an Americanist. I spend more time 17 looking at American politics. I am not an 18 international affairs scholar, so I do focus 19 predominantly on American politics related to 20 research methods, too. I focus sometimes in that 21 area. And then I teach and have studied a good bit 22 in public administration, but I don't tend now to 23 write a lot in public administration or research 24 just in that field. Again, it goes back to 25 American. And when you get very narrowed into

Page 46 1 KAREN OWEN, Ph.D. 2 American politics, I enjoy researching on 3 legislative politics, congressional politics, so I 4 look a lot at elections, special elections. I have 5 a new book coming out with a colleague on special 6 elections to Congress. That's a very important 7 interest in my research. And then I also have 8 looked at women in politics particularly. 9 I have a book about women when they 10 serve in Congress. That's an interest of mine, 11 because women have and are not always at the seat 12 at the table, and it's been a fascination of mine 13 of when they do emerge and how they get involved in 14 politics. 15 Q. So what about the effect of race in 16 politics? Has that been an area of primary focus 17 of yours? 18 A. So I would say that in the scope of 19 American politics, when I started my work on my 20 Ph.D., my focus was a lot on Southern politics and 21 the region of the South. And I studied extensively 22 while I was in college Southern politics and 23 regional variations, especially related to 24 elections and the emergence of two-party politics 25 in the South.	Page 47 1 KAREN OWEN, Ph.D. 2 But when I got ready to write my 3 dissertation, I needed to get something completed 4 quickly instead of still being working on the 5 dissertation, and I had enough information and 6 contacts from my time with members of Congress that 7 I decided to write on women in Congress. But 8 racial issues and the South's unique history has 9 always been something I've studied, looked at, 10 researched, because it's just an interest of mine 11 because I live here. 12 Q. But from the perspective of your 13 primary work as a scholar, that has been on women 14 in politics and the effect of special elections and 15 elections to legislators; is that correct? 16 MS. MESSICK: Object to the form. 17 A. I would say that that's not my only 18 focus. I mean, I guess from a lawyer's standpoint, 19 it's hard to see from an academic standpoint how 20 much we are constantly reading and researching 21 things, but then we have to tailor to what we write 22 sometimes in the hopes of getting something 23 published quickly in our area. So when I hit the 24 market in 2012-2013 for a job, women in politics 25 was a very -- it was the best subject, let's say,
Page 48 1 KAREN OWEN, Ph.D. 2 to go on the market to get things published and it 3 was interesting for me. But I do research many 4 other areas. It doesn't mean that, you know, my CV 5 reflects all the different working academic things 6 that I have going on, because that's part of what 7 my job is, is to work on a lot of different things. 8 And my interest does lie in Southern 9 politics, the unique nature of the politics of the 10 South, which does include race relations and racial 11 issues. 12 Q. Have you published anything on racial 13 discrimination? 14 A. No. 15 Q. And anything on racial discrimination 16 and voting? 17 A. I have not, like, published in a peer 18 review or any type of article. I've presented at a 19 conference some things related to voter ID in the 20 different states. But I would have to go back and 21 look at that paper. I don't know if specifically 22 we talk about racial discrimination in that. 23 Q. You are not a lawyer; is that correct? 24 A. No. 25 Q. I did that thing you didn't like,	Page 49 1 KAREN OWEN, Ph.D. 2 Misty. 3 Are you a lawyer? 4 A. No, I am not a lawyer. 5 Q. Before your work on this case, had you 6 ever done any analysis of Alabama's constitutional 7 history with respect to felony disenfranchisement 8 before? 9 A. No. 10 Q. How many hours would you say you've 11 spent researching and studying the effect of 12 special elections in legislative -- in 13 legislatures? 14 A. Well, sitting here, I don't know if I 15 could quantify exactly how many hours I've worked 16 on special elections. We -- I mean, I began the 17 book project following the 2017 special election in 18 Georgia. That was the most expensive House race 19 ever. I started collecting information and data 20 then, and then working on the book, you know, off 21 and on. Again, going back, I don't know if I could 22 quantify hours, but it's a substantial amount of 23 time. 24 Q. Would you say it's, like, thousands of 25 hours?

Page 50 1 KAREN OWEN, Ph.D. 2 A. Again, sitting here, I can't say 3 exactly what those hours were. 4 Q. Would you say it's, like, more than one 5 week's worth of work? 6 A. Yes. 7 Q. How much more, roughly? 8 MS. MESSICK: Object to the form. 9 A. Again, you know, as I sit here, I 10 couldn't -- I could not honestly quantify how much 11 time. It is an extensive amount of time working on 12 any type of research project you're going to turn 13 into a book. And so yes, I don't even want to 14 speculate or guess how many hours. But it is a 15 lot. And, you know, I told you I began in 2017. 16 We finished the final draft to send to Oxford in 17 February of 2020, and we're still working on 18 proofing pages right now. 19 Q. And is that true, as well, with respect 20 to your work on women in politics, has that been a 21 substantial amount of time that you've devoted to 22 that topic? 23 A. Again, it's hard to quantify just based 24 off your question of women in politics. Specific 25 pieces, you know, I might have written a chapter	Page 51 1 KAREN OWEN, Ph.D. 2 for a book in a week. I might have been reading 3 articles over the course of months of doing 4 different things. It just depends on the actual 5 project and where I'm at. 6 Q. And I'm not asking about any particular 7 project. I'm trying to get a sense of the amount 8 of time that you have devoted professionally to the 9 topic of women in politics. And so how would you 10 characterize the amount of time you have spent on 11 that topic? 12 A. Again, I'm going to go back to it's 13 hard to quantify specifically what I put into one 14 research area. 15 (Simultaneous speakers.) 16 A. But it's a research area that is 17 important to me and it helps in my teaching of 18 gender in politics course, so I do spend a 19 substantial amount of time in research. Again, as 20 an academic, we are appraised, I guess, on our 21 performance in different areas and a third of that 22 would have to be towards research. So it's a focus 23 of my professional time. 24 Q. Have you ever done any analysis of the 25 history of criminal disenfranchisement prior to
Page 52 1 KAREN OWEN, Ph.D. 2 this case? 3 A. No. 4 Q. Can you describe for me the thesis of 5 your forthcoming book on special elections, just 6 briefly? 7 A. We analyze how special elections to 8 Congress, as the title ensues, is the back-door 9 entrance. More people get into Congress through 10 special elections than we actually recognize. So 11 we look at over 70 years' worth of data of special 12 elections to determine whether they're predictive 13 of a next midterm or presidential election. 14 Q. What -- I don't want to -- before you 15 release your book, I don't want to make news here, 16 but can you tell me what the general conclusion is 17 of your -- 18 A. Special elections are very important to 19 Congress. They -- more members go in through this 20 doorway in many ways and then rise to leadership, 21 and that there are -- special elections are -- 22 let's just say that we hope special elections, 23 right, show that a district will flip, 24 partisanship. So if the president is unpopular, 25 you have a special election afterwards, that that	Page 53 1 KAREN OWEN, Ph.D. 2 will flip against the president. We find that it's 3 really just a partisan story: Whoever -- the 4 incumbent party holding that seat most likely holds 5 and retains that seat in a special election. 6 Q. And then can you also describe for me 7 the thesis on your forthcoming book on Alabama's 8 history of female office (indiscernible)? 9 A. This is a historical analysis of the 10 different women who have held constitutional 11 offices in Alabama. At the time we started the -- 12 at the beginning of our analysis, we look at when 13 the first woman who becomes secretary of state, and 14 then those offices were term-limited. There's 15 three that we look at, treasury -- I'm sorry -- 16 auditor, secretary of state, and, I believe, yeah, 17 the treasury, and then they rotate through those 18 offices like a merry-go-round. So they would -- 19 term limit, out; moves to the next one. And we're 20 just analyzing those different women. It's very 21 historical why these women were maybe the ones that 22 were running and elected. 23 Q. What period of time is -- are we 24 talking about? 25 A. We're talking the 1930s through 1978.

Page 54 1 KAREN OWEN, Ph.D. 2 Q. And then can you also describe the 3 thesis of your forthcoming book on the distinctive 4 roles of female congressional staff? 5 A. So this is very much in the beginning 6 process. I am looking at the distinction of 7 congressional staffers, and we are -- I'm in the 8 process right now of surveying former and current 9 staff, as well as the role that the female members 10 of Congress have on -- as a role model are 11 encouraging female staff in their career path. 12 Q. You worked in the legislature in 13 Congress for Congressman Nathan Deal; is that 14 right? 15 A. Yes. 16 Q. Did you work for him at all when he was 17 governor of Georgia? 18 A. No. 19 Q. Are you politically active in -- beyond 20 your teaching in your personal capacity? 21 MS. MESSICK: Object to the form. 22 A. I don't know specifically what you mean 23 by "politically active." 24 Q. Do you volunteer on any campaigns? 25 A. No.	Page 55 1 KAREN OWEN, Ph.D. 2 Q. Have you ever? 3 A. Volunteered -- when I worked for 4 Congressman Deal at the time, I volunteered for 5 some congressional campaigns, but I haven't since 6 I've become an academic. 7 Q. Was it his congressional campaign or 8 other congressional campaigns that you volunteered 9 with? 10 A. His campaign. 11 Q. Okay. Were you ever a paid staff 12 member of a candidate's campaign? 13 A. No. 14 Q. Since you became an academic, have you 15 volunteered for any political campaigns? 16 MS. MESSICK: Object to the form. 17 A. I have not -- oh, I have volunteered at 18 the local city council contest of my neighbor. He 19 ran for city council seat, and I helped him -- 20 Q. For or against him? 21 A. I helped him -- I was going to say I 22 helped him file his ethics paperwork. 23 Q. Okay. Are you a member of a political 24 party? 25 A. No.
Page 56 1 KAREN OWEN, Ph.D. 2 Q. Have you ever made any political 3 monetary contributions? 4 A. No. 5 Q. I wanted to turn now to your expert 6 report, and I think you testified earlier, but I'll 7 ask again. Did you write the expert report? 8 A. Yes. 9 MS. MESSICK: Object to the form. 10 BY MR. GABER: 11 Q. Did you get any assistance from anyone 12 in writing the report? 13 A. No. 14 Q. Were there any students or graduate 15 students who worked with you on the project? 16 A. No. 17 Q. Did anyone review your conclusions 18 before it was submitted in this case? 19 A. No outside person reviewed. This is my 20 report. And then I gave it to Ms. Messick. 21 Q. Did anyone proofread your report? 22 A. I mean, we had -- Ms. Messick and I had 23 a draft back for formatting. She needed to have it 24 in the correct format for submission. But I did 25 the work.	Page 57 1 KAREN OWEN, Ph.D. 2 Q. And did anyone from counsel offer 3 substantive feedback? And I'm not asking for what 4 that was, if it happened, but just did they have -- 5 offer any substantive feedback? 6 A. No. 7 MS. MESSICK: Hold on just a 8 second, please. 9 (Off-the-record discussion from 10 10:58 a.m. to 10:59 a.m.) 11 MS. MESSICK: Mark, we want to 12 clarify that answer, please. 13 A. So you asked me if they provided 14 substantive feedback and I answered no, because I 15 think substantive is very much, like, a degree, and 16 I don't feel like -- they provided some feedback 17 and comments, especially related to formatting or 18 something like that. So they did provide some 19 feedback, but it was not in my -- it was -- this is 20 my report. These are my words. 21 Q. Dr. Owen, could you please summarize 22 the opinions that you offer in your report, for the 23 record? 24 A. This expert report that I offered, I 25 looked at whether the claim of a racial intent was

Page 58 1 KAREN OWEN, Ph.D. 2 in the 1995 Legislative Act and in the passage of 3 the 1996 amendment related to felon 4 disenfranchisement, and I offered the opinion that 5 I did not think that the passage and enactment of 6 this act was done with a racial motivation. 7 Q. Are you familiar with the Arlington 8 Heights framework that courts use to assess the 9 presence of racially discriminatory purpose? 10 A. Yes. 11 Q. What do you understand that to be? 12 A. I have seen that Arlington Heights 13 standard applied in other expert reports' 14 historical analysis. 15 Q. And what is your understanding of what 16 the Arlington Heights analysis looks to? 17 A. I would have to go back and look very 18 specifically at the case and the procedure put out, 19 and I have not done that recently to feel like I 20 should provide an exact assessment of that. 21 Q. Did you use the Arlington Heights 22 framework in coming to your conclusions in this 23 case? 24 A. I did an analysis from my perspective 25 as a political scientist and through legislative	Page 59 1 KAREN OWEN, Ph.D. 2 history and reading of testimony. 3 Q. So my question was: Did you use the 4 Arlington Heights framework in coming to your 5 conclusions? 6 A. I do not mention that in this report. 7 Q. And I know it's not mentioned, but did 8 you use it at all? 9 A. I do not state in this report that I 10 was using that. 11 Q. I understand that. 12 My question -- I know you can write it 13 down. But my question is: Did you do it and not 14 write it down? 15 A. I used my expertise, what I knew from 16 political science and through historical analysis. 17 I did not rely and write down in this the Arlington 18 Heights specific framework. 19 Q. Okay. So you have no opinion applying 20 the Arlington Heights framework as to whether or 21 not any law in Alabama was racially discriminatory; 22 is that correct? 23 A. I don't have an expert opinion in this 24 right here, this report. 25 Q. Well, I think you do -- I think you do
Page 60 1 KAREN OWEN, Ph.D. 2 have an expert opinion in the report. But the -- 3 A. Related to what you asked, related to 4 Arlington Heights. 5 Q. Okay. 6 MS. MESSICK: I believe you asked 7 if she applied that framework, and that 8 her answer is no. Is that correct, 9 Dr. Owen, you did not apply that 10 framework which courts apply? 11 THE WITNESS: Correct. I did not 12 use that in this report. 13 BY MR. GABER: 14 Q. Did you express any opinion as to 15 whether the phrase "moral turpitude," as it was 16 used in the 1901 Constitution, had a racially 17 discriminatory purpose? 18 A. I'm sorry. Could you ask your question 19 again? I didn't hear it all. 20 Q. Sure. Do you have an opinion about 21 whether the phrase "moral turpitude," as it was 22 used in the 1901 Constitution, had a racially 23 discriminatory purpose? 24 A. No. 25 Q. Do you intend to offer any such opinion	Page 61 1 KAREN OWEN, Ph.D. 2 in this case? 3 MS. MESSICK: Object to the form. 4 A. No. 5 Q. Did you undertake any research on the 6 topic of whether the phrase "moral turpitude", as 7 it was used in the 1901 Constitution, had a 8 racially discriminatory purpose? 9 A. I'm sorry. Could you ask that again? 10 Q. Did you -- I know you didn't express 11 any opinions on it, but did you do any research or 12 analysis as to whether the use of the phrase "moral 13 turpitude" in the 1901 Constitution was for a 14 racially discriminatory purpose? 15 A. No. 16 Q. And do you have any plans to issue an 17 opinion on the application of the Arlington Heights 18 standard in this case? 19 A. No. 20 Q. Dr. Owen, I'd like to direct you to 21 page 10 of your report. And on this page and in 22 this section of your report, you discuss the use 23 and application of the phrase "moral turpitude" and 24 phrases that led up to that concept in various 25 legal contexts during U.S. history prior to 1915.

Page 62 1 KAREN OWEN, Ph.D. 2 Is that an accurate description of this paragraph 3 on page 10? 4 A. On page 10, I talk about moral 5 turpitude first appearing in 1891 and in legal 6 context. 7 Q. Can you read to me the last sentence at 8 the bottom of page 10? 9 A. That begins with the word "the use"? 10 Q. That's right. 11 A. You're asking me to read it out loud? 12 Q. Yeah. 13 A. The use and application of moral 14 turpitude in each of these legal contexts does not 15 carry the intent and taint of racial 16 discrimination. 17 Q. Earlier in the paragraph, you discuss 18 the first appearance of moral turpitude in 1891, 19 which you state was the Revised Immigration Act of 20 1882. And then you say that that law was built on 21 concerns first addressed in the 1875 Page Law. 22 Do you see that? 23 A. Yes. 24 Q. Have you done any research into the 25 history of this series of immigration laws?	Page 63 1 KAREN OWEN, Ph.D. 2 MS. MESSICK: Object to the form. 3 A. I'm sorry. Could you ask your question 4 again? 5 Q. Have you done any research into the 6 history of the immigration laws you refer to on 7 page 10? 8 A. So yes, I looked into these and read 9 this part to -- and looked at what was provided in 10 this document and the footnote, read this to 11 understand when the term was used in relation to 12 immigration. 13 Q. When you say the document, are you 14 referring to footnote 21 on the page, the Deirdre 15 Maloney book? 16 A. Yes. And then the second one, the 17 Cornell International Law Journal article. 18 Q. And that's the one titled, Why the 19 Void-For-Vagueness Argument Is Still Available and 20 Meritorious? 21 MS. MESSICK: Object to the form. 22 BY MR. GABER: 23 Q. Is that the article you're referring 24 to? 25 A. Yes.
Page 64 1 KAREN OWEN, Ph.D. 2 Q. Did you agree with the conclusions of 3 Derrick Moore's article? 4 MS. MESSICK: Object to the form. 5 A. So I don't have an expert opinion on 6 his article. I did not provide that. I used it as 7 a source to review, and I -- I'm not going to 8 provide an opinion on his conclusion here when I 9 don't have the article here in front of me. 10 Q. Did you read his article? 11 A. Yes, in the timing of preparing this. 12 Q. Do you recall whether you agreed with 13 his conclusion at that time? 14 MS. MESSICK: Object to the form. 15 A. Again, as I stated just a minute ago, 16 I'm not going to provide an opinion here on his 17 conclusions. I don't have the article. It's been 18 several weeks now since I read it. 19 Q. And I'm not asking for your expert 20 opinion. I'm just asking whether, when you read 21 it, did you agree with his conclusions? 22 MS. MESSICK: Object to the form. 23 A. I don't recall what I was thinking 24 about his conclusions at that time. 25 Q. This was several weeks ago, you said?	Page 65 1 KAREN OWEN, Ph.D. 2 A. Yes. 3 Q. Okay. Aside from these -- the book, 4 the Deirdre Maloney book and the Derrick Moore 5 article, have you done any other research into the 6 late 1800s immigration laws that you reference on 7 page 10? 8 A. No. 9 Q. What was the purpose, as you understand 10 it, of the 1875 Page Law? 11 A. So as I have written here, I talk about 12 how it has constraints on immigration, but I don't 13 provide an opinion specifically on that. 14 Q. So I'm not asking for any opinion of 15 yours. I guess I'm asking whether you -- what you 16 understood the purpose of the law to be. 17 A. As I have written here, constraints on 18 immigration. 19 Q. And its constraints on immigration of 20 unmarried women in China; is that correct? 21 A. Yes, as the sentence -- 22 MS. MESSICK: Object to the form. 23 A. -- as this sentence states. 24 Q. And that's because of a concern in the 25 United States that those Chinese women would be

Page 66 1 KAREN OWEN, Ph.D. 2 likely to engage in immoral acts of prostitution? 3 Is that what you concluded? 4 MS. MESSICK: Object to the form. 5 A. I have written that in this report. 6 Q. Does that reflect your understanding of 7 what the purpose of the Page Law was? 8 A. You know, sitting here right now, I 9 don't recall all aspects of it when I was reviewing 10 it, but this is what I put into my report. 11 Q. I'd like to introduce an exhibit, and 12 this is the -- let me pull it up and describe it. 13 The article by Pooja Dadhania, titled, Deporting 14 Undesirable Women. And this is an article that was 15 published in the UC Irvine Law Review, Volume 9. 16 Do you have that there? 17 MS. MESSICK: I'm distributing it 18 now. 19 MR. GABER: I'm going to mark 20 this as Exhibit 2. 21 (Exhibit 2 was marked for 22 identification.) 23 BY MR. GABER: 24 Q. Now, I don't expect, Dr. Owen, that 25 you've read this before. Have you?	Page 67 1 KAREN OWEN, Ph.D. 2 A. No. 3 Q. And I'm not going to ask you to read 4 the whole thing, but I do want to draw your 5 attention to the bottom of page 57 of the article. 6 MS. MESSICK: Are you referring 7 to paragraph I-A, and are you asking 8 her to read that paragraph or how much? 9 BY MR. GABER: 10 Q. Let me -- sorry. I need to pull it up 11 on my -- the printer I have at home is woefully 12 inadequate to allow printing these things. 13 Yeah, if you could just read for the 14 record the paragraph under subheader A, and then it 15 continues onto page 58. But just that paragraph as 16 it continues. And if you could read it aloud for 17 the court reporter. 18 A. Oh, okay. Sorry. 19 The first federal immigration law to 20 target prostitution was the Page Law, enacted in 21 1875. The Page Law, passed in the context of 22 rising anti-Chinese sentiment, targeted Chinese 23 women as undesirable immigrants due to the 24 perceived threat they posed to American morality 25 through their potential to bring prostitution to
Page 68 1 KAREN OWEN, Ph.D. 2 the United States and thereby corrupt white 3 females. 4 MS. MESSICK: Actually, that last 5 part. 6 BY MR. GABER: 7 Q. You misread that. 8 A. White families. Sorry. 9 Q. Is that description consistent with 10 your understanding of the purpose of the Page Act? 11 MS. MESSICK: Actually, hold on, 12 before she answers that, there are 13 footnotes that she did not read and I 14 want that to be clear for the record. 15 She did not read those aloud, and she 16 hasn't read this whole report. 17 If the court reporter could read 18 back your question to her so she can 19 answer. 20 (The court reporter read the 21 requested portion.) 22 A. I've written in my expert report on 23 page 10 what I know about the Page Act and have put 24 in here regarding the Page Act. I'm not familiar 25 with this document and what all that you've put in	Page 69 1 KAREN OWEN, Ph.D. 2 front of me now, Deporting Undesirable Women. And 3 I'm not sure that this paragraph, in the context of 4 what came before it or after it -- I don't know 5 that it accurately describes it. I can't provide 6 that I know that that is what it all is. 7 Q. Okay. So I guess I had a much simpler 8 question than that, which is whether you agreed 9 with the description that you just read aloud, if 10 that reflected your understanding of what the 11 purpose of the 1875 Page Act was? 12 A. So as I wrote in my report, I put that 13 that Page Law placed significant constraints on 14 immigration of unmarried women from China, who 15 public officials felt were likely to engage in 16 immoral acts of prostitution. 17 This part that I just read from this 18 article has similar language related to the fact 19 that it was an immigration law targeting 20 prostitution. Now, as far as the other parts about 21 to bring prostitution to the United States and then 22 corrupt white families, I'm not sure I've not done 23 research thoroughly on that to know. 24 Q. Okay. So you haven't researched 25 whether there was any racial component to the

Page 70 1 KAREN OWEN, Ph.D. 2 purpose of the 1875 Page Act; is that your 3 testimony? 4 MS. MESSICK: Object to the form. 5 A. I'm sorry. Could you ask that again? 6 Q. Have you conducted any research into 7 whether there was a racially discriminatory purpose 8 that motivated the 1875 Page Act? 9 A. So I write this because it's -- in my 10 report I'm talking about moral turpitude, and I did 11 not investigate this specific immigration act 12 related to racial intention. 13 Q. Did you investigate it with respect to 14 the -- whether there was any racial intention with 15 respect to the use of the word "morality" in the 16 Page Act? 17 A. No. The focus of my report was on 18 Alabama, not on the 19 -- sorry -- 1875 Page Act or 19 Page Law. 20 Q. Do you believe that the 1875 Page Act 21 carries the intent and taint of racial 22 discrimination? 23 MS. MESSICK: Object to the form. 24 A. I don't have an expert opinion on the 25 Page Law. I did not write on that.	Page 71 1 KAREN OWEN, Ph.D. 2 Q. I'm not asking for an expert opinion, I 3 guess. I'm just asking from your experience as a 4 political science professor and having looked at 5 the Page Act and articles about it for your work in 6 this case. Did you come to the conclusion that the 7 Page Act had a racially discriminatory purpose with 8 respect to the use of the phrase "morality of 9 Chinese women"? 10 A. I did not focus on looking at 11 immigration related to the intent of why that was 12 passed. 13 Q. Why not? 14 A. That was not the focus of this expert 15 report. 16 Q. Why did you reference it on page 10 of 17 your report, then? 18 A. Because it's talking about how moral 19 turpitude first appeared in an 1891 revised 20 immigration act of 1882, and that revised statute 21 built on concerns first addressed in the 1875 Page 22 Law. It's part of the history of how there are -- 23 the phrase "moral turpitude" was in other parts of 24 legal context and how some statutes build on other 25 revised statutes.
Page 72 1 KAREN OWEN, Ph.D. 2 Q. So part of your -- as part of your 3 historical review of the origination of moral 4 turpitude as a phrase in the immigration laws of 5 the late 1800s, you didn't look at whether that had 6 a racially discriminatory purpose? 7 A. No. 8 MS. MESSICK: Object to the form. 9 BY MR. GABER: 10 Q. And your answer was "no"? 11 A. No. Yes, I answered "no." Does that 12 clarify it? 13 Q. I think so. We'll try one more time. 14 Am I correct that you did not look to whether there 15 was a racially discriminatory purpose in the use of 16 the phrase "moral turpitude" in the late 1800s 17 immigration laws you reference on page 10 of your 18 report? 19 A. I did not. 20 Q. Now, you say that the immigration act 21 of 1882 built on concerns of the Page Act. How did 22 it do so? 23 A. What I have written here is what I am 24 providing. It builds on concerns first addressed 25 that place significant constraints on immigration	Page 73 1 KAREN OWEN, Ph.D. 2 of unmarried women from China, whom public 3 officials felt were likely to engage in immoral 4 acts of prostitution. And then I go on further to 5 talk about the 1891 Immigration Act. 6 Q. And are you aware that the immigration 7 act of 1882 was actually enacted the same year that 8 the Chinese Exclusion Act was passed? 9 A. No, I don't recall those exact years. 10 Q. Are you familiar with the Chinese 11 Exclusion Act? 12 A. I would say relatively familiar. 13 Q. Now, the revised immigration act of 14 1882, my understanding is it has two parts. The 15 first, a prohibition on public charge -- public 16 charges and those suffering from disease. 17 Is it your understanding that this 18 (indiscernible) the original immigration act? 19 MS. MESSICK: People are beeping, 20 and you cut out for part of that. I'm 21 sorry. It's a long question, but I'm 22 going to need you to repeat it, because 23 you did cut out and there's a lot of 24 beeping going on. 25 MR. GABER: That's fine. Give me

Page 74 1 KAREN OWEN, Ph.D. 2 a second, and I may change the 3 question. 4 BY MR. GABER: 5 Q. Is it your understanding that the 6 revised immigration act of 1882 included a 7 prohibition on public charges and those suffering 8 from disease? 9 A. I don't know. I can't recall right 10 now. 11 Q. Did you -- did you research the revised 12 immigration act of 1882 in preparing for your 13 report? 14 A. I looked at it, but -- I don't -- I 15 wouldn't say I researched it thoroughly. 16 Q. Another part of the revised immigration 17 act is the prohibition on those convicted of a 18 felony infamous crime, misdemeanor involving moral 19 turpitude; is that correct? 20 A. I don't -- no, I don't recall right 21 here what section. 22 Q. Well, you report that the 1891 law, 23 which was the revised immigration act, is -- I 24 think you say was first where the phrase "moral 25 turpitude" first appeared. Is that your	Page 75 1 KAREN OWEN, Ph.D. 2 understanding? 3 A. Yes. 4 Q. Would you agree with the statement that 5 the revised immigration act of 1882, like the Page 6 Act, perceived Chinese women as undesirable and a 7 threat to American morality? 8 MS. MESSICK: Object to the form. 9 A. No, I don't have an opinion on exactly 10 what you've just stated. I would have to do more 11 research and think about that more thoroughly. 12 Q. So with respect to all of the early 13 history of moral turpitude that you report on, on 14 page 10 of your report, am I correct that you've 15 not done any analysis to determine whether there 16 was a racially discriminatory purpose motivating 17 the use of that phrase? 18 MS. MESSICK: Object to the form. 19 A. Could you ask your question again? I'm 20 sorry. 21 Q. With respect to all of the immigration 22 laws that you reference on page 10 of your report, 23 did you conduct any research or analysis as to 24 whether there was a racially discriminatory purpose 25 for the use of the phrase "moral turpitude"?
Page 76 1 KAREN OWEN, Ph.D. 2 A. No. 3 Q. When you conclude on page 10 that the 4 use and application of moral turpitude in each of 5 these legal contexts does not carry the intent and 6 taint of racial discrimination, what is the basis 7 of that conclusion with respect to the immigration 8 laws that you report on? 9 MS. MESSICK: Object to the form. 10 A. So this concluding sentence, in my 11 expert opinion, is built on the entire paragraph, 12 related also to the -- you know, after footnote 21, 13 Furthermore, moral turpitude has been used in 14 judicial conduct proceedings, jury service, use of 15 veterans' services, licensing, and the revocation 16 of licenses in professions such as law, medicine, 17 education, and real estate, as well as the breach 18 of employment and endorsement contracts, imposition 19 of punitive damages and Oklahoma's infamous 20 Habitual Criminal Sterilization Act. Drs. Riser 21 and McCrary provide no additional evidence of 22 discussion how and why "moral turpitude" had been 23 used and continue to be used in these other legal 24 pronouncements and contexts. Then I write, The use 25 and application of moral turpitude in each of these	Page 77 1 KAREN OWEN, Ph.D. 2 legal contexts does not carry the intent and taint 3 of racial discrimination. 4 So I concluded at the end of this, that 5 based on all of this going on and other judicial 6 contexts, that it did not have racial 7 discrimination. 8 Q. Does your concluding sentence here -- 9 did you intend that to apply to the earlier part of 10 the paragraph about the legal context of 11 immigration in the late 1800s? 12 MS. MESSICK: Object to the form. 13 A. I know that when I wrote that, it came 14 after my sentence related that Drs. Riser and 15 McCrary had not provided additional evidence of how 16 and why moral turpitude had been used in these 17 contexts, specifically to the ones above to that, 18 the judicial conduct, jury proceedings, and the 19 list that proceeds after that. 20 Q. So your intent -- I'm just trying to 21 understand what this last sentence applies to. So 22 does it apply to the immigration laws in the first 23 part of the paragraph? 24 A. I don't know that I was specifically 25 referencing back to that piece, no. That was to

Page 78 1 KAREN OWEN, Ph.D. 2 say that when moral turpitude first appeared in a 3 legal context, an immigration context, was at that 4 point. But these other sections is where I make 5 the distinction that that did not carry the taint 6 of racial discrimination. 7 Q. So everything preceding the word 8 "furthermore" is not -- you're not intending this 9 final conclusion at the end of that paragraph to 10 apply to that, is that a correct understanding? 11 MS. MESSICK: Object to the form. 12 A. Yes, this last sentence does apply to 13 that which follows the word "furthermore." And I 14 had stated that I did not do an analysis exactly on 15 the racial intention of the immigration act, but I 16 introduced it here in this paragraph related to 17 when moral turpitude first appeared in that legal 18 context. 19 Q. Did you look to see whether the phrase 20 "moral turpitude," as it was used in these other 21 contexts that you introduced the "furthermore" 22 sentence -- did you look to see when it was 23 introduced in those contexts? 24 A. I looked briefly at that, but I did not 25 do a full analysis of each piece -- of each one,	Page 79 1 KAREN OWEN, Ph.D. 2 like, for instance, when it related to the 3 revocation of the licensing. 4 Q. When is the first appearance of the 5 phrase in any of these contexts you list in the 6 sentence that begins "furthermore" that you're 7 aware of? 8 A. As I sit here right now, I don't recall 9 the exact date. 10 Q. Do you know whether any of them were 11 before or after 1901? 12 A. I -- I can't say with certainty. I 13 can't recall. 14 Q. Do you know when the phrase "moral 15 turpitude" first appeared within the context of 16 judicial conduct proceedings? 17 A. As I just stated, I don't exactly 18 recall that date. 19 Q. And is -- would it be the same answer 20 for each of the items listed in this sentence? 21 MS. MESSICK: Object to the form. 22 A. Yes. Right now, as I sit here, I can't 23 recall each of those individually, the dates that 24 corresponds to when it was introduced. 25 Q. Have you done any research into whether
Page 80 1 KAREN OWEN, Ph.D. 2 the use of the phrase "moral turpitude" in any of 3 these particular legal contexts in this sentence 4 that we've been talking about -- whether it was 5 used for a racially discriminatory purpose? 6 MS. MESSICK: Object to the form. 7 A. I'm not exactly sure what you're 8 asking. Could you rephrase your question? 9 Q. Sure. And we can go through them. 10 Did you do any research into whether 11 the phrase "moral turpitude" was ever used with a 12 racially discriminatory purpose in judicial conduct 13 proceedings? 14 A. So I looked to find the use of the word 15 "moral turpitude" in different legal contexts, and 16 these were some of the examples that I provided 17 where moral turpitude had been used, but I did not 18 do extensive legislative history on when that 19 phrase was put into, for instance, the judicial 20 conduct proceedings. 21 Q. Did you do any analysis or research 22 into whether there was a racially discriminatory 23 purpose for its use in any of these contexts? 24 A. So when I looked at when moral 25 turpitude was used, I looked at it with seeing it	Page 81 1 KAREN OWEN, Ph.D. 2 was in other legal contexts. And if it was just in 3 one legal area, for instance, like immigration -- 4 and it wasn't just in one area, it was in other 5 contexts. And from seeing it in a multitude of 6 contexts, I came to the conclusion that, if it is 7 in other legal contexts, legislative [sic] has 8 passed that there would be this use of a phrase in 9 terms of licensing for a profession, then that 10 wouldn't have passed with discriminatory intent; 11 that there are so many contexts that I didn't see 12 that -- you know, licensing, why would you, as a 13 legislature, use a phrase to be discriminatory when 14 you would need more people to be in medicine or in 15 real estate. 16 Q. So am I correct that the basis of your 17 conclusion that the use and application of the 18 phrase "moral turpitude" in these contexts did not 19 carry the taint and intent of racial 20 discrimination, is the fact that it appeared in 21 multiple legal contexts? 22 MS. MESSICK: Object to the form. 23 A. I would say it's not just the fact that 24 it -- it appeared in other forms, but it was a -- a 25 phrase used in other legal contexts, and that there

Page 82 1 KAREN OWEN, Ph.D. 2 would be complexity and complications surrounding 3 any legal -- any legislative enactment, but it's a 4 phrase that was used in multiple ways. It wasn't 5 just a one -- it doesn't appear in just one 6 context, but it appears in multiple contexts. 7 Q. So I -- I'm trying to understand what 8 the answer to my question was and my question was: 9 Is the basis of your conclusion that it was -- that 10 its appearance in these multiple contexts was not 11 for a racially discriminatory purpose? Is the 12 basis for that conclusion the fact that it appeared 13 in more than one legal context? 14 MS. MESSICK: Object to the form. 15 A. I'm not exactly sure I agree with how 16 you phrased it, but I would say that what I see -- 17 and I used here was that moral turpitude was in 18 multiple legal contexts, and in seeing that it was 19 in these multiple contexts and my opinion was that 20 it was not with an intent -- it was not used in 21 these contexts with an intent for discrimination. 22 Q. And so the latter part is what I'm 23 trying to get at. What research did you do to 24 determine that there was no racial motivation for 25 the use of the phrase in any one of these contexts?	Page 83 1 KAREN OWEN, Ph.D. 2 A. So I looked at that it was used there 3 and that it was in multiple places. 4 Q. Okay. Anything else? 5 A. Not that I can recall at this point. I 6 would have to look exactly at each of these again. 7 Q. Okay. Is it your testimony that you 8 don't think there's ever been racially exclusionary 9 policies in professional licensing? 10 MS. MESSICK: Object to the form. 11 A. No, I would say that's probably not my 12 testimony. I would have to research that more 13 extensively. 14 Q. But you haven't done that research in 15 preparation for this report; is that correct? 16 A. I have done research related to this 17 report, but I don't have that exact context in 18 here, in this exact page here. 19 Q. And just so the record is clear, is it 20 correct that you have not looked at for judicial 21 conduct proceedings, jury service, use of veterans' 22 services, licensing, and the revocation of license 23 in professions such as law, medicine, education and 24 real estate -- you've not looked to see whether 25 there were any racially exclusionary policies as
Page 84 1 KAREN OWEN, Ph.D. 2 part of your conclusions in this report? 3 MS. MESSICK: Object to the form. 4 A. I have researched this in regards to 5 moral turpitude being used in this context. I 6 don't have an opinion -- I don't have the 7 research -- I'm sorry. Let me back up. I used and 8 found moral turpitude had been used in each of 9 those that you listed, but I did not analyze the 10 legislative history or the policymaking of those 11 specific contexts. 12 Q. Okay. And so you can't tell me today 13 sitting here whether the use of the phrase "moral 14 turpitude" in, say, medicine, the professional 15 licensure of medicine, whether there was ever a 16 racially discriminatory purpose for the use of that 17 phrase? 18 MS. MESSICK: Object to the form. 19 A. I don't have an -- I don't have an 20 opinion in here on that, no. And I researched to 21 look that moral turpitude was in that, but I do not 22 know the extent of the legislative history behind 23 those particular legal contexts. 24 Q. And so the only -- the only basis from 25 which you draw the conclusion that you state in the	Page 85 1 KAREN OWEN, Ph.D. 2 last sentence on page 10 is the fact that there are 3 multiple legal contexts in which moral turpitude 4 has been used as a standard; is that correct? 5 A. I would not say it's the only basis. 6 It could -- it's one of them, but it was used in 7 multiple contexts. But as we sit here, I don't 8 recall the research that I went into -- by just 9 looking at each of these, the exact -- in looking 10 at the context of how they were actually passed, I 11 did not put that in here. The basis of saying that 12 they did not carry is that it is -- it is in 13 multiple areas. It was used in multiple areas. 14 Q. Okay. So first you said that it was 15 one of the bases, and I think you just said that it 16 was the basis. So is there any other basis for 17 your conclusion of the last sentence of page 10 18 beyond the fact that it has appeared multiple times 19 in different legal contexts? 20 A. Yes, perhaps, but I just can't recall 21 right now exactly each of these contexts and when 22 they were passed and what extension of analysis I 23 did. I know I did not do the same type of analysis 24 that I did with the -- the statute for Alabama 25 disenfranchisement.

Page 86 1 KAREN OWEN, Ph.D. 2 Q. Can you name any other basis for me 3 sitting here that would support your conclusion in 4 the last sentence of page 10 other than the fact 5 that it has appeared in multiple contexts? 6 MS. MESSICK: Object to the form. 7 She has repeatedly answered that 8 question. 9 A. I know that the multiple appearance is 10 one of the basis, I just don't know if there's 11 more. And as I sit right now, I can't recall. 12 Q. You didn't provide any other basis in 13 your report; is that correct? 14 MS. MESSICK: Object to the form. 15 A. I have written in here what I have in 16 the expert report. I don't specifically know that 17 this piece comes up again in any other context. 18 I'd have to go through the entire report right now 19 and try to find it again. 20 Q. Do you intend to offer any other basis 21 for your conclusion in the last sentence of page 10 22 other than the fact that moral turpitude was used 23 as a phrase multiple times in different contexts? 24 MS. MESSICK: Object to the form. 25 A. At this time, I don't recall, so I'm	Page 87 1 KAREN OWEN, Ph.D. 2 not providing any more expert opinion or any 3 opinion. This is what I have provided. 4 Q. You mention the Oklahoma's Infamous 5 Habitual Criminal Sterilization Act. What is that 6 law? 7 A. So I mention that that's here. It's 8 part, again, of a list of things that there had 9 been the use of moral turpitude, where, you know -- 10 I don't recall the specifics of the Act as I sit 11 here, but where criminals were being sterilized. 12 Q. Did you do any research or analysis to 13 determine whether there was any racially 14 discriminatory purpose for the use of the phrase 15 "moral turpitude" in the Oklahoma eugenics law? 16 A. No. 17 Q. What is the basis for your exclusion in 18 the last sentence of page 10 that Oklahoma's 19 eugenics law's use of moral turpitude as a standard 20 did not have a racial discriminatory intent or 21 (indiscernible)? 22 MS. MESSICK: Object to the form. 23 A. As I previously mentioned, it was 24 within this list of others where moral turpitude 25 had been used.
Page 88 1 KAREN OWEN, Ph.D. 2 Q. Okay. So is there any -- do you have 3 any other basis to support your conclusion in the 4 last sentence of page 10 with respect to Oklahoma's 5 eugenics law other than that it, like other 6 contexts, used the phrase "moral turpitude"? 7 MS. MESSICK: Object to the form. 8 A. At this time, I'm not providing any 9 additional basis. I mean, this is what I have 10 written. 11 Q. Do you think that the use of poll taxes 12 in state constitutions and state laws during the 13 late 1800s and early 1900s -- is it your belief 14 that that was for a racially discriminatory 15 purpose? 16 MS. MESSICK: Object to the form. 17 A. I don't offer an opinion here on poll 18 taxes, and I have not looked extensively as to the 19 legislative history of when poll taxes were 20 instituted and when they were passed and how they 21 were used. 22 Q. As a political scientist, do you have a 23 view of whether poll taxes were used as a racially 24 discriminatory device in American history? 25 MS. MESSICK: Object to the form.	Page 89 1 KAREN OWEN, Ph.D. 2 A. So, as a political scientist -- and 3 this is just my personal opinion as a political 4 scientist, not as an expert -- I would say that 5 historically we have seen that poll taxes were 6 discriminatory. They were discriminatory towards 7 poor people, for certain, and that did include 8 being discriminatory against people of different 9 races. 10 Q. Does the fact that the phrase "poll 11 tax" appeared in multiple different states and in 12 multiple different legal documents make it not 13 racially discriminatory? 14 MS. MESSICK: Object to the form. 15 A. I don't have a personal opinion -- I 16 mean, I'm sorry. I don't -- as I sit here, I would 17 have to see where poll tax is used multiple times 18 and what is -- that's a hypothetical. I'm guessing 19 at what that would be, and I don't feel comfortable 20 to say yes or no that this is what it is. 21 Q. Okay. So just as a, like, a research 22 methodology, does the fact that something appears 23 multiple times during an era in which there was 24 racism, does that negate the fact that it had a 25 racial purpose?

Page 90 1 KAREN OWEN, Ph.D. 2 MS. MESSICK: Object to the form. 3 A. Again, I think that the use of phrases 4 is complex and people reuse different phrases 5 multiple times, and just because it's used multiple 6 times doesn't mean that that is always the 7 intention of why it's used or that it carries on. 8 For instance, we use, right, all men are created 9 equal. Well, I pray to God and hope right now 10 sitting here that that doesn't apply to just men, 11 that that applies to women. So it does change in 12 the context. And I think that you have to look at 13 the phrase. And in here, I have multiple -- I have 14 just stated that moral turpitude had been used in 15 other contexts. 16 Q. Do you think it's sufficient to 17 determine that a phrase doesn't have a racially 18 discriminatory purpose in a legal context merely 19 because it was used multiple times in the legal -- 20 in different legal contexts? 21 MS. MESSICK: Object to the form. 22 A. I believe as a political scientist, I 23 would want to have adequate time to review and 24 analyze and look at all the details surrounding all 25 pieces of what's provided.	Page 91 1 KAREN OWEN, Ph.D. 2 Q. Did you have adequate time to conduct 3 research into the purpose behind the use of the 4 phrase "moral turpitude" in these -- all these 5 legal contexts that you mention on page 10? 6 A. I would have liked to have had more 7 time, certainly, especially given the pandemic and 8 having to manage multiple things at my home, and 9 this is one part where I provided that. In the 10 context of the entirety of my report, where you can 11 see moral turpitude had been -- had appeared in 12 other contexts. It wasn't brand new to Alabama. 13 Q. I think you testified that you don't 14 know whether it ever appeared in these contexts 15 prior to the 1901 Constitution, right? 16 MS. MESSICK: Object to the form. 17 A. I -- I don't believe that's my 18 testimony, no. 19 Q. What is your testimony, then? 20 A. So I stated right here in my expert 21 report, where moral turpitude had been seen in 22 contexts in immigration law prior to 1901. 23 Q. Okay. Right. So we have the 24 immigration laws, and you didn't look to see 25 whether moral turpitude was -- had a racially
Page 92 1 KAREN OWEN, Ph.D. 2 discriminatory purpose in those. Those preceded 3 1901, right? 4 A. Yes. 5 MS. MESSICK: Object to the form. 6 BY MR. GABER: 7 Q. But you don't know whether any of these 8 other legal contexts that you report on, starting 9 with the "furthermore" sentence, whether those 10 preceded 1901? 11 MS. MESSICK: Object to the form. 12 A. I've already testified that I don't 13 recall the exact timing of these. 14 Q. In any of your other expert reports 15 that you've done in your expert testimony, have you 16 ever offered an opinion on whether a law had a 17 racially discriminatory purpose? 18 A. I don't believe I understand your 19 question. Could you ask it again? 20 Q. Is this the first time that you've ever 21 offered an opinion in a litigation as to whether a 22 law had a racially discriminatory purpose or not? 23 A. No, this is not the first time. 24 Q. In what other cases did you do so? 25 A. When I testified in the Virginia voter	Page 93 1 KAREN OWEN, Ph.D. 2 photo identification case, I looked at whether that 3 statute for the photo ID was passed with racial 4 intention. 5 Q. What methodology did you use to come to 6 your conclusion? 7 A. In that case, I was asked to review and 8 analyze Professor Allan Lichtman's historical 9 analysis of that case and he used the Arlington 10 Heights framework in that case, and I was asked to 11 analyze his analysis data and determine if he had 12 sufficiently met and showed racial discrimination. 13 And then in the process of that, I showed that the 14 Virginia legislature had alternative reasons why 15 they passed the photo identification law and that 16 also in that same time frame, there was polling of 17 the electorate in Virginia and that they wanted 18 that voter ID law passed. So the legislature was 19 responding to the public's interest for the policy 20 to have ID -- identification be shown when voting. 21 Q. Did that involve any sort of historical 22 analysis of the meaning of any words or phrases 23 from the photo ID law? 24 A. At this point, I don't recall all parts 25 of that expert report, and I would have to go back

Page 94 1 KAREN OWEN, Ph.D. 2 and look exactly at all that I testified to and 3 wrote about. 4 Q. Was your testimony limited to offering 5 the potential alternative explanations? 6 A. My testimony was about analyzing and 7 reviewing Lichtman's expert report and his 8 methodology to come to the -- to what he basically 9 concluded and did I agree with that conclusion, or 10 was there potentially other things not considered. 11 And then I offered that -- I thought he relied on a 12 lot of inferences for determining that there was 13 racial discrimination and that there were these 14 other possible alternatives. 15 Q. Other than the Virginia photo ID case, 16 have you offered any other expert opinions about 17 whether a law had a racially discriminatory 18 purpose? 19 A. Not that I can recall. 20 Q. What would you describe as the 21 methodology you followed in coming to your 22 conclusion on the last paragraph -- the last 23 sentence of page 10 of your report? 24 MS. MESSICK: Object to the form. 25 A. I believe I stated that, in the process	Page 95 1 KAREN OWEN, Ph.D. 2 of writing in this report, I was discussing how the 3 phrase "moral turpitude" had been used in other 4 historical contexts or legal contexts -- excuse 5 me -- had been used in other legal contexts, and 6 that seeing this and then seeing that Dr. -- the 7 other -- the plaintiffs' expert had provided no 8 evidence of how and why this had been used and 9 can -- and was used in other contexts besides just 10 the disenfranchisement section. But it did appear 11 in other places, so it was not an unknown or rare 12 term. It was in other contexts. So I used 13 research, reports, other documents to show that 14 there had -- the phrase had been used elsewhere. 15 Q. And that is the methodology that you 16 employed to come to the conclusion that, in those 17 other legal contexts, the phrase did not carry the 18 intent and taint of racial discrimination; is that 19 correct? 20 A. I've written that I thought it did not 21 carry the intent. 22 (Simultaneous speakers.) 23 A. Looking at those different contexts. 24 Q. And that's based on the methodology of 25 seeing that it was used in multiple contexts?
Page 96 1 KAREN OWEN, Ph.D. 2 MS. MESSICK: Object to the form. 3 A. Yes, that it was in multiple contexts, 4 and perhaps other bases that -- you know, right 5 now, I don't recall each exact piece that I looked 6 at, because the focus, again, of my report was on 7 this Alabama statute. 8 Q. Does it -- is the opinion you express 9 in the last sentence of page 10 about the preceding 10 paragraph, does that continue to be your opinion 11 today? 12 A. It's what I stated -- 13 Q. No, that's not my question. 14 (Simultaneous speakers.) 15 A. Can I please finish? 16 Q. Sure. 17 A. So can you please re-ask your question? 18 Q. Sitting here today, is it still your 19 opinion that the use and application of moral 20 turpitude in each of these legal contexts does not 21 carry the intent and taint of racial 22 discrimination, referring to the legal context in 23 the preceding paragraph? 24 A. This is my conclusion at the end of 25 this paragraph in my expert report. I stand by	Page 97 1 KAREN OWEN, Ph.D. 2 what I have written. As we sit here right now, 3 sure, I would love to have ample more opportunity 4 to dive into other factors of moral turpitude and 5 where it applied in different legal contexts. But 6 I'm showing here that moral turpitude was seen in 7 other legal contexts, and then it's moving into how 8 that would then be known by -- it would have been a 9 phrase that someone in the legal realm would have 10 been aware of as they're working on other statutory 11 provisions going forward. And, again, my focus of 12 the report is on the 1995 act and then the 1996 13 amendment. 14 Q. Did you explore at all whether the 15 legislators in 1901 were aware of whether there had 16 been a racially discriminatory purpose with respect 17 to the use of the phrase "moral turpitude" in other 18 legal contexts? 19 MS. MESSICK: Object to the form. 20 A. No. 21 Q. Did you look to see whether the 1901 22 Alabama constitution used other racially 23 discriminatory -- or let me -- I'll start over. 24 Did you look to see whether the 1901 25 Constitution of Alabama used phrases that in other

Page 98 1 KAREN OWEN, Ph.D. 2 legal contexts and in other states had a racially 3 discriminatory purpose? 4 MS. MESSICK: Object to the form. 5 A. No, I did not review sections of the 6 1901 Alabama Constitution. I was asked to look at 7 the constitutional reform effort after 1901 and how 8 that led into the 1995 act and the 1996 amendment 9 passage. 10 MS. MESSICK: Can we go off the 11 record for just one minute? 12 MR. GABER: Sure. 13 (Lunch recess from 11:57 a.m. to 14 1:30 p.m.) 15 THE WITNESS: Earlier, you asked 16 me about the cases I had been involved 17 in related, and I -- and then you asked 18 me if I recalled reading the opinions 19 of any of those cases, and I do -- I 20 said at that time that I had read the 21 opinion and the -- or may have read the 22 opinion in the Common Cause case in 23 North Carolina, and I -- I read the 24 part, I remember, where it said that 25 the Court found some of my testimony to	Page 99 1 KAREN OWEN, Ph.D. 2 be unpersuasive. I read that section 3 of the opinion. I did not read the 4 entirety of that opinion. And I just 5 want the record to reflect that I had 6 reviewed that section and do remember 7 that the Court, at some point, found 8 some of my testimony or an aspect of my 9 testimony to be unpersuasive. 10 BY MR. GABER: 11 Q. Do you know whether the Court found any 12 of your testimony in that case to be persuasive? 13 A. I do not recall the exact details. I 14 just remember that one phrase. At this point, 15 that's all I can recall is that one part. 16 Q. The unpersuasive part. 17 A. Yes. 18 Q. I want to return to pages 11 to 12 of 19 your report and talk briefly about the 1930 reform 20 effort that you talk about. Did your research 21 uncover any evidence that the advocates of reform 22 in the 1930s gave any consideration to the purpose 23 of the 1901 Constitution's use of the phrase "moral 24 turpitude"? 25 A. I'm sorry. Could you repeat what page
Page 100 1 KAREN OWEN, Ph.D. 2 you're on and then also repeat your question. 3 Somehow, it cut out a little bit and I didn't hear 4 all of it. 5 Q. Sure. So this is pages 11 to 12 of 6 your report. I don't need you to read it, but it's 7 just about the 1930s reform effort. And my 8 question is: Did your research uncover any 9 evidence that the advocates of reform in the 1930s 10 gave any consideration to the purpose of the 1901 11 Constitution's use of the phrase "moral turpitude"? 12 MS. MESSICK: Object to the form. 13 A. I don't recall reading specifically 14 about advocate -- advocacy at this time in the 15 1930s. What I wrote in the report talked about the 16 governor's initiative to revise the constitution at 17 that time. 18 Q. And did you come across any evidence 19 that the governor, in his initiatives in the 1930s, 20 was focused at all on the meaning of the 1901 21 Constitution's use of the phrase "moral turpitude"? 22 MS. MESSICK: Object to the form. 23 A. I do not recall specifically in the 24 research of the 1930s specifically. I put in here 25 what -- was talking about the governor's attempts	Page 101 1 KAREN OWEN, Ph.D. 2 to begin the constitution revisions and efforts 3 related to making the constitution more succinct 4 and be in line, kind of, with the idea of moving 5 more progressively into the decade. So I don't 6 recall specifically -- specific research on that 7 phrase within the gubernatorial and historical 8 document that I looked at. 9 Q. So you don't have any opinion that the 10 1930s effort that you talk about in your report was 11 premised upon the meaning of moral turpitude in the 12 1901 Constitution. Am I correct about that? 13 A. I write in my report about how the 14 governors had just made -- in the 1930s, Governors 15 O'Neal and Kilby were working towards revising the 16 constitution, which would incorporate a look at the 17 holistic constitution -- they were looking at 18 revising it. And if they're looking at the 19 entirety of the constitution, obviously, there's 20 multiple sections and that could be a section to be 21 looked at. But I don't specifically address that 22 in the report. 23 Q. Okay. And my -- it's a very specific 24 question: Did you uncover any evidence that the 25 motivating purpose for the 1930s effort was because

Page 102 1 KAREN OWEN, Ph.D. 2 of a concern about what the phrase "moral 3 turpitude" meant in the 1901 Constitution? 4 A. I do not have research in this report 5 related to that. It's just about the revisions of 6 the constitution. 7 Q. You didn't find any -- did you find any 8 evidence that they were thinking about the phrase 9 "moral turpitude" in particular at all? 10 A. I don't recall looking at specific 11 document on that. I just don't recall. I mean, I 12 looked at thousands of pages related to 13 constitutional reform, and I don't remember 14 specifically that time period of a document for 15 that. 16 Q. Do you recall there being any focus on 17 the criminal disenfranchisement topic in particular 18 for the 1930s reform effort? 19 A. No, I don't recall. 20 Q. And so you don't express an opinion 21 that the 1930s effort focused on criminal 22 disenfranchisement for moral turpitude, as that 23 phrase was understood in 1901? 24 MS. MESSICK: Object to the form. 25 A. So my report talks about that the	Page 103 1 KAREN OWEN, Ph.D. 2 initiatives began for revising the constitution in 3 the 1930s. This is when I start talking about 4 constitutional reform. And again, as I just 5 previously stated, that revision was for -- I 6 believe it was, like, for a new constitution that 7 would be more succinct, so it would incorporate the 8 provisions and sections, which could include that, 9 on disenfranchisement. They were looking at 10 revising the constitution. 11 Q. If you turn to pages 12 through 14, you 12 move on to talk about the 1940s and 1950s reform 13 effort and you discuss efforts by Governor Folsom 14 in the 1940s to abolish the poll tax and 15 reapportion the legislature. Does that sound 16 familiar? 17 A. Yes. 18 Q. Did your research uncover any evidence 19 that Governor Folsom gave any consideration to the 20 purpose of the 1901 Constitution's use of the 21 phrase "moral turpitude"? 22 A. I don't recall. 23 Q. You don't present anything in your 24 report that would suggest that. Is that fair? 25 A. I do not specifically say anything
Page 104 1 KAREN OWEN, Ph.D. 2 related to that phrase in the 1940s with Governor 3 Folsom. 4 Q. What about criminal disenfranchisement 5 generally? Did you find any evidence to suggest 6 that Governor Folsom's effort was focused on the 7 criminal disenfranchisement provision? 8 A. I don't recall that there was specific 9 things I looked at where he spoke out for that 10 specific. What I highlighted here was, I think, 11 two of the biggest initiatives he was pushing for 12 in the revision. But again, he was pushing for 13 revising the constitution. 14 Q. You also highlight the advocacy in the 15 1950s from the League of Women Voters regarding a 16 constitutional revision. Did your research yield 17 any evidence that the League of Women Voters gave 18 any thought in their 1950s advocacy to the purpose 19 of the 1901 Constitution's use of the phrase "moral 20 turpitude"? 21 A. On page 13, I talk about the League of 22 Women Voters, and how they were writing about their 23 support for state constitutional revision and 24 understanding of how that revision could be met 25 through either convention or an amendment and how	Page 105 1 KAREN OWEN, Ph.D. 2 the league would be involved or could contribute to 3 this work. They talk very broadly about the 4 importance of having constitution revision and what 5 it looks like, and then they don't specifically, in 6 the part that I quote here, talk about moral 7 turpitude. 8 Q. Did you find anything else that you 9 didn't quote in here from the League's advocacy 10 about the 1901 Constitution's meaning of the phrase 11 "moral turpitude"? 12 MS. MESSICK: Object to the form. 13 A. In this report, I talk about from the 14 letter what -- what's their desire to see in -- 15 just state constitutional reform, general, and that 16 they would -- and this is the beginning of their 17 process of getting involved in state constitutional 18 reform. And then on page 14, I talk about how that 19 then leads into other letters and subsequent 20 decades where they will ask -- will talk about 21 specific articles to be revised in the 22 constitution. 23 Q. Okay. So my -- my question was pretty 24 specific about whether you found any evidence that 25 the League focused at all on the 1901

Page 106 1 KAREN OWEN, Ph.D. 2 Constitution's meaning for the phrase "moral 3 turpitude." And I didn't hear it. Is the answer 4 "no"? 5 A. In this 1953 letter -- 6 MS. MESSICK: Hold on. Object to 7 the form. And I think that to the 8 extent there was any kind of time frame 9 on your question, it got lost when you 10 restated it. So if you meant to 11 include that, let us know. 12 Otherwise, if you would just give 13 me a minute to object. 14 THE WITNESS: Sorry. 15 MS. MESSICK: Do you want to 16 rephrase? 17 BY MR. GABER: 18 Q. Well, so we're talking about the 1950s 19 League of Women Voters advocacy that you talk about 20 on pages 13 through 14, and my question was -- I 21 think you answered that you hadn't written here in 22 the quote that you selected anything that would 23 suggest a focus on the 1901 Constitution's meaning 24 of moral turpitude. 25 My question was: Did you -- is there	Page 107 1 KAREN OWEN, Ph.D. 2 some other research that you found that you chose 3 not to quote here that would have shown that the 4 League was focused on that phrase from the 1901 5 Constitution? 6 A. No, there's no other component to this. 7 In 1953, the League was talking about wanting state 8 constitutional reform and the effort to get that 9 done. 10 Q. And that was about the procedure for 11 how to do that and their value as a nonpartisan 12 organization and as an organization focused on 13 women; is that correct? 14 A. Yes. 15 Q. And there was also no focus on criminal 16 disenfranchisement generally in the League's 1950s 17 advocacy; is that correct? 18 A. No, there was no discussion of the 19 criminal. 20 Q. Now, on page -- I guess starting on 21 page 14 and kind of going through 24, the next kind 22 of time period you talk about is the late 1960s and 23 into the 1970s and the Constitutional Revision 24 Commission. Do you recall that part of your 25 report?
Page 108 1 KAREN OWEN, Ph.D. 2 A. Yes. 3 Q. On page 17 -- 4 Are you there? 5 A. You said 17? 6 Q. 17, yeah. 7 A. Okay. 8 Q. You discuss the Constitutional Revision 9 Commission from the 1970s and note that its staff 10 member, Dr. Beatty, proposed eliminating the 11 enumerated list of disenfranchising crimes and 12 having a general description. 13 Do you see that? 14 A. Are you in the first paragraph? 15 Q. Yes, the one that begins with the 16 commission. 17 A. Okay. 18 Q. You have a block quote on page 17. Why 19 did you bold and italicize the two sections of 20 that? 21 A. So I wanted to provide emphasis here 22 about what was stated in the report's rationale for 23 revising, that state constitutions commonly include 24 like provisions, disqualifying mental incompetence. 25 That part, the inclusion or exclusion, becomes a	Page 109 1 KAREN OWEN, Ph.D. 2 matter of constitutional interpretation or 3 constitutional amendment. And then I highlighted 4 it to show, bolded it to show the emphasis there. 5 It would appear sufficient to describe subsequent 6 disqualifications in general terms, thus overcoming 7 these objections and eliminating a long, scattered, 8 and redundant list of disqualifying crimes. I 9 wanted to show what the commission was talking 10 about as far as their rationale. 11 Q. And so was it your conclusion that the 12 commission was focused on the, like, procedural 13 manner in which the constitution presented this 14 material? 15 MS. MESSICK: Object to the form. 16 A. Could you repeat your question? 17 Q. Can you tell me what your -- like, what 18 conclusion did you draw from this -- these two bold 19 and italicized parts? 20 MS. MESSICK: Object to the form. 21 A. So in this report, I have written that 22 Dr. Beatty, who was providing to the commission his 23 discussion of the section that he worked on, which 24 was 182, and how they were looking at streamlining 25 or putting the disqualifications in general terms

Page 110

1 KAREN OWEN, Ph.D.
2 and eliminating the long list of crimes that were
3 in the constitution at the time and they were
4 trying to make those revisions. So I emphasized
5 these parts to show that it was a new -- an
6 intention for putting the language in more general
7 terms and shortening that list or, as he put it,
8 eliminating a long, scattered, and redundant list
9 of disqualifying crimes.
10 Q. Why is that significant?
11 A. This is --
12 MS. MESSICK: Object to the form.
13 A. So this is part of my analysis showing
14 how constitutional revision -- the conversations
15 that committee members were having when they were
16 talking about different sections of revising the
17 constitution, and the actual rationale for the
18 revisions they were putting in.
19 Q. What did you conclude was the
20 rationale?
21 MS. MESSICK: Object to the form.
22 A. So I stated here in the opinion what
23 the individual had -- the quote from that report as
24 their rationale for the revision.
25 Q. Okay. You don't have -- you don't draw

Page 112

1 KAREN OWEN, Ph.D.
2 disqualifications in general terms and eliminating
3 that long list of disqualifying crimes.
4 Q. So you don't -- you come across
5 anything that suggested Dr. Beatty was focused at
6 all on the 1901 Constitution's meaning of the
7 phrase "moral turpitude"; is that correct?
8 MS. MESSICK: Object to the form.
9 A. In this discussion where he notes, you
10 know -- he states what the constitution provides
11 and that the different -- you know, he states, to
12 disqualify from one voting, he says this. And then
13 after the statement of the current constitutional
14 language, he reports their rationale for what they
15 were doing to revise it. In the process of all of
16 that, the phrase "moral turpitude" is in the old
17 constitution, but he doesn't specifically bring it
18 up in his comment that is provided here as a
19 rationale for revision.
20 Q. Did you uncover anything else that you
21 didn't include in your report that would suggest
22 that Dr. Beatty was focused at all on the 1901
23 Constitution's meaning of the phrase "moral
24 turpitude"?
25 MS. MESSICK: Object to the form.

Page 111

1 KAREN OWEN, Ph.D.
2 any sort of conclusion of your own as to what that
3 means?
4 A. In this part right here, I state what
5 the rationale was from those commission members in
6 their report.
7 Q. Did you find any evidence that
8 Dr. Beatty or the Constitutional Reform Commission
9 focused at all on the 1901 Constitution's meaning
10 behind the phrase "moral turpitude"?
11 MS. MESSICK: Object to the form.
12 A. Could you or the court reporter repeat
13 your question?
14 Q. I will. Did you find any evidence that
15 Dr. Beatty focused at all on the 1901
16 Constitution's meaning of the phrase "moral
17 turpitude"?
18 A. So what's in my report is what I
19 reported from Dr. Beatty. I don't recall -- and
20 I'm happy to sit here and read. I report what he
21 provided to the full commission and -- related to
22 their comments and drafts on the provision of the
23 articles related to disenfranchisement, and I don't
24 recall specifically anything on moral turpitude.
25 But they did discuss how they were describing these

Page 113

1 KAREN OWEN, Ph.D.
2 A. No, I don't recall that there was any
3 specific information. What I provided is what his
4 report had.
5 Q. And is that true, as well, for the
6 commission -- the Constitutional Revision
7 commission generally, that -- did you find anything
8 outside of Dr. Beatty's work with respect to the
9 commission that would show the commission how to
10 focus on the 1901 Constitution's meaning of the
11 phrase "moral turpitude"?
12 MS. MESSICK: Object to the form.
13 A. If I can have just a moment to review
14 these sections to refresh my memory exactly what
15 the commission was saying, and then I may ask you
16 to restate your question. I think I know what you
17 were. . .
18 Okay. Can you ask your question again?
19 Sorry.
20 Q. Did you uncover any evidence in your
21 research that the Constitutional Revision
22 Commission focused at all on the 1901
23 Constitution's meaning behind the phrase "moral
24 turpitude"?
25 MS. MESSICK: Object to the form.

Page 114 1 KAREN OWEN, Ph.D. 2 A. So the Constitutional Revision 3 Commission looked at the different sections. And 4 in this part, I highlight the part on suffrage and 5 elections, where they did propose the new section 6 on disqualifications that would say no person 7 convicted of a felony involving moral turpitude or 8 having been adjudicated in this or any other state, 9 territory, or district to be mentally incompetent, 10 shall be qualified to vote until restoration of 11 civil rights or removal of disability. That was 12 their proposed language. And they used the phrase 13 "convicted of a felony involving moral turpitude." 14 I don't report in the expert report any comments on 15 that phrase, and actually show that this discussion 16 on the section was approved and not amended. 17 Q. Say that last part again. 18 A. So on page 18, I highlight that the 19 committee proposed that section on disqualification 20 and that the full commission membership reviewed 21 that section. Amendments were offered on section 1 22 of the suffrage -- I mean, the suffrage and 23 elections part. They deleted a few, because that 24 was an extensive part. But that section I just 25 read, section 2 on disqualification, there was no	Page 115 1 KAREN OWEN, Ph.D. 2 debate or concern, and it was approved by the 3 commission. 4 Q. Okay. So my question is: Did you 5 uncover any evidence that the Constitutional 6 Revision Commission focused on the meaning of the 7 phrase "moral turpitude" as used by the 1901 8 Constitution? 9 MS. MESSICK: Object to the form. 10 A. I do not recall that the commission -- 11 (Simultaneous speakers.) 12 BY MR. GABER: 13 Q. I was just saying -- I'm not trying to 14 ask a trick question. I think it's a yes-or-no 15 question. Did you uncover any evidence that the 16 Constitutional Revision Commission was focused on 17 the 1901 Constitution's meaning of the phrase 18 "moral turpitude"? 19 MS. MESSICK: Object to the form. 20 A. I don't recall that was in this 21 commission meeting -- minutes and the discussion 22 from this subcommittee that there was any specific 23 discussion of the language "moral turpitude." 24 Q. You don't express an opinion that the 25 Constitutional Revision Commission in the 1970s was
Page 116 1 KAREN OWEN, Ph.D. 2 seeking to understand what moral turpitude meant to 3 those who included it in the 1901 Constitution; is 4 that correct? 5 A. No, I don't express an opinion about 6 that. 7 Q. What about with respect to -- strike 8 that. 9 With respect -- you speak of it in the 10 report about community groups that advocated to the 11 Constitutional Revision Commission. Did you, in 12 your research, uncover any evidence that any of 13 those community groups were focused in their 14 comments on the 1901 Constitution's meaning of the 15 phrase "moral turpitude"? 16 MS. MESSICK: Object to the form. 17 A. So I do write on pages 18 and 19 about 18 groups who were submitting their support or 19 advocating for constitutional reform, and I 20 mentioned that the Young Men's Business Club of 21 Birmingham wrote a letter about removing 22 restrictions on the franchise and their concern 23 about making sure that the franchise was available. 24 And I talk about the League of Women Voters and 25 their support of the new constitution and	Page 117 1 KAREN OWEN, Ph.D. 2 constitutional revision, and that the League had no 3 concern or comments regarding the revisions on 4 voter qualifications, that that was not part of 5 their -- didn't see any controversy in that. And 6 they did not comment specifically on a particular 7 phrase in that section except related to, you know, 8 18-year-olds voting, I believe the Young Men's 9 Business Group did comment about 18-year-olds. 10 (Simultaneous speakers.) 11 BY MR. GABER: 12 Q. Did you uncover any evidence that any 13 group spoke to the commission about the 1901 14 Constitution's meaning behind the phrase "moral 15 turpitude"? 16 MS. MESSICK: Object to the form. 17 A. Not that I can recall. And I provided 18 two examples here. 19 Q. Those aren't examples using -- speaking 20 about the meaning of the constitution's phrase 21 "moral turpitude," are they? 22 MS. MESSICK: Object to the form. 23 A. I provide two examples of community or 24 advocacy groups, organized groups, who had an 25 interest in constitutional revision efforts, and

Page 118 1 KAREN OWEN, Ph.D. 2 they spoke about -- particularly here, they did 3 discuss the voter qualifications and elections 4 section. 5 Q. There's not some material that you have 6 showing them talking about the 1901 Constitution's 7 meaning behind the phrase "moral turpitude" that 8 you did -- chose to exclude from your report, is 9 there? 10 A. No. 11 MS. MESSICK: Object to the form. 12 BY MR. GABER: 13 Q. The commission's proposed changes to 14 the voting provisions did not become law; is that 15 right? 16 A. I'm sorry. Could you ask that again? 17 Q. The proposed revisions of the 18 commission that related to voting, those were not 19 enacted into law, were they? 20 A. Not in the 1971-73 legislative session, 21 no. 22 Q. I want to move now to the 1979 effort. 23 Your report presents this (indiscernible) from 24 pages 24 to 40, and this was the effort led by 25 Governor Fob James and members of the legislature	Page 119 1 KAREN OWEN, Ph.D. 2 in 1979. Does that sound familiar to you? 3 A. Yes. 4 Q. In your research, did you uncover any 5 evidence that, during the 1979 effort, there was 6 any focus or discussion on the purpose of the 1901 7 Constitution's use of the phrase "moral turpitude"? 8 A. Can I have a moment to review this 9 section to refresh my memory? 10 Q. Sure. But I mean, first, just sitting 11 here, do you recall any effort from your research 12 on that topic? 13 A. So I do recall in the 1979, where 14 Governor James had a working group and they were 15 working section by section on revising the 16 constitution, and that part of that 17 section-by-section work was on the suffrage and 18 elections article, that they were revising that. 19 Q. And the meaning of the 1901 20 Constitution's use of the phrase "moral turpitude," 21 did you find any -- do you recall sitting here that 22 it came up that there was -- what the meaning was 23 behind that phrase in 1901? 24 MS. MESSICK: Object to the form. 25 A. So I asked to review, because there's
Page 120 1 KAREN OWEN, Ph.D. 2 different testimony that was provided at this time, 3 so the legislators were working on this section and 4 they asked questions, as well as there was public 5 comment related to this section. 6 Q. Okay. So in order to answer my 7 question about whether the 1979 effort involved a 8 review of the meaning behind the 1901 9 Constitution's use of the phrase "moral turpitude," 10 you need to read the report. Is that your 11 testimony? 12 MS. MESSICK: Object to the form. 13 A. I'm telling you that I have written in 14 my report -- I do recall the 1979 effort, but I 15 cannot directly state or quote from a legislative 16 member or the governor or a public official as to 17 what they were saying at the time. During this 18 time, there was -- there was discussion about this 19 particular article and section of the constitution 20 being revised. 21 Q. Okay. Do you want to take a look now? 22 Did you, after refreshing your 23 recollection of your report, find anything to 24 reflect any focus on the meaning in the 1901 25 Constitution of the phrase "moral turpitude" in the	Page 121 1 KAREN OWEN, Ph.D. 2 1979 reform effort? 3 MS. MESSICK: Object to the form. 4 A. In the analysis and the review that I 5 have here of the testimony and the public comments 6 that were offered, there is discussion of the 7 qualifications of voting and that section on 8 elections and suffrage, and there is discussion of 9 the phrase "involving moral turpitude." 10 Q. Okay. So first, I'm asking very 11 specifically about the 1901 Constitution drafters' 12 meaning of that phrase. So it's a very specific 13 question: Did you find anything about that in the 14 1979 reform effort? 15 MS. MESSICK: Object to the form. 16 A. No, I did not see that they referred 17 back to 1901 and the phrase. They talk about 18 revising the 1901 Constitution, the sections of 19 that. 20 Q. And did you uncover anything in your 21 research about the 1979 effort that reflected any 22 thought to what the meaning of moral turpitude was 23 to them in 1979? 24 A. So in this discussion of the public 25 testimony, they talk about how they were relying on

Page 122 1 KAREN OWEN, Ph.D. 2 revisions that had been offered in previous -- 3 like, the 1973 session from the working group, that 4 they were relying on those proposed changes and 5 they were looking at them. They thought this was 6 noncontroversial, and then there was a question 7 asked and raised about whether this section on 8 disqualification using the phrase "moral 9 turpitude," how is that defined? There was an 10 exchange about that. There was an exchange about 11 whether these were to be handled constitutionally, 12 statutorily. There was a lot of debate regarding 13 the -- I shouldn't say a lot. Let me rephrase 14 that. There was discussion, minimal discussion, 15 among three or four members of the legislature 16 about this one section on suffrage and elections, 17 and they do talk about how they are revising from 18 the 1901 Constitution and that proposed revisions 19 had been coming through different iterations since, 20 you know, the governor's work in the late 1960s. 21 Q. Did you uncover anything that gave you 22 any evidence as to why the phrase "moral turpitude" 23 was being used in the 1979 effort? 24 MS. MESSICK: Object to the form. 25 A. Could you restate your question or	Page 123 1 KAREN OWEN, Ph.D. 2 could you repeat it? 3 Q. Did your research reveal to you the 4 reason why the phrase "moral turpitude" was being 5 used in the 1979 reform effort? 6 A. So if you review the testimony provided 7 during this joint hearing, they were relying on the 8 '73 working group constitutional revision. They 9 were using that phrase that was coming -- it was 10 not an uncommon phrase. It was found in, I 11 believe, the impeachment section portion of the 12 revision of the constitution. And so in my 13 research of this, there was no direct discussion 14 that they were using the phrase, that it was 15 coming -- it was a continuation from those previous 16 revisions and proposals. 17 Q. Okay. And so did your research uncover 18 any reasons why the phrase "moral turpitude" was 19 used in the previous 1973 revision effort? 20 A. So they talked about, we just discussed 21 that, where Dr. Beatty presented to the commission 22 then that they were providing the disqualifications 23 in general terms and trying to eliminate the long 24 list of disqualifying crimes. 25 Q. And that -- but they were maintaining
Page 124 1 KAREN OWEN, Ph.D. 2 the use of the phrase "moral turpitude" that 3 originated in the 1901 Constitution; is that 4 correct? 5 MS. MESSICK: Object to the form. 6 A. They did not state in the seventies 7 that they were reusing that from 1901. There's -- 8 I don't recall any testimony saying that. 9 Q. Well, did you recall any testimony 10 saying why they were using the phrase "moral 11 turpitude"? 12 MS. MESSICK: Object to the form. 13 A. Is there a specific part in my report? 14 Because I did talk about, in the report, the 15 rationale that the commission provided for why they 16 were revising the section and what they were 17 writing. 18 Q. And that was -- I think we talked about 19 that. That was to reduce it from having an 20 enumerated list of disqualifying crimes to just 21 having a general principle of what would be 22 disqualifying; is that correct? 23 A. Yes. Yes. They were making -- they 24 were shortening, making the article more succinct. 25 Q. But it kept -- the 1973 revision effort	Page 125 1 KAREN OWEN, Ph.D. 2 kept the phrase "moral turpitude" that was in the 3 existing-then 1901 Constitution at that time; is 4 that right? 5 MS. MESSICK: Object to the form. 6 A. It does have that same, including 7 "moral turpitude" phrase. 8 Q. Did you find any evidence to suggest 9 that the 1973 revision effort took that phrase from 10 something other than the existing constitution? 11 A. I'm sorry. Could you ask that again? 12 Q. Did you uncover any evidence that would 13 suggest that the reason 1973 revision effort 14 employed the phrase "moral turpitude" was to borrow 15 it from something else, other than the fact that it 16 was just already in the constitution? 17 A. I don't recall that there was any 18 public comment surrounding that phrase or even 19 mentioned that they were just pulling language. 20 They were simplifying the article, and in doing so, 21 eliminating many of that list of crimes. 22 Q. But what they did do was keep the 23 phrase "moral turpitude" as it was in the existing 24 constitution? 25 MS. MESSICK: Object to the form.

Page 126 1 KAREN OWEN, Ph.D. 2 A. I would have to go back and actually 3 compare 1901's language to what they proposed in 4 the '73 commission, as well as in '79. I don't 5 have -- in my report, I do not state that exact -- 6 1901 and the phrase is similar, but is it an exact 7 copyover? I'd have to see that. 8 Q. Well, the phrase "moral turpitude," you 9 agree that that's in the 1901 Constitution? 10 A. Yes. 11 Q. And that phrase would have been 12 maintained in the 1973 proposal? 13 MS. MESSICK: Object to the form. 14 (Simultaneous speakers.) 15 A. In the 1973 commission, they proposed a 16 section 2 on disqualification, and they have the 17 phrase "no person convicted of a felony involving 18 moral turpitude." That is the language that they 19 proposed. It was not passed in the legislature, 20 but that is what they proposed to the legislature. 21 Q. I want to turn to page 30 of your 22 report. And you quote -- and I think you've 23 mentioned this a bit ago: You quote Representative 24 Harrison, and he was African-American; is that 25 right?	Page 127 1 KAREN OWEN, Ph.D. 2 A. Yes. 3 Q. In the middle of page 30, you quote 4 Representative Harrison as saying, quote, But I am 5 still lacking in the scope of what this language of 6 moral turpitude includes and what the net effect of 7 its exclusion will continue to be, end quote. 8 Do you see that? 9 A. Yes. 10 Q. Do you have any evidence that 11 Representative Harrison wasn't, with this comment, 12 expressing concern about the potential for 13 disparate racial effects from the use of the phrase 14 "moral turpitude"? 15 MS. MESSICK: Object to the form. 16 A. I'm sorry. Could you repeat your 17 question? 18 MR. GABER: Can I first ask, 19 Misty, what is the nature of your 20 objection? 21 MS. MESSICK: I find it very -- I 22 found your question confusing. I think 23 you asked her did she have any evidence 24 that somebody's intention wasn't 25 something.
Page 128 1 KAREN OWEN, Ph.D. 2 BY MR. GABER: 3 Q. What do you conclude was the meaning 4 behind Representative Harrison's statement that I 5 quoted? 6 A. I do not have an expert opinion in my 7 report about the statement he gave. 8 Q. Well, if you turn to page 32 of your 9 report, do you see that you say, Throughout this 10 debate on section 7.02 of the suffrage and 11 elections article, it seems the main concern of 12 representative Tony Harrison, an African-American, 13 was, quote, the question of the necessity of this 14 kind of thing being a constitutional consideration 15 rather than a statutory consideration, end quote, 16 and not whether the phrases were written to 17 intentionally discriminate and affect minority 18 voters through disenfranchisement mechanisms. 19 Did I read that correctly? 20 A. Yes, that's my statement. 21 Q. So in making this statement, were you 22 reaching a conclusion about the intent and concerns 23 of representative Tony Harrison? 24 MS. MESSICK: Object to the form. 25 A. In this statement, I provide that	Page 129 1 KAREN OWEN, Ph.D. 2 looking at the totality of his comments at this 3 time related to the section 7.02 on suffrage and 4 elections article, it seems his concern was on the 5 constitutional consideration rather -- or a 6 statutory consideration and not on the -- a 7 discriminatory effect. 8 Q. Okay. And so my question is: Going 9 back to page 30 to this quote, where Representative 10 Harrison says, I'm lacking in the scope of what 11 this language of moral turpitude includes and what 12 the net effect of its exclusion will continue to 13 be. Do you have any reason to believe that he was 14 not referring to any potential racial effect with 15 this statement? 16 A. I do not know exactly what his -- in 17 this one sentence was definitely saying. I made an 18 opinion based on the totality of what 19 Representative Harrison was discussing in regards 20 to this section that concerned him. This one 21 phrase, I am not -- or one sentence, I'm not sure 22 what he further noted, because he went on to say, 23 also, another question -- and I'm going back -- and 24 I'm going to come back, and then he goes to another 25 part. So I'm not exactly sure that he elaborated

Page 130 1 KAREN OWEN, Ph.D. 2 here more. What I drew was that throughout the 3 totality of his comments, that it seemed he was 4 focused more on the constitutional consideration 5 rather than the statutory consideration and not on 6 a particular phrase written to discriminate. 7 Q. Doesn't he say that he is -- I'm going 8 to come back to a further definition without 9 hopefully reference to the 1901, and he means 10 constitution, but he moves on. 11 Do you see that? 12 A. Yes. 13 Q. Did you draw any conclusion about why 14 Representative Harrison didn't want to refer to the 15 1901 Constitution? 16 A. In this testimony, this is what he 17 provided, and I did not provide an opinion directly 18 on this specific phrase. 19 Q. Do you have an opinion or a suspicion 20 as to why Representative Harrison might have been 21 concerned about using language from the 1901 22 Constitution? 23 A. I mean, I would be speculating what he 24 was thinking at the time, and I'm not going to do 25 that.	Page 131 1 KAREN OWEN, Ph.D. 2 Q. One of Representative Harrison's main 3 concerns -- and you reference this on page 32 -- 4 was that he considered the disenfranchisement after 5 the point of release from custody to be an 6 additional punishment. Does that reflect what you 7 found about his concerns? 8 A. I'm sorry. Could you point to where I 9 said something? I don't see that on page 32. 10 Q. Well, apart from what's written on 11 (indiscernible) here, in your research of 12 Representative Harrison's concerns, was one of 13 those concerns that it would be continuing 14 punishment to disenfranchise people after they had 15 been released from their sentence? 16 MS. MESSICK: Object to the form. 17 A. As I sit here, I do recall from the 18 transcript some discussion he laid out about the 19 idea of punishment. 20 Q. And the idea was that it would be 21 punishing people a second time, in effect, to 22 continue disenfranchising them after they had 23 finished their time in prison. Is that your 24 understanding? 25 MS. MESSICK: Object to the form.
Page 132 1 KAREN OWEN, Ph.D. 2 A. I would have to look again exactly at 3 his statement to say exactly what he was referring 4 to as that punishment. I do recall the -- that 5 context, but the focus of my report was on -- not 6 the idea of the punishment. It was on language 7 related to the disqualifications in the seventies. 8 Q. Can you turn to page 31 of your report? 9 And do you see in the first sentence, you say, 10 Representative Tony Harrison shifted his focus to 11 his most significant concern, which was whether an 12 additional procedure for restoring civil rights 13 constitutes additional punishment. Was that -- 14 does that reflect your conclusion about what 15 Representative Harrison's main concern was? 16 A. Yes, this is what I've written. 17 Q. Well, does what you've written reflect 18 your conclusion? 19 A. Yes. 20 Q. And then do you see that there's a 21 response down in the paragraph that you quote from 22 Senator Bob Harris in which he says, if he wanted 23 to reverse that process or to alter it so as to say 24 that whatever punishment imposed was -- should not 25 impact on your right to vote or hold office or	Page 133 1 KAREN OWEN, Ph.D. 2 whatever, that should be a way to go; is that 3 correct? 4 MS. MESSICK: Object to the form. 5 A. What is your question? 6 Q. Did your research -- I guess, did your 7 research uncover that Senator Harris and 8 Representative Harrison were having a colloquy in 9 which they were discussing the punishment effects 10 of disenfranchisement after release from jail or 11 prison? 12 MS. MESSICK: Object to the form. 13 A. My understanding from the reading of 14 the record and the transcript between their 15 conversation here was a concern related to whether 16 this was additional punishment or if this was 17 punishment, and the response being back that it's a 18 policy call, that the legislature can handle this 19 in some way. Again, going back to the conclusion I 20 had that it seemed like Representative Harrison was 21 very concerned about what things were 22 constitutional in nature and what was statutory in 23 nature, and this would be something that could be 24 discussed in a statutory nature. 25 Q. But throughout, they characterized the

Page 134 1 KAREN OWEN, Ph.D. 2 disenfranchisement as being a form of punishment? 3 MS. MESSICK: Object to the form. 4 BY MR. GABER: 5 Q. (Indiscernible)? 6 MS. MESSICK: We did not get the 7 first part of the sentence, and the 8 last part was just a grunt. 9 BY MR. GABER: 10 Q. Sure. In this conversation between 11 Representative Harrison and Senator Harris, the way 12 they spoke about disenfranchisement was that it was 13 punishment, whether it was set out in the 14 constitution or whether it was going to be set out 15 by the legislature. Their understanding that, from 16 what you uncovered, was that they spoke of it as a 17 form of punishment. Is that fair? 18 MS. MESSICK: Object to the form. 19 A. I did not write in my report, nor do I 20 have an opinion, that their conversation was -- was 21 on what is the punishment, if it is punishment, or 22 if it is not punishment. I report and have an 23 opinion that Representative Harrison's concern was 24 the discussion of this being punishment and whether 25 it would be handled in a constitutional revision or	Page 135 1 KAREN OWEN, Ph.D. 2 through statutory changes. I don't talk about and 3 I don't have an opinion about whether their 4 conversation was about punishment or not. 5 Q. Did you uncover any evidence to suggest 6 that anyone disagreed that it was a form of 7 punishment? 8 A. I reported the transcript information 9 right here. That's what I reported in the 10 conversation. 11 Q. I understand that. What I'm asking you 12 is about your research. I assume -- earlier, you 13 said you've reviewed thousands of pages. Now, you 14 didn't report all thousand pages in here. So I'm 15 asking about the research that you did that led to 16 this report. 17 Did you find anything that suggested 18 that anyone involved in this legislative discussion 19 with Representative Harrison disagreed with his 20 premise that disenfranchisement was a form of 21 punishment? 22 A. I do not recall in the research that I 23 specifically found anything related to the 24 punishment, because that was not something I was 25 focused on looking at for this report. So I wasn't
Page 136 1 KAREN OWEN, Ph.D. 2 searching for the conversations on punishment, 3 whether it is or is not a part of this. I was 4 looking at the phrase and the actual revision to 5 the article related to qualifications and 6 disqualifications. This just -- this part, to me, 7 shows part of the testimony that was surrounding 8 the discussion on the revision of this article and 9 that these two, a representative and senator, 10 concerns seem to be on this aspect of punishment, 11 not on that they were looking at other specific 12 language. 13 Q. Is this one discussion from 14 Representative Harrison on page 30, where he brings 15 up that he doesn't understand what -- the scope of 16 it would be, is that the only discussion about the 17 phrase "moral turpitude" that you found with 18 respect to the 1979 revision effort? 19 A. I would have to look further into the 20 report, because I know that there was discussion 21 related to impeachment involving the phrase "moral 22 turpitude," and I don't recall right now which 23 representative hold that -- held that discussion. 24 But I do remember that phrase coming up again in 25 regards to the section on impeachment.	Page 137 1 KAREN OWEN, Ph.D. 2 Q. Did you do any research to determine 3 whether the impeachment provision's use of the 4 phrase "moral turpitude" was intended to mean the 5 same thing as the disenfranchisement section's use 6 of that phrase in the constitution? 7 MS. MESSICK: Object to the form. 8 A. I'm sorry. Could you repeat your 9 question? 10 Q. Did you do any research into whether 11 the intent behind using the phrase "moral 12 turpitude" in the impeachment provision was the 13 same or different than the intent for using it in 14 the voting section, the disenfranchisement section? 15 MS. MESSICK: Object to the form. 16 A. In my analysis, I looked at this 17 section related to suffrage and elections, the use 18 of the phrase. That phrase was also used with 19 impeachment. And just like we previously discussed 20 before lunch, it's related to -- moral turpitude 21 has been used in other contexts, like the judicial 22 court proceedings. And that's just not one area, 23 it's a multitude, so that applies, like, for 24 licensing in multiple states. It's not one license 25 group and it's been done by different

Page 138 1 KAREN OWEN, Ph.D. 2 decision-making bodies. So the term -- so looking 3 at the totality of all of the information I used to 4 write this report, moral turpitude was discussed by 5 the representatives and the senators in this 1979 6 context related to suffrage and elections, as well 7 as it was discussed in the impeachment part. 8 Q. My question to you was: Did you do any 9 research to determine whether the purpose for using 10 the phrase "moral turpitude" in the impeachment 11 section was the same as the purpose for using the 12 phrase "moral turpitude" in the disenfranchisement 13 section? Yes or no? 14 MS. MESSICK: Object to the form. 15 A. The focus of my expert report was on 16 the section for voting suffrage and elections, not 17 on impeachment. The phrase is the same. Moral 18 turpitude was brought up again in impeachment. I 19 did not analyze that particular section, because 20 that section is not being challenged in this case. 21 Q. Okay. So the answer is no? 22 MS. MESSICK: Could the court 23 reporter repeat back the preceding 24 question, please? 25 (The court reporter read the	Page 139 1 KAREN OWEN, Ph.D. 2 requested portion.) 3 MS. MESSICK: All right. And 4 then he asked you to confirm, he 5 understood your answer to be no. 6 A. I did -- I did not research the 7 impeachment standard. 8 MS. MESSICK: Is this a good time 9 for a break, Mark? 10 MR. GABER: Sure. 11 (Recess from 2:36 p.m. to 12 2:51 p.m.) 13 BY MR. GABER: 14 Q. Dr. Owen, could you please turn to 15 page 35 of your report? And on this page, you 16 discuss the public hearings the legislature held in 17 February of 1979 and in particular, the testimony 18 of Mary Weidler of the ACLU. 19 Do you see that? 20 A. Yes. 21 Q. And do you see that Mrs. Weidler 22 testifies at the hearing that the phrase "moral 23 turpitude" appears unwarranted and discriminatory? 24 A. Yes. 25 Q. Did any legislator respond to her
Page 140 1 KAREN OWEN, Ph.D. 2 criticism? 3 A. So I write on the next page that 4 Representative Martha Jo Smith is the only 5 legislator who asked a follow-up question to 6 Ms. Weidler, and she asked about if the ACLU and 7 she were proposing that persons still in prison or 8 on probation would be allowed to vote. And then 9 Weidler responded, quote, no, I am not suggesting 10 that in my statement. 11 Q. Did anyone -- did any legislator 12 respond to her criticism that the phrase "moral 13 turpitude" appeared discriminatory? 14 MS. MESSICK: Object to the form. 15 A. In the record, no legislator asked a 16 question following up to that. And if someone had 17 asked, I would have reported that. 18 Q. Okay. Did you find any evidence that 19 the legislature, after they heard Ms. Weidler say 20 that she thought the phrase was discriminatory, 21 that they conducted any sort of analysis to 22 determine whether there was a discriminatory 23 purpose or effect? 24 A. No, I did not see anything that they 25 looked into the discriminatory comment.	Page 141 1 KAREN OWEN, Ph.D. 2 Q. On page 39, you explain that after the 3 Senate passed the proposal to amend the 4 Constitution, it did not pass the House; is that 5 correct? 6 A. Correct. It passed in the Senate, but 7 not the House. 8 Q. Was there -- was there a final -- what 9 was the procedure by which it didn't pass the 10 House? Was there a final vote, or did they not 11 vote, or did they miss the time to vote or 12 something? Do you know? 13 A. I don't recall. I know that the House 14 had a substitute bill, and I don't remember -- I 15 can't recall if it was a final vote or if it was 16 laid on the table and not brought up for a final 17 passage. I just know that a substitute bill was 18 reported. And, again, I write here that it was not 19 agreed upon by the entire legislature. But I don't 20 know if that was the final vote. I can't recall at 21 this time. 22 Q. The substitute that the House adopted 23 was an amendment by Representative Zohby of Mobile 24 that eliminated the moral-turpitude provision 25 entirely, isn't that -- is that correct?

Page 142

1 KAREN OWEN, Ph.D.
2 A. Yes.
3 Q. What would have been -- what would that
4 have left the disenfranchisement provision as
5 being? If the House substitute had been adopted
6 and passed by the Senate, what would the law have
7 been?
8 A. So I think you're asking if the House
9 had agreed and passed the substitute bill --
10 Q. I guess --
11 A. -- that --
12 (Simultaneous speakers.)
13 BY MR. GABER:
14 Q. My question is: If the House
15 substitute had become the law, what would the
16 state -- like, what would the disqualification
17 provision do? What would -- who would be
18 disqualified?
19 A. It would remove the -- that phrase
20 "involving moral turpitude," is the way I
21 understood that the bill had it proposed.
22 Q. And was it then to be just all felonies
23 or all crimes? Or what -- or it would have --
24 (Simultaneous speakers.)
25 ///

Page 144

1 KAREN OWEN, Ph.D.
2 reference.
3 Q. The last paragraph on page 39, you
4 say -- you mention that Zohby wanted the moral
5 turpitude language removed. And then you say, yet
6 there was no debate or controversy reported on why
7 this House substitute bill was accepted. What do
8 you mean by that?
9 A. So there is -- there is no debate that
10 was recorded related to this House substitute bill.
11 Q. Well, was there no debate recorded, or
12 did -- or is the record of the debate just no
13 longer available?
14 A. My understanding from Legislative
15 Services is that they -- there was no debate
16 reported on that bill, on that House substitute
17 bill, that there was no report related to
18 discussions from legislators about this.
19 Q. Do you understand that to mean that
20 there was not a debate or just that there is not a
21 recording of that debate?
22 A. So I've written here that there was no
23 debate reported. I write -- I mean, that's how I
24 viewed it, is that there was no debate reported
25 out, that the bill was accepted, and then it wasn't

Page 143

1 KAREN OWEN, Ph.D.
2 BY MR. GABER:
3 Q. -- list from 1901?
4 A. I would have -- I'm sorry to cut you
5 off.
6 I would have to look at the language of
7 the substitute bill. I don't have that. And I
8 actually asked in correspondence with Legislative
9 Services for the transcript related, the House
10 journal transcript, and they didn't have any of the
11 debate transcripts. They don't hold that. Because
12 I was trying to understand more about the process
13 when the substitute bill was accepted, but then the
14 House didn't pass it. And I don't -- there's not a
15 record of testimony about legislators and their
16 discussions surrounding the substitute bill. I did
17 try to look for it so I could include it.
18 Q. You say in the -- in your
19 second-to-last sentence that there was no debate or
20 controversy reported on why this House substitute
21 bill was accepted. What do you mean by -- what do
22 you mean by that sentence, if you didn't have a --
23 if you just didn't get -- have a copy of it?
24 A. I'm sorry. I don't -- I'm not sure
25 where you're reading from. I missed the -- the

Page 145

1 KAREN OWEN, Ph.D.
2 agreed upon by the entire legislature, and there's
3 no record of -- from my recollection, there is no
4 record from the House journal as to their debate on
5 that substitute bill.
6 Q. Did you try to contact Representative
7 Zohby to ask her about her substitute amendment?
8 A. No, I did not.
9 Q. Why not?
10 A. I -- there's really no reason why I
11 didn't. I just did not -- that was not part of my
12 initial thought process to reach out to her.
13 Q. Did you reach out to anyone who was a
14 member of the legislature at this time in 1979 to
15 determine what the reason for the House substitute
16 bill was?
17 A. I did not -- I didn't interview a
18 legislator from 1979 about the specific bill, the
19 specific House substitute bill, no. I did not
20 contact someone about it.
21 Q. Did you interview any legislator about
22 the 1979 reform effort in general?
23 A. In the conversation I had with Speaker
24 Hammett, we talked about constitutional revision in
25 general. And he commented, and we talked about how

Page 146 1 KAREN OWEN, Ph.D. 2 it had gone through multiple iterations in time. 3 Q. Was he a legislator at the time in 4 1979? 5 A. I don't recall right now his time 6 period as a legislator. 7 Q. You next discuss the 1983 effort to 8 revise the constitution that starts on page 40 of 9 your report. Did you uncover any evidence that the 10 legislature in 1983 put any focus or discussion on 11 the purpose of the 1901 Constitution's use of the 12 phrase "moral turpitude"? 13 A. I'm sorry. You cut off and I didn't 14 hear your full question. 15 Q. The question will sound familiar to 16 you. Did you uncover any evidence that the 17 legislature in 1983 had any focus or discussion on 18 the purpose of the 1901 Constitution's use of the 19 phrase "moral turpitude"? 20 A. No. The evidence I had, that is 21 reported here about their discussions. And if I 22 had found additional evidence, I would have 23 reported it. This is what I have provided in this 24 expert report. 25 Q. Did you find any evidence that they	Page 147 1 KAREN OWEN, Ph.D. 2 were discussing their own purpose for what they 3 meant by the phrase "moral turpitude"? 4 MS. MESSICK: Object to the form. 5 A. I'm not sure what you mean by "they." 6 Q. The 1983 legislature. 7 A. So the senators and the 8 representatives? 9 Q. Yeah. Or anyone. Any member of the 10 legislature. Was there any evidence about what 11 anyone in the legislatures understood the phrase 12 "moral turpitude" to mean to them? 13 A. No, I don't recall any specific 14 legislator discussing moral turpitude. I mean, 15 what I have provided here in the report is their 16 efforts at revising the amendments. And, again, we 17 are focused very much on the suffrage and elections 18 amendment, but that was just one small piece of 19 what all constitutional revision was. They were 20 looking at a lot -- I mean, revisions of many 21 sections. This was deemed noncontroversial. They 22 even spoke about that. The newspaper reported it 23 was noncontroversial. And they were focused on 24 other things I think that gained a little bit more 25 of their attention, which was home rule and
Page 148 1 KAREN OWEN, Ph.D. 2 taxation and those types of revisions in the 3 constitution. 4 Q. On page 47 of your report, you talk 5 about the Alabama State Bar Association's Task 6 Force. And your report says that there's no 7 discussion of the phrase "convicted of crimes 8 involving moral turpitude"; is that right? 9 A. I'm not seeing that. Where are you at? 10 (Simultaneous speakers.) 11 BY MR. GABER: 12 Q. The top of 47. It's the first 13 sentence. 14 A. So I've written within the Alabama 15 State Bar Association's Task Force, there is no 16 mention of disenfranchisement sections of 17 Article 8, nor is there discussion of the phrase, 18 quote, convicted of crimes involving moral 19 turpitude, end quote. 20 Q. Did you see any discussion from the 21 ABA, the State ABA -- I don't know if they call 22 themselves the ABA? 23 MS. MESSICK: It's the Alabama 24 Bar. 25 MR. GABER: Sorry.	Page 149 1 KAREN OWEN, Ph.D. 2 BY MR. GABER: 3 Q. Did you see any discussion from the 4 Alabama State Bar Association's Task Force about 5 moral turpitude -- the meaning of the phrase "moral 6 turpitude" from the 1901 Constitution? 7 A. No. 8 Q. And you didn't see any discussion from 9 the -- what it meant to them in 1983 either; is 10 that right? 11 A. I'm sorry. You cut off again. I 12 didn't hear all of it. 13 Q. Okay. My question was: Did you see 14 any evidence of the State Bar Association's 15 understanding of the meaning of the phrase "moral 16 turpitude" at that time, in 1983? 17 A. No, I didn't see discussion of that. 18 MR. GABER: I'd like to introduce 19 as what I think is Exhibit #3, the 20 Supreme Court's decision in Hunter 21 versus Underwood. 22 (Exhibit 3 was marked for 23 identification.) 24 BY MR. GABER: 25 Q. Do you have it in front of you,

Page 150 1 KAREN OWEN, Ph.D. 2 Dr. Owen? 3 A. Yes. 4 Q. Are you familiar with the Supreme 5 Court's decision in Hunter versus Underwood? 6 A. I have a little bit of an 7 understanding. I'm not a lawyer, so I haven't read 8 it thoroughly. 9 Q. You haven't -- you have not read Hunter 10 versus Underwood? 11 MS. MESSICK: Object to the form. 12 A. I have read the opinion, but I have not 13 looked at any of the facts or the case file at all. 14 I just read it briefly before my report -- I wrote 15 my report, sorry. 16 Q. Why didn't you focus more thoroughly on 17 Hunter versus Underwood? 18 MS. MESSICK: Object to the form. 19 A. I'm not -- could you ask 20 your question -- could you repeat it. 21 Q. Well, why did you decide -- I mean, it 22 sounds like you may have read it, but perhaps 23 just -- have you read it once? 24 A. Yes. 25 Q. And did you do anything else with it	Page 151 1 KAREN OWEN, Ph.D. 2 other than reading it that one time? 3 A. No. 4 Q. Why not? 5 A. I read it because Dr. -- I believe 6 Dr. McCrary cited it in his report, and when I read 7 his report, before I, you know, began writing my 8 report, I read the opinion. But I didn't 9 thoroughly analyze it or research it. 10 Q. So you didn't -- did you review any of 11 the expert reports that were submitted in the 12 Hunter case? 13 A. No. 14 Q. Or any of the evidence that was cited 15 by the Supreme Court in the Hunter case? 16 A. No. 17 Q. Did you read the 11th Circuit's 18 decision in this case? 19 A. No. 20 Q. Did you read any of the evidence cited 21 by the 11th Circuit in the Hunter case? 22 A. No. 23 Q. What do you understand the Court's 24 holding to be in Hunter versus Underwood? And do 25 you know what a holding is?
Page 152 1 KAREN OWEN, Ph.D. 2 MS. MESSICK: Object to the form. 3 A. I believe you're referring to, like, 4 what they found, what their findings were? 5 Q. Correct. 6 A. Again, this is my personal 7 interpretation. I'm not a judge. I'm not a 8 lawyer, and I really don't recall a lot from the 9 case, because I read it just once. But I believe 10 that it involves looking at Alabama's constitution 11 and that it applies to crimes involving 12 misdemeanors. That's about all I can recall at 13 this time. 14 Q. If you could turn to the last page of 15 the decision that's in front of you there, and read 16 the paragraph at the top, starting with the 17 phrase -- starting with the word "without" -- 18 "without deciding." And can you read it aloud too, 19 for the reporter, when you get there? 20 A. You would like me to start with the 21 word "without"? 22 Q. Yeah. Through the end of that 23 paragraph. 24 A. Without deciding whether Section 182 25 would be valid if enacted today without any	Page 153 1 KAREN OWEN, Ph.D. 2 impermissible motivation, we simply observe that 3 its original enactment was motivated by a desire to 4 discriminate against blacks on account of race, and 5 the section continues to this day to have that 6 effect. As such, it violates equal protection 7 under Arlington Heights. 8 Q. What do you understand Section 182 to 9 be? 10 A. I would have to look at the beginning 11 of the case. 12 Q. That's a reference to the Alabama 13 Constitution. Are you familiar with Section 182 of 14 the Alabama Constitution? 15 MS. MESSICK: Object to the form. 16 A. The first part of the opinion, it talks 17 about Article 8, Section 182, of the Alabama 18 Constitution of 1901. 19 Q. Are you familiar with Section 182 of 20 the 1901 Constitution? 21 A. So for my expert report, I did not 22 analyze or review the 1901 Constitution. 23 Q. Do you understand Section 182 to 24 contain the moral-turpitude provision? 25 A. I would have to read that section to

Page 154 1 KAREN OWEN, Ph.D. 2 say for certain. I mean, I'm taking your word that 3 that is the section. This says that it provides 4 for disenfranchisement of persons, in the opinion. 5 Q. You're aware that the State of Alabama 6 defended the law as not being intentionally 7 discriminatory? 8 MS. MESSICK: Object to the form. 9 A. I -- I don't know the case history of 10 this, how the defense was put out. I mean, I've 11 read this opinion very briefly. 12 Q. In your -- in your research starting 13 with the 1930s reform effort, up through the 1983 14 reform effort, did you find any evidence that 15 anyone was suggesting that Section 182 was enacted 16 with an intentionally discriminatory purpose? 17 A. No. 18 Q. Do you think that the lack of that 19 evidence is reason to believe that it was not 20 enacted with a racially discriminatory purpose? 21 MS. MESSICK: Object to the form. 22 A. I'm sorry. Could you ask your question 23 again? 24 Q. Given that, in 19- -- in the 1930 25 reform effort, the 1940 and 1950s reform effort, up	Page 155 1 KAREN OWEN, Ph.D. 2 through the 1983 reform effort, that you didn't 3 find any evidence of anyone suggesting that 4 Section 182 had a racially discriminatory purpose, 5 would that lead you as an expert to believe that it 6 did not in fact have one, because people weren't 7 talking about it having one? 8 A. I don't think I could provide an expert 9 opinion on that fact that just -- it could exist 10 even though no one is speaking on it. You know, my 11 job as an expert is to look at the resources, look 12 at the data, look at the files that are available 13 to see what is motivating, what was the discussion 14 at the time related to why revisionist efforts were 15 being made. 16 Q. And in doing that, you didn't come 17 across anything that suggested revisionist efforts 18 were being made because Section 182 had a racially 19 discriminatory purpose? 20 A. No, I didn't find evidence that that 21 was the intention. 22 Q. Do you believe that the Supreme Court, 23 then, was mistaken in its conclusion? 24 MS. MESSICK: Object to the form. 25 A. Respectfully, I'm not a judge, I'm not
Page 156 1 KAREN OWEN, Ph.D. 2 a lawyer, I don't tell the Supreme Court what to 3 think or what to do or how to review their case. 4 They heard and saw briefs, facts, oral arguments. 5 I was not present for that; I did not see that. I 6 have not reviewed that. So their decision is based 7 off what they saw, and that's -- and my 8 understanding as a citizen, this is, you know, law 9 precedent that we look at. 10 Q. Well, what I'm trying to do is 11 understand your expert methodology and how that 12 would apply to a case like Hunter. And so if what 13 you've done, right, is you've looked at the reform 14 efforts from the 1930s through 1983, and I think 15 your thesis is that this provision was 16 noncontroversial, you didn't see anything to 17 suggest that anyone was concerned about the phrase 18 "moral turpitude" or thought about it. Is that a 19 fair assessment? 20 MS. MESSICK: Object to the form. 21 A. I would say that that's not a -- that 22 fair a conclusion. I would say that my opinion is 23 and my framework was that, as a political 24 scientist, looking at the totality of a record of 25 what was taking place with legislative members,	Page 157 1 KAREN OWEN, Ph.D. 2 gubernatorial initiatives, what they were trying to 3 accomplish with, in this case, particularly, 4 revising the constitution, and as we've seen from 5 the 1930s through 1983, those efforts legislatively 6 and from the governor's office as well was to 7 revise the entirety of the constitution, and that 8 became a little bit problematic in one document to 9 be revised, so they had to attempt to do it section 10 by section. 11 And so a lot of times, the legislature 12 would look at those noncontroversial sections that 13 they could get through, and so that involves the 14 suffrage and elections. So my framework is to look 15 at the totality of the record there with the 16 legislative and governor's, what their statements 17 were, what they produced. And then as we get to 18 1995 and '96, what the legislature passed and then 19 what the voters agreed to. 20 Q. Is your analysis of the reform efforts 21 from the 1930s through 1983 -- in your opinion, is 22 that inconsistent with the Supreme Court's 23 determination that the 1901 provision Section 182 24 of the constitution had a racially discriminatory 25 purpose?

Page 158 1 KAREN OWEN, Ph.D. 2 MS. MESSICK: Object to the form. 3 A. I, sitting here, honestly do not know 4 exactly. I mean, I read one part out loud related 5 to what the Court found related to Section 182, and 6 I would want to investigate further. But the 7 Supreme Court had facts and evidence that I'm not 8 familiar with right now. I don't know what those 9 are. And I'm not suggesting in any way that the 10 Court is wrong, that they -- you know, but I think 11 it's a matter of what they were looking at, at the 12 time, to determine their basis. I would suggest, 13 and I believe this, that any type of revisionist 14 effort is complicated and it's complex at the time. 15 What politically can get done? Can you get a whole 16 revised constitution? Or do you try to get one 17 article passed? And we have to look at all of 18 those pieces. 19 Q. I guess, what I'm trying to understand 20 is what conclusion do you draw from this entire 21 discussion of the 1930s through the 1983? How 22 is -- how is that relevant to your ultimate 23 conclusion in your report? 24 MS. MESSICK: Object to the form. 25 A. In my report, I talk about the	Page 159 1 KAREN OWEN, Ph.D. 2 constitutional reform efforts that lead into, then, 3 the legislature taking up the suffrage article in 4 1995 and revising it and having it pass as an act. 5 This is showing that constitutional effort for 6 reform had been talked about in Alabama since the 7 1930s, that the state legislature and governors had 8 been working to revise sections of the constitution 9 that they thought were lengthy or not meeting 10 federal requirements, federal law, and to revise 11 the constitution. 12 Q. How does -- is the purpose of the 13 entire discussion of the 1930s through the 1983 14 reform effort -- how does -- how, or does it, bear 15 on your conclusion that the ultimate provision that 16 was enacted had no discriminatory provision? 17 A. So when I reviewed the record coming 18 from the constitutional revisionist efforts from 19 1930 to 1983, I did not see evidence of a racial 20 intent when they were writing proposals to revise 21 the article on suffrage and elections. If there 22 had been racial intention discussed, I would have 23 put that in and laid the foundation for that. I 24 would have said that. 25 What I saw from 1930s through 1983 is
Page 160 1 KAREN OWEN, Ph.D. 2 efforts on behalf of the governor and the 3 legislature to revise articles to put it into 4 general terms to eliminate the long list of crimes 5 and to provide a section that was succinct on 6 qualifying to vote and disqualifications to vote, 7 and that was the leading part that came into 8 then -- because in the 1983 effort, Representative 9 Jack Venable was the one pushing for the revision 10 of the articles, and he is the one that would carry 11 it in the 1995 session -- he would be the one to 12 introduce it -- and that that language continued 13 over and it was not done with racial intent. It 14 was done to revise and streamline the constitution. 15 Q. What were you looking for to determine 16 whether there was any racial intent? What would 17 have triggered a conclusion on your part that there 18 was racial intent? 19 MS. MESSICK: Object to the form. 20 A. I'm not exactly sure, again. I'm 21 sorry. What was your question? 22 Q. Well, if you were trying to uncover 23 whether there was any racial discriminatory intent, 24 I'm curious, like, what evidence were you on the 25 look for to see if that were so?	Page 161 1 KAREN OWEN, Ph.D. 2 A. So I think we would -- 3 MS. MESSICK: Object to the form. 4 THE WITNESS: I'm sorry. This 5 whole -- I can't see her in her mask. 6 I think she's coughing or -- I'm sorry. 7 MR. GABER: I hope she's not 8 coughing. 9 MS. MESSICK: I'm objecting. 10 A. I'm sorry. Could you ask the question 11 again? 12 Q. Sure. I can try to remember it. 13 MS. MESSICK: You were asking her 14 hypothetically what she would have been 15 looking for. 16 BY MR. GABER: 17 Q. Right. So if you were looking -- you 18 were looking to see from 1930 on through 1983 19 whether you thought there was any racially 20 discriminatory motive, what -- what piece of 21 evidence would, to you, indicate a racially 22 discriminatory motive? 23 MS. MESSICK: Object to the form. 24 A. So, in my analysis, I looked at the 25 initiatives and the policymaking efforts going in

Page 162 1 KAREN OWEN, Ph.D. 2 to how they were revising this. So part of that 3 was then debate, legislative history, and 4 discussion surrounding changing of the phrases or 5 how the proposed revisions would be and looking for 6 whether there was debate, controversy, questions 7 raised about why language was used, if this was 8 going to have an effect on a certain group. Those 9 are things that I would be looking for. For 10 instance, like in the public comments from the ACLU 11 witness, she raised the question on this being 12 discriminatory, but then there was no evidence or 13 follow-up to show that that was the case or that 14 was an intent. And I was looking for that. Did a 15 legislator then say to her, oh, if it is, then why 16 are we using it, what does it mean, what is the 17 effect, show us that -- excuse me -- that data. 18 That was not there. And so those are the -- the 19 pieces I'm looking for to see if there is racial 20 concerns, effects, discrimination taking place. 21 Q. And in your work as a political 22 scientist, would you expect a legislator, upon 23 being accused of -- of promoting a racially 24 discriminatory law -- what would you expect them -- 25 how would you expect them to respond? Or in	Page 163 1 KAREN OWEN, Ph.D. 2 history, how have legislators responded to such an 3 accusation? 4 A. I don't think anyone would overtly say 5 something, but I think other members would raise 6 questions and comments. And I think that there 7 would be questions raised in the press about, 8 perhaps, why things are being discussed the way 9 they are. And those are items we would look for. 10 Q. Does -- does the fact that someone 11 raised concern that it was racially discriminatory 12 and nothing was done in response to that, no 13 analysis was done, no comments were made, how does 14 that bear on your conclusion about the motivation 15 of the legislators? 16 A. I'm sorry. Could you ask -- it seemed 17 multiple questions you were asking me. 18 Q. I was trying to ask one. 19 The fact that -- if someone in the 20 public attends a hearing and suggests that a law is 21 discriminatory and no one does -- no one in the 22 legislature does anything to respond to that 23 accusation, any analysis to determine whether it's 24 discriminatory, how does that response bear on what 25 you would determine whether there was a -- possibly
Page 164 1 KAREN OWEN, Ph.D. 2 a discriminatory intent? 3 A. So I would say that the public can 4 raise lots of concerns, and it's upon legislators 5 to listen to the public and then to determine and 6 find answers about what they're raising. If 7 there's no concern, then you would say, as a 8 political scientist, as a citizen, as we look at 9 it, then you have to wonder why it was raised and 10 then to the investigation. If there's no 11 investigation by the legislature, then they must 12 not deem that to be problematic or that there 13 wasn't enough evidence brought to them to bring 14 that to another, you know, avenue for research or 15 doing more about it. 16 I mean, we elect our representatives to 17 hear our voices and then to do the investigation 18 and to create laws that are nondiscriminatory. And 19 I think if we are sitting here, our legislators are 20 working to make sure laws are not discriminatory, 21 because then they end up in lawsuits all the time 22 and that's not what they're wanting to do. They're 23 wanting to make good public policy. 24 Q. Is that your understanding of American 25 political history, that legislators were working	Page 165 1 KAREN OWEN, Ph.D. 2 not to enact discriminatory laws on the topic of 3 voting? 4 A. I mean -- 5 MS. MESSICK: Object to the form. 6 A. I'm talking right now as of today, in 7 general today. I was not referring back 8 historically. I was talking about in a 9 hypothetical you asked me about today, if a member 10 was working on policy today. 11 Q. You don't think it's possible today 12 that there's legislators who are acting with 13 discriminatory intent? 14 MS. MESSICK: Object to the form. 15 A. I'm -- I'm not going to comment on what 16 I think legislators today are planning to do. We 17 have -- they're complex people; they have multiple 18 motivations. One of them always seems to get 19 reelected. 20 Q. Does the phrase "turning a blind 21 eye" -- is that something that could apply to a 22 legislator hearing that something is discriminatory 23 and then going ahead and passing it anyways? 24 MS. MESSICK: Object to the form. 25 A. I have no opinion on that.

Page 166

1 KAREN OWEN, Ph.D.

2 Q. Might it be -- as a political scientist

3 looking at legislative history, might the fact that

4 no one analyzed a law to determine whether it was

5 discriminatory after it was suggested to be so,

6 might that not actually show that there was an

7 effort to just not know about its discriminatory

8 effects?

9 MS. MESSICK: Object to the form.

10 A. I don't -- I don't know. I don't feel

11 comfortable commenting on that.

12 Q. You didn't -- you didn't consider

13 whether the fact that no one in the legislature

14 conducted an analysis after being told that the

15 member of the ACLU thought the law was

16 discriminatory, you don't -- you don't view that as

17 potential evidence that that could be probative of

18 a discriminatory intent?

19 MS. MESSICK: Object to the form.

20 A. I'm not exactly sure what you're

21 asking. Could you rephrase that?

22 Q. Do you think that it's possible that it

23 could be evidence of discriminatory intent, if,

24 after being told by some member of the public, a

25 leader of a respected organization, that the law

Page 168

1 KAREN OWEN, Ph.D.

2 vote, did not ask the question about the

3 discrimination piece.

4 Q. No one at the time of the 1930s through

5 1983 reform efforts had the benefit of the Supreme

6 Court's decision in Hunter versus Underwood. Is

7 that your understanding?

8 A. I'm sorry. You're -- it cut out.

9 Q. So Hunter versus Underwood is a 1985

10 case of the Supreme Court, so it's just a time

11 question. But given that fact, no one in the 1930s

12 through the 1983 reform efforts had before them the

13 Supreme Court's ultimate decision that Section 182

14 was enacted with a racially discriminatory intent;

15 is that fair?

16 A. Yes. These members would not have been

17 aware of it.

18 Q. In your experience as a political

19 science professor and expert, is it your view that

20 politicians -- that if politicians do not express

21 racially discriminatory purposes or views, that the

22 law that they enact is not racially discriminatory?

23 MS. MESSICK: Object to the form.

24 A. Can I ask for that to be repeated?

25 Q. Sure. In your experience as a

Page 167

1 KAREN OWEN, Ph.D.

2 seems to be discriminatory, the legislator did

3 nothing in response, could that be evidence that

4 the -- that they actually had a discriminatory

5 intent and just didn't want the truth of that to be

6 known?

7 MS. MESSICK: Object to the form.

8 A. I don't write about that in my report,

9 and I don't have an opinion on that. I don't know.

10 Q. You didn't consider that possibility?

11 MS. MESSICK: Object to the form.

12 A. I reported my opinion in this expert

13 report about how, for instance, that the ACLU

14 brought up -- the representative from the ACLU

15 brought up the term of "moral turpitude," had

16 concern about it being discriminatory, questions

17 were raised afterwards. That was my -- and that

18 there was no further discussion about it. And if

19 there had been additional controversy or concern,

20 it is my belief it would have been raised.

21 This is what my expert opinion says,

22 that there was a comment related to it, a

23 legislator responded in relation to whether she was

24 wanting to know if the ACL member was considering

25 that people sitting in prison would be able to

Page 169

1 KAREN OWEN, Ph.D.

2 political science professor, is it your view that

3 if legislators do not articulate a racially

4 discriminatory purpose, that it must be so that

5 there is not one?

6 MS. MESSICK: Object to the form.

7 A. A racially discriminatory purpose in

8 what they're saying?

9 Q. A law. A law that they're -- that

10 either has been enacted or that they are enacting.

11 My question is: Does the -- does the

12 expression of the racially discriminatory purpose

13 need to be overt in order for there to, in fact, be

14 a racially discriminatory purpose in your view?

15 A. I mean, I think I stated earlier that

16 it would be really rare to have the politician

17 overtly state something racist. So yes, they could

18 have intentions that are not politically correct or

19 meet our current standards. But I don't think that

20 that motivation is going to be expressed in the law

21 when you have to work with a multitude of other

22 lawmakers to get a law passed. So if one

23 politician is a, quote/unquote, bad politician with

24 bad motives, that person would have to convince the

25 majority of the -- of those motives and go with it.

Page 170 1 KAREN OWEN, Ph.D. 2 Q. Well, so in your understanding -- in 3 your expert analysis of whether something is or is 4 not motivated by a racially discriminatory purpose, 5 is it your view that, if the sponsor of the 6 legislation, say, has a discriminatory purpose but 7 is not broadcasting it, gets the legislation 8 passed, would you say that that law, as enacted, is 9 not racially discriminatory? It was not enacted 10 with a racially discriminatory purpose? 11 MS. MESSICK: Object to the form. 12 A. This is a hypothetical that has so many 13 pieces, and I don't feel comfortable providing an 14 expert opinion or analysis on that. If you want to 15 look specifically at this article that I've talked 16 about, I'm happy to discuss this with you. But I 17 don't think that, through the constitutional 18 revision from 1930, the efforts from the '30s, into 19 '83, that any of that was motivated by racial 20 intention. They were working to revise the 21 constitution. And then in 1996, the effort, again 22 too, was to revise this article and get something 23 that the legislature seen -- perceived as 24 noncontroversial passed to update the constitution. 25 Q. So I need to understand -- you've	Page 171 1 KAREN OWEN, Ph.D. 2 reached conclusions about whether laws were 3 motivated by a racially discriminatory purpose, and 4 so I need to understand what methodology you used 5 to come to that conclusion. And so my question is: 6 If a sponsor of a piece of legislation intends to 7 discriminate on the basis of race but doesn't do so 8 in an overt way, if the legislature adopts that 9 provision, in your view as an academic, would you 10 conclude that such a law was enacted with a 11 racially discriminatory purpose? 12 MS. MESSICK: Object to the form. 13 A. Again, I think there's multiple pieces 14 there. So if -- my methodology -- and I 15 explained -- is that I have looked at whether there 16 was racial intention when they were looking at 17 revising the constitution, whether that was through 18 the governor's initiative, through the 19 Constitutional Revision Commission, or then what 20 was enacted by the legislature. If one person has 21 ill intention, those types of questions can come 22 up. In the totality of the record I saw, I did not 23 see that. I do not believe, in my expert opinion, 24 based on what I have reviewed here, there was a 25 racial intention when they passed a revised article
Page 172 1 KAREN OWEN, Ph.D. 2 on suffrage and elections. 3 Q. And if the person who sponsored or 4 wrote a piece of legislation did have a racially 5 discriminatory purpose, if the legislature adopts 6 that provision -- and say you know that that person 7 had that non-overt purpose -- what would your 8 expert conclusion be about that law? It's just 9 there's two things. There's not a lot of things. 10 There's two things: A non-overt racially 11 discriminatory purpose and the legislature enacts 12 it. In that scenario, as an expert, would you 13 conclude that the law was enacted with a racially 14 discriminatory purpose? 15 MS. MESSICK: Object to the form. 16 A. As an expert, I have a lot of other 17 questions to relate -- it's not as simplistic as 18 one non-overt -- how do I know exactly that the 19 person is racially biased in writing something? 20 How would I know that if it was not overtly stated? 21 (Simultaneous speakers.) 22 A. So am I (indiscernible) that because 23 I'm able to just find out through hearsay? 24 (Simultaneous speakers.) 25 ///	Page 173 1 KAREN OWEN, Ph.D. 2 BY MR. GABER: 3 Q. You find an email. An email is 4 produced and says, I'm passing this law because I 5 want to racially discriminate. I wrote it for 6 racially discriminatory purposes. That email comes 7 out. The legislature didn't know about that at the 8 time, but they passed it. Would you say that the 9 law had a racially discriminatory purpose? 10 MS. MESSICK: Object to the form. 11 A. Again, I have a lot of questions as to 12 why the information is provided. Because an email 13 would be documentation showing intent to 14 discriminate, and, that, you can't turn a blind eye 15 to. You would look at that and see that that was a 16 purpose. It's not hidden. You just told me it was 17 through an email. 18 Q. My point was that the email was 19 discovered later after the law was enacted. 20 MR. GABER: Can we take a 21 five-minute break? 22 (Recess from 3:40 p.m. to 23 3:51 p.m.) 24 BY MR. GABER: 25 Q. I want to move on to the 1995

Page 174 1 KAREN OWEN, Ph.D. 2 legislative session and the 1996 adoption of the 3 amendment. And to start, did you uncover any 4 evidence that the 1995 legislature discussed or 5 debated the import of the Supreme Court's decision 6 in Hunter versus Underwood? 7 A. No. 8 Q. Your report suggests that the proposed 9 amendment was adopted quickly and without any 10 debate; is that correct? 11 A. Are you reading that directly from my 12 report? 13 Q. No, I'm just characterizing it. 14 A. I mean, I would say that I wrote it 15 very detailed about the legislative process, that 16 it was introduced, and by the end of the -- you 17 know, the session, it had passed both chambers 18 unanimously. 19 Q. So I think on page 49, you say that 20 you introduce -- this is Jack Venable -- introduced 21 his amendment on the first legislative day; is that 22 right? 23 A. Yes. 24 Q. And then on page 50, it says on the 25 second legislative day, Representative Venable	Page 175 1 KAREN OWEN, Ph.D. 2 reported that the amendment had been enacted -- had 3 been acted on favorably in the standing committee 4 on constitution and elections; is that correct? 5 A. Yes. 6 Q. Was there any debate in the standing 7 committee on elections that you found? 8 A. I did not see any recorded debate. 9 Q. Was there any debate in the Senate 10 committee that you found? 11 A. No, I did not. 12 Q. On the -- and you testified about this 13 earlier, and you cite to it on pages 49 and 50, a 14 conversation that you had with Seth Hammett. Was 15 he the Speaker of the House at this time? 16 A. I don't recall the years he was 17 Speaker, but he was a legislator. I'm not -- I'm 18 sorry, I don't know the exact date of his 19 speakership. 20 Q. Other than the quotes that he provided 21 you, what else did he say to you in his phone call? 22 Was it a phone interview or was it in person? 23 A. This was a phone interview, and we 24 spoke about the legislature work on this particular 25 measure. He -- as I stated in the quotes, he talks
Page 176 1 KAREN OWEN, Ph.D. 2 about how Representative Venable was a friend. He 3 introduced the bill. We talked about this exact 4 enactment, whether it was controversial or not. He 5 said no, it moved on, had support. And then after 6 that, he and I talked about how he was Speaker in 7 Alabama. And I direct the Murphy Center for Public 8 Service at the University of West Georgia who is 9 named in honor of Speaker Thomas Murphy, and we 10 talked about if I knew Tom Murphy. 11 Q. How long was your phone conversation? 12 A. Probably 30 minutes. 13 Q. Did you take notes on that 14 conversation? 15 A. Yes. 16 Q. Did you provide those notes to 17 Ms. Messick? 18 A. No. 19 Q. Do you still have those notes? 20 A. Yes. 21 MR. GABER: Misty, as with the 22 previous notes, I would ask that -- 23 these certainly sound like they are 24 relevant and were relied upon. 25 ///	Page 177 1 KAREN OWEN, Ph.D. 2 BY MR. GABER: 3 Q. So did you -- did you refer to your 4 notes in helping to draft your report? 5 A. I did refer to my notes for the direct 6 quotations, and then I told Speaker Hammett that I 7 would only quote him if he heard the quote and 8 agreed to it, and he said yes. And so he did. We 9 had a follow-up that this would be the quote that I 10 used. 11 MR. GABER: I would request that 12 the notes of the conversation with 13 Speaker Hammett be produced. 14 BY MR. GABER: 15 Q. Did you uncover any evidence that the 16 1995 legislature had any focus or discussion on the 17 purpose of the 1901 Constitution's use of the 18 phrase "moral turpitude"? 19 A. No. 20 Q. Did you uncover any evidence of any 21 purpose or meaning for the use of the phrase "moral 22 turpitude" in the 1995 amendment? 23 A. I'm sorry. I missed part of the 24 question with the -- 25 (Simultaneous speakers.)

Page 178 1 KAREN OWEN, Ph.D. 2 BY MR. GABER: 3 Q. I'm sorry. 4 Did you uncover any evidence of the 5 purpose or meaning of the phrase "moral turpitude" 6 as it was used in the 1995 amendment? 7 MS. MESSICK: Object to the form. 8 A. No. 9 Q. On pages 51 through 52 of your report, 10 you point to two pieces that ran in the Montgomery 11 Advertiser. 12 Do you see that? 13 A. Yes. 14 Q. The first was an op-ed that said that 15 the existing constitution -- and this was in -- 16 prior to the passage of the 1996 amendment -- had, 17 quote, a great deal of outdated and indefensible 18 language on voting rights in Alabama, end quote. 19 Do you see that? 20 A. I'm not seeing where you're reading 21 that. I'm sorry. 22 Q. It's at the top of page 52. It's in 23 bold and italics. 24 A. Okay. Could you read again? I'm 25 sorry. I wasn't able to follow along.	Page 179 1 KAREN OWEN, Ph.D. 2 Q. That's okay. 3 What's quoted here is a -- from an 4 editorial from the editors of the Montgomery 5 Advertiser, and the quote that you include is that 6 the proposed amendment, quote, strikes out a great 7 deal of outdated and indefensible language on 8 voting rights in Alabama. 9 And then it goes on. But do you see 10 that quote? 11 A. Yes. 12 Q. And then in the next paragraph, you 13 cite to another article in the Montgomery 14 Advertiser, prior to the election in which the AP 15 writer says, quote, If you read Alabama's 16 constitution, you'd think you couldn't vote in 17 Alabama unless you are a white male who owns 18 property, can read the U.S. Constitution, and has 19 paid a poll tax. 20 Do you see that? 21 A. Yes. 22 Q. Did you find any news articles from 23 1996 that discussed the original purpose of the 24 "moral turpitude" phrase from the 1901 25 Constitution?
Page 180 1 KAREN OWEN, Ph.D. 2 A. No. I reviewed articles from the 3 Montgomery Advertiser and the Birmingham News 4 related to this amendment and its passage to see if 5 there was any discussion related to the suffrage 6 and elections, you know, article here, and 7 amendment, and this is what I found. And I didn't 8 find anything related to the moral turpitude. If I 9 had, it would have been included. 10 Q. What is the conclusion that you draw 11 from the fact that the legislature and the voters 12 adopted the 1996 amendment? 13 A. So I conclude that the legislature 14 unanimously approved the act to revise the section 15 and that voters overwhelmingly supported the new 16 amendment to the constitution that would call for 17 the revision of the article on suffrage and 18 elections. Voters overwhelmingly in Alabama 19 supported the amendment with over 75 percent of the 20 vote. And it seemed that this measure wasn't 21 controversial, it was something that the 22 legislature and voters agreed needed to be changed 23 and implemented. 24 Q. Do you conclude from the fact that it 25 was adopted with that margin that it did not have a	Page 181 1 KAREN OWEN, Ph.D. 2 racially discriminatory purpose included in it? 3 A. I conclude in this expert report that 4 voters overwhelmingly supported it, as seen in the 5 vote totals by each county and across statewide, as 6 well as that the legislature passed it unanimously. 7 As far as racial intent, that is where it was 8 actually drafted and enacted in the legislature, 9 and that was language that was brought through 10 constitutional revision, where it had not been 11 brought up that there was concerns of racial 12 intentions in any of that language, that it was 13 noncontroversial, just revising language to make it 14 general and to eliminate sections that were not 15 needed. 16 Q. So is it -- am I correct in 17 understanding what you just said, that you don't 18 draw any conclusion about whether or not there was 19 a racially discriminatory purpose from the vote 20 totals when it was put to the voters? 21 MS. MESSICK: Object to the form. 22 A. So in my report, I specifically state 23 that -- and I would have to -- I'm paraphrasing 24 here -- but it is in my report, there is no 25 relationship between the vote totals and a voter --

Page 182 1 KAREN OWEN, Ph.D. 2 a county race, whether, you know, the support was 3 higher in white counties versus, you know, majority 4 black counties. There is no racial distinction 5 there that we see in the vote. 6 (Simultaneous speakers.) 7 BY MR. GABER: 8 Q. My question was just, it sounds to me 9 like what you said is from a political science 10 perspective, to determine whether there was a 11 racially discriminatory purpose, you would look at 12 the purpose of the drafters in the legislature and 13 not look at the voters who are at large. Is 14 that -- am I correct in understanding that? 15 A. I don't believe that's exact -- I mean, 16 I think we look at all of the circumstance here, 17 which would be how the legislature enacted the law. 18 And this is unique in the fact that it's not just a 19 statute that went into the Code of Alabama. This 20 was an act passed, then had to have -- because of 21 constitutional revision, it had to have voter 22 support. So in that piece, you would look at the 23 voters' acceptance or rejection of the measure. 24 And if voters then had concern that the measure was 25 unfavorable, discriminatory, not in best interest	Page 183 1 KAREN OWEN, Ph.D. 2 of the state, then they have the right to reject 3 that. 4 Q. So do you view the fact that the voters 5 adopted this as evidence that the law did not have 6 a racially discriminatory motive in it? 7 A. I mean, I -- 8 MS. MESSICK: Object to the form. 9 A. I show in here that the voters 10 overwhelmingly supported the amendment. And there 11 was, across the counties, that's not, like, one 12 county overwhelmingly supported it opposed to the 13 next one. There's no relationship between those 14 different county votes. But the voters did support 15 it and therefore, this amendment was not 16 controversial or concerning to voters. They 17 thought it was a revision related to suffrage and 18 elections on qualifications, on disqualification, 19 that they accepted, they thought needed to be 20 revised in their constitution. 21 Q. I understand all of that, and I just 22 have a much simpler, like, kind of methodological 23 question, which is: In a situation like this, 24 where the process is the legislature drafts 25 legislation and it doesn't go into effect until the
Page 184 1 KAREN OWEN, Ph.D. 2 voters enact it, as an expert who is looking to 3 discern whether there was a racially discriminatory 4 purpose in the law, is it relevant what happened in 5 the election, or is it -- or is that not relevant 6 to whether, as drafted, it had a racially 7 discriminatory purpose? 8 MS. MESSICK: Object to the form. 9 I think you just asked her two 10 different questions. Are you asking if 11 the bill had a bad intent or if the 12 legislature had a bad intent? I think 13 your question changed. 14 BY MR. GABER: 15 Q. My question -- I'm not -- I guess at 16 the moment, I'm just asking sort of hypothetically 17 as a methodological matter. Just set aside this -- 18 this bill. If you're trying to determine whether a 19 constitutional provision has a racially 20 discriminatory purpose, is it methodologically 21 appropriate to consider the fact that the voters 22 enacted it when they weren't the ones who had the 23 power to write it? 24 A. The methodologically -- hypothetically, 25 as a researcher, I would look at the totality of	Page 185 1 KAREN OWEN, Ph.D. 2 this -- of the whole case, the legislature, how 3 they drafted it, enacted it, and then the ultimate 4 outcome. So if it was just statutory, then you 5 would look at the vote for the legislature. But 6 because this is unique and it's constitutional, 7 one, yes, you look at how the legislature enacted 8 it, passed it -- it was passed unanimous here in 9 Alabama -- and then the next step would be to look 10 to see if voters accepted it. Remember, the 11 legislature are representatives of the voters. And 12 so if the voters have a problem with it, they will 13 reject that constitutional amendment. And so part 14 of the analysis in this scope would be to, yes, 15 look at the voters, because they're the final 16 decisionmakers on whether the constitution is 17 amended here. 18 Q. In your experience as a political 19 science professor, does it occur that voters might 20 think they have to choose between two bad options, 21 ever? 22 MS. MESSICK: Object to the form. 23 A. I'm not sure I really understand your 24 question. 25 Q. Well, I really -- you have -- as a

Page 186

1 KAREN OWEN, Ph.D.
2 political science professor, have you ever
3 encountered an election in which the voters were of
4 the view that option 1 is bad and option 2 is bad?
5 Have you ever encountered that phenomenon?
6 MS. MESSICK: Object to the form.
7 A. I guess I'm -- I'm not following the
8 situation as in option 1 being a person, option 2
9 being a person, or option 1 being a law and
10 option 2 not being a law. I don't know how that --
11 options play out.
12 Q. So let's -- usually, laws don't run in
13 elections against people. So what I mean is apples
14 and apples.
15 So have you ever, as a political
16 scientist, encountered an election in which voters
17 thought that person A was a bad choice and person B
18 is a bad choice and I'm just trying to pick which
19 one is better, or less bad?
20 MS. MESSICK: And I want to
21 object to the form. I think she was
22 asking if you're talking about apples
23 or oranges, and you've clarified that
24 you're talking presently about
25 candidates.

Page 188

1 KAREN OWEN, Ph.D.
2 voters --
3 Q. No, I'm not. I'm asking: In your
4 experience as a political science professor, have
5 you ever encountered an election -- and this time,
6 let's say about initiatives or referenda or
7 amendments. Have you ever encountered such an
8 election in which the evidence showed that the
9 voters had very strong negative feelings about one
10 option and that that is what motivated their vote?
11 A. As I sit here today, I don't recall
12 examining a situation like that.
13 Q. Well, you -- so you -- so as a
14 political science professor, you can't give us an
15 example of an election in which voters' strong
16 negative feelings about one option are what caused
17 them to vote against that option? You can't name a
18 single --
19 MS. MESSICK: Object to the form.
20 A. I mean, I don't want to sit here and
21 try to recall -- like, I'm happy to ask about the
22 voters on this amendment, and we see the evidence
23 that they -- over 75 percent of the state supported
24 this amendment. I did not see any evidence from
25 the newspaper that there was a growing cry against

Page 187

1 KAREN OWEN, Ph.D.
2 A. So in the situation that you just laid
3 out, I have not personally done an analysis on one
4 election where voters had a choice between an
5 option they thought was A, B might not be not as
6 well so they just choose who they potentially think
7 is better. So I -- I don't want to speculate on
8 that. But possibly, that's always going to be an
9 option. But it would go back to the individual
10 voter and not the totality of the aggregate of
11 voters. So I may personally go in and vote and say
12 option 1 and 2 is not great, but then you could
13 walk in and it would be different. And then as
14 political scientists, we're looking at the
15 aggregate vote total of all. We're also looking at
16 precinct level. And so it would be very -- it
17 would vary across. We would look at lots of
18 information on that.
19 Q. Does it occur sometimes that voters
20 might have very strong negative feelings of one
21 choice and those negative feelings are what drives
22 their vote and not anything about the other choice?
23 A. Again, you're --
24 MS. MESSICK: Object to the form.
25 A. -- you're asking me to speculate about

Page 189

1 KAREN OWEN, Ph.D.
2 the amendment.
3 Q. Assume for me voters have two choices
4 as follows: First, they can vote to maintain a law
5 that includes a poll tax, a descendants' clause,
6 and a literacy test. Or their other option is to
7 eliminate the first two but keep the literacy test.
8 Do you follow?
9 MS. MESSICK: Hold on, because I
10 don't follow. Are those things legally
11 operative or are they just written down
12 but struck down by courts? Those are
13 different situations.
14 BY MR. GABER:
15 Q. Set aside the courts. There's -- there
16 is --
17 My question is: They have the
18 option -- they can maintain an existing
19 (indiscernible) that includes --
20 A. I'm sorry. You're -- you're cutting
21 out. I'm missing -- and I'm trying to follow.
22 Q. So the first option is the existing law
23 in the state says that there is a poll tax, there
24 is a descendants' clause, and there is a literacy
25 test in order to vote.

Page 190

1 KAREN OWEN, Ph.D.
2 Do you understand that?
3 A. Yes. Okay.
4 Q. And then the option is, you can amend
5 the law to eliminate the poll tax and the
6 descendants' clause, but the new -- the new
7 amendment will still have a literacy test.
8 Do you understand the hypothetical?
9 MS. MESSICK: I'm going to object
10 to the form, because I. . .
11 A. I mean, I -- I follow what you've
12 stated.
13 Q. Okay. If the voters adopt the
14 amendment, the second option, because they think
15 it's less racist and less discriminatory, does that
16 mean that the literacy test that's maintained is
17 not a discriminatory or racist device?
18 A. So this hypothetical implies that what
19 is provided to the voter on the ballot is this
20 phrasing, your option is, one, this is what's
21 current, two, this is what's current, strike -- or
22 being struck out, and here is the third option? Or
23 are they just seeing the second piece? There's a
24 lot of complexity to this.
25 Q. So say there's newspaper articles that

Page 192

1 KAREN OWEN, Ph.D.
2 about whether or not the inclusion of a literacy
3 test in that amendment was or was not racially
4 discriminatory from the fact of its passage?
5 MS. MESSICK: Object to the form.
6 If you heard the question, please
7 answer, but I do object to the form.
8 A. As a political scientist, I would not
9 just look at the voters' support or opposition to
10 this passage of an amendment. I would look at how
11 the amendment was passed, how -- I mean, how it was
12 enacted, how it was drafted, how it was put before
13 the voters. I would look at a -- you know, as much
14 information as I could to understand how this
15 amendment was brought before the legislature, if it
16 had to be, or if it was just placed on the ballot.
17 There's a lot of different
18 circumstances as to how states get amendments to
19 their constitution passed and what is needed and
20 requirement. So it's not a simple easy just look
21 and see if voters are supporting or opposing this,
22 but what all is being discussed. And in other
23 cases, I've had to look at polling to see if you
24 can get exit poll data to ask, you know, and see
25 what voters responded, or before an election, how

Page 191

1 KAREN OWEN, Ph.D.
2 say, we have a racist (indiscernible). It has poll
3 taxes, it has a descendants' clause, it has a
4 literacy test. We need to get rid of the poll
5 taxes and the descendants' clause that has a racist
6 history. And the voters are presented with these
7 two options: To amend the constitution to
8 eliminate the poll tax and the descendants' clause,
9 but the new -- the proposal before them keeps the
10 literacy test. As a political science expert,
11 would you look at that and conclude that because
12 the voters overwhelmingly adopt option B that there
13 can't -- the literacy tests aren't a discriminatory
14 device?
15 A. I mean, this is -- in a hypothetical
16 situation, if I were to look at this, I would look
17 to just see if the voters supported it and if they
18 passed it, then we would say they overwhelmingly
19 supported this amending of the constitution.
20 MS. MESSICK: And before you ask
21 your next question -- she answered too
22 quickly -- I want to object to the form
23 on that.
24 BY MR. GABER:
25 Q. And what conclusion would you draw

Page 193

1 KAREN OWEN, Ph.D.
2 they're supporting an amendment. There's a lot to
3 be offered here than just, oh, because you see this
4 clause, then there is one way or the other.
5 Q. Okay. So assume for me, please, that
6 it follows the same process as Alabama, that in
7 1901, there is a constitutional provision that has
8 a poll tax, a descendent's clause, and a
9 literacy -- a literacy test. And evidence shows
10 everyone agrees that the initial provision -- the
11 Supreme Court has found that the initial provision
12 was enacted with a racially discriminatory motive.
13 Do you understand that assumption?
14 A. I think I am following you.
15 Q. Okay. And then say, over the next 96
16 years or 95 years, there are reform efforts that
17 are unsuccessful, but that no one really talks
18 about the literacy test; it's not controversial,
19 it's not spoken of, and there's no evidence that
20 anyone can find that it was really discussed or
21 that it's racially -- or that there was any
22 evidence of it being discussed in a racial way.
23 Do you understand?
24 A. Okay.
25 Q. And say the voters then see two

Page 194 1 KAREN OWEN, Ph.D. 2 newspaper articles saying, pass this amendment, it 3 gets rid of these two terribly racist outmoded 4 ideas, and those are the only two articles that the 5 voters see, and the vote is passed by a large 6 margin, 70 percent or plus. Would you draw from 7 that conclusion, from all of the -- from that 8 hypothetical set of facts, that the literacy test 9 that was adopted by the voters is not a device that 10 had a racially discriminatory purpose? 11 A. Again, I believe in these situations 12 there's so much more complexity at play. 13 (Simultaneous speakers.) 14 A. I want you to understand that you're 15 using the example of a literacy test which I know 16 is unconstitutional. So as a political scientist, 17 I'm caught on that. That was a -- that's a key to 18 voters that that is unconstitutional, right? So -- 19 but I understand your -- your scenario and what 20 you're trying to, you know, piece out. And I think 21 here that the public had awareness of an amendment; 22 it was not the only amendment on the ballot in 23 1996. There were four ballots -- four amendments. 24 This was the first one. And if we see, this one 25 actually carried the strongest voter support.	Page 195 1 KAREN OWEN, Ph.D. 2 There was efforts to revise, and it wasn't 3 controversial in this certain section. Voters 4 supported it. There was no discussion previously 5 that there was racial intent. In your discussion, 6 as we sit here today, we know that literacy tests 7 were problematic and they were unconstitutional. 8 So I think it's very hard. It's not to me, like, a 9 complete easy apples-to-apples comparison. 10 Q. So I do want an answer to my question, 11 though. Say that the -- say that there wasn't a 12 ruling that the literacy test was unconstitutional. 13 If you don't have that piece of information, do -- 14 what do you draw from the inclusion of the literacy 15 test? Is it necessarily not having a 16 discriminatory purpose because of the fact of its 17 large margin of passage? 18 MS. MESSICK: Object to the form. 19 A. I'm going to ask you to restate your 20 question, because I feel like we got lost in the 21 discussion of the unconstitutional part. 22 Q. Okay. Let me replace the literacy test 23 in this hypothetical with, say, a type of 24 identification, a birth certificate, and there -- 25 say there's evidence in the world that it's not
Page 196 1 KAREN OWEN, Ph.D. 2 discussed, that people of color were less likely to 3 get a copy of their certified birth certificate 4 when they were born. Does the fact that the -- 5 that the voters overwhelmingly got rid of the 6 descendants' clause and the poll tax necessarily 7 mean that there wasn't a racially discriminatory 8 purpose in the remaining provision? 9 A. I believe that that's what the voters 10 chose to support. That's the -- I mean, they chose 11 to amend it and keep that part. 12 Q. But so this is -- let's move off the 13 hypothetical. 14 Did you consider the fact that 15 newspaper articles were telling the voters, you 16 should pass this because if you don't, these racist 17 provisions are going to remain in the constitution 18 of Alabama? Did it occur to you that maybe the 19 motivating factor for why the voters voted for it 20 was because they thought to vote -- a vote of "no" 21 would be to maintain racist provisions that they 22 were told? 23 A. So looking -- 24 MS. MESSICK: Object to the form. 25 A. Sorry. Looking at the news coverage	Page 197 1 KAREN OWEN, Ph.D. 2 that I saw and that I talk about in the report, I 3 highlight from the Montgomery Advertiser that the 4 amendment was striking out outdated in -- language 5 in voting rights. I don't think these editors were 6 screaming to voters that you have to support this. 7 They encouraged that they would support this to 8 update the -- and replace an old article with 9 succinct language that provided for qualifications 10 to voting and that these amendments were worthy of 11 passage. Editors, as well as other writers, 12 thought that this was important, it was 13 noncontroversial. If the editor of a paper or a 14 journalist had concern about racial motivations in 15 the amendment, wouldn't they have highlighted that 16 to tell voters that that was a concern? I think 17 that would have been brought out. I think they 18 thought that, as a revised article, that was not 19 discriminatory and perfect, it was to update the 20 constitution. 21 Q. So I think we're talking past each 22 other. What I am trying to ask is: If the 23 voter -- if voters are told that option 1, 24 maintaining the current law, would keep several 25 outdated and unconstitutional and discriminatory

Page 198 1 KAREN OWEN, Ph.D. 2 provisions in law, wouldn't -- did you consider 3 whether the fact -- that it might be the fact that 4 the voters were acting not because they thought 5 anything about the replacement, but rather as a 6 negative against the thing that was currently in 7 the law? 8 MS. MESSICK: And I'm going to 9 object to the form. And I don't think 10 you're talking past each other. I 11 think this comes back to my earlier 12 concern. What she is saying to you is 13 that voters were being told that those 14 outdated, racist things were not 15 effective. And so -- 16 MR. GABER: Misty, at this point, 17 you're testifying, so I would ask you 18 to stop. 19 MS. MESSICK: I don't think that 20 I'm testifying, and I am objecting -- 21 MR. GABER: Actually, literally, 22 what you're doing is testifying, so you 23 need to stop. If you have an 24 objection, you can state it. 25 Otherwise, please stop.	Page 199 1 KAREN OWEN, Ph.D. 2 MS. MESSICK: I am objecting to 3 the form. I am saying that my witness 4 has answered your question, and that 5 you are harassing her. She has 6 answered the same question six times 7 with -- she has answered 10 questions 8 six times. She has answered your 9 question. 10 BY MR. GABER: 11 Q. Did you consider whether it was 12 possible that voters were motivated to reject the 13 existing language because they had been told in 14 newspaper articles that it was particularly 15 discriminatory and included measures that were -- 16 had been struck down as invalid, that that was the 17 primary motivation rather than anything affirmative 18 about the new language? Did you consider that? 19 MS. MESSICK: Object to the form. 20 A. I did not see anything related to the 21 negative. 22 Q. What do you mean? 23 A. You just asked -- as you asked me. Did 24 I consider evidence, did I take into consideration, 25 and I'm reporting that I did not see that type of
Page 200 1 KAREN OWEN, Ph.D. 2 negative coming from the press telling voters that. 3 Q. Well, what are these two -- how would 4 you characterize these two articles? I mean, the 5 one says, if you read Alabama's Constitution, you'd 6 think you couldn't vote in Alabama unless you are a 7 white male who owns property, can read the U.S. 8 Constitution, and has paid a poll tax. Everyone 9 knows that's no longer true due to various court 10 rulings and federal laws, but no one has ever 11 brought Alabama's constitution up to date. 12 A. So I read -- I'm reading this right 13 now. Okay? 14 Q. Well, I -- do you think that's not a 15 statement about the negative discriminatory nature 16 of the words that existed in the Alabama 17 Constitution at that time? 18 MS. MESSICK: Object to the form. 19 A. I believe that the writer is telling in 20 this edition that the Alabama Constitution is 21 outdated and that if you continue to read on, 22 various court rulings and federal laws no longer 23 have those standards apply, and so Alabama's 24 constitution needs to be brought up to date, which 25 is why the legislature was passing to make	Page 201 1 KAREN OWEN, Ph.D. 2 revisions, to bring Alabama's constitution up to 3 date, so voters should support that -- 4 Q. So there was -- 5 A. -- and that there was concern about 6 this not being an appropriate change to the 7 constitution, I think people would have let the 8 voters know. 9 Q. The other article says that there's a 10 great deal of outdated and indefensible language on 11 voting rights in Alabama. It's your -- you don't 12 draw from that that voters received a message that 13 the existing language had discriminatory language 14 in it? 15 MS. MESSICK: Object to the form. 16 A. So in this editorial, I -- I mean, it 17 reads exactly that, outdated indefensible language 18 on voting rights. It does not say that a 19 particular piece is discriminatory. It says that 20 the current amendment will strike out a great deal 21 of outdated and indefensible language on voting 22 rights. 23 Q. Okay. So was the -- would a voter who 24 heard that the existing constitution -- the words 25 in the existing constitution say you have to be a

Page 202

1 KAREN OWEN, Ph.D.
2 white male who owns property, you have to be able
3 to read the U.S. Constitution, and you have to have
4 paid a poll tax. Would you expect a voter -- as a
5 political scientist, would you expect a voter who
6 heard that to think that the existing language was
7 discriminatory?

8 MS. MESSICK: Object to the form.

9 A. I would say, as a political scientist
10 and voter, if I read that, I would say in 1996, I
11 would know that those have been found
12 unconstitutional, that women have the right to vote
13 as of the 19th amendment, that we are not paying
14 poll taxes anymore, so that those are provisions
15 that are outdated.

16 Q. You don't think voters got a message
17 here that there was a -- there was discriminatory
18 language in the Alabama Constitution? You think it
19 was just technocratic, we need to just change this,
20 because it's outmoded, it's no longer the law?

21 MS. MESSICK: Object to the form.
22 (Simultaneous speakers.)

23 BY MR. GABER:

24 Q. (Indiscernible) to get rid of the
25 discriminatory language?

Page 204

1 KAREN OWEN, Ph.D.
2 African-American counties that the amendment
3 received; is that correct?

4 A. I provide, yes, the different
5 breakdowns by county.

6 Q. Did you consider whether it was
7 possible that African-American voters supported the
8 bill because they were concerned about the
9 discriminatory language against African-Americans
10 that existed in the constitution at that time?

11 MS. MESSICK: Object to the form.

12 A. In my expert report, I provided the
13 information I have on the vote returns.

14 Q. The extent of your analysis on the
15 import of the vote is what you've presented in your
16 report?

17 A. I'm sorry. You cut out again. I
18 didn't hear your whole question.

19 Q. Did you conduct an ecological
20 regression or ecological inference analysis to
21 determine the percentage of support among different
22 demographic groups for the amendment?

23 A. No.

24 Q. And I think you said there were no --
25 you didn't come across any articles that would have

Page 203

1 KAREN OWEN, Ph.D.
2 A. I'm sorry. I can't hear you. You cut
3 out. I missed part of that.

4 Q. Do you think that -- do you think that
5 some portion of the voters, at least, wanted to
6 vote "yes" on this amendment because they thought
7 it was discriminatory to have the Alabama
8 Constitution say that you have to be a white male
9 who is a property owner who can read the
10 constitution and who has paid a poll tax?

11 MS. MESSICK: Object to the form.

12 A. As I said here, I reported that this is
13 what the newspaper was telling voters, that
14 these -- this amendment, Amendment 1, would strike
15 outdated, undefensible language, and that it should
16 garner support. As a voter, I can't suspect what
17 every voter was thinking when they walked in to
18 cast a ballot. What I see is the return, the
19 outcome, which is 75 percent of the people voted to
20 accept this change to the constitution. They
21 wanted to see it revised, to see this article on
22 suffrage and elections revised.

23 Q. In your report, you talk about the
24 large support -- with one exception of long
25 (indiscernible), the large support in the majority

Page 205

1 KAREN OWEN, Ph.D.
2 informed voters about the history of the phrase
3 "moral turpitude" in Alabama; is that correct?

4 MS. MESSICK: Object to the form.

5 A. No, I did not see.
6 (Simultaneous speakers.)

7 BY MR. GABER:

8 Q. (Indiscernible) the articles that
9 informed the voters about the Supreme Court's
10 decision in the Hunter versus Underwood case in the
11 context of the 1996 election?

12 A. I did not see any reference to that.

13 Q. And that there was no reference either
14 to what the 1995 legislature understood the phrase
15 "moral turpitude" to mean either, was there?

16 A. Could you restate your question? I'm
17 not sure I understood the first part.

18 Q. It wasn't -- it wasn't a well-formed
19 question.

20 Did you find any evidence that the
21 public -- in the public discussion, whether in
22 newspapers or other materials, that referenced the
23 1995 legislature's understanding of the meaning of
24 the phrase "moral turpitude"?

25 A. No. In my review, I did not see that.

Page 206

1 KAREN OWEN, Ph.D.

2 And if I had, I would have included it for part of

3 the discussion.

4 Q. On page 59 of your report, you say --

5 in the last paragraph before the conclusion

6 section, you say plaintiffs' experts do not address

7 these updated provisions in Alabama law or in the

8 Alabama Constitution. Which plaintiffs' experts

9 are you referring to?

10 MS. MESSICK: Object to the form.

11 A. I -- in this context, I reviewed

12 Dr. Riser and McCrary's report.

13 Q. What about -- you're not referring here

14 to Professor Smith; is that correct?

15 A. No, I am not.

16 Q. How would you describe what the

17 generally accepted methodology is in the political

18 science field for ascertaining whether a law was

19 enacted with discriminatory intent?

20 A. As a political scientist, I think we

21 look at the totality of what is seen in the

22 legislative history, so part of that is the

23 legislative enactment, how a bill is created and

24 passed, as well as we look at testimony and the

25 framework of what is provided. And in situations

Page 208

1 KAREN OWEN, Ph.D.

2 Q. Do you look to the -- the history of

3 the legal context of the particular law to see if

4 it, at any point, had a racially discriminatory

5 purpose?

6 MS. MESSICK: Object to the form.

7 A. I'm not sure what you mean by "legal

8 context." I think that in looking at the law or

9 bill that's being drafted, you look at the context

10 of it, the history of what's going on.

11 Q. In this case, I think you testified

12 that you didn't do any analysis of the 1901

13 Constitution and whether that had a racially

14 discriminatory purpose; is that correct?

15 A. No, I did not.

16 Q. And so your conclusion that the

17 moral-turpitude provision as it exists now in

18 Alabama law, that it doesn't have a discriminatory

19 purpose, that's without considering anything about

20 the 1901 Constitution; is that correct?

21 A. So my expert report talks about this

22 phrase "moral turpitude" being used in the revision

23 and that it was not brought up as controversial. I

24 did not go back and look at when it was used in

25 1901. But as we talked about earlier, I showed

Page 207

1 KAREN OWEN, Ph.D.

2 where laws are enacted and have to go before the

3 voters, then we look at that -- the votes cast and

4 whether it was passed then. And we look to

5 determine conversations that are recorded over why

6 public policy is needing to be addressed, what the

7 problem potentially is and what the solution will

8 be. So we look at the record, history of all of

9 that conversation. And I think that you look --

10 when the information is going before the voters,

11 you can look at the press reports. So in some

12 situations, the legislature may not have put out

13 certain information, but the newspaper will report

14 it to the people. Or if there's not a record from

15 a particular hearing, then press reports can fill

16 in that gap. Usually the press are available at

17 committee hearings or when the debate of a bill is

18 being made, and they will report that. So you look

19 for those cases where they provide a synopsis or

20 summary or indication of what's going on.

21 Q. Do you look to the history of the

22 context in which a particular law was adopted in

23 the past?

24 A. I missed the first part of your

25 question.

Page 209

1 KAREN OWEN, Ph.D.

2 that it was a term that had been used in other

3 context.

4 Q. Right. Have you reviewed other

5 experts' analysis in other cases? Let me start

6 over.

7 How many expert reports have you read

8 on the topic of racial discrimination?

9 A. I mean, a specific part of -- I guess

10 I'm not exactly sure what you mean by "racial

11 discrimination."

12 Q. So I know that you -- you said that you

13 had responded to Professor Lichtman's analysis in

14 the Virginia case. Presumably, that's one example

15 of an expert report that is on the topic of racial

16 discrimination, a law, whether it's racially

17 discriminatory; is that correct?

18 A. Yes.

19 Q. What other -- how many other expert

20 reports on the topic of whether a law is racially

21 discriminatory have you read?

22 A. I mean, I don't know the exact number,

23 but if I was to recall here, maybe three to four,

24 based on the cases I've been involved in. It might

25 be higher than four.

Page 210 1 KAREN OWEN, Ph.D. 2 Q. Did you consult those reports for 3 determining what the appropriate methodology was to 4 inform your analysis in this case? 5 A. No, I didn't go back and look at those 6 reports. 7 Q. How did you determine what methodology 8 you would follow in conducting your analysis in 9 this case? 10 A. So when I was asked to become an expert 11 in this case or just to look at it, if I could 12 provide something, the first thing I thought about 13 was what I understand and, as a political 14 scientist, the question that was being posed in 15 front of me was just to look to determine if this 16 law, which became an amendment to the constitution, 17 was passed with discriminatory intent. And in that 18 process, I began what I do as a political 19 scientist, which is to look at the legislative 20 history of it, look at where the language came 21 from, which then pushed -- you know, I saw that 22 this had been a constitutional revision discussion 23 for decades prior to the 1996. And then I looked 24 at the legislative enactment of it and then the 25 amendment and the voters.	Page 211 1 KAREN OWEN, Ph.D. 2 Q. Did you look at any expert reports or 3 evidence from other cases where there were 4 allegations of racial discrimination in a law to 5 inform what methodological approach you would 6 follow in this case? 7 MS. MESSICK: Object to the form. 8 A. No, I did not read other reports except 9 for what was provided to me from the plaintiffs and 10 the -- plaintiffs' experts in this case. 11 Q. Did you review other instances of laws 12 that had been determined to be found with -- to 13 have a racially discriminatory purpose to aid you 14 in determining whether this law did? 15 A. No, I focused on what was going -- you 16 know, this case in Alabama. 17 Q. What is the most recent example, in 18 your view as a political scientist, of a law that 19 was enacted in the United States, whether at the 20 federal or state level, that had a racially 21 discriminatory purpose? 22 A. I mean, I feel like that's a very legal 23 question, and I don't teach -- I don't. . . 24 Q. Well, why is that a legal question? 25 A. Like, in my mind, I feel like that's
Page 212 1 KAREN OWEN, Ph.D. 2 what a legal scholar is always looking at, is the 3 law and what is. . . 4 So I mean, the first -- you said 5 racial, but the first thing that came to my mind is 6 laws that are discriminatory against the LGBTQ 7 community. 8 Q. So what about -- so I am focused on 9 racial discrimination in my question. 10 Can you -- as a political scientist, I 11 think -- would you agree that whether a law has a 12 racially discriminatory purpose, is that something 13 that's within the field of political science? 14 A. Yes. And I mean, I guess I was 15 thinking, too, along the lines of redistricting 16 and, with the passage of redistricting maps, you 17 would have sometimes racially discriminatory maps 18 drawn. 19 Q. So what is the most recent example in 20 your mind of a redistricting law that was enacted 21 with a racially discriminatory purpose? 22 A. In North Carolina, it was mostly 23 partisan, but I think they had a state map with one 24 racial -- discussion of racial discrimination. But 25 I don't know the name of that particular case nor	Page 213 1 KAREN OWEN, Ph.D. 2 the actual state statute for their map. 3 Q. Did you -- did you agree, as a 4 political scientist, that that particular district 5 was racially discriminatory in its purpose? 6 A. As we sit here right now, I would have 7 to think back -- I would have to look specifically 8 at the map. I mean, I'm not sitting here to repeat 9 what the Court decided. 10 Q. And I guess my question is not focused 11 on -- you know, I don't want you to tell me what 12 someone else, a Court -- whether a Court or 13 otherwise determined. I'm interested to know in 14 your own view, as a political scientist, what is 15 the most recent law that you're aware of that was 16 enacted with a racially discriminatory purpose? 17 A. I mean, there's hundreds of laws. I -- 18 I guess I just feel uncomfortable saying for 19 certain right now that I can recall one law. I 20 know there is one. I just don't -- at this hour, I 21 can't just state. 22 Q. Is there any law that you can identify 23 that you have concluded as a political scientist 24 was enacted with a racially discriminatory purpose? 25 MS. MESSICK: Object to the form.

Page 214

1 KAREN OWEN, Ph.D.

2 A. Again, I would -- I feel uncomfortable

3 right now answering, because I just can't recall.

4 I'm sure there are potentially laws out there that

5 are racially discriminatory. There's not enough

6 caffeine in this Coke to help me retain my

7 recollection of every law.

8 Q. This isn't something that you've

9 studied in great depth as a political scientist?

10 MS. MESSICK: Object to the form.

11 A. I study a vast array of things as a

12 political scientist.

13 Q. Your focus has been on women in

14 politics and on the effect of special elections, at

15 least your most recent focus; is that correct?

16 MS. MESSICK: Object to the form.

17 A. My academic research related to my

18 position as a professor has definitely been working

19 on those two areas.

20 Q. And in reaching your conclusions in

21 this case, your opinion that the law here was not

22 passed with any sort of racially discriminatory

23 intent, you didn't review other laws that were

24 passed with racially discriminatory intent to

25 compare; is that correct?

Page 216

1 KAREN OWEN, Ph.D.

2 Q. And what have you found?

3 A. So when I stated roughly the 50 hours,

4 I was thinking just this spring what I had worked

5 on prior to June when I started writing the report

6 and working more extensively on the report. So

7 last year in 2019, in the fall, I worked about 26

8 to 27 hours on this case, and then from January

9 until May 31st, I worked 57 hours. And then since

10 June 1st until the report was due on, I believe,

11 June 19th, I have about right at 100 hours on this

12 case, just in that three-week window.

13 Q. Thank you.

14 Do you remember your lengthy discussion

15 with Mr. Gaber this morning on page 10 of your

16 report talking about the use of the phrase "moral

17 context" [sic] in different situations?

18 A. I'm sorry. What page?

19 Q. Page 10.

20 A. Page 10. Okay.

21 Q. So you see that list of judicial

22 conduct proceedings, jury service, use of veterans'

23 services, licensing, there's a revocation of

24 licensing in the professions such as law, medicine,

25 education, and real estate, and then also breach of

Page 215

1 KAREN OWEN, Ph.D.

2 A. No.

3 Q. And I just want to clarify. When you

4 say no, you mean that you did not do that

5 comparison?

6 A. I did not compare to another law.

7 MR. GABER: Okay. Can we just

8 take a quick break? I think I'm just

9 about done, but I just want to look at

10 my notes quickly.

11 MS. MESSICK: Sure.

12 (Recess from 4:53 p.m. to

13 4:53 p.m.)

14 MR. GABER: I don't have any

15 further questions at this time.

16 MS. MESSICK: Okay. And I have

17 bad news. I do have a few questions.

18 EXAMINATION

19 BY MS. MESSICK:

20 Q. You testified this morning trying to

21 recollect how much time you had spent on your

22 report prior to June. Have you had an opportunity

23 to look at any records and refresh your

24 recollection about your billings?

25 A. Yes.

Page 217

1 KAREN OWEN, Ph.D.

2 employment and endorsement, contracts, imposition

3 of punitive damages.

4 You see that list?

5 A. Yes.

6 MR. GABER: Object to form.

7 BY MS. MESSICK:

8 Q. And I've left off the last item on

9 purpose. As to those other items, like when you

10 refer to jury service, when you refer to licenses

11 and the law and medicine, are you talking about in

12 just one jurisdiction for each of those categories?

13 A. No.

14 MR. GABER: Object to form.

15 BY MS. MESSICK:

16 Q. So this list, you've got approximately

17 10 items, and each of these items, you are aware of

18 these -- you are aware of each of these items using

19 the phrase "moral turpitude" in multiple

20 jurisdictions?

21 A. Yes.

22 Q. Would it surprise you if I told you

23 that the court that we're in for this case uses the

24 phrase "moral turpitude" in regulating attorney

25 conduct?

Page 218 1 KAREN OWEN, Ph.D. 2 A. No. 3 Q. Earlier, Mr. Gaber showed you 4 Exhibit 2, Deporting Undesirable Women. 5 Do you remember that? 6 A. Yes. 7 Q. Have you read this entire article? 8 A. No. 9 Q. If you'll turn to page 57, I'd like to 10 ask you to look at the paragraph that he had you 11 read into the record. Do you see on the bottom 12 line in the text above the footnotes, the word 13 "undesirable" is in quote marks? 14 A. Yes. 15 Q. Having not read this article, do you 16 have any idea what they mean by "undesirable" 17 there? 18 A. No. 19 Q. In terms of constitutional revision, 20 you mentioned the 1930s, but then you really 21 focused on the efforts under Governor Brewer, the 22 effort under Governor James, the effort for the 23 Baxley proposals, and then the 1995-'96 adoption, 24 correct? 25 A. Yes.	Page 219 1 KAREN OWEN, Ph.D. 2 Q. And with those constitutional revision 3 efforts, with the exception of the last one, the 4 1995-'96 constitutional amendment, those other 5 three -- Brewer, James, and Baxley -- those were 6 all revisions of the entire constitution, correct? 7 A. Yes. 8 Q. And so when you said you reviewed 9 thousands of pages, some of that is scanning pages 10 about home rule and taxation and there was a 11 initiative proposal. Not all of that was about 12 suffrage and elections, correct? 13 MR. GABER: Object to form. 14 A. Yes, most of the pages were not on the 15 suffrage and elections amendment. 16 Q. And what you were looking for in 17 studying those efforts under Brewer, under Baxley, 18 under James, and then in '95, '96, you were looking 19 for evidence of racial intent, correct? 20 A. Yes. 21 Q. And if you had found evidence of racial 22 intent, would you have included it in your opinion? 23 A. Yes. Absolutely. 24 Q. I would like to ask you to look at 25 the -- think back to your discussion about
Page 220 1 KAREN OWEN, Ph.D. 2 Representative Tony Harrison. I'd like to point 3 you to pages 29, 30, and 31 and 32 and 34, so 29 to 4 34, most of those pages. Take a moment for me, and 5 look at what you have reported that Representative 6 Harrison was talking about. 7 A. Okay. 8 Q. Okay. Do you remember that you -- that 9 Mr. Gaber focused some on page 30, where 10 Representative Harrison is talking about 11 understanding the scope of the "moral turpitude" 12 phrase? 13 A. Yes. 14 Q. On any of these pages, 29 through 34, 15 where you talk about Representative Harrison, did 16 you at any point say that he raised concerns about 17 racial discrimination? 18 A. No, not that I recall. 19 Q. And if he had raised such concerns, 20 would you have included those in your report? 21 A. Yes. 22 Q. On page 29, in the block quote, am I 23 understanding correctly that Representative 24 Harrison said that section 2 -- strike that. 25 Please read for me the first sentence	Page 221 1 KAREN OWEN, Ph.D. 2 in the block quotes that is being stated by 3 Representative Tony Harrison. 4 A. Representative Tony Harrison: Senator, 5 in section 2, I just find that this is -- I'm 6 sorry. Let me start again. 7 Senator, in section 2, I just find that 8 this is probably one of the best sections that was 9 proposed by the working group. 10 Q. All right. Thank you. 11 And then thereafter, you talk about a 12 lack of clarity in his mind -- he expresses a lack 13 of understanding about the scope of "moral 14 turpitude;" correct? 15 A. Correct. 16 Q. And he also expresses his position that 17 it is punishment, correct? 18 A. Yes. 19 Q. That the disenfranchisement for felony 20 convictions is punishment? 21 A. Yes. 22 Q. And Senator -- on page 32, Senator Mack 23 Parsons asked, quote, Moral turpitude put in there, 24 as I understand it, is not for one or two felonies, 25 which I think is stealing whiskey and transporting

Page 222 1 KAREN OWEN, Ph.D. 2 are about the only two, and does he suggest that 3 the phrase "moral turpitude" should be left out and 4 the proposal simplified with "felony"? What do you 5 understand Senator Parsons to be conveying there? 6 A. My understanding that he questioned, 7 you know, why is moral turpitude in here and 8 perhaps it just needs to be listed as felony, which 9 would include more. 10 Q. And he seems to think that just about 11 every felony involves moral turpitude, based on 12 that statement? 13 A. It's not for just one or two, yes. 14 Q. And then on page 34 and 35, what is 15 your understanding of the concerns that 16 Representative Martha Smith raised? 17 A. I'm sorry. Which pages? 18 Q. Start at the bottom of page 34. It's 19 the last two lines on page 34 and then continuing 20 to 35. 21 A. Oh, okay. So here, I state that 22 Representative Martha Smith raised concerns with 23 crimes involving moral turpitude, suggesting a 24 broader interpretation to include misdemeanors for 25 attempts to commit felonies. She was afraid that	Page 223 1 KAREN OWEN, Ph.D. 2 an individual who would be attempting to commit a 3 felony, that they potentially should be included in 4 this list involving those misdemeanors for attempts 5 to commit felonies. 6 Q. Okay. So her -- so her concern was 7 that you attempted to commit murder, but you 8 weren't successful, and so you -- you have only 9 been convicted of a misdemeanor, and her concern 10 was that that person should have also lost voting 11 rights, the same as the person who successfully 12 carries out the murder? 13 A. Yes. 14 Q. And this is the 1979 -- the efforts 15 occurring around 1979 under Governor Fob James, 16 correct? 17 A. Yes. 18 Q. I believe you were asked about whether 19 you had spoken with any legislators from 1979, and 20 that your answer was that you had not; is that 21 correct? 22 A. Yes, I believe that's correct. 23 Q. Did you, for these Fob James efforts, 24 rely on the sworn testimony of Mike Waters? 25 A. Yes.
Page 224 1 KAREN OWEN, Ph.D. 2 Q. And who was he? 3 A. He was an attorney under Governor 4 James, and he was part of the working group on 5 constitutional revision. 6 Q. Thank you. 7 I'd like to focus your attention on 8 pages 35 and 36 and the comment by Mary Weidler of 9 the ACLU. I believe in one of the questions 10 Mr. Gaber referred to Ms. Weidler as the leader of 11 that organization. Do you know what position, if 12 any, she held? 13 A. I don't recall. It just said she was 14 with the ACLU. 15 Q. Okay. And her -- her statement to the 16 committee on page 35, you say that she urged 17 members to remove the reference referring to 18 persons convicted of felonies involving moral 19 turpitude. She said it seemed to her organization 20 there's no reason to continue to penalize for these 21 felonies. And then she was asked, you do not mean, 22 do you, that people should be allowed to vote while 23 they're still incarcerated; is that correct? 24 MR. GABER: Object to the form. 25 A. (Indiscernible.)	Page 225 1 KAREN OWEN, Ph.D. 2 Q. And then she raised a concern -- 3 Her answer was yes. 4 A. Yes. 5 Q. And then she has a sentence here that 6 you quote that says, furthermore, the phrase "moral 7 turpitude" is vague and indefinite and when added 8 to the disability of being a convicted felon, 9 appears unwarranted and discriminatory. 10 Is that correct? 11 A. Yes. 12 Q. And then she goes on to say that under 13 the present system of applying to the Board of 14 Pardons and Parole for restoration of rights, 15 nearly all who apply have their rights restored; is 16 that correct? 17 A. Yes. 18 Q. And, then, so she encouraged automatic 19 restoration of rights? 20 A. Yes. 21 Q. So it sounds like her focus is on 22 automatic restoration of rights once some person -- 23 somebody has completed their sentence? 24 A. Yes. 25 Q. But when she says it's discriminatory,

Page 226 1 KAREN OWEN, Ph.D. 2 does she explain what she means by that phrase? 3 A. No. 4 Q. Did she provide any data or evidence to 5 the committee that you're aware of beyond the 6 passing use of this word "discriminatory"? 7 A. No. 8 Q. If I understood your earlier testimony, 9 you agree that it is unlikely that a legislator 10 will say that they personally were acting with a 11 racist motive; is that correct? 12 A. Yes. 13 Q. Is it -- has it, in your experience and 14 in your studies, been more likely that a legislator 15 will accuse somebody else of acting with a racist 16 motive? 17 MR. GABER: Object to the form. 18 A. Can you ask that again? I'm sorry. 19 Well, wait a minute. I missed the -- a legislator? 20 Q. Right. A legislator. 21 So, if, for instance -- there's a 22 sentence on page 30 that the plaintiffs want to 23 focus on and seems to suggest that perhaps there's 24 a concern on the part of Representative Harrison 25 about race. But as I understand your testimony, he	Page 227 1 KAREN OWEN, Ph.D. 2 has not raised -- he has not explicitly raised any 3 concern about race; is that correct? 4 A. Yes. 5 MR. GABER: Object to the form. 6 BY MS. MESSICK: 7 Q. If somebody in Mr. Harrison's position 8 is unlikely to -- does somebody in Mr. Harrison's 9 position have the same motivation to not raise 10 concerns of racism on the part of others as a 11 legislator has to not say that he, himself, is 12 acting in a racist manner? 13 MR. GABER: Object to form. 14 A. So I think that a legislator would call 15 out if he heard racial intention. 16 Q. And you've seen examples of that? 17 A. Yes. 18 Q. Have you re-read your report in the 19 last week? 20 A. Yes. 21 Q. Do you stand by everything in it? 22 A. Yes. 23 Q. And you have a bachelor's degree from 24 the University of Georgia where you majored in 25 political science; is that correct?
Page 228 1 KAREN OWEN, Ph.D. 2 A. Yes. 3 Q. And you minored in history? 4 A. Yes. 5 Q. And do you also have a master's degree? 6 A. Yes. 7 Q. And what kind of degree is that? 8 A. A master in public administration. 9 Q. From where? 10 A. University of Georgia. 11 Q. And do you have a Ph.D.? 12 A. Yes. 13 Q. And where is that from? 14 A. The University of Georgia. 15 Q. And what is that Ph.D. in? 16 A. Political science. 17 Q. And what did you specialize in? 18 A. American politics and methodology and 19 public administration. 20 MS. MESSICK: I don't have any 21 further questions at this time. 22 Mr. Gaber may have questions. 23 MR. GABER: I do have some 24 follow-up questions. 25 ///	Page 229 1 KAREN OWEN, Ph.D. 2 EXAMINATION 3 BY MR. GABER: 4 Q. If you could turn to page 10 of your 5 report, and I want to focus on the sentence -- the 6 "furthermore" sentence, where you list the judicial 7 conduct proceedings, jury service, use of veterans' 8 services, licensing, et cetera. 9 Do you see that sentence? 10 A. Yes. 11 Q. You don't have any citation for this 12 assertion that moral turpitude has been used in all 13 these different settings. What evidence did you 14 look to to make this assertion? 15 A. So I looked through a search on Westlaw 16 and LexisNexis about where moral turpitude was 17 found in different legal contexts. 18 Q. And is that a -- what happened when you 19 conducted that search? Did you get a list of all 20 of the examples with that phrase? 21 A. Yes, and then I went in to different 22 pieces of those lists and searched for what that 23 was a part of, whether it was, you know, a code, 24 the statute, or whatever. 25 Q. Did you save that list?

Page 230

1 KAREN OWEN, Ph.D.

2 A. No.

3 Q. How many states have a moral-turpitude

4 standard for judicial conduct proceedings?

5 MS. MESSICK: Object to the form.

6 A. I don't recall the number off the top

7 of my head.

8 Q. What about with respect to jury

9 service?

10 A. I don't recall off the top of my head

11 right now.

12 Q. How many jurisdictions use the

13 moral-turpitude standard for use of veterans'

14 services?

15 A. I'm -- I don't recall the number of

16 different decision-making -- or jurisdictions --

17 (Simultaneous speakers.)

18 BY MR. GABER:

19 Q. What about with respect to licensing?

20 A. I don't recall the exact number.

21 MS. MESSICK: And I'm sorry. She

22 answered too quickly. I do object to

23 the form of that one.

24 BY MR. GABER:

25 Q. How many jurisdictions use the

Page 232

1 KAREN OWEN, Ph.D.

2 I'm sorry. Object to privilege.

3 You're asking her at what point I told

4 her something.

5 MR. GABER: Oh, okay.

6 BY MR. GABER:

7 Q. Well, did you know that this Court uses

8 a moral-turpitude standard before the examination

9 just a few moments ago?

10 A. Yes.

11 MS. MESSICK: Object to

12 privilege.

13 MR. GABER: I just asked if you

14 knew that. I didn't ask who told you.

15 I don't think that that's privileged.

16 MS. MESSICK: She's answered the

17 question, so ask another one.

18 BY MR. GABER:

19 Q. Other than the example that came up of

20 this Court, can you name any other jurisdiction

21 that uses a moral-turpitude standard for one of

22 these examples that you proffered in your report?

23 A. I believe the State of Georgia has

24 the -- moral turpitude in regards to judicial

25 conduct proceedings.

Page 231

1 KAREN OWEN, Ph.D.

2 moral-turpitude standard for the revocation of

3 licenses in professions such as law, medicine,

4 education, and real estate?

5 MS. MESSICK: Object to the form.

6 A. At this time, I don't recall that exact

7 number.

8 Q. What about with respect to breach of

9 employment and endorsement contracts?

10 A. At this time, I don't recall the exact

11 number.

12 Q. How many use the moral-turpitude

13 standard for the imposition of punitive damages?

14 A. At this point, I don't recall that

15 exact number.

16 Q. Can you give me an example of a

17 jurisdiction that uses the standards -- uses the

18 moral-turpitude standard for any one of these

19 examples?

20 A. So it was brought to my attention that,

21 for this Court, that the moral-turpitude standard

22 is in the rules for the conduct of attorneys.

23 Q. You learned that during Ms. Messick's

24 examination a few minutes ago; is that right?

25 MS. MESSICK: Object to the form.

Page 233

1 KAREN OWEN, Ph.D.

2 Q. When did Georgia enact that provision?

3 A. I don't recall that exact time.

4 Q. When did this Court for this proceeding

5 enact its moral conduct provision?

6 A. For what -- I'm not sure I follow.

7 Q. The Middle District of Alabama, when

8 did it adopt a moral-turpitude standard for its

9 proceedings for members of its bar?

10 A. I believe, in reading the rule portion,

11 it said it was effective in 1998, but I don't

12 exactly recall. I believe it was 1998.

13 Q. Okay. Did -- in this list -- in the

14 sentence that begins, "furthermore," can you name

15 any example from this list that was in effect in

16 1901 that used the moral-turpitude standard as of

17 1901?

18 A. I don't recall the exact timing of each

19 of these.

20 Q. Can you name any that use the

21 moral-turpitude standard as of 1996?

22 A. As I sit here right now, I can't recall

23 the exact timing on each of these.

24 Q. Did you consider the timing of when any

25 of these went into effect as it might relate to the

Page 234 1 KAREN OWEN, Ph.D. 2 meaning of the phrase with respect to the Alabama 3 Constitution? 4 A. At the time I looked at these, I'm sure 5 I looked at the timing, but I did not include it in 6 this report. 7 Q. Did you review each of the underlying 8 statutes that you say you got from Lexis and 9 Westlaw to determine whether there was any racially 10 discriminatory motivation in the adoption of that 11 standard in that context or that law? 12 MS. MESSICK: Object to the form. 13 A. As I previously mentioned, when the 14 list came up from Westlaw, I looked through 15 different ones of these to look at the different 16 uses of moral turpitude, like in these legal 17 contexts, but I did not do a full analysis of each 18 of the statutes or codes related to these contexts. 19 Q. And by full analysis, do you mean that 20 you didn't do an analysis of whether there was a 21 racially discriminatory purpose for them? 22 MS. MESSICK: Object to the form. 23 A. I did not do -- conduct a review or 24 analysis of the legislative history or how it was 25 enacted, the passage of it, or any of that.	Page 235 1 KAREN OWEN, Ph.D. 2 Q. And you don't provide a list of any 3 law, a citation or an example that we could look at 4 for any of them; is that correct? 5 MS. MESSICK: Object to the form. 6 A. I provide the list of these in the 7 section that I have found on Westlaw. That's what 8 I provided in this report. 9 Q. The topics, right? Not any -- you 10 haven't cited an actual specific law? 11 MS. MESSICK: Object to the form. 12 A. At the very end, it talks about the 13 Oklahoma Act, but I did not cite that statute. It 14 is not in here. 15 Q. Right. I mean, that one actually, you 16 know, people can look up the Oklahoma eugenics law. 17 That's an actual specific example. The others are 18 just topics, right? 19 MS. MESSICK: Object to the form. 20 A. The others are topics that have -- they 21 are legal context topics that have moral 22 turpitude -- where moral turpitude has been used. 23 Q. But you can't tell me sitting here 24 today which jurisdictions other than Georgia and 25 the rules of this Court actually employ a
Page 236 1 KAREN OWEN, Ph.D. 2 moral-turpitude standard with respect to any of 3 these legal contexts; is that correct? 4 A. In this report, I have -- 5 MS. MESSICK: Object to the form. 6 THE WITNESS: I'm sorry. 7 MS. MESSICK: Go ahead. 8 A. In this report, I have not provided 9 that specificity. 10 Q. And you haven't today in your 11 deposition either, correct? 12 MS. MESSICK: Object to the form. 13 A. I have not spoken about those. 14 Q. Are you aware of there being a history 15 of racial discrimination in jury selection at any 16 point in American history? 17 A. Yes. 18 Q. Did you look to see whether the 19 moral-turpitude standard had been employed as a 20 method of screening out black jurors? 21 A. No. 22 Q. Did you conduct any analysis of how any 23 boards of registrars in Alabama have applied the 24 moral-turpitude standard to determine whether it 25 was applied in a discriminatory way?	Page 237 1 KAREN OWEN, Ph.D. 2 A. No. 3 Q. Ms. Messick asked you about the 4 colloquy with Representative Harrison from your 5 report, and you were asked if -- if it was more 6 likely that a legislator would call out something 7 as discriminatory than would a legislator having a 8 non-overt purpose. 9 Do you recall that questioning? 10 A. Yes. 11 MS. MESSICK: Object to the form. 12 A. Yes. 13 Q. And you said that you agreed that you 14 had seen examples of legislators calling out laws 15 having a discriminatory purpose. 16 Do you recall that? 17 A. I said that I was aware of examples. 18 Q. Were you referring to Representative 19 Harrison when you testified about your awareness of 20 such an example? 21 A. No. 22 Q. What about any Alabama legislator? 23 MS. MESSICK: Object to the form. 24 A. No. 25 Q. Any Alabama legislator during the 1979

Page 238 1 KAREN OWEN, Ph.D. 2 reforms effort? 3 A. No, I was not referring to 4 Alabama-specific legislators. 5 Q. What is the example that you were 6 referring to? 7 A. I'm referring to an example from when I 8 worked for a member of Congress, Congressman Nathan 9 Deal, and I don't know that it's appropriate for me 10 to comment on how he called out a member in a 11 committee hearing that we were in. 12 Q. Well, I'm going to ask you to please do 13 so. 14 MS. MESSICK: Committee hearings 15 are public. 16 A. It was behind -- it was not in the 17 public hearing. 18 Q. There is no privilege that would 19 protect that information, so I need to know -- 20 MS. MESSICK: Hold on. I'm not 21 as sure as you are that there's -- that 22 the United States Congress has no 23 privilege for things that happen behind 24 closed doors. I would think that there 25 may very well be a deliberative	Page 239 1 KAREN OWEN, Ph.D. 2 privilege or a legislative privilege. 3 I mean, I'm aware of 4 congressional members having meetings 5 where, like, they can't bring in their 6 phones and they're in top secret -- 7 they're in rooms that cannot be -- 8 (Simultaneous speakers.) 9 MR. GABER: I'll try to get to 10 that. 11 BY MR. GABER: 12 Q. Dr. Owens, was this a -- was this a 13 classified setting that this conversation occurred? 14 A. Yes. 15 Q. What -- how so? What was the 16 classification? 17 A. So this is related to immigration 18 status and work on an immigration visa-related 19 bill. 20 Q. And what -- why was it classified? 21 What was the level of classification? 22 A. I don't recall that. 23 Q. Do you -- 24 (Simultaneous speakers.) 25 ///
Page 240 1 KAREN OWEN, Ph.D. 2 BY MR. GABER: 3 Q. Go ahead. 4 A. I do recall that we were in -- we were 5 behind closed doors, interaction with members, we 6 were discussing an immigration classified issue on 7 a visa, and I don't -- I don't feel it is 8 appropriate that I comment on what those two 9 members said to each other. 10 Q. Do you hold a classification? Did you 11 have a clearance of any level? 12 A. At the time I was working in Defense, I 13 had some level and we were allowed as staffers to 14 be with the member. We could not be in certain 15 rooms that were looking at classified documents. 16 There were certain restrictions on that. 17 MS. MESSICK: And I just want to 18 say that I think this is harassing. I 19 mean, it's obviously not relevant. 20 (Simultaneous speakers.) 21 MR. GABER: Well, you asked the 22 question. You elicited the question. 23 You can't use it as a sword and a 24 shield. So I'm entitled to ask -- 25 (Simultaneous speakers.)	Page 241 1 KAREN OWEN, Ph.D. 2 MS. MESSICK: I asked her if 3 something like this could happen, with 4 the exact situation that it happened in 5 and factually different, and she is 6 uncomfortable testifying to it, so I'm 7 objecting. I feel like you are 8 harassing her. 9 BY MR. GABER: 10 Q. I'm not harassing you, Dr. Owens. I'm 11 trying to understand the context of the answer you 12 gave to the question that you had seen an example 13 of a legislator accusing someone else of engaging 14 in discriminatory conduct. Since that has been 15 offered as an example, I'm entitled to know what 16 that conduct was. 17 (Simultaneous speakers.) 18 A. I will answer this. I told you that I 19 witnessed it and the example I thought of was that 20 example from when I was a staffer witnessing a 21 legislator talk to another legislator about what 22 they were doing. I don't feel comfortable sharing 23 what they said to one another. 24 Q. Was the general nature of it that -- 25 was Congressman Deal accusing another legislator of

Page 242 1 KAREN OWEN, Ph.D. 2 acting with a discriminatory purpose? 3 A. I would say "accusing" might not be the 4 best word, but he was calling out the member for 5 what he was thinking -- saying or implying. 6 Q. And this was in the context of an 7 immigration -- was it an immigration bill that was 8 before the committee or a particular immigration 9 matter? 10 MS. MESSICK: Object to the form. 11 A. I don't recall the specifics of that. 12 We'll say it was an immigration matter. 13 Q. Why did that example come to mind? 14 A. Because when she asked me if it's 15 likely, I worked for a member of Congress and I 16 recalled that. 17 Q. Are there any other examples that come 18 to mind? 19 A. That's the one that came to mind, and 20 that's (indiscernible) part of my thought process 21 right now. 22 Q. So is it your -- is it your testimony 23 then, that it's more likely, given the one example 24 that you can think of, that that occurs than that 25 legislators have discriminatory purposes that they	Page 243 1 KAREN OWEN, Ph.D. 2 don't share? 3 A. It is my opinion that it's likely for a 4 member to say something to another member than to 5 overtly make a comment themselves -- himself, 6 herself. 7 Q. And do you think that's likely to 8 happen -- do you think that was likely to happen in 9 1979 in the Alabama legislature, where an 10 African-American member would be likely to call out 11 one of their colleagues in a public meeting? Did 12 you find any evidence of that happening? 13 A. I did not find evidence. But 14 hypothetically, it could have occurred. 15 Q. What does that mean? 16 A. Like, I don't -- I don't have -- 17 MS. MESSICK: Object to the form. 18 A. I don't have evidence in this report, 19 but it's potential that someone, just like my 20 example, could have been behind a closed door and 21 said something. It's a potential. 22 Q. And we wouldn't know that, right, that 23 that could have happened behind closed doors? 24 There could have been discussions about the 25 racially discriminatory effect and we wouldn't know
Page 244 1 KAREN OWEN, Ph.D. 2 that; is that correct? 3 A. Yes. 4 Q. And sometimes people won't tell people 5 about those conversations, like how you just didn't 6 tell me about the conversation that you witnessed; 7 is that correct? 8 A. I didn't tell you because I don't think 9 it's fair for an elected official who still has 10 prominence in Georgia to, in a deposition, say what 11 he said. That doesn't mean that I don't think 12 someone may have heard and told someone else. So 13 in the situation, another staff member might have 14 heard it and could have told someone. I don't know 15 that. 16 Q. And so isn't it also possible that 17 throughout the all of these years, 1930 through 18 1983, there could have been conversations behind 19 closed doors about the racially discriminatory 20 purpose and someone wouldn't want to call out a 21 sitting legislator or they wouldn't want people to 22 know that they think a law might be discriminatory. 23 Is that also possible? 24 A. I believe that legislators could have 25 conversations that are behind closed doors. I	Page 245 1 KAREN OWEN, Ph.D. 2 think if an attempt to revise the constitution had 3 wanted to have racial intention, that would have 4 been brought out in conversations no matter what. 5 It seems here that the revisions from 1930 through 6 1983 that were brought on was to revise and get rid 7 of language that was outdated and had racial 8 intention, if that was present. 9 Q. And that's based on your review of the 10 transcripts and reports from the public hearings to 11 the extent they were made available; is that 12 correct? 13 MS. MESSICK: Object to the form. 14 A. It is the review of not just the report 15 from the commission, but also organized interests' 16 letters reporting what they were reviewing and 17 hearing and seeing, as well as from newspaper 18 coverage of these commissions and work and how they 19 were reporting it to the public. 20 Q. You didn't see any transcripts or 21 reports or records of any internal nonpublic 22 conversations among any legislators in this 83-year 23 period that you talk about in your report, correct? 24 MS. MESSICK: Object to the form. 25 A. I did not see -- I'm sorry --

Page 246 1 KAREN OWEN, Ph.D. 2 (Simultaneous speakers.) 3 BY MR. GABER: 4 Q. Sure. You didn't review any -- you 5 didn't have access to any transcripts or journals 6 or recordings of private conversations between 7 legislators during the entirety of the period you 8 analyzed; is that correct? 9 A. I do not have written records or 10 transcripts, but I did speak to individuals who 11 were present at the time and working on these, and 12 they did not comment in any way about a racial 13 intention or that they heard that. They spoke 14 about how this was noncontroversial and that they 15 were trying to revise the constitution. 16 Q. Who are you talking about? 17 A. I spoke in here to Attorney General, 18 Lieutenant Governor Bill Baxley. I talked to 19 Speaker Seth Hammett, and then I did read the 20 testimony of Mike Waters. 21 Q. Did you ask any of those people if they 22 had -- were privy to any conversations in which 23 people -- legislators had discussed the racially 24 discriminatory history or purpose of this 25 provision?	Page 247 1 KAREN OWEN, Ph.D. 2 MS. MESSICK: Object to the form. 3 A. I put in here Seth Hammett talking 4 about how he -- this measure in 1995 was 5 noncontroversial, limited debate. There was no 6 discussion of that, racial intention. That was not 7 part of it. 8 Q. According to the Speaker? 9 A. According to him and his conversations 10 with his friend Jack Venable who was leading this 11 initiative. 12 MR. GABER: I have no further 13 questions. But I would just remind 14 you, Ms. Messick, that we would like to 15 get a copy of those -- the one set of 16 notes for sure that was about this 17 report. I'd like you to review the 18 other set of notes. I forget which 19 member or person it was, but that was 20 the interview that was originally about 21 her book but that waded into this 22 subject. I'd like you to review those 23 and see if they have relevant 24 information to produce. 25 MS. MESSICK: I've heard your
Page 248 1 KAREN OWEN, Ph.D. 2 request and we'll decide how to proceed 3 with respect to those. 4 You have a good night. 5 MR. GABER: Thank you. You too. 6 And, Dr. Owen, thank you for your 7 time. I appreciate it. 8 COURT REPORTER: Counsel, would 9 you like the same transcript orders as 10 yesterday? 11 MS. MESSICK: Yes, a copy, no 12 rush. 13 MR. GABER: Yes. 14 (The deposition of KAREN OWEN, 15 Ph.D., concluded at 5:39 p.m.) 16 * * * * * 17 18 19 20 21 22 23 24	Page 249 1 KAREN OWEN, Ph.D. 2 REPORTER'S CERTIFICATE 3 I, Greta H. Duckett, Certified Court 4 Reporter, Registered Professional Reporter, and 5 Certified Realtime Reporter, hereby certify that on 6 Friday, July 10, 2020, I reported the deposition of 7 KAREN OWEN, Ph.D., who was first duly sworn or 8 affirmed to speak the truth in the matter of the 9 foregoing cause, and that the pages herein contain 10 a true and accurate transcription of the 11 examination of said witness by counsel for the 12 parties set out herein. 13 I further certify that I am neither of kin 14 nor of counsel to any of the parties to said cause, 15 nor in any manner interested in the results 16 thereof. 17 This 23rd day of July, 2020. 18 19 20 21 GRETA H. DUCKETT, RPR, CRR, CVR-S, RVR-M-S 22 ACCR-12, GCCR-2891, MCCR-1945, TNLCC-671 23 Commissioner, State of Alabama at Large 24 CCR EXPIRATION: 9/30/20 MY COMMISSION EXPIRES: 5/17/21

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# #3 149:19 \$ \$150 17:25 \$300 17:17 \$4,000 18:16 \$50,000 19:4 1 1 37:5,6 114:21 186:4, 8,9 187:12 197:23 203:14 10 61:21 62:3,4,8 63:7 65:7 68:23 71:16 72:17 75:14,22 76:3 85:2,17 86:4,21 87:18 88:4 91:5 94:23 96:9 199:7 216:15,19,20 217:17 229:4 100 216:11 10:19 34:25 10:20 34:25 10:22 36:7 10:30 36:8 10:58 57:10 10:59 57:10 10th 36:22 11 99:18 100:5 11:57 98:13 11th 151:17,21 12 99:18 100:5 103:11 13 104:21 106:20 14 103:11 105:18 106:20 107:21 17 108:3,5,6,18 18 114:18 116:17	18-year-olds 117:8, 9 1800s 65:6 72:5,16 77:11 88:13 182 109:24 152:24 153:8,13,17,19,23 154:15 155:4,18 157:23 158:5 168:13 1875 62:21 65:10 67:21 69:11 70:2,8, 18,20 71:21 1882 62:20 71:20 72:21 73:7,14 74:6, 12 75:5 1891 62:5,18 71:19 73:5 74:22 19 70:18 116:17 19- 154:24 1900s 88:13 1901 60:16,22 61:7, 13 79:11 91:15,22 92:3,10 97:15,21,24 98:6,7 99:23 100:10, 20 101:12 102:3,23 103:20 104:19 105:10,25 106:23 107:4 111:9,15 112:6,22 113:10,22 115:7,17 116:3,14 117:13 118:6 119:6, 19,23 120:8,24 121:11,17,18 122:18 124:3,7 125:3 126:6, 9 130:9,15,21 143:3 146:11,18 149:6 153:18,20,22 157:23 177:17 179:24 193:7 208:12,20,25 233:16, 17 1901's 126:3 1915 61:25 1930 99:19 154:24 159:19 161:18 170:18 244:17 245:5 1930s 21:8 53:25 99:22 100:7,9,15,19, 24 101:10,14,25 102:18,21 103:3 154:13 156:14 157:5,	21 158:21 159:7,13, 25 168:4,11 218:20 1940 154:25 1940s 103:12,14 104:2 1950s 103:12 104:15, 18 106:18 107:16 154:25 1953 106:5 107:7 1960s 107:22 122:20 1970s 21:9 107:23 108:9 115:25 1971-73 118:20 1973 122:3 123:19 124:25 125:9,13 126:12,15 1978 53:25 1979 118:22 119:2,5, 13 120:7,14 121:2, 14,21,23 122:23 123:5 136:18 138:5 139:17 145:14,18,22 146:4 223:14,15,19 237:25 243:9 1983 146:7,10,17 147:6 149:9,16 154:13 155:2 156:14 157:5,21 158:21 159:13,19,25 160:8 161:18 168:5,12 244:18 245:6 1985 168:9 1995 58:2 97:12 98:8 157:18 159:4 160:11 173:25 174:4 177:16, 22 178:6 205:14,23 247:4 1995-'96 218:23 219:4 1996 23:25 24:10 26:9 28:18 58:3 97:12 98:8 170:21 174:2 178:16 179:23 180:12 194:23 202:10 205:11 210:23 233:21 1998 233:11,12	19th 40:9 202:13 216:11 1:30 98:14 1st 216:10 2 2 7:12 66:20,21 114:25 126:16 186:4, 8,10 187:12 218:4 220:24 221:5,7 2012-2013 47:24 2017 49:17 50:15 2019 10:3 13:10 20:12 27:24 216:7 2020 50:17 21 63:14 76:12 24 107:21 118:24 26 216:7 27 216:8 29 220:3,14,22 2:36 139:11 2:51 139:12 3 3 149:22 30 126:21 127:3 129:9 136:14 176:12 220:3,9 226:22 300 17:23 30s 170:18 31 132:8 220:3 31st 216:9 32 128:8 131:3,9 220:3 221:22 34 220:3,4,14 222:14, 18,19 35 139:15 222:14,20 224:8,16 36 224:8 39 141:2 144:3	3:40 173:22 3:51 173:23 4 40 118:24 146:8 47 148:4,12 49 174:19 175:13 4:53 215:12,13 5 50 18:8 174:24 175:13 216:3 51 178:9 52 178:9,22 56,000 21:17 57 67:5 216:9 218:9 58 67:15 59 206:4 5:39 248:15 7 7.02 128:10 129:3 70 52:11 194:6 72 37:11 73 123:8 126:4 75 180:19 188:23 203:19 79 126:4 8 8 148:17 153:17 83 170:19 83-year 245:22 9 9 66:15 95 193:16 219:18

Index: 96...appears

96 157:18 193:15 219:18 A a.m. 34:25 36:7,8 57:10 98:13 ABA 148:21,22 ability 12:10 22:3 abolish 103:14 Absolutely 219:23 academic 20:3 26:3 27:3 44:23 45:13 47:19 48:5 51:20 55:6,14 171:9 214:17 accept 203:20 acceptance 182:23 accepted 143:13,21 144:7,25 183:19 185:10 206:17 access 34:18 40:11 246:5 accomplish 157:3 account 153:4 accurate 62:2 accurately 69:5 accusation 163:3,23 accuse 226:15 accused 162:23 accusing 241:13,25 242:3 ACL 167:24 ACLU 139:18 140:6 162:10 166:15 167:13,14 224:9,14 act 39:11 40:5 58:2,6 62:19 68:10,23,24 69:11 70:2,8,11,16, 18,20 71:5,7,20 72:20,21 73:5,7,8,11, 13,18 74:6,12,17,23 75:5,6 76:20 78:15 87:5,10 97:12 98:8 159:4 180:14 182:20 235:13	acted 175:3 acting 165:12 198:4 226:10,15 227:12 242:2 action 7:3 active 54:19,23 actively 41:5 acts 66:2 69:16 73:4 actual 24:10 51:4 110:17 136:4 213:2 235:10,17 add 15:6 37:15 added 225:7 additional 21:23 76:21 77:15 88:9 131:6 132:12,13 133:16 146:22 167:19 address 39:22 101:21 206:6 addressed 62:21 71:21 72:24 207:6 adds 11:16 adequate 90:23 91:2 adjudicated 114:8 adjusted 19:7 administration 37:25 45:22,23 228:8,19 adopt 190:13 191:12 233:8 adopted 141:22 142:5 174:9 180:12, 25 183:5 194:9 207:22 adoption 174:2 218:23 234:10 adopts 171:8 172:5 Advertiser 178:11 179:5,14 180:3 197:3 advocacy 100:14 104:14,18 105:9 106:19 107:17 117:24	advocate 100:14 advocated 116:10 advocates 99:21 100:9 advocating 116:19 affairs 45:18 affect 128:17 affirmative 199:17 afraid 222:25 African-american 126:24 128:12 204:2, 7 243:10 African-americans 204:9 aggregate 187:10,15 agree 34:4 64:2,21 75:4 82:15 94:9 126:9 212:11 213:3 226:9 agreed 22:7 64:12 69:8 141:19 142:9 145:2 157:19 177:8 180:22 237:13 agreeing 6:5 agreement 16:22 17:2 19:4 agrees 193:10 ahead 9:14 165:23 236:7 240:3 aid 211:13 Alabama 16:13 17:12 19:14,16,18,21 21:8 22:11 23:17,23 28:5,22 30:20,24 41:22,24 42:12,25 43:12,17 44:3,9,19 53:11 59:21 70:18 85:24 91:12 96:7 97:22,25 98:6 148:5, 14,23 149:4 153:12, 14,17 154:5 159:6 176:7 178:18 179:8, 17 180:18 182:19 185:9 193:6 196:18 200:6,16,20 201:11 202:18 203:7 205:3 206:7,8 208:18	211:16 233:7 234:2 236:23 237:22,25 243:9 Alabama's 42:23 49:6 53:7 152:10 179:15 200:5,11,23 201:2 Alabama-specific 238:4 Allan 93:8 allegations 211:4 allowed 140:8 224:22 240:13 aloud 67:16 68:15 69:9 152:18 alter 132:23 alternative 93:14 94:5 alternatives 94:14 amend 141:3 190:4 191:7 196:11 amended 114:16 185:17 amending 191:19 amendment 24:2,10 28:18 29:5 40:9 43:14 58:3 97:13 98:8 104:25 109:3 141:23 145:7 147:18 174:3,9,21 175:2 177:22 178:6,16 179:6 180:4,7,12,16, 19 183:10,15 185:13 188:22,24 189:2 190:7,14 192:3,10, 11,15 193:2 194:2, 21,22 197:4,15 201:20 202:13 203:6, 14 204:2,22 210:16, 25 219:4,15 amendments 43:4 114:21 147:16 188:7 192:18 194:23 197:10 American 38:3,18 39:16 40:2,14,18,21, 25 45:3,17,19,25 46:2,19 67:24 75:7	78:24 164:24 228:18 236:16 Americanist 45:16 amount 18:14,21 49:22 50:11,21 51:7, 10,19 ample 97:3 analysis 9:17 22:15 24:18 25:7 26:16 34:13 35:4 36:5 49:6 51:24 53:9,12 58:14, 16,24 59:16 61:12 75:15,23 78:14,25 80:21 85:22,23 87:12 93:9,11,22 110:13 121:4 137:16 140:21 157:20 161:24 163:13,23 166:14 170:3,14 185:14 187:3 204:14,20 208:12 209:5,13 210:4,8 234:17,19, 20,24 236:22 analyze 34:7 35:5 52:7 84:9 90:24 93:8, 11 138:19 151:9 153:22 analyzed 166:4 246:8 analyzing 28:11 53:20 94:6 answering 214:3 answers 12:14,19 68:12 164:6 anti-chinese 67:22 anymore 202:14 AP 179:14 apologize 19:3 appearance 62:18 79:4 82:10 86:9 appeared 71:19 74:25 78:2,17 79:15 81:20,24 82:12 85:18 86:5 89:11 91:11,14 140:13 appearing 62:5 appears 82:6 89:22

139:23 225:9 appendix 37:10,11 apples 186:13,14,22 apples-to-apples 195:9 application 61:17,23 62:13 76:4,25 81:17 96:19 applied 58:13 60:7 97:5 236:23,25 applies 77:21 90:11 137:23 152:11 apply 60:9,10 77:9, 22 78:10,12 90:10 156:12 165:21 200:23 225:15 applying 59:19 225:13 appraised 51:20 approach 211:5 approached 16:9 approved 114:16 115:2 180:14 approximately 217:16 Archives 19:20 20:2, 8,9,17 30:12 area 45:21 46:16 47:23 51:14,16 81:3, 4 137:22 areas 48:4 51:21 85:13 214:19 Argument 63:19 arguments 156:4 Arlington 58:7,12, 16,21 59:4,17,20 60:4 61:17 93:9 153:7 array 214:11 article 48:18 63:17, 23 64:3,6,9,10,17 65:5 66:13,14 67:5 69:18 119:18 120:19 124:24 125:20 128:11 129:4 136:5,8	148:17 153:17 158:17 159:3,21 170:15,22 171:25 179:13 180:6,17 197:8,18 201:9 203:21 218:7,15 articles 43:23 44:2,5, 16 51:3 71:5 105:21 111:23 160:3,10 179:22 180:2 190:25 194:2,4 196:15 199:14 200:4 204:25 205:8 articulate 169:3 ascertaining 206:18 aspect 18:3 19:6 99:8 136:10 aspects 40:15 66:9 assertion 229:12,14 assess 58:8 assessment 58:20 156:19 assigned 13:12 assist 20:20 23:7 26:20 assistance 56:11 Association's 148:5,15 149:4,14 assume 12:25 135:12 189:3 193:5 assumption 193:13 attempt 157:9 245:2 attempted 223:7 attempting 223:2 attempts 100:25 222:25 223:4 attends 163:20 attention 67:5 147:25 224:7 231:20 attorney 14:6 16:13 23:18 25:4 217:24 224:3 246:17 attorneys 8:21 13:14 14:9 16:13 23:3,12	231:22 auditor 53:16 automatic 225:18,22 avenue 164:14 aware 22:21 37:20 73:6 79:7 97:10,15 154:5 168:17 213:15 217:17,18 226:5 236:14 237:17 239:3 awareness 194:21 237:19 B B-A-X-L-E-Y 24:14 bachelor's 227:23 back 18:24 24:5 25:3 41:14 45:24 48:20 49:21 51:12 56:23 58:17 68:18 77:25 84:7 93:25 121:17 126:2 129:9,23,24 130:8 133:17,19 138:23 165:7 187:9 198:11 208:24 210:5 213:7 219:25 back-door 52:8 background 14:19 bad 169:23,24 184:11,12 185:20 186:4,17,18,19 215:17 ballot 190:19 192:16 194:22 203:18 ballots 194:23 bar 148:5,15,24 149:4,14 233:9 based 42:7 50:23 77:5 95:24 129:18 156:6 171:24 209:24 222:11 245:9 bases 85:15 96:4 basically 9:15 94:8 basis 76:6 81:16 82:9,12 84:24 85:5, 11,16 86:2,10,12,20	87:17 88:3,9 158:12 171:7 Baxley 23:19,21 24:9,12,17 25:11,18, 25 26:14 29:22 30:7 36:13 218:23 219:5, 17 246:18 bear 159:14 163:14, 24 Beatty 108:10 109:22 111:8,15,19 112:5,22 123:21 Beatty's 113:8 beeping 73:19,24 began 49:16 50:15 103:2 151:7 210:18 begin 101:2 beginning 13:10 53:12 54:5 105:16 153:10 begins 62:9 79:6 108:15 233:14 behalf 8:3,6 9:22 160:2 Beito 31:6,8 belief 88:13 167:20 benefit 168:5 biased 172:19 biggest 104:11 bill 18:22 23:19 24:9 25:25 141:14,17 142:9,21 143:7,13, 16,21 144:7,10,16, 17,25 145:5,16,18,19 176:3 184:11,18 204:8 206:23 207:17 208:9 239:19 242:7 246:18 billing 18:18 billings 215:24 Birmingham 29:20, 24 116:21 180:3 birth 195:24 196:3 bit 11:7 45:21 100:3 126:23 147:24 150:6	157:8 black 182:4 236:20 blacks 153:4 blind 165:20 173:14 block 108:18 220:22 221:2 Board 7:21,23 225:13 boards 236:23 Bob 132:22 bodies 138:2 bold 108:19 109:18 178:23 bolded 109:4 book 20:6 23:22 27:4 29:8 46:5,9 49:17,20 50:13 51:2 52:5,15 53:7 54:3 63:15 65:3, 4 247:21 born 196:4 borrow 125:14 bottom 62:8 67:5 218:11 222:18 brand 91:12 breach 76:17 216:25 231:8 break 11:24 12:4 35:22 139:9 173:21 215:8 breakdowns 204:5 Brewer 218:21 219:5,17 briefly 52:6 78:24 99:19 150:14 154:11 briefs 156:4 bring 67:25 69:21 112:17 164:13 201:2 239:5 brings 136:14 broadcasting 170:7 broad 222:24 broadly 105:3

Index: brought..component

brought 138:18 141:16 164:13 167:14,15 181:9,11 192:15 197:17 200:11,24 208:23 231:20 245:4,6 build 71:24 builds 72:24 built 62:20 71:21 72:21 76:11 Business 116:20 117:9 buy 29:8,10 C caffeine 214:6 call 133:18 148:21 175:21 180:16 227:14 237:6 243:10 244:20 called 238:10 calling 237:14 242:4 campaign 55:7,10, 12 campaigns 54:24 55:5,8,15 candidate's 55:12 candidates 186:25 cap 18:21 19:2,4,7,11 capacity 54:20 career 44:23 54:11 Carolina 7:25 10:4, 12,24 98:23 212:22 carried 194:25 carries 70:21 90:7 223:12 carry 62:15 76:5 77:2 78:5 81:19 85:12 95:17,21 96:21 160:10 case 7:13,14,18,25 8:7,9,13,24 9:8,22 10:4,9,11,12,24 13:6, 13 15:12 16:6,23	17:5 18:4,12,23 19:10,17,23 20:2 21:3,22,25 22:9 23:24 26:2,16,21 27:7,19 28:14,17 30:2,17 31:11,24 32:3,6,12 33:3,6,16, 21 35:20 38:14 49:5 52:2 56:18 58:18,23 61:2,18 71:6 93:2,7, 9,10 94:15 98:22 99:12 138:20 150:13 151:12,15,18,21 152:9 153:11 154:9 156:3,12 157:3 162:13 168:10 185:2 205:10 208:11 209:14 210:4,9,11 211:6,10,16 212:25 214:21 216:8,12 217:23 cases 7:9,11,15,16 8:2 10:5,13,19 92:24 98:16,19 192:23 207:19 209:5,24 211:3 cast 203:18 207:3 categories 217:12 caught 194:17 caused 188:16 Center 176:7 certainty 79:12 certificate 195:24 196:3 certified 196:3 cetera 41:5 229:8 challenged 138:20 chambers 174:17 change 74:2 90:11 201:6 202:19 203:20 changed 180:22 184:13 changing 162:4 chapter 50:25 characterize 51:10 200:4	characterized 133:25 characterizing 174:13 charge 73:15 charges 73:16 74:7 check 17:14,16 18:15 China 65:20 69:14 73:2 Chinese 65:25 67:22 71:9 73:8,10 75:6 choice 186:17,18 187:4,21,22 choices 189:3 choose 185:20 187:6 chose 107:2 118:8 196:10 Circuit 151:21 Circuit's 151:17 circumstance 182:16 circumstances 192:18 citation 229:11 235:3 cite 175:13 179:13 235:13 cited 151:6,14,20 235:10 citizen 156:8 164:8 city 55:18,19 civil 114:11 132:12 claim 8:13 57:25 claims 22:18 clarified 186:23 clarify 12:24 25:24 35:24 36:3 57:12 72:12 215:3 clarity 221:12 class 38:15,17 39:15, 25 40:19 42:4 43:10	classes 37:21,24 39:6,12,22 40:10 41:14 42:13 43:13,16 45:12 classification 239:16,21 240:10 classified 239:13,20 240:6,15 clause 189:5,24 190:6 191:3,5,8 193:4,8 196:6 clear 6:10 14:5,25 68:14 83:19 clearance 240:11 closed 238:24 240:5 243:20,23 244:19,25 Club 116:20 code 182:19 229:23 codes 234:18 cogent 12:21 Coke 214:6 colleague 20:6 21:6 28:3 46:5 colleagues 243:11 collecting 49:19 college 46:22 colloquy 133:8 237:4 color 196:2 comfortable 89:19 166:11 170:13 241:22 comment 34:4 36:4 112:18 117:6,9 120:5 125:18 127:11 140:25 165:15 167:22 224:8 238:10 240:8 243:5 246:12 commented 145:25 commenting 166:11 comments 57:17 111:22 114:14 116:14 117:3 121:5 129:2 130:3 162:10	163:6,13 commission 107:24 108:9,16 109:9,12,22 111:5,8,21 113:6,7,9, 15,22 114:3,20 115:3,6,10,16,21,25 116:11 117:13 118:18 123:21 124:15 126:4,15 171:19 245:15 commission's 118:13 commissions 245:18 commit 222:25 223:2,5,7 committee 110:15 114:19 175:3,7,10 207:17 224:16 226:5 238:11,14 242:8 Common 7:24 10:11,24 98:22 commonly 108:23 communicate 31:5, 14 community 116:10, 13 117:23 212:7 comparative 41:3, 25 42:9 compare 126:3 214:25 215:6 compared 42:9 comparison 42:19 195:9 215:5 compensated 17:23 complete 195:9 completed 47:3 225:23 complex 90:4 158:14 165:17 complexity 82:2 190:24 194:12 complicated 158:14 complications 82:2 component 10:21

Index: computer..correct

11:17 69:25 107:6 computer 27:16 concept 61:24 concern 65:24 102:2 115:2 116:22 117:3 127:12 128:11 129:4 132:11,15 133:15 134:23 163:11 164:7 167:16,19 182:24 197:14,16 198:12 201:5 223:6,9 225:2 226:24 227:3 concerned 9:3 129:20 130:21 133:21 156:17 204:8 concerns 62:21 71:21 72:21,24 128:22 131:3,7,12,13 136:10 162:20 164:4 181:11 220:16,19 222:15,22 227:10 conclude 10:14 76:3 110:19 128:3 171:10 172:13 180:13,24 181:3 191:11 concluded 66:3 77:4 94:9 213:23 248:15 concluding 76:10 77:8 conclusion 10:18 52:16 64:8,13 71:6 76:7 78:9 81:6,17 82:9,12 84:25 85:17 86:3,21 88:3 93:6 94:9,22 95:16 96:24 109:11,18 111:2 128:22 130:13 132:14,18 133:19 155:23 156:22 158:20,23 159:15 160:17 163:14 171:5 172:8 180:10 181:18 191:25 194:7 206:5 208:16 conclusions 24:18 56:17 58:22 59:5 64:2,17,21,24 84:2 171:2 214:20 conduct 13:12 19:16 20:23 75:23 76:14	77:18 79:16 80:12,20 83:21 91:2 204:19 216:22 217:25 229:7 230:4 231:22 232:25 233:5 234:23 236:22 241:14,16 conducted 20:4 70:6 140:21 166:14 229:19 conducting 210:8 conference 7:20 48:19 conferences 31:22 confirm 139:4 confusing 127:22 Congress 46:6,10 47:6,7 52:8,9,19 54:10,13 238:8,22 242:15 congressional 46:3 54:4,7 55:5,7,8 239:4 Congressman 54:13 55:4 238:8 241:25 consideration 99:22 100:10 103:19 128:14,15 129:5,6 130:4,5 199:24 considered 94:10 131:4 consistent 68:9 constantly 47:20 constitutes 132:13 constitution 39:13, 18 40:25 41:23,25 42:2,10,12,18,19,20, 21,23 43:2,12 60:16, 22 61:7,13 91:15 97:22,25 98:6 100:16 101:2,3,12,16,17,19 102:3,6 103:2,6,10 104:13 105:4,22 107:5 109:13 110:3, 17 112:10,17 115:8 116:3,25 119:16 120:19,25 121:11,18 122:18 123:12 124:3 125:3,10,16,24 126:9	130:10,15,22 134:14 137:6 141:4 146:8 148:3 149:6 152:10 153:13,14,18,20,22 157:4,7,24 158:16 159:8,11 160:14 170:21,24 171:17 175:4 178:15 179:16, 18,25 180:16 183:20 185:16 191:7,19 192:19 196:17 197:20 200:5,8,11, 17,20,24 201:2,7,24, 25 202:3,18 203:8, 10,20 204:10 206:8 208:13,20 210:16 219:6 234:3 245:2 246:15 constitution's 99:23 100:11,21 103:20 104:19 105:10 106:2, 23 111:9,16 112:6,23 113:10,23 115:17 116:14 117:14,20 118:6 119:7,20 120:9 146:11,18 177:17 constitutional 14:16 24:22 26:5 28:6 49:6 53:10 98:7 102:13 103:4 104:16,23 105:15,17 107:8,23 108:8 109:2,3 110:14 111:8 112:13 113:6, 21 114:2 115:5,16,25 116:11,19 117:2,25 123:8 128:14 129:5 130:4 133:22 134:25 145:24 147:19 159:2, 5,18 170:17 171:19 181:10 182:21 184:19 185:6,13 193:7 210:22 218:19 219:2,4 224:5 constitutionally 122:11 constitutions 42:9, 24 43:9 88:12 108:23 constraints 65:12, 17,19 69:13 72:25 consult 22:16 210:2 contact 145:6,20	contacted 8:8,24,25 13:5,7,8 16:19 contacts 47:6 contained 16:6 content 13:18 contest 55:18 context 32:12 62:6 67:21 69:3 71:24 77:10 78:3,18 79:15 82:6,13 83:17 84:5 85:10 86:17 90:12,18 91:10 96:22 132:5 138:6 205:11 206:11 207:22 208:3,8,9 209:3 216:17 234:11 235:21 241:11 242:6 contexts 61:25 62:14 76:5,24 77:2,6, 17 78:21,23 79:5 80:3,15,23 81:2,5,6, 7,11,18,21,25 82:6, 10,18,19,21,25 84:11,23 85:3,7,19, 21 86:5,23 88:6 90:15,20 91:5,12,14, 22 92:8 95:4,5,9,12, 17,23,25 96:3,20 97:5,7,18 98:2 137:21 229:17 234:17,18 236:3 continuation 123:15 continue 28:21 76:23 96:10 127:7 129:12 131:22 200:21 224:20 continued 160:12 continues 67:15,16 153:5 continuing 131:13 222:19 contract 8:20 9:8 17:24 18:25 23:24 contracts 76:18 217:2 231:9 contradicted 26:15 contribute 105:2 contributions 56:3	controversial 176:4 180:21 183:16 193:18 195:3 208:23 controversy 117:5 143:20 144:6 162:6 167:19 convenient 11:25 convention 104:25 conversation 11:15 14:6,7 24:4,11,16,19 25:6,10,18 27:2,7,21, 23 28:2,15 29:6,12, 16,17,21 30:25 36:12,16 42:22 133:15 134:10,20 135:4,10 145:23 175:14 176:11,14 177:12 207:9 239:13 244:6 conversations 13:18 14:2 15:9 40:4, 5 43:15,21 110:14 136:2 207:5 244:5, 18,25 245:4,22 246:6,22 247:9 conveying 222:5 convicted 74:17 114:7,13 126:17 148:7,18 223:9 224:18 225:8 convictions 221:20 convince 169:24 copy 16:25 25:15 36:11,25 143:23 196:3 247:15 248:11 copyover 126:7 core 41:12,14 Cornell 63:17 correct 9:5,24 17:19 21:12 24:15 34:3,14, 17 47:15 48:23 56:24 59:22 60:8,11 65:20 72:14 74:19 75:14 78:10 81:16 83:15,20 85:4 86:13 95:19 101:12 107:13,17 112:7 116:4 124:4,22 133:3 141:5,6,25 152:5 169:18 174:10

Index: corrections..discriminatory

175:4 181:16 182:14 204:3 205:3 206:14 208:14,20 209:17 214:15,25 218:24 219:6,12,19 221:14, 15,17 223:16,21,22 224:23 225:10,16 226:11 227:3,25 235:4 236:3,11 244:2,7 245:12,23 246:8	cover 38:18 39:6 40:24 41:2 45:4 coverage 196:25 245:18 create 164:18 created 90:8 206:23 credited 10:25 crime 74:18 crimes 108:11 109:8 110:2,9 112:3 123:24 124:20 125:21 142:23 148:7,18 152:11 160:4 222:23 criminal 51:25 76:20 87:5 102:17,21 104:4,7 107:15,19 criminals 87:11 criticism 140:2,12 cry 188:25 curious 160:24 current 21:14 30:16, 20 45:5 54:8 112:13 169:19 190:21 197:24 201:20 curriculum 41:13 cursory 33:22 custody 131:5 cut 12:15 35:15 73:20,23 100:3 143:4 146:13 149:11 168:8 203:2 204:17 cutting 189:20 CV 37:9,12 48:4	date 79:9,18 175:18 200:11,24 201:3 dates 79:23 David 31:6 day 20:15 153:5 174:21,25 deal 54:13 55:4 178:17 179:7 201:10, 20 238:9 241:25 debate 115:2 122:12 128:10 143:11,19 144:6,9,11,12,15,20, 21,23,24 145:4 162:3,6 174:10 175:6,8,9 207:17 247:5 debated 174:5 decade 101:5 decades 105:20 210:23 decide 21:24 150:21 248:2 decided 47:7 213:9 deciding 22:6 152:18,24 decision 149:20 150:5 151:18 152:15 156:6 168:6,13 174:5 205:10 decision-making 138:2 230:16 decisionmakers 185:16 deem 164:12 deemed 147:21 deeper 42:6 defendant 9:23 defendants 8:3 35:12,19 defendants' 23:2 defended 154:6 defending 22:12,22 defense 8:4 154:10 240:12	defenses 22:19 defined 122:9 definition 130:8 degree 57:15 227:23 228:5,7 Deirdre 63:14 65:4 deleted 114:23 deliberative 238:25 demographic 204:22 depends 42:3 51:4 Deporting 66:13 69:2 218:4 deposed 7:4 deposit 17:14 deposition 7:14 10:2,3 18:19 22:25 23:3 31:6,15 236:11 244:10 248:14 depth 214:9 Derrick 64:3 65:4 descendants' 189:5 190:6 191:8 descendent's 193:8 descendents' 189:24 191:3,5 196:6 describe 13:17 52:4 53:6 54:2 66:12 94:20 109:5 206:16 describes 69:5 describing 111:25 description 62:2 68:9 69:9 108:12 desire 105:14 153:3 detail 27:2 detailed 174:15 details 27:9 90:24 99:13 determination 157:23 determine 52:12 75:15 82:24 87:13	90:17 93:11 137:2 138:9 140:22 145:15 158:12 160:15 163:23,25 164:5 166:4 182:10 184:18 204:21 207:5 210:7, 15 234:9 236:24 determined 211:12 213:13 determining 94:12 210:3 211:14 development 45:14 device 88:24 190:17 191:14 194:9 devoted 50:21 51:8 differences 43:8 difficult 41:10 dig 42:6 direct 17:14 61:20 123:13 176:7 177:5 directly 25:23 28:25 120:15 130:17 174:11 disability 114:11 225:8 disagreed 135:6,19 discern 184:3 discovered 173:19 discriminate 128:17 130:6 153:4 171:7 173:5,14 discrimination 39:19,23 40:6 48:13, 15,22 62:16 70:22 76:6 77:3,7 78:6 81:20 82:21 93:12 94:13 95:18 96:22 162:20 168:3 209:8, 11,16 211:4 212:9,24 220:17 236:15 discriminatory 58:9 59:21 60:17,23 61:8, 14 70:7 71:7 72:6,15 75:16,24 80:5,12,22 81:10,13 82:11 84:16 87:14,20 88:14,24 89:6,8,13 90:18 92:2,

17,22 94:17 97:16,23 98:3 129:7 139:23 140:13,20,22,25 154:7,16,20 155:4,19 157:24 159:16 160:23 161:20,22 162:12,24 163:11,21, 24 164:2,20 165:2, 13,22 166:5,7,16,18, 23 167:2,4,16 168:14,21,22 169:4, 7,12,14 170:4,6,9,10 171:3,11 172:5,11,14 173:6,9 181:2,19 182:11,25 183:6 184:3,7,20 190:15,17 191:13 192:4 193:12 194:10 195:16 196:7 197:19,25 199:15 200:15 201:13,19 202:7,17,25 203:7 204:9 206:19 208:4, 14,18 209:17,21 210:17 211:13,21 212:6,12,17,21 213:5,16,24 214:5, 22,24 225:9,25 226:6 234:10,21 236:25 237:7,15 241:14 242:2,25 243:25 244:19,22 246:24 discuss 14:16 18:25 40:15,17 42:8,17 43:19 61:22 62:17 103:13 108:8 111:25 118:3 139:16 146:7 170:16 discussed 13:14 28:17 42:13 123:20 133:24 137:19 138:4, 7 159:22 163:8 174:4 179:23 192:22 193:20,22 196:2 246:23 discussing 95:2 129:19 133:9 147:2, 14 240:6 discussion 8:21 9:10 19:13 34:24 57:9 76:22 107:18 109:23 112:9 114:15 115:21,23 119:6 120:18 121:6,8,24 122:14 123:13	131:18 134:24 135:18 136:8,13,16, 20,23 146:10,17 148:7,17,20 149:3,8, 17 155:13 158:21 159:13 162:4 167:18 177:16 180:5 195:4, 5,21 205:21 206:3 210:22 212:24 216:14 219:25 247:6 discussions 43:10 143:16 144:18 146:21 243:24 disease 73:16 74:8 disenfranchise 131:14 disenfranchisemen t 22:22 41:17 43:11, 23 44:7,18 49:7 51:25 58:4 85:25 95:10 102:17,22 103:9 104:4,7 107:16 111:23 128:18 131:4 133:10 134:2,12 135:20 137:5,14 138:12 142:4 148:16 154:4 221:19 disenfranchising 108:11 131:22 disparate 127:13 disqualification 114:19,25 122:8 126:16 142:16 183:18 disqualifications 109:6,25 112:2 114:6 123:22 132:7 136:6 160:6 disqualified 142:18 disqualify 112:12 disqualifying 108:24 109:8 110:9 112:3 123:24 124:20, 22 dissertation 47:3,5 distinction 54:6 78:5 182:4 distinctive 54:3	distributing 66:17 district 52:23 114:9 213:4 233:7 dive 97:4 document 63:10,13 68:25 101:8 102:11, 14 157:8 documentation 173:13 documents 89:12 95:13 240:15 Don 23:20 27:22 30:8 door 243:20 doors 238:24 240:5 243:23 244:19,25 doorway 52:20 draft 50:16 56:23 177:4 drafted 181:8 184:6 185:3 192:12 208:9 drafters 182:12 drafters' 121:11 drafts 111:22 183:24 draw 67:4 84:25 109:18 110:25 130:13 158:20 180:10 181:18 191:25 194:6 195:14 201:12 drawn 212:18 drew 130:2 drives 187:21 Drs 76:20 77:14 due 23:13 67:23 200:9 216:10 duly 6:20 E earlier 30:4 56:6 62:17 77:9 98:15 135:12 169:15 175:13 198:11 208:25 218:3 226:8	early 75:12 88:13 easy 192:20 195:9 ecological 204:19, 20 edition 200:20 editor 197:13 editorial 179:4 201:16 editors 179:4 197:5, 11 education 7:21 76:17 83:23 216:25 231:4 effect 46:15 47:14 49:11 127:6 129:7, 12,14 131:21 140:23 153:6 162:8,17 183:25 214:14 233:15,25 243:25 effective 198:15 233:11 effects 127:13 133:9 162:20 166:8 effort 35:3 98:7 99:20 100:7 101:10,25 102:18,21 103:13 104:6 107:8 118:22, 24 119:5,11 120:7,14 121:2,14,21 122:23 123:5,19 124:25 125:9,13 136:18 145:22 146:7 154:13, 14,25 155:2 158:14 159:5,14 160:8 166:7 170:21 218:22 238:2 efforts 24:22 101:2 103:13 117:25 147:16 155:14,17 156:14 157:5,20 159:2,18 160:2 161:25 168:5,12 170:18 193:16 195:2 218:21 219:3,17 223:14,23 elaborated 129:25 elect 164:16 elected 53:22 244:9	election 49:17 52:13, 25 53:5 179:14 184:5 186:3,16 187:4 188:5,8,15 192:25 205:11 elections 7:23 46:4, 6,24 47:14,15 49:12, 16 52:5,7,10,12,18, 21,22 114:5,23 118:3 119:18 121:8 122:16 128:11 129:4 137:17 138:6,16 147:17 157:14 159:21 172:2 175:4,7 180:6,18 183:18 186:13 203:22 214:14 219:12,15 electorate 93:17 elicited 240:22 eligible 9:18 eliminate 123:23 160:4 181:14 189:7 190:5 191:8 eliminated 141:24 eliminating 108:10 109:7 110:2,8 112:2 125:21 email 30:11,15 173:3, 6,12,17,18 emerge 46:13 emergence 46:24 emphasis 108:21 109:4 emphasized 110:4 employ 235:25 employed 95:16 125:14 236:19 employment 76:18 217:2 231:9 enact 165:2 168:22 184:2 233:2,5 enacted 67:20 73:7 118:19 152:25 154:15,20 159:16 168:14 169:10 170:8, 9 171:10,20 172:13 173:19 175:2 181:8

182:17 184:22 185:3, 7 192:12 193:12 206:19 207:2 211:19 212:20 213:16,24 234:25 enacting 169:10 enactment 14:17 58:5 82:3 153:3 176:4 206:23 210:24 enacts 172:11 encountered 186:3, 5,16 188:5,7 encouraged 41:15 197:7 225:18 encouraging 54:11 end 77:4 78:9 96:24 127:7 128:15 148:19 152:22 164:21 174:16 178:18 235:12 ended 15:14 endorsement 76:18 217:2 231:9 engage 9:7 66:2 69:15 73:3 engaging 241:13 enjoy 46:2 ensues 52:8 entire 76:11 86:18 141:19 145:2 158:20 159:13 218:7 219:6 entirety 91:10 99:4 101:19 157:7 246:7 entitled 240:24 241:15 entrance 52:9 enumerated 108:11 124:20 equal 90:9 153:6 era 40:12 44:21,24 89:23 estate 76:17 81:15 83:24 216:25 231:4 ethics 55:22	ethnicity 40:8 eugenics 87:15,19 88:5 235:16 events 45:5 evidence 76:21 77:15 95:8 99:21 100:9,18 101:24 102:8 103:18 104:5, 17 105:24 111:7,14 113:20 115:5,15 116:12 117:12 119:5 122:22 125:8,12 127:10,23 135:5 140:18 146:9,16,20, 22,25 147:10 149:14 151:14,20 154:14,19 155:3,20 158:7 159:19 160:24 161:21 162:12 164:13 166:17,23 167:3 174:4 177:15, 20 178:4 183:5 188:8,22,24 193:9, 19,22 195:25 199:24 205:20 211:3 219:19, 21 226:4 229:13 243:12,13,18 exact 9:6 15:25 18:25 28:25 58:20 73:9 79:9 83:17,18 85:9 92:13 96:5 99:13 126:5,6 175:18 176:3 182:15 209:22 230:20 231:6,10,15 233:3,18,23 241:4 examination 6:23 215:18 229:2 231:24 232:8 examining 188:12 examples 80:16 117:18,19,23 227:16 229:20 231:19 232:22 237:14,17 242:17 exception 6:6 203:24 219:3 exchange 122:10 exclude 118:8 excluding 18:3	exclusion 73:8,11 87:17 108:25 127:7 129:12 exclusionary 83:8, 25 excuse 95:4 162:17 exhibit 37:5,6 66:11, 20,21 149:19,22 218:4 exist 155:9 existed 200:16 204:10 existing 125:10,23 178:15 189:18,22 199:13 201:13,24,25 202:6 existing-then 125:3 exists 208:17 exit 192:24 expect 66:24 162:22, 24,25 202:4,5 expensive 49:18 experience 71:3 168:18,25 185:18 188:4 226:13 expert 8:10 14:14,15, 18 15:16,18,23 16:10,20 21:25 22:7, 13 23:6 26:13 31:10, 17,23 32:2,8 33:7,8, 13,20,23 34:6,8 35:11,18 36:2,5 56:5, 7 57:24 58:13 59:23 60:2 64:5,19 68:22 70:24 71:2,14 76:11 86:16 87:2 89:4 91:20 92:14,15 93:25 94:7,16 95:7 96:25 114:14 128:6 138:15 146:24 151:11 153:21 155:5,8,11 156:11 167:12,21 168:19 170:3,14 171:23 172:8,12,16 181:3 184:2 191:10 204:12 208:21 209:7, 15,19 210:10 211:2 expertise 59:15	experts 206:6,8 211:10 experts' 209:5 explain 141:2 226:2 explained 171:15 explaining 22:4 explanations 94:5 expletive 25:5 explicitly 227:2 explore 97:14 express 60:14 61:10 96:8 102:20 115:24 116:5 168:20 expressed 169:20 expresses 221:12, 16 expressing 127:12 expression 169:12 extension 85:22 extensive 50:11 80:18 114:24 extensively 46:21 83:13 88:18 216:6 extent 36:18 84:22 106:8 204:14 245:11 extra 11:17 eye 165:21 173:14 F fact 14:7 69:18 81:20, 23 82:12 85:2,18 86:4,22 89:10,22,24 125:15 155:6,9 163:10,19 166:3,13 168:11 169:13 180:11,24 182:18 183:4 184:21 192:4 195:16 196:4,14 198:3 factor 196:19 factors 97:4 facts 150:13 156:4 158:7 194:8	factually 241:5 fair 13:3 22:23 103:24 134:17 156:19,22 168:15 244:9 fall 216:7 familiar 32:20,25 42:5 58:7 68:24 73:10,12 103:16 119:2 146:15 150:4 153:13,19 158:8 families 68:8 69:22 fascination 46:12 favorably 175:3 Fayette 7:21 February 50:17 139:17 federal 7:11 67:19 159:10 200:10,22 211:20 feedback 57:3,5,14, 16,19 feel 14:17 26:11 57:16 58:19 89:19 166:10 170:13 195:20 211:22,25 213:18 214:2 240:7 241:7,22 feelings 187:20,21 188:9,16 felon 58:3 225:8 felonies 142:22 221:24 222:25 223:5 224:18,21 felony 41:17 43:11, 23 44:7,18 49:7 74:18 114:7,13 126:17 221:19 222:4, 8,11 223:3 felt 69:15 73:3 female 53:8 54:4,9, 11 females 68:3 field 45:24 206:18 212:13 figured 36:22

Index: file..governors

file 55:22 150:13	111:9,15 112:5,22 113:22 115:6,16 116:13 130:4 135:25 147:17,23 211:15 212:8 213:10 218:21 220:9	140:14 147:4 150:11, 18 152:2 153:15 154:8,21 155:24 156:20 158:2,24 160:19 161:3,23 165:5,14,24 166:9,19 167:7,11 168:23 169:6 170:11 171:12 172:15 173:10 178:7 181:21 183:8 184:8 185:22 186:6,21 187:24 188:19 190:10 191:22 192:5, 7 195:18 196:24 198:9 199:3,19 200:18 201:15 202:8, 21 203:11 204:11 205:4 206:10 208:6 211:7 213:25 214:10, 16 217:6,14 219:13 224:24 226:17 227:5, 13 230:5,23 231:5,25 234:12,22 235:5,11, 19 236:5,12 237:11, 23 242:10 243:17 245:13,24 247:2	206:25 franchise 40:11 116:22,23 freshman 41:11,15 freshmen 41:6 friend 176:2 247:10 front 18:8 64:9 69:2 149:25 152:15 210:15 full 78:25 111:21 114:20 146:14 234:17,19	104:17 122:21 128:7 241:12 gender 38:3 51:18 general 23:19 40:18 52:16 105:15 108:12 109:6,25 110:6 112:2 123:23 124:21 145:22,25 160:4 165:7 181:14 241:24 246:17 general's 16:13 25:4 generally 41:6,11 104:5 107:16 113:7 206:17 Georgia 7:19,22 8:9 10:10 21:12,15,19 37:22 42:16,18,21 49:18 54:17 176:8 227:24 228:10,14 232:23 233:2 235:24 244:10 Georgia's 43:5 give 12:13 36:23 73:25 106:12 188:14 231:16 giving 12:19 global 41:2 God 90:9 good 6:25 36:6 45:21 139:8 164:23 248:4 government 38:3,19 39:16 40:3,14,19,22 45:3 governor 23:18,20 24:3,9,17,21 25:11, 18,25 26:14 27:22 28:4,23 29:7,13,22 30:7 36:13 54:17 100:19 103:13,19 104:2,6 118:25 119:14 120:16 160:2 218:21,22 223:15 224:3 246:18 governor's 100:16, 25 122:20 157:6,16 171:18 governors 101:14 159:7
filed 8:11	follow 11:8 15:2 36:21 178:25 189:8, 10,21 190:11 210:8 211:6 233:6 follow-up 140:5 162:13 177:9 228:24 Folsom 103:13,19 104:3 Folsom's 104:6 footnote 63:10,14 76:12 footnotes 68:13 218:12 Force 148:6,15 149:4 forget 247:18 form 6:11 9:13 14:22 15:19,24 18:13 21:5 23:9 24:6 25:20 26:17,22 30:3,21 31:12 32:16 41:9 42:14 47:16 50:8 54:21 55:16 56:9 61:3 63:2,21 64:4,14, 22 65:22 66:4 70:4, 23 72:8 75:8,18 76:9 77:12 78:11 79:21 80:6 81:22 82:14 83:10 84:3,18 86:6, 14,24 87:22 88:7,16, 25 89:14 90:2,21 91:16 92:5,11 94:24 96:2 97:19 98:4 100:12,22 102:24 105:12 106:7 109:15, 20 110:12,21 111:11 112:8,25 113:12,25 115:9,19 116:16 117:16,22 118:11 119:24 120:12 121:3, 15 122:24 124:5,12 125:5,25 126:13 127:15 128:24 131:16,25 133:4,12 134:2,3,17,18 135:6, 20 137:7,15 138:14	format 9:7 25:3 format 56:24 formatting 56:23 57:17 forms 81:24 forthcoming 52:5 53:7 54:3 forward 8:22 9:20 97:11 found 84:8 98:25 99:7,11 105:24 107:2 123:10 127:22 131:7 135:23 136:17 146:22 152:4 158:5 175:7,10 180:7 193:11 202:11 211:12 216:2 219:21 229:17 235:7 foundation 159:23 founding 45:5 frame 93:16 106:8 framework 58:8,22 59:4,18,20 60:7,10 93:10 156:23 157:14	G Gaber 6:17,24 7:2 15:4,13 28:20 32:19 34:23 35:2,17,22 36:6,9,24 37:4,8 38:24 39:4,5 44:13, 14 56:10 60:13 63:22 66:19,23 67:9 68:6 72:9 73:25 74:4 92:6 98:12 99:10 106:17 115:12 117:11 118:12 127:18 128:2 134:4,9 139:10,13 142:13 143:2 148:11, 25 149:2,18,24 161:7,16 173:2,20,24 176:21 177:2,11,14 178:2 182:7 184:14 189:14 191:24 198:16,21 199:10 202:23 205:7 215:7, 14 216:15 217:6,14 218:3 219:13 220:9 224:10,24 226:17 227:5,13 228:22,23 229:3 230:18,24 232:5,6,13,18 239:9, 11 240:2,21 241:9 246:3 247:12 248:5, 13 gained 147:24 gap 207:16 garner 203:16 gathering 23:7 gave 10:2,3 56:20 99:22 100:10 103:19	

Index: graduate..indefensible

graduate 38:2,6,9,11 56:14	harassing 199:5 240:18 241:8,10	higher 182:3 209:25	142:5,8,14 143:9,14, 20 144:7,10,16 145:4,15,19 175:15	10,17,18 139:7
great 178:17 179:6 187:12 201:10,20 214:9	hard 47:19 50:23 51:13 195:8	highlight 104:14 114:4,18 197:3	hundreds 213:17	impermissible 153:2
ground 11:3	Harris 132:22 133:7 134:11	highlighted 104:10 109:3 197:15	Hunter 149:20 150:5, 9,17 151:12,15,21,24 156:12 168:6,9 174:6 205:10	implemented 180:23
group 117:9,13 119:14 122:3 123:8 137:25 162:8 221:9 224:4	Harrison 126:24 127:4,11 128:12,23 129:10,19 130:14,20 132:10 133:8,20 134:11 135:19 136:14 220:2,6,10, 15,24 221:3,4 226:24 237:4,19	historical 44:25 45:6 53:9,21 58:14 59:16 72:3 93:8,21 95:4 101:7	hypothetical 89:18 165:9 170:12 190:8, 18 191:15 194:8 195:23 196:13	implies 190:18
groups 116:10,13,18 117:24 204:22	Harrison's 128:4 131:2,12 132:15 134:23 227:7,8	historically 89:5 165:8	hypothetically 161:14 184:16,24 243:14	implying 242:5
growing 188:25		history 14:16 40:6 41:18 43:17 44:17 47:8 49:7 51:25 53:8 59:2 61:25 62:25 63:6 71:22 75:13 80:18 84:10,22 88:19,24 154:9 162:3 163:2 164:25 166:3 191:6 205:2 206:22 207:8,21 208:2,10 210:20 228:3 234:24 236:14,16 246:24		import 174:5 204:15
grunt 134:8		hit 47:23	I	importance 105:4
gubernatorial 101:7 157:2	head 11:20 230:7,10	hold 57:7 68:11 106:6 132:25 136:23 143:11 189:9 238:20 240:10	I-A 67:7	important 11:7,11 46:6 51:17 52:18 197:12
guess 47:18 50:14 51:20 65:15 69:7 71:3 107:20 133:6 142:10 158:19 184:15 186:7 209:9 212:14 213:10,18	heard 140:19 156:4 177:7 192:6 201:24 202:6 227:15 244:12, 14 246:13 247:25	holding 53:4 151:24, 25	ID 7:13 10:11 48:19 93:3,18,20,23 94:15	imposed 132:24
guessing 89:18	hearing 123:7 139:22 163:20 165:22 207:15 238:11,17 245:17	holds 53:4	idea 101:4 131:19,20 132:6 218:16	imposition 76:18 217:2 231:13
H	hearsay 172:23	holistic 101:17	ideas 25:8 194:4	in-person 29:18,23
Habitual 76:20 87:5	heights 58:8,12,16, 21 59:4,18,20 60:4 61:17 93:10 153:7	home 17:3 67:11 91:8 147:25 219:10	identification 37:7 66:22 93:2,15,20 149:23 195:24	inadequate 67:12
Hammett 23:16 30:5, 7 145:24 175:14 177:6,13 246:19 247:3	held 28:8 53:10 136:23 139:16 224:12	honestly 50:10 158:3	identify 213:22	incarcerated 224:23
Hancock 8:9,14	helped 55:19,21,22	honor 176:9	ill 171:21	include 17:21 30:8 48:10 89:7 103:8 106:11 108:23 112:21 143:17 179:5 222:9,24 234:5
handle 133:18	helpful 22:4	hope 52:22 90:9 161:7	immigrants 67:23	included 26:13 74:6 116:3 180:9 181:2 199:15 206:2 219:22 220:20 223:3
handled 122:11 134:25	helping 177:4	hopes 47:22	immigration 62:19, 25 63:6,12 65:6,12, 18,19 67:19 69:14,19 70:11 71:11,20 72:4, 17,20,25 73:5,6,13, 18 74:6,12,16,23 75:5,21 76:7 77:11, 22 78:3,15 81:3 91:22,24 239:17,18 240:6 242:7,8,12	includes 127:6 129:11 189:5,19
handwritten 27:16, 17	hidden 173:16	hour 17:17,23,25 29:15 213:20	impeachment 123:11 136:21,25 137:3,12,19 138:7,	including 19:6 125:6
happen 29:19 238:23 241:3 243:8	high 18:9	hours 18:2,3,8 20:18 49:10,15,22,25 50:3, 14 216:3,8,9,11	impact 132:25	inclusion 108:25 192:2 195:14
happened 57:4 184:4 229:18 241:4 243:23		House 23:17 49:18 141:4,7,10,13,22	impaired 12:10	income 21:18,23
happening 243:12			impeachment 123:11 136:21,25 137:3,12,19 138:7,	incompetence 108:24
happy 111:20 170:16 188:21				incompetent 114:9
				inconsistent 157:22
				incorporate 101:16 103:7
				incumbent 53:4
				indefensible 178:17 179:7 201:10,17,21

Index: indefinite..KAREN

indefinite 225:7	intended 137:4	23:16,18 28:3	items 79:20 163:9 217:9,17,18	20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1 207:1
indication 207:20	intending 78:8	interviewing 25:25	iterations 122:19 146:2	
indiscernible 53:8 73:18 87:21 118:23 131:11 134:5 172:22 189:19 191:2 202:24 203:25 205:8 224:25 242:20	intends 171:6	interviews 20:2,4,23	J	
individual 30:11 110:23 187:9 223:2	intent 57:25 62:15 70:21 71:11 76:5 77:2,20 81:10,19 82:20,21 87:20 95:18,21 96:21 128:22 137:11,13 159:20 160:13,16,18, 23 162:14 164:2 165:13 166:18,23 167:5 168:14 173:13 181:7 184:11,12 195:5 206:19 210:17 214:23,24 219:19,22	intro 41:7		
individually 79:23	intention 70:12,14 78:15 90:7 93:4 110:6 127:24 155:21 159:22 170:20 171:16,21,25 227:15 245:3,8 246:13 247:6	introduce 66:11 149:18 160:12 174:20	Jack 160:9 174:20 247:10	
individuals 8:15 19:19 23:11 246:10	intentionally 128:17 154:6,16	introduced 78:16, 21,23 79:24 174:16, 20 176:3	jail 133:10	
infamous 74:18 76:19 87:4	intentions 25:24 169:18 181:12	introduction 40:21, 23,24	James 118:25 119:14 218:22 219:5, 18 223:15,23 224:4	
inference 204:20	interaction 240:5	introductory 45:4	January 216:8	
inferences 94:12	interest 42:5 46:7,10 47:10 48:8 93:19 117:25 182:25	invalid 199:16	Jo 140:4	
inform 24:17 210:4 211:5	interested 28:7 213:13	investigate 70:11,13 158:6	job 47:24 48:7 155:11	
information 22:3 23:7 27:6 30:9 36:15, 19 47:5 49:19 113:3 135:8 138:3 173:12 187:18 192:14 195:13 204:13 207:10,13 238:19 247:24	interesting 29:6 45:8 48:3	investigating 21:7 28:10	joint 123:7	
informed 25:7 205:2, 9	interests 42:8	investigation 164:10,11,17	journal 30:14 63:17 143:10 145:4	
initial 9:10 145:12 193:10,11	interests' 245:15	invoices 17:4,7,10	journalist 197:14	
initiative 100:16 171:18 219:11 247:11	internal 245:21	involve 93:21	journals 246:5	
initiatives 100:19 103:2 104:11 157:2 161:25 188:6	international 45:18 63:17	involved 7:18,20,22, 24 8:4,9 14:19 41:5 46:13 98:16 105:2,17 120:7 135:18 209:24	judge 152:7 155:25	
instance 39:11 79:2 80:19 81:3 90:8 162:10 167:13 226:21	interpretation 109:2 152:7 222:24	involves 152:10 157:13 222:11	judicial 76:14 77:5, 18 79:16 80:12,19 83:20 137:21 216:21 229:6 230:4 232:24	
instances 211:11	interview 23:11,15, 22 25:13 26:2,12 29:2,18,23,25 145:17,21 175:22,23 247:20	involving 7:12 74:18 114:7,13 121:9 126:17 136:21 142:20 148:8,18 152:11 222:23 223:4 224:18	July 18:6 36:22	
instituted 88:20	interviewed 19:19	Irvine 66:15	June 10:3 18:5 215:22 216:5,10,11	
intend 16:5 34:2,20 35:7 60:25 77:9 86:20		issue 14:5 61:16 240:6	jurors 236:20	
		issues 38:18 41:4 47:8 48:11	jury 76:14 77:18 83:21 216:22 217:10 229:7 230:8 236:15	
		italicize 108:19	K	
		italicized 109:19	KAREN 6:1,19 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1	
		italics 178:23		
		item 217:8		

Index: key..longer

208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 240:1 241:1 242:1 243:1 244:1 245:1 246:1 247:1 248:1,14	77:11 88:13 107:22 122:20 law 22:22 41:18 59:21 62:20,21 63:17 65:10,16 66:7,15 67:19,20,21 69:13,19 70:19,25 71:22 74:22 76:16 83:23 87:6,15 88:5 91:22 92:16,22 93:15,18,23 94:17 118:14,19 142:6,15 154:6 156:8 159:10 162:24 163:20 166:4, 15,25 168:22 169:9, 20,22 170:8 171:10 172:8,13 173:4,9,19 182:17 183:5 184:4 186:9,10 189:4,22 190:5 197:24 198:2,7 202:20 206:7,18 207:22 208:3,8,18 209:16,20 210:16 211:4,14,18 212:3, 11,20 213:15,19,22 214:7,21 215:6 216:24 217:11 231:3 234:11 235:3,10,16 244:22 law's 87:19 lawmakers 169:22 laws 38:20 39:8,10 43:23 62:25 63:6 65:6 72:4,17 75:22 76:8 77:22 88:12 91:24 164:18,20 165:2 171:2 186:12 200:10,22 207:2 211:11 212:6 213:17 214:4,23 237:14 lawsuit 22:18 lawsuits 9:22 164:21 lawyer 48:23 49:3,4 150:7 152:8 156:2 lawyer's 47:18 lead 155:5 159:2 leader 166:25 224:10 leadership 52:20 leading 160:7 247:10 leads 105:19	league 104:15,17,21 105:2,25 106:19 107:4,7 116:24 117:2 League's 105:9 107:16 learn 30:8 learned 231:23 led 21:24 61:24 98:8 118:24 135:15 Lee 7:22 left 142:4 217:8 222:3 legal 61:25 62:5,14 71:24 76:5,23 77:2, 10 78:3,17 80:3,15 81:2,3,7,21,25 82:3, 13,18 84:23 85:3,19 89:12 90:18,19,20 91:5 92:8 95:4,5,17 96:20,22 97:5,7,9,18 98:2 208:3,7 211:22, 24 212:2 229:17 234:16 235:21 236:3 legally 189:10 legislation 170:6,7 171:6 172:4 183:25 legislative 14:15,17, 20 30:13 38:3,19 46:3 49:12 58:2,25 80:18 81:7 82:3 84:10,22 88:19 118:20 120:15 135:18 143:8 144:14 156:25 157:16 162:3 166:3 174:2,15,21,25 206:22,23 210:19,24 234:24 239:2 legislatively 157:5 legislator 139:25 140:5,11,15 145:18, 21 146:3,6 147:14 162:15,22 165:22 167:2,23 175:17 226:9,14,19,20 227:11,14 237:6,7, 22,25 241:13,21,25 244:21 legislators 30:16,20 47:15 97:15 120:3 143:15 144:18 163:2,	15 164:4,19,25 165:12,16 169:3 223:19 237:14 238:4 242:25 244:24 245:22 246:7,23 legislature 30:20,24 42:17 54:12 81:13 93:14,18 103:15 118:25 122:15 126:19,20 133:18 134:15 139:16 140:19 141:19 145:2, 14 146:10,17 147:6, 10 157:11,18 159:3,7 160:3 163:22 164:11 166:13 170:23 171:8, 20 172:5,11 173:7 174:4 175:24 177:16 180:11,13,22 181:6,8 182:12,17 183:24 184:12 185:2,5,7,11 192:15 200:25 205:14 207:12 243:9 legislature's 205:23 legislatures 31:4 49:13 147:11 length 42:25 lengthy 159:9 216:14 letter 25:2 26:10 105:14 106:5 116:21 letterhead 25:3 letters 105:19 245:16 level 7:11 38:2,6 39:17 41:7 187:16 211:20 239:21 240:11,13 levels 38:8 Lewis 7:25 10:12 Lexis 234:8 Lexisnexis 229:16 LGBTQ 212:6 license 83:22 137:24 licenses 76:16 217:10 231:3 licensing 76:15 79:3 81:9,12 83:9,22 137:24 216:23,24	229:8 230:19 licensure 84:15 Lichtman's 93:8 94:7 209:13 lie 48:8 lieutenant 23:18 24:3,9,16,21 25:11, 18,25 26:14 29:22 30:7 36:13 246:18 limit 53:19 limited 94:4 247:5 lines 33:10 212:15 222:19 list 77:19 79:5 87:8, 24 108:11 109:8 110:2,7,8 112:3 123:24 124:20 125:21 143:3 160:4 216:21 217:4,16 223:4 229:6,19,25 233:13,15 234:14 235:2,6 listed 79:20 84:9 222:8 listen 164:5 lists 229:22 literacy 189:6,7,24 190:7,16 191:4,10,13 192:2 193:9,18 194:8,15 195:6,12, 14,22 literally 198:21 litigation 92:21 live 47:11 lived 19:14 local 55:18 located 20:9 logistically 17:13 long 20:13,16 25:10 29:12 35:23 73:21 109:7 110:2,8 112:3 123:23 160:4 176:11 203:24 longer 144:13 200:9, 22 202:20

Index: longest..mine

longest 43:2,3	78:4 89:12 110:4	113:10,23 115:6,17	87:4,7 91:5 144:4	13,23 165:5,14,24
looked 19:3 22:12	164:20,23 181:13	116:14 117:14,20	148:16	166:9,19 167:7,11
46:8 47:9 57:25 63:8,	200:25 229:14 243:5	118:7 119:19,22	mentioned 59:7	168:23 169:6 170:11
9 71:4 74:14 78:24	makes 11:7	120:8,24 121:12,22	87:23 116:20 125:19	171:12 172:15
80:14,24,25 83:2,20,	making 101:3 116:23	128:3 149:5,15	126:23 218:20	173:10 176:17 178:7
24 88:18 93:2 96:5	124:23,24 128:21	177:21 178:5 205:23	234:13	181:21 183:8 184:8
101:8,21 102:12	male 179:17 200:7	means 111:3 130:9	Meritorious 63:20	185:22 186:6,20
104:9 114:3 137:16	202:2 203:8	226:2	merry-go-round	187:24 188:19 189:9
140:25 150:13	Maloney 63:15 65:4	meant 102:3 106:10	53:18	190:9 191:20 192:5
156:13 161:24	manage 91:8	116:2 147:3 149:9	message 201:12	195:18 196:24 198:8,
171:15 210:23	manner 109:13	measure 175:25	202:16	19 199:2,19 200:18
229:15 234:4,5,14	227:12	180:20 182:23,24	Messick 6:4 9:13	201:15 202:8,21
lost 106:9 195:20	map 212:23 213:2,8	247:4	13:7,9,16,24 14:22	203:11 204:11 205:4
223:10	maps 212:16,17	measures 199:15	15:7,19,24 16:16	206:10 208:6 211:7
lot 29:7 45:23 46:4,20	margin 180:25 194:6	mechanisms 128:18	17:9 18:13 21:5 23:9	213:25 214:10,16
48:7 50:15 73:23	195:17	medications 12:9	24:6 25:20 26:17,22	215:11,16,19 217:7,
94:12 122:12,13	mark 7:2 37:4 57:11	medicine 76:16	27:19 30:3,21 31:12	15 227:6 228:20
147:20 152:8 157:11	66:19 139:9	81:14 83:23 84:14,15	32:16 34:21 35:14	230:5,21 231:5,25
172:9,16 173:11	marked 37:6 66:21	216:24 217:11 231:3	38:22 39:2 41:9	232:11,16 234:12,22
190:24 192:17 193:2	149:22	meet 20:20 169:19	42:14 44:11 47:16	235:5,11,19 236:5,7,
lots 164:4 187:17	market 47:24 48:2	meeting 115:21	50:8 54:21 55:16	12 237:3,11,23
loud 62:11 158:4	marks 218:13	159:9 243:11	56:9,20,22 57:7,11	238:14,20 240:17
love 97:3	Martha 140:4 222:16,	meetings 239:4	60:6 61:3 63:2,21	241:2 242:10 243:17
lunch 98:13 137:20	22	member 30:23	64:4,14,22 65:22	245:13,24 247:2,14,
	Mary 139:18 224:8	55:12,23 108:10	66:4,17 67:6 68:4,11	25 248:11
M	mask 161:5	120:16 145:14 147:9	70:4,23 72:8 73:19	Messick's 231:23
	master 228:8	165:9 166:15,24	75:8,18 76:9 77:12	met 16:16 29:20
Mack 221:22	master's 228:5	240:14 242:4,15	78:11 79:21 80:6	93:12 104:24
made 6:10 19:25	material 109:14	243:4,10 244:13	81:22 82:14 83:10	method 17:15
37:19 56:2 101:14	118:5	247:19	84:3,18 86:6,14,24	236:20
129:17 155:15,18	materials 205:22	members 31:3 47:6	87:22 88:7,16,25	methodological
163:13 207:18	matter 109:2 158:11	52:19 54:9 110:15	89:14 90:2,21 91:16	183:22 184:17 211:5
245:11	184:17 242:9,12	111:5 118:25 122:15	92:5,11 94:24 96:2	methodologically
main 128:11 131:2	245:4	156:25 163:5 168:16	97:19 98:4,10	184:20,24
132:15	Mccrary 32:9,11	224:17 233:9 239:4	100:12,22 102:24	methodologies
maintain 189:4,18	33:15 76:21 77:15	240:5,9	105:12 106:6,15	34:13 35:4
196:21	151:6	membership 114:20	109:15,20 110:12,21	methodology 89:22
maintained 126:12	meaning 93:22	memory 113:14	111:11 112:8,25	93:5 94:8,21 95:15,
190:16	100:20 101:11	119:9	113:12,25 115:9,19	24 156:11 171:4,14
maintaining 123:25	105:10 106:2,23	men 90:8,10	116:16 117:16,22	206:17 210:3,7
197:24	111:9,16 112:6,23	Men's 116:20 117:8	118:11 119:24	228:18
major 40:24 41:16	Mccrary's 35:25	mental 108:24	120:12 121:3,15	methods 45:20
major 227:24	206:12	mentally 114:9	122:24 124:5,12	middle 127:3 233:7
majority 169:25	make 14:10 19:22	mention 41:24 59:6	125:5,25 126:13	midterm 52:13
182:3 203:25	20:11 21:17 52:15		127:15,21 128:24	Mike 223:24 246:20

Index: minimal..object

minimal 122:14	101:11 102:2,9,22	16	199:21 200:2,15	object 6:12 9:13
minored 228:3	103:21 104:19 105:6,	motives 169:24,25	neighbor 55:18	14:22 15:8,19,24
minority 128:17	11 106:2,24 111:10,	move 9:20 103:12	net 127:6 129:12	18:13 21:5 23:9 24:6
minute 64:15 98:11	16,24 112:7,16,23	118:22 173:25	news 52:15 179:22	25:20 26:17,22 30:3,
106:13 226:19	113:11,23 114:7,13	196:12	180:3 196:25 215:17	21 31:12 32:16 41:9
minutes 115:21	115:7,18,23 116:2,15	moved 176:5	newspaper 22:17	42:14 47:16 50:8
176:12 231:24	117:14,21 118:7	moves 53:19 130:10	147:22 188:25	54:21 55:16 56:9
misdemeanor 74:18	119:7,20 120:9,25	moving 8:22 97:7	190:25 194:2 196:15	61:3 63:2,21 64:4,14,
223:9	121:9,22 122:8,22	101:4	199:14 203:13	22 65:22 66:4 70:4,
misdemeanors	123:4,18 124:2,10	multiple 43:4 81:21	207:13 245:17	23 72:8 75:8,18 76:9
152:12 222:24 223:4	125:2,7,14,23 126:8,	82:4,6,10,18,19 83:3	newspapers 205:22	77:12 78:11 79:21
misread 68:7	18 127:6,14 129:11	85:3,7,13,18 86:5,9,	niche 45:8	80:6 81:22 82:14
missed 143:25	136:17,21 137:4,11,	23 89:11,12,17,23	night 248:4	83:10 84:3,18 86:6,
177:23 203:3 207:24	20 138:4,10,12,17	90:5,13,19 91:8	non-overt 172:7,10,	14,24 87:22 88:7,16,
226:19	139:22 140:12	95:25 96:3 101:20	18 237:8	25 89:14 90:2,21
missing 189:21	142:20 144:4 146:12,	137:24 146:2 163:17	noncontroversial	91:16 92:5,11 94:24
mistaken 155:23	19 147:3,12,14	165:17 171:13	122:6 147:21,23	96:2 97:19 98:4
Misty 13:7 38:24 49:2	148:8,18 149:5,15	217:19	156:16 157:12	100:12,22 102:24
127:19 176:21	156:18 167:15	multitude 81:5	170:24 181:13	105:12 106:6,13
198:16	177:18,21 178:5	137:23 169:21	197:13 246:14 247:5	109:15,20 110:12,21
Mobile 141:23	179:24 180:8 205:3,	murder 223:7,12	nondiscriminatory	111:11 112:8,25
model 54:10	15,24 208:22 216:16	Murphy 176:7,9,10	164:18	113:12,25 115:9,19
moment 113:13	217:19,24 220:11		nonpartisan 107:11	116:16 117:16,22
119:8 184:16 220:4	221:13,23 222:3,7,	N	nonpublic 245:21	118:11 119:24
moments 232:9	11,23 224:18 225:6	NAACP 7:20 9:2	normal 11:15	120:12 121:3,15
monetary 56:3	229:12,16 232:24	named 176:9	North 7:25 10:4,12,	122:24 124:5,12
Montgomery 20:10,	233:5 234:16 235:21,	narrowed 45:25	24 98:23 212:22	125:5,25 126:13
13 178:10 179:4,13	22	Nathan 54:13 238:8	note 108:9	127:15 128:24
180:3 197:3	morality 67:24 70:15	nation 43:3	noted 129:22	131:16,25 133:4,12
months 51:3	71:8 75:7	nature 7:8 8:12 9:7,9	notes 24:7 25:14,15	134:3,18 137:7,15
Moore 65:4	morning 6:25 215:20	22:18 48:9 127:19	26:20,25 27:6,15,16,	138:14 140:14 147:4
Moore's 64:3	216:15	133:22,23,24 200:15	17,18 29:2 36:12	150:11,18 152:2
moral 60:15,21 61:6,	motivated 70:8	241:24	112:9 176:13,16,19,	153:15 154:8,21
12,23 62:4,13,18	153:3 170:4,19 171:3	necessarily 195:15	22 177:4,5,12 215:10	155:24 156:20 158:2,
70:10 71:18,23 72:3,	188:10 199:12	196:6	247:16,18	24 160:19 161:3,23
16 74:18,24 75:13,25	motivating 75:16	necessity 128:13	number 42:4 209:22	165:5,14,24 166:9,19
76:4,13,22,25 77:16	101:25 155:13	needed 8:10 25:23	230:6,15,20 231:7,	167:7,11 168:23
78:2,17,20 79:14	196:19	47:3 56:23 180:22	11,15	169:6 170:11 171:12
80:2,11,15,17,24	motivation 58:6	181:15 183:19	numerous 28:8	172:15 173:10 178:7
81:18 82:17 84:5,8,	82:24 153:2 163:14	192:19		181:21 183:8 184:8
13,21 85:3 86:22	169:20 199:17 227:9	needing 207:6	O	185:22 186:6,21
87:9,15,19,24 88:6	234:10	negate 89:24	O'NEAL 101:15	187:24 188:19 190:9
90:14 91:4,11,21,25	motivations 165:18	negative 187:20,21	oath 12:6	191:22 192:5,7
95:3 96:19 97:4,6,17	197:14	188:9,16 198:6		195:18 196:24 198:9
99:23 100:11,21	motive 161:20,22			199:19 200:18
	183:6 193:12 226:11,			201:15 202:8,21

247:2 objecting 161:9 198:20 199:2 241:7 objection 127:20 198:24 objections 6:11 109:7 observe 153:2 occur 185:19 187:19 196:18 occurred 239:13 243:14 occurring 223:15 occurs 242:24 odd 11:16 off-the-record 34:24 57:9 offer 16:6 33:23 34:2 35:7 57:2,5,22 60:25 86:20 88:17 offered 57:24 58:4 92:16,21 94:11,16 114:21 121:6 122:2 193:3 241:15 offering 35:9 94:4 office 16:14 25:4 28:12 29:24 53:8 132:25 157:6 offices 26:5 28:6 53:11,14,18 official 120:16 244:9 officials 69:15 73:3 Oklahoma 87:15 235:13,16 Oklahoma's 76:19 87:4,18 88:4 op-ed 178:14 operative 189:11 opinion 10:16,17 14:15 26:16 32:14 33:5,13,23,25 34:6,9 35:7,9 36:2 58:4 59:19,23 60:2,14,20, 25 61:17 64:5,8,16,	20 65:13,14 70:24 71:2 75:9 76:11 82:19 84:6,20 87:2,3 88:17 89:3,15 92:16, 21 96:8,10,19 98:21, 22 99:3,4 101:9 102:20 110:22 115:24 116:5 128:6 129:18 130:17,19 134:20,23 135:3 150:12 151:8 153:16 154:4,11 155:9 156:22 157:21 165:25 167:9,12,21 170:14 171:23 214:21 219:22 243:3 opinions 10:22 15:17,22 16:4,5 33:11,17 35:25 57:22 61:11 94:16 98:18 opportunity 97:3 215:22 opposed 183:12 opposing 192:21 opposition 192:9 option 186:4,8,9,10 187:5,9,12 188:10, 16,17 189:6,18,22 190:4,14,20,22 191:12 197:23 options 185:20 186:11 191:7 oral 156:4 oranges 186:23 order 120:6 169:13 189:25 orders 248:9 organization 8:23 107:12 166:25 224:11,19 organized 117:24 245:15 original 73:18 153:3 179:23 originally 247:20 originated 124:3 origination 72:3	outcome 185:4 203:19 outdated 178:17 179:7 197:4,25 198:14 200:21 201:10,17,21 202:15 203:15 245:7 outmoded 194:3 202:20 overcoming 109:6 overt 169:13 171:8 overtly 163:4 169:17 172:20 243:5 overwhelmingly 180:15,18 181:4 183:10,12 191:12,18 196:5 Owen 6:1,19,25 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1,3 36:1 37:1,2 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1,21 58:1 59:1 60:1,9 61:1,20 62:1 63:1 64:1 65:1 66:1,24 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1	131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1,14 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1,2 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1 207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 240:1 241:1 242:1 243:1 244:1 245:1 246:1 247:1 248:1,6,14 Owens 239:12 241:10 owner 203:9 owns 179:17 200:7 202:2 Oxford 50:16 P p.m. 98:14 139:11,12 173:22,23 215:12,13 248:15	pages 50:18 99:18 100:5 102:12 103:11 106:20 116:17 118:24 135:13,14 175:13 178:9 219:9, 14 220:3,4,14 222:17 224:8 paid 17:10,11,17,24 18:11 19:12 55:11 179:19 200:8 202:4 203:10 pandemic 91:7 paper 48:21 197:13 paperwork 55:22 paragraph 62:2,17 67:7,8,14,15 69:3 76:11 77:10,23 78:9, 16 94:22 96:10,23,25 108:14 132:21 144:3 152:16,23 179:12 206:5 218:10 paraphrasing 29:4 181:23 Pardons 225:14 Parole 225:14 Parsons 221:23 222:5 part 6:8 25:6 27:2 35:14 48:6 63:9 68:5 69:17 71:22 72:2 73:20 74:16 77:9,23 82:22 84:2 87:8 91:9 98:24 99:15,16 105:6 107:24 108:25 110:13 111:4 114:4, 17,23,24 117:4 119:16 124:13 129:25 134:7,8 136:3,6,7 138:7 145:11 153:16 158:4 160:7,17 162:2 177:23 185:13 195:21 196:11 203:3 205:17 206:2,22 207:24 209:9 224:4 226:24 227:10 229:23 242:20 247:7 participating 41:5 partisan 53:3 212:23

Index: partisanship..politicians

partisanship 52:24	percent 180:19 188:23 194:6 203:19	100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1 207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1, 11,15 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 240:1 241:1 242:1 243:1 244:1 245:1 246:1 247:1 248:1,15	phones 239:6	pieces 27:3 50:25 90:25 158:18 162:19 170:13 171:13 178:10 229:22
parts 69:20 71:23 73:14 93:24 109:19 110:5	percentage 38:10 204:21		photo 7:13 93:2,3,15, 23 94:15	
party 53:4 55:24	perfect 197:19		phrase 60:15,21 61:6,12,23 71:8,23 72:4,16 74:24 75:17, 25 78:19 79:5,14 80:2,11,19 81:8,13, 18,25 82:4,25 84:13, 17 86:23 87:14 88:6 89:10 90:13,17 91:4 95:3,14,17 97:9,17 99:14,23 100:11,21 101:7 102:2,8,23 103:21 104:2,19 105:10 106:2 107:4 111:10,16 112:7,16, 23 113:11,23 114:12, 15 115:7,17 116:15 117:7,14,20 118:7 119:7,20,23 120:9,25 121:9,12,17 122:8,22 123:4,9,10,14,18 124:2,10 125:2,7,9, 14,18,23 126:6,8,11, 17 127:13 129:21 130:6,18 136:4,17, 21,24 137:4,6,11,18 138:10,12,17 139:22 140:12,20 142:19 146:12,19 147:3,11 148:7,17 149:5,15 152:17 156:17 165:20 177:18,21 178:5 179:24 205:2, 14,24 208:22 216:16 217:19,24 220:12 222:3 225:6 226:2 229:20 234:2	place 16:2 72:25 156:25 162:20
pass 141:4,9 143:14 159:4 194:2 196:16	performance 51:21			places 83:3 95:11
passage 58:2,5 98:9 141:17 178:16 180:4 192:4,10 195:17 197:11 212:16 234:25	period 44:25 53:23 102:14 107:22 146:6 245:23 246:7			plaintiff 8:7
passed 28:18 67:21 71:12 73:8 81:8,10 85:10,22 88:20 93:3, 15,18 126:19 141:3,6 142:6,9 157:18 158:17 169:22 170:8, 24 171:25 173:8 174:17 181:6 182:20 185:8 191:18 192:11, 19 194:5 206:24 207:4 210:17 214:22, 24	periods 45:7			plaintiffs 7:2 8:3,8 211:9 226:22
passing 165:23 173:4 200:25 226:6	person 29:22 56:19 114:6 126:17 169:24 171:20 172:3,6,19 175:22 186:8,9,17 223:10,11 225:22 247:19			plaintiffs' 8:12 95:7 206:6,8 211:10
past 197:21 198:10 207:23	personal 54:20 89:3, 15 152:6			planning 165:16
path 7:13 54:11	personally 187:3,11 226:10			plans 61:16
paying 202:13	persons 140:7 154:4 224:18			play 186:11 194:12
payment 17:15	perspective 41:2,3, 25 43:5 47:12 58:24 182:10			point 30:23 78:4 83:5 93:24 99:7,14 131:5, 8 173:18 178:10 198:16 208:4 220:2, 16 231:14 232:3 236:16
peer 34:13 44:17 48:17	persuasive 99:12			policies 83:9,25
peer-reviewed 43:22,25 44:6	Ph.d. 6:1,19 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1,20 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1			polycymaking 84:10 161:25
penalize 224:20				political 21:11 31:2, 21 39:17 40:23 45:11,15 55:15,23 56:2 58:25 59:16 71:4 88:22 89:2,3 90:22 156:23 162:21 164:8,25 166:2 168:18 169:2 182:9 185:18 186:2,15 187:14 188:4,14 191:10 192:8 194:16 202:5,9 206:17,20 210:13,18 211:18 212:10,13 213:4,14, 23 214:9,12 227:25 228:16
pending 12:2				politically 54:19,23 158:15 169:18
people 9:3 52:9 73:19 81:14 89:7,8 90:4 131:14,21 155:6 165:17 167:25 186:13 196:2 201:7 203:19 207:14 224:22 235:16 244:4, 21 246:21,23		phenomenon 186:5		politician 29:8 169:16,23
perceived 67:24 75:6 170:23		philosophy 24:24		politicians 168:20
		phone 29:16,17,22 175:21,22,23 176:11	phrased 82:16	
			phrases 61:24 90:3, 4 93:22 97:25 128:16 162:4	
			phrasing 190:20	
			pick 186:18	
			piece 77:25 78:25 86:17 96:5 147:18 161:20 168:3 171:6 172:4 182:22 190:23 194:20 195:13 201:19	

Index: politics..punishment

politics 14:20 21:8 23:23 26:4 38:3,4,19 44:22 45:17,19 46:2, 3,8,14,16,19,20,22, 24 47:14,24 48:9 50:20,24 51:9,18 214:14 228:18 poll 88:11,17,19,23 89:5,10,17 103:14 179:19 189:5,23 190:5 191:2,4,8 192:24 193:8 196:6 200:8 202:4,14 203:10 polling 93:16 192:23 Pooja 66:13 poor 89:7 portion 68:21 123:11 139:2 203:5 233:10 posed 67:24 210:14 position 21:15 22:11 28:8 214:18 221:16 224:11 227:7,9 positions 22:8 possibility 167:10 possibly 163:25 187:8 post-civil 40:12 potential 67:25 94:5 127:12 129:14 166:17 243:19,21 potentially 16:20 94:10 187:6 207:7 214:4 223:3 power 184:23 practices 40:7 pray 90:9 preceded 92:2,10 precedent 156:9 preceding 78:7 96:9, 23 138:23 precinct 187:16 predictive 52:12 predominantly	45:19 preliminary 9:17 premise 135:20 premised 101:11 preparation 17:18 20:21 30:2 83:15 prepare 23:3 preparing 19:17 22:25 23:5,8 31:17 64:11 74:12 presence 58:9 present 103:23 156:5 225:13 245:8 246:11 presented 48:18 109:13 123:21 191:6 204:15 presently 186:24 presents 118:23 president 52:24 53:2 presidential 52:13 press 163:7 200:2 207:11,15,16 pretty 105:23 prevent 12:18 previous 122:2 123:15,19 176:22 previously 87:23 103:5 137:19 195:4 234:13 primary 46:16 47:13 199:17 principle 124:21 printer 67:11 printing 67:12 prior 16:12 18:6 40:8 51:25 61:25 91:15,22 178:16 179:14 210:23 215:22 216:5 prison 131:23 133:11 140:7 167:25 private 246:6	privilege 6:13 232:2, 12 238:18,23 239:2 privileged 13:19 232:15 privy 246:22 probation 140:8 probative 166:17 problem 185:12 207:7 problematic 157:8 164:12 195:7 problems 34:10 procedural 109:12 procedure 58:18 107:10 132:12 141:9 proceed 10:6 248:2 proceeded 6:16 proceeding 233:4 proceedings 76:14 77:18 79:16 80:13,20 83:21 137:22 216:22 229:7 230:4 232:25 233:9 proceeds 77:19 process 54:6,8 93:13 94:25 105:17 112:15 132:23 143:12 145:12 174:15 183:24 193:6 210:18 242:20 produce 247:24 produced 36:20 157:17 173:4 177:13 producing 23:6 profession 81:9 professional 45:14 51:23 83:9 84:14 professionally 51:8 professions 76:16 83:23 216:24 231:3 professor 21:10 33:21 34:2 35:6,8 71:4 93:8 168:19 169:2 185:19 186:2	188:4,14 206:14 209:13 214:18 proffer 15:18,23 proffered 232:22 progressively 101:5 prohibition 73:15 74:7,17 project 20:3,5,7 21:2 23:22 26:3 27:4 49:17 50:12 51:5,7 56:15 prominence 244:10 promoting 162:23 pronouncements 76:24 proofing 50:18 proofread 56:21 property 179:18 200:7 202:2 203:9 proposal 126:12 141:3 191:9 219:11 222:4 proposals 123:16 159:20 218:23 propose 114:5 proposed 108:10 114:12,19 118:13,17 122:4,18 126:3,15, 19,20 142:21 162:5 174:8 179:6 221:9 proposing 140:7 prostitution 66:2 67:20,25 69:16,20,21 73:4 protect 238:19 protection 153:6 provide 14:14,18 15:16 22:3,13,14 57:18 58:20 64:6,8, 16 65:13 69:5 76:21 86:12 108:21 117:23 128:25 130:17 155:8 160:5 176:16 204:4 207:19 210:12 226:4 235:2,6	provided 27:18 34:7 57:13,16 63:9 77:15 80:16 87:3 90:25 91:9 95:7 111:21 112:18 113:3 117:17 120:2 123:6 124:15 130:17 146:23 147:15 173:12 175:20 190:19 197:9 204:12 206:25 211:9 235:8 236:8 providing 72:24 87:2 88:8 109:22 123:22 170:13 provision 43:11 104:7 111:22 137:12 141:24 142:4,17 153:24 156:15 157:23 159:15,16 171:9 172:6 184:19 193:7,10,11 196:8 208:17 233:2,5 246:25 provision's 137:3 provisions 97:11 103:8 108:24 118:14 196:17,21 198:2 202:14 206:7 public 21:16 22:17 37:25 45:22,23 69:15 73:2,15 74:7 120:4, 16 121:5,24 125:18 139:16 162:10 163:20 164:3,5,23 166:24 176:7 194:21 205:21 207:6 228:8, 19 238:15,17 243:11 245:10,19 public's 93:19 published 44:5,15 47:23 48:2,12,17 66:15 pull 66:12 67:10 pulling 125:19 punishing 131:21 punishment 131:6, 14,19 132:4,6,13,24 133:9,16,17 134:2, 13,17,21,22,24 135:4,7,21,24 136:2,

10 221:17,20 punitive 76:19 217:3 231:13 purged 8:16 9:4 purpose 26:13 27:25 58:9 60:17,23 61:8, 14 65:9,16 66:7 68:10 69:11 70:2,7 71:7 72:6,15 75:16, 24 80:5,12,23 82:11 84:16 87:14 88:15 89:25 90:18 91:3 92:2,17,22 94:18 97:16 98:3 99:22 100:10 101:25 103:20 104:18 119:6 138:9,11 140:23 146:11,18 147:2 154:16,20 155:4,19 157:25 159:12 169:4, 7,12,14 170:4,6,10 171:3,11 172:5,7,11, 14 173:9,16 177:17, 21 178:5 179:23 181:2,19 182:11,12 184:4,7,20 194:10 195:16 196:8 208:5, 14,19 211:13,21 212:12,21 213:5,16, 24 217:9 234:21 237:8,15 242:2 244:20 246:24 purposes 168:21 173:6 242:25 pushed 210:21 pushing 104:11,12 160:9 put 24:24 25:23 51:13 58:18 66:10 68:23,25 69:12 80:19 85:11 100:24 110:7 146:10 154:10 159:23 160:3 181:20 192:12 207:12 221:23 247:3 putting 109:25 110:6,18 Q qualifications 117:4 118:3 121:7 136:5	183:18 197:9 qualified 114:10 qualifying 160:6 quantify 49:15,22 50:10,23 51:13 Quentin 31:15,20 question 11:13,18 12:2,3,16,17 13:2 14:5,24 15:3,6,10,21 16:3 23:25 27:14 32:22,24 35:15 39:3, 21 44:12 50:24 59:3, 12,13 60:18 63:3 68:18 69:8 73:21 74:3 75:19 80:8 82:8 86:8 92:19 96:13,17 100:2,8 101:24 105:23 106:9,20,25 109:16 111:13 113:16,18 115:4,14, 15 120:7 121:13 122:6,25 127:17,22 128:13 129:8,23 133:5 137:9 138:8,24 140:5,16 142:14 146:14,15 149:13 150:20 154:22 160:21 161:10 162:11 168:2,11 169:11 171:5 177:24 182:8 183:23 184:13, 15 185:24 189:17 191:21 192:6 195:10, 20 199:4,6,9 204:18 205:16,19 207:25 210:14 211:23,24 212:9 213:10 232:17 240:22 241:12 questioned 222:6 questioning 237:9 questions 7:3 12:22 14:8 45:9 120:4 162:6 163:6,7,17 167:16 171:21 172:17 173:11 184:10 199:7 215:15, 17 224:9 228:21,22, 24 247:13 quick 215:8 quickly 47:4,23 174:9 191:22 215:10	230:22 quotations 177:6 quote 24:8 25:17 28:25 105:6,9 106:22 107:3 108:18 110:23 120:15 126:22,23 127:3,4,7 128:13,15 129:9 132:21 140:9 148:18,19 177:7,9 178:17,18 179:5,6, 10,15 218:13 220:22 221:23 225:6 quote/unquote 169:23 quoted 128:5 179:3 quotes 175:20,25 221:2 R race 46:15 48:10 49:18 153:4 171:7 182:2 226:25 227:3 races 89:9 racial 39:19,23 40:6 47:8 48:10,12,15,22 57:25 58:6 62:15 69:25 70:12,14,21 76:6 77:3,6 78:6,15 81:19 82:24 87:20 89:25 93:3,12 94:13 95:18 96:21 127:13 129:14 159:19,22 160:13,16,18,23 162:19 170:19 171:16,25 181:7,11 182:4 193:22 195:5 197:14 209:8,10,15 211:4 212:5,9,24 219:19,21 220:17 227:15 236:15 245:3, 7 246:12 247:6 racially 58:9 59:21 60:16,22 61:8,14 70:7 71:7 72:6,15 75:16,24 80:5,12,22 82:11 83:8,25 84:16 87:13 88:14,23 89:13 90:17 91:25 92:17,22 94:17 97:16,22 98:2 154:20 155:4,18	157:24 161:19,21 162:23 163:11 168:14,21,22 169:3, 7,12,14 170:4,9,10 171:3,11 172:4,10, 13,19 173:5,6,9 181:2,19 182:11 183:6 184:3,6,19 192:3 193:12,21 194:10 196:7 208:4, 13 209:16,20 211:13, 20 212:12,17,21 213:5,16,24 214:5, 22,24 234:9,21 243:25 244:19 246:23 racism 89:24 227:10 racist 169:17 190:15, 17 191:2,5 194:3 196:16,21 198:14 226:11,15 227:12 raise 163:5 164:4 227:9 raised 22:19 122:7 162:7,11 163:7,11 164:9 167:17,20 220:16,19 222:16,22 225:2 227:2 raises 14:5 raising 164:6 ran 28:5 55:19 178:10 rare 95:11 169:16 rationale 108:22 109:10 110:17,20,24 111:5 112:14,19 124:15 re-ask 12:16 96:17 re-read 227:18 reach 145:12,13 reached 171:2 reaching 128:22 214:20 read 6:7 10:17 31:10, 23 33:22 36:4 42:21 62:7,11 63:8,10 64:10,18,20 66:25 67:3,8,13,16 68:13, 15,16,17,20 69:9,17	98:20,21,23 99:2,3 100:6 111:20 114:25 120:10 128:19 138:25 150:7,9,12, 14,22,23 151:5,6,8, 17,20 152:9,15,18 153:25 154:11 158:4 178:24 179:15,18 200:5,7,12,21 202:3, 10 203:9 209:7,21 211:8 218:7,11,15 220:25 246:19 reading 47:20 51:2 59:2 98:18 100:13 133:13 143:25 151:2 174:11 178:20 200:12 233:10 reads 201:17 ready 47:2 real 76:17 81:15 83:24 216:25 231:4 realm 97:9 reapportion 103:15 reason 12:12,18 123:4 125:13 129:13 145:10,15 154:19 224:20 reasons 93:14 123:18 recall 9:6 10:16,21 11:2 18:9,16 19:2 25:21 26:10,18 27:3, 5,8,10 28:16,24 29:14 30:13,24 42:11 43:10,13,16,18,20 64:12,23 66:9 73:9 74:9,20 79:8,13,18, 23 83:5 85:8,20 86:11,25 87:10 92:13 93:24 94:19 96:5 99:13,15 100:13,23 101:6 102:10,11,16, 19 103:22 104:8 107:24 111:19,24 113:2 115:10,20 117:17 119:11,13,21 120:14 124:8,9 125:17 131:17 132:4 135:22 136:22 141:13,15,20 146:5 147:13 152:8,12

Index: recalled..representative

175:16 188:11,21 209:23 213:19 214:3 220:18 224:13 230:6, 10,15,20 231:6,10,14 233:3,12,18,22 237:9,16 239:22 240:4 242:11 recalled 23:25 28:17 98:18 242:16 recalling 18:7 receive 17:15 received 17:16 18:15,17 36:11 201:12 204:3 recent 9:25 37:12 211:17 212:19 213:15 214:15 recently 18:15 58:19 recess 36:7 98:13 139:11 173:22 215:12 reciting 13:25 recognize 52:10 recollect 215:21 recollection 10:23 120:23 145:3 214:7 215:24 record 6:10 11:20 21:16 34:22 36:10 57:23 67:14 68:14 83:19 98:11 99:5 133:14 140:15 143:15 144:12 145:3, 4 156:24 157:15 159:17 171:22 207:8, 14 218:11 recorded 144:10,11 175:8 207:5 recording 144:21 recordings 246:6 records 22:17 215:23 245:21 246:9 redistricting 212:15, 16,20 reduce 124:19 redundant 109:8	110:8 reelected 165:19 refer 63:6 130:14 177:3,5 217:10 reference 65:6 71:16 72:17 75:22 130:9 131:3 144:2 153:12 205:12,13 224:17 referenced 205:22 referencing 77:25 referenda 188:6 referred 121:16 224:10 referring 63:14,23 67:6 96:22 129:14 132:3 152:3 165:7 206:9,13 224:17 237:18 238:3,6,7 reflect 66:6 99:5 120:24 131:6 132:14, 17 reflected 37:16 69:10 121:21 reflects 48:5 reform 14:17 24:22 98:7 99:19,21 100:7, 9 102:13,18 103:4,12 105:15,18 107:8 111:8 116:19 121:2, 14 123:5 145:22 154:13,14,25 155:2 156:13 157:20 159:2, 6,14 168:5,12 193:16 reforms 238:2 refresh 113:14 119:9 215:23 refreshing 120:22 region 46:21 regional 46:23 registered 9:17 registrars 236:23 registration 9:16,18 registrations 8:15 regression 204:20	regulating 217:24 reject 183:2 185:13 199:12 rejection 182:23 relate 172:17 233:25 related 14:15 19:25 20:3 23:22 24:9 25:23 26:2,3 27:2,9, 13 30:17 33:14 35:6 36:17 38:20 39:8,10 40:6 42:22 45:19 46:23 48:19 57:17 58:3 60:3 69:18 70:12 71:11 76:12 77:14 78:16 79:2 83:16 98:17 101:3 102:5,12 104:2 111:21,23 117:7 118:18 120:5 129:3 132:7 133:15 135:23 136:5,21 137:17,20 138:6 143:9 144:10, 17 155:14 158:4,5 167:22 180:4,5,8 183:17 199:20 214:17 234:18 239:17 relates 44:3 relation 23:11 30:5 41:2 63:11 167:23 relations 48:10 relationship 16:12 26:6 181:25 183:13 relationships 28:9 release 52:15 131:5 133:10 released 131:15 relevant 36:15,19 158:22 176:24 184:4, 5 240:19 247:23 relied 94:11 176:24 rely 59:17 223:24 relying 121:25 122:4 123:7 remain 196:17 remaining 196:8	remember 29:3,5 98:24 99:6,14 102:13 136:24 141:14 161:12 185:10 216:14 218:5 220:8 remind 247:13 removal 114:11 remove 142:19 224:17 removed 144:5 removing 116:21 repeat 35:15 39:2 73:22 99:25 100:2 109:16 111:12 123:2 127:16 137:8 138:23 150:20 213:8 repeated 168:24 repeatedly 86:7 rephrase 80:8 106:16 122:13 166:21 replace 195:22 197:8 replacement 198:5 replicate 35:4 report 15:16,18,23, 25 16:3,4,7 17:18 19:17 20:21 21:4 22:13 23:6,8,10,12, 13 24:8,25 25:19 26:13 30:2,5,9 31:10, 18,24 32:2,6,8,18,21 33:2,7,8,14,16,18,20, 24 34:3,5,6,8,11 35:6,8,10,13,20,24 36:2,4,5,17,20,25 56:6,7,12,20,21 57:20,22,24 59:6,9, 24 60:2,12 61:21,22 66:5,10 68:16,22 69:12 70:10,17 71:15,17 72:18 74:13,22 75:13,14,22 76:8 83:15,17 84:2 86:13,16,18 91:10,21 92:8 93:25 94:7,23 95:2 96:6,25 97:12 99:19 100:6,15 101:10,13,22 102:4, 25 103:24 105:13	107:25 109:21 110:23 111:6,18,20 112:21 113:4 114:14 116:10 118:8,23 120:10,14,23 124:13, 14 126:5,22 128:7,9 132:5,8 134:19,22 135:14,16,25 136:20 138:4,15 139:15 144:17 146:9,24 147:15 148:4,6 150:14,15 151:6,7,8 153:21 158:23,25 167:8,13 174:8,12 177:4 178:9 181:3, 22,24 197:2 203:23 204:12,16 206:4,12 207:13,18 208:21 209:15 215:22 216:5, 6,10,16 220:20 227:18 229:5 232:22 234:6 235:8 236:4,8 237:5 243:18 245:14, 23 247:17 report's 108:22 reported 111:19 135:8,9 140:17 141:18 143:20 144:6, 16,23,24 146:21,23 147:22 167:12 175:2 203:12 220:5 reporter 6:2 11:10, 19 67:17 68:17,20 111:12 138:23,25 152:19 248:8 reporting 199:25 245:16,19 reports 35:11,18 92:14 95:13 112:14 151:11 207:11,15 209:7,20 210:2,6 211:2,8 245:10,21 reports' 58:13 represent 7:2 representative 126:23 127:4,11 128:4,12,23 129:9,19 130:14,20 131:2,12 132:10,15 133:8,20 134:11,23 135:19 136:9,14,23 140:4 141:23 145:6 160:8

Index: representatives..section

167:14 174:25 176:2 220:2,5,10,15,23 221:3,4 222:16,22 226:24 237:4,18 representatives 138:5 147:8 164:16 185:11 reproduce 34:16 request 177:11 248:2 requested 68:21 139:2 required 42:17,21 requirement 192:20 requirements 159:10 research 22:14 31:2 45:6,13,20,23 46:7 48:3 50:12 51:14,16, 19,22 61:5,11 62:24 63:5 65:5 69:23 70:6 74:11 75:11,23 79:25 80:10,21 82:23 83:12,14,16 84:7 85:8 87:12 89:21 91:3 95:13 99:20 100:8,24 101:6 102:4 103:18 104:16 107:2 113:21 116:12 119:4, 11 121:21 123:3,13, 17 131:11 133:6,7 135:12,15,22 137:2, 10 138:9 139:6 151:9 154:12 164:14 214:17 researched 47:10 69:24 74:15 84:4,20 researcher 184:25 researching 46:2 47:20 49:11 resources 155:11 respect 33:11,15,17 34:2 39:23 44:9,17, 18 49:7 50:19 70:13, 15 71:8 75:12,21 76:7 88:4 97:16 113:8 116:7,9 136:18 230:8,19 231:8 234:2 236:2 248:3	respected 166:25 Respectfully 155:25 respond 139:25 140:12 162:25 163:22 responded 25:3 140:9 163:2 167:23 192:25 209:13 responding 93:19 response 11:20 132:21 133:17 163:12,24 167:3 restate 15:20 113:16 122:25 195:19 205:16 restated 106:10 restoration 114:10 225:14,19,22 restored 225:15 restoring 132:12 restrictions 116:22 240:16 retain 214:6 retains 53:5 retention 9:10 16:22 17:2 return 99:18 203:18 returns 204:13 reuse 90:4 reusing 124:7 reveal 123:3 revealing 13:21 15:9 reverse 132:23 review 17:18 32:8 33:20 34:13 36:18 48:18 56:17 64:7 66:15 72:3 90:23 93:7 98:5 113:13 119:8,25 120:8 121:4 123:6 151:10 153:22 156:3 205:25 211:11 214:23 234:7,23 245:9,14 246:4 247:17,22	reviewed 32:2 34:9 44:17 56:19 99:6 114:20 135:13 156:6 159:17 171:24 180:2 206:11 209:4 219:8 reviewing 32:6 35:18 66:9 94:7 245:16 revise 100:16 112:15 146:8 157:7 159:8, 10,20 160:3,14 170:20,22 180:14 195:2 245:2,6 246:15 revised 62:19 71:19, 20,25 73:13 74:6,11, 16,23 75:5 105:21 120:20 157:9 158:16 171:25 183:20 197:18 203:21,22 revising 101:15,18 103:2,10 104:13 108:23 110:16 119:15,18 121:18 122:17 124:16 147:16 157:4 159:4 162:2 171:17 181:13 revision 103:5 104:12,16,23,24 105:4 107:23 108:8 110:14,24 112:19 113:6,21 114:2 115:6,16,25 116:11 117:2,25 123:8,12,19 124:25 125:9,13 134:25 136:4,8,18 145:24 147:19 160:9 170:18 171:19 180:17 181:10 182:21 183:17 208:22 210:22 218:19 219:2 224:5 revisionist 155:14, 17 158:13 159:18 revisions 101:2 102:5 110:4,18 117:3 118:17 122:2,18 123:16 147:20 148:2 162:5 201:2 219:6 245:5 revocation 76:15 79:3 83:22 216:23 231:2	rid 191:4 194:3 196:5 202:24 245:6 rights 7:12 39:8,11 40:5 43:17 44:2 114:11 132:12 178:18 179:8 197:5 201:11,18,22 223:11 225:14,15,19,22 rise 52:20 Riser 32:3,5 76:20 77:14 206:12 Riser's 32:14 33:2 35:25 rising 67:22 role 28:4 54:9,10 roles 54:4 rolls 8:16 9:4 rooms 239:7 240:15 rotate 53:17 rough 38:10 roughly 50:7 216:3 rule 147:25 219:10 233:10 rules 11:3 231:22 235:25 ruling 195:12 rulings 200:10,22 run 186:12 running 53:22 rush 248:12 S salary 21:14,19 save 229:25 scanning 219:9 scattered 109:7 110:8 scenario 172:12 194:19 scheduled 23:21 scholar 45:18 47:13	212:2 science 21:11 31:2, 21 39:17 40:23 45:11,15 59:16 71:4 168:19 169:2 182:9 185:19 186:2 188:4, 14 191:10 206:18 212:13 227:25 228:16 scientist 58:25 88:22 89:2,4 90:22 156:24 162:22 164:8 166:2 186:16 192:8 194:16 202:5,9 206:20 210:14,19 211:18 212:10 213:4,14,23 214:9,12 scientists 187:14 scope 13:11,20,25 15:10,11,14 22:4 46:18 127:5 129:10 136:15 185:14 220:11 221:13 screaming 197:6 screening 236:20 search 229:15,19 searched 229:22 searching 136:2 seat 46:11 53:4,5 55:19 second-to-last 143:19 secret 239:6 secretary 28:5,7,12 53:13,16 section 7:12 61:22 74:21 95:10 99:2,6 101:20 109:23 114:5, 16,19,21,24,25 117:7 118:4 119:9,15 120:3,5,19 121:7 122:7,16 123:11 124:16 126:16 128:10 129:3,20 136:25 137:14,17 138:11,13,16,19,20 152:24 153:5,8,13, 17,19,23,25 154:3,15 155:4,18 157:9,10,23

Index: section's..standard

158:5 160:5 168:13 180:14 195:3 206:6 220:24 221:5,7 235:7	service 76:14 83:21 176:8 216:22 217:10 229:7 230:9	sign 6:7 8:20 16:22	solution 207:7	84:11 101:6,23 102:10 104:8,10 105:21,24 113:3 115:22 121:12 124:13 130:18 136:11 145:18,19 147:13 209:9 235:10, 17
section's 137:5	services 30:13 76:15 83:22 143:9 144:15 216:23 229:8 230:14	significant 69:13 72:25 110:10 132:11	somebody's 127:24	specifically 19:25 22:12 28:16 29:14 39:25 41:20 43:19 48:21 51:13 54:22 58:18 65:13 77:17,24 86:16 100:13,23,24 101:6,21 102:14 103:25 105:5 111:24 112:17 117:6 121:11 135:23 170:15 181:22 213:7
section-by-section 119:17	session 118:20 122:3 160:11 174:2, 17	similar 69:18 126:6	sophomore 41:16	specificity 236:9
sections 43:14 78:4 98:5 101:20 103:8 108:19 110:16 113:14 114:3 121:18 147:21 148:16 157:12 159:8 181:14 221:8	set 134:13,14 184:17 189:15 194:8 247:15, 18	similarities 43:8	sophomores 41:7, 11	specifics 18:8 87:10 242:11
seek 12:24	Seth 23:16 30:4,7 175:14 246:19 247:3	simple 192:20	sort 34:12 93:21 111:2 140:21 184:16 214:22	speculate 50:14 187:7,25
seeking 116:2	setting 16:17 239:13	simpler 69:7 183:22	sound 11:22 13:3 103:15 119:2 146:15 176:23	speculating 130:23
selected 106:22	settings 229:13	simplified 222:4	sounds 9:21 36:13 150:22 182:8 225:21	spend 17:22 18:19, 22 19:10 20:16 45:16 51:18
selection 236:15	settled 8:10 9:8	simplifying 125:20	source 64:7	spent 18:2,4 29:7 49:11 51:10 215:21
semester 38:12,13 42:7	seventies 124:6 132:7	simplistic 172:17	sources 21:18	spoke 23:12 30:4 104:9 117:13 118:2 134:12,16 147:22 175:24 246:13,17
Senate 141:3,6 142:6 175:9	shake 11:20	simply 153:2	South 40:11 46:21, 25 48:10	spoken 30:6,19,23 193:19 223:19 236:13
senator 132:22 133:7 134:11 136:9 221:4,7,22 222:5	share 243:2	simultaneous 28:19 38:23 51:15 95:22 96:14 115:11 117:10 126:14 142:12,24 148:10 172:21,24 177:25 182:6 194:13 202:22 205:6 230:17 239:8,24 240:20,25 241:17 246:2	South's 47:8	sponsor 170:5 171:6
senators 138:5 147:7	shared 24:25 26:10	single 188:18	Southern 46:20,22 48:8	sponsored 172:3
send 50:16	sharing 241:22	sit 30:22 43:19 50:9 79:8,22 85:7 86:11 87:10 89:16 97:2 111:20 131:17 188:11,20 195:6 213:6 233:22	speak 6:21 23:2,7,19 30:10 116:9 246:10	spring 216:4
seniors 41:14	shield 240:24	sitting 10:20 26:18 27:5 49:14 50:2 66:8 84:13 86:3 90:10 96:18 119:10,21 158:3 164:19 167:25 213:8 235:23 244:21	speaker 23:16,17 145:23 175:15,17 176:6,9 177:6,13 246:19 247:8	staff 54:4,9,11 55:11 108:9 244:13
sense 14:10 42:9 51:7	shifted 132:10	situation 183:23 186:8 187:2 188:12 191:16 241:4 244:13	speakers 28:19 38:23 51:15 95:22 96:14 115:11 117:10 126:14 142:12,24 148:10 172:21,24 177:25 182:6 194:13 202:22 205:6 230:17 239:8,24 240:20,25 241:17 246:2	staffer 241:20
sentence 62:7 65:21,23 76:10 77:8, 14,21 78:12,22 79:6, 20 80:3 85:2,17 86:4, 21 87:18 88:4 92:9 94:23 96:9 129:17,21 131:15 132:9 134:7 143:19,22 148:13 220:25 225:5,23 226:22 229:5,6,9 233:14	shortening 110:7 124:24	situations 189:13 194:11 206:25 207:12 216:17	speakership 175:19	staffers 54:7 240:13
sentiment 67:22	shortly 33:23	slowly 11:12	speaking 117:19 155:10	stand 96:25 227:21
series 62:25	show 52:23 95:13 109:4,9 110:5 113:9 114:15 162:13,17 166:6 183:9	small 147:18	special 46:4,5 47:14 49:12,16,17 52:5,7, 10,11,18,21,22,25 53:5 214:14	standard 58:13 61:18 85:4 87:19
serve 16:10 46:10	showed 24:25 93:12, 13 188:8 208:25 218:3	Smith 33:21 36:3 140:4 206:14 222:16, 22	specialize 228:17	
served 21:8 26:4	showing 97:6 110:13 118:6 159:5 173:13	Smith's 34:2 35:4,6, 8	specific 26:12 33:9 38:17 43:14,20 45:2 50:24 59:18 70:11	
	shown 93:20 107:3			
	shows 136:7 193:9			
	sic 81:7 216:17			
	Siegelman 23:20,21 27:22 28:4,23 29:7, 13 30:8			

Index: standards..targeted

139:7 230:4,13 231:2,13,18,21 232:8,21 233:8,16,21 234:11 236:2,19,24 standards 169:19 200:23 231:17 standing 25:9 175:3, 6 standpoint 47:18,19 start 97:23 103:3 152:20 174:3 209:5 221:6 222:18 started 46:19 49:19 53:11 216:5 starting 20:8 37:11 92:8 107:20 152:16, 17 154:12 starts 146:8 state 7:11,20,23 8:5 9:2,23 17:11 19:20 22:8,11,22 28:5,13 42:2,5,8 53:13,16 59:9 62:19 84:25 88:12 104:23 105:15, 17 107:7 108:23 111:4 114:8 120:15 124:6 126:5 142:16 148:5,15,21 149:4,14 154:5 159:7 169:17 181:22 183:2 188:23 189:23 198:24 211:20 212:23 213:2, 21 222:21 232:23 state's 28:7 stated 64:15 75:10 78:14 79:17 90:14 91:20 94:25 96:12 103:5 108:22 110:22 169:15 172:20 175:25 190:12 216:3 221:2 statement 75:4 112:13 128:4,7,20, 21,25 129:15 132:3 140:10 200:15 222:12 224:15 statements 157:16 states 41:18 42:2,10, 20 44:7 48:20 65:23,	25 68:2 69:21 89:11 98:2 112:10,11 137:24 192:18 211:19 230:3 238:22 statewide 181:5 status 239:18 statute 71:20 85:24 93:3 96:7 182:19 213:2 229:24 235:13 statutes 39:10 71:24,25 234:8,18 statutorial 7:13 statutorily 122:12 statutory 97:10 128:15 129:6 130:5 133:22,24 135:2 185:4 stealing 221:25 step 185:9 Sterilization 76:20 87:5 sterilized 87:11 stilted 11:16 stipulations 6:3,5,9, 15 stood 24:20 stop 198:18,23,25 stories 22:17 story 24:25 53:3 streamline 160:14 streamlining 109:24 strike 116:7 190:21 201:20 203:14 220:24 strikes 179:6 striking 197:4 strong 187:20 188:9, 15 strongest 194:25 struck 189:12 190:22 199:16 students 42:3,7,20	43:16 56:14,15 studied 45:21 46:21 47:9 214:9 studies 226:14 study 214:11 studying 49:11 219:17 subcommittee 115:22 subheader 67:14 subject 28:14 47:25 247:22 submission 56:24 submit 17:4,7,9 submitted 35:20 56:18 151:11 submitting 23:13 35:12 116:18 subsequent 105:19 109:5 substantial 49:22 50:21 51:19 substantive 57:3,5, 14,15 substitute 141:14, 17,22 142:5,9,15 143:7,13,16,20 144:7,10,16 145:5,7, 15,19 succeed 12:22 successful 223:8 successfully 223:11 succinct 101:3 103:7 124:24 160:5 197:9 suffering 73:16 74:7 sufficient 90:16 109:5 sufficiently 93:12 suffrage 114:4,22 119:17 121:8 122:16 128:10 129:3 137:17 138:6,16 147:17 157:14 159:3,21 172:2 180:5,17	183:17 203:22 219:12,15 suggest 103:24 104:5 106:23 112:21 125:8,13 135:5 156:17 158:12 222:2 226:23 suggested 112:5 135:17 155:17 166:5 suggesting 140:9 154:15 155:3 158:9 222:23 suggests 163:20 174:8 sum 33:17 summarize 57:21 summary 207:20 summer 20:12 27:24 Sumter 7:19 10:9 support 28:22 86:3 88:3 104:23 116:18, 25 176:5 182:2,22 183:14 192:9 194:25 196:10 197:6,7 201:3 203:16,24,25 204:21 supported 180:15, 19 181:4 183:10,12 188:23 191:17,19 195:4 204:7 supporting 192:21 193:2 supremacists 25:2 26:11 Supreme 149:20 150:4 151:15 155:22 156:2 157:22 158:7 168:5,10,13 174:5 193:11 205:9 surprise 217:22 surrounding 82:2 90:24 125:18 136:7 143:16 162:4 surveying 54:8 suspect 203:16 suspicion 130:19	sword 240:23 sworn 6:20 223:24 syllabus 40:17 synopsis 207:19 system 225:13 T table 46:12 141:16 tailor 47:21 taint 62:15 70:21 76:6 77:2 78:5 81:19 95:18 96:21 taking 12:9 41:7 154:2 156:25 159:3 162:20 talk 11:12 30:16 31:2 39:9,11,17 41:3 43:6, 14 48:22 62:4 65:11 73:5 99:19,20 101:10 103:12 104:21 105:3, 6,13,18,20 106:19 107:22 116:24 121:17,25 122:17 124:14 135:2 148:4 158:25 197:2 203:23 220:15 221:11 241:21 245:23 talked 28:11 100:15 123:20 124:18 145:24,25 159:6 170:15 176:3,6,10 208:25 246:18 talking 40:19 42:24 45:12 53:24,25 70:10 71:18 80:4 100:25 103:3 106:18 107:7 109:9 110:16 118:6 155:7 165:6,8 186:22,24 197:21 198:10 216:16 217:11 220:6,10 246:16 247:3 talks 102:25 153:16 175:25 193:17 208:21 235:12 target 67:20 targeted 67:22

targeting 69:19 Task 148:5,15 149:4 taught 38:14 39:12 41:22 tax 89:11,17 103:14 179:19 189:5,23 190:5 191:8 193:8 196:6 200:8 202:4 203:10 taxation 148:2 219:10 taxes 88:11,18,19,23 89:5 191:3,5 202:14 teach 37:21,24,25 38:8,12 39:7,25 40:21,22 41:17,21 42:16,18,19 45:21 211:23 teaching 40:2,14 42:24 51:17 54:20 technocratic 202:19 telling 120:13 196:15 200:2,19 203:13 tend 45:22 term 53:19 63:11 95:12 138:2 167:15 209:2 term-limited 53:14 terms 43:7 81:9 109:6,25 110:7 112:2 123:23 160:4 218:19 terribly 194:3 territory 114:9 test 189:6,7,25 190:7, 16 191:4,10 192:3 193:9,18 194:8,15 195:12,15,22 testified 6:22 7:14, 24 8:6 10:9,10,11 56:6 91:13 92:12,25 94:2 175:12 208:11 215:20 237:19 testifies 139:22 testify 10:6 12:10 16:2	testifying 8:2 13:6 17:22 198:17,20,22 241:6 testimony 8:10 9:25 10:14,18,25 21:21 27:11 36:14 59:2 70:3 83:7,12 91:18, 19 92:15 94:4,6 98:25 99:8,9,12 120:2,11 121:5,25 123:6 124:8,9 130:16 136:7 139:17 143:15 206:24 223:24 226:8, 25 242:22 246:20 tests 191:13 195:6 text 218:12 thesis 52:4 53:7 54:3 156:15 thing 6:9 48:25 67:4 128:14 137:5 198:6 210:12 212:5 things 19:25 47:21 48:2,5,7,19 51:4 67:12 87:8 91:8 94:10 104:9 133:21 147:24 162:9 163:8 172:9,10 189:10 198:14 214:11 238:23 thinking 64:23 102:8 130:24 203:17 212:15 216:4 242:5 Thomas 176:9 thought 94:11 95:20 104:18 121:22 122:5 140:20 145:12 156:18 159:9 161:19 166:15 183:17,19 186:17 187:5 196:20 197:12,18 198:4 203:6 210:12 241:19 242:20 thousand 135:14 thousands 49:24 102:12 135:13 219:9 threat 67:24 75:7 three-and-a-half-hour 25:12	three-week 216:12 time 10:20 17:21 18:7,18 19:8,10,12 20:4 24:21,24 26:11, 19 29:7 45:16 47:6 49:23 50:11,21 51:8, 10,19,23 53:11,23 55:4 64:13,24 72:13 86:25 88:8 90:23 91:2,7 92:20,23 93:16 98:20 100:14, 17 102:14 106:8 107:22 110:3 120:2, 17,18 125:3 129:3 130:24 131:21,23 139:8 141:11,21 145:14 146:2,3,5 149:16 151:2 152:13 155:14 158:12,14 164:21 168:4,10 173:8 175:15 188:5 200:17 204:10 215:15,21 228:21 231:6,10 233:3 234:4 240:12 246:11 248:7 times 7:6,7 19:21 31:3 85:18 86:23 89:17,23 90:5,6,19 157:11 199:6,8 timing 64:11 92:13 233:18,23,24 234:5 title 52:8 titled 38:17 63:18 66:13 today 7:3 10:21 12:7, 14,19 17:22 28:24 43:19 84:12 96:11,18 152:25 165:6,7,9,10, 11,16 188:11 195:6 235:24 236:10 today's 22:25 23:3 told 38:5 50:15 166:14,24 173:16 177:6 196:22 197:23 198:13 199:13 217:22 232:3,14 241:18 244:12,14 Tom 176:10 Tony 128:12,23 132:10 220:2 221:3,4	top 148:12 152:16 178:22 230:6,10 239:6 topic 21:2,3 39:23 44:2,6 45:11 50:22 51:9,11 61:6 102:17 119:12 165:2 209:8, 15,20 topics 235:9,18,20, 21 total 18:14,21 33:11, 17 187:15 totality 129:2,18 130:3 138:3 156:24 157:15 171:22 184:25 187:10 206:21 totals 181:5,20,25 Traditionally 6:7 transcribing 11:10 transcript 30:15 131:18 133:14 135:8 143:9,10 248:9 transcripts 143:11 245:10,20 246:5,10 transporting 221:25 travel 17:25 18:3 19:6,16 treasury 53:15,17 trial 7:15 10:6 trick 115:14 triggered 160:17 trip 19:25 20:8,11,14, 20,24 trips 19:22 true 50:19 113:5 200:9 truth 6:21,22 167:5 truthful 12:14,19 turn 37:9 50:12 56:5 103:11 126:21 128:8 132:8 139:14 152:14 173:14 218:9 229:4 turning 165:20	turpitude 60:15,21 61:6,13,23 62:5,14, 18 70:10 71:19,23 72:4,16 74:19,25 75:13,25 76:4,13,22, 25 77:16 78:2,17,20 79:15 80:2,11,15,17, 25 81:18 82:17 84:5, 8,14,21 85:3 86:22 87:9,15,19,24 88:6 90:14 91:4,11,21,25 95:3 96:20 97:4,6,17 99:24 100:11,21 101:11 102:3,9,22 103:21 104:20 105:7, 11 106:3,24 111:10, 17,24 112:7,16,24 113:11,24 114:7,13 115:7,18,23 116:2,15 117:15,21 118:7 119:7,20 120:9,25 121:9,22 122:9,22 123:4,18 124:2,11 125:2,7,14,23 126:8, 18 127:6,14 129:11 136:17,22 137:4,12, 20 138:4,10,12,18 139:23 140:13 142:20 144:5 146:12, 19 147:3,12,14 148:8,19 149:5,6,16 156:18 167:15 177:18,22 178:5 179:24 180:8 205:3, 15,24 208:22 217:19, 24 220:11 221:14,23 222:3,7,11,23 224:19 225:7 229:12,16 232:24 234:16 235:22 two-party 46:24 type 17:24 27:15 33:23 35:5 48:18 50:12 85:23 158:13 195:23 199:25 types 148:2 171:21 U U.S. 39:13,18 61:25 179:18 200:7 202:3 UC 66:15

Index: uh-huh..witnessed

uh-huh 11:21	134:15 144:14	urged 224:16	Void-for-vagueness 63:19	48:16 93:20 112:12
ultimate 158:22	149:15 150:7 156:8	usual 6:3,5,8,14	Volume 66:15	117:8 118:14,18
159:15 168:13 185:3	164:24 168:7 170:2		volunteer 54:24	121:7 137:14 138:16
ultimately 15:12	181:17 182:14	V	volunteered 55:3,4, 8,15,17	165:3 178:18 179:8
unanimous 185:8	205:23 220:11,23		vote 9:17,18 114:10	197:5,10 201:11,18, 21 223:10
unanimously	221:13 222:6,15	vague 225:7	voted 43:6 196:19 203:19	
174:18 180:14 181:6	understood 13:2	valid 152:25	voter 7:13 8:14,15,16 9:16 10:11 48:19 92:25 93:18 117:4 118:3 181:25 182:21 187:10 190:19 194:25 197:23 201:23 202:4,5,10 203:16,17	W
uncomfortable	24:23 65:16 102:23 139:5 142:21 147:11 205:14,17 226:8	variations 46:23	voters 104:15,17,22 106:19 116:24 128:18 157:19 180:11,15,18,22 181:4,20 182:13,24 183:4,9,14,16 184:2, 21 185:10,11,12,15, 19 186:3,16 187:4, 11,19 188:2,9,22 189:3 190:13 191:6, 12,17 192:13,21,25 193:25 194:5,9,18 195:3 196:5,9,15,19 197:6,16,23 198:4,13 199:12 200:2 201:3, 8,12 202:16 203:5,13 204:7 205:2,9 207:3, 10 210:25	waded 247:21
213:18 214:2 241:6	undertake 34:12 35:3 61:5	varied 45:6	voting 7:12 38:15,16, 17,18,20 39:7,8,10, 11,20,24 40:4,5,15 41:4 43:17 44:2	wait 11:17 226:19
uncommon 123:10	Underwood 149:21 150:5,10,17 151:24 168:6,9 174:6 205:10	varies 42:6		waiver 6:7
unconstitutional	undesirable 66:14 67:23 69:2 75:6 218:4,13,16	vary 38:13 187:17		walk 187:13
194:16,18 195:7,12, 21 197:25 202:12	unfavorable 182:25	vast 214:11		walked 203:17
uncover 99:21 100:8 101:24 103:18 112:20 113:20 115:5, 15 116:12 117:12 119:4 121:20 122:21 123:17 125:12 133:7 135:5 146:9,16 160:22 174:3 177:15, 20 178:4	unique 47:8 48:9 182:18 185:6	Venable 160:9 174:20,25 176:2 247:10		wanted 15:6 36:22 56:5 93:17 108:21 109:9 132:22 144:4 203:5,21 245:3
uncovered 134:16	United 41:18 42:10, 20 44:7 65:25 68:2 69:21 211:19 238:22	verbal 11:20		wanting 24:21 107:7 164:22,23 167:24
undefensible 203:15	University 21:11 42:16 176:8 227:24 228:10,14	verbally 30:10		War 40:12
undergraduate 38:2,6,9,11	unknown 95:11	version 37:16		Waters 223:24 246:20
underlying 234:7	Unlike 11:15	versus 7:21,22,25 10:12 149:21 150:5, 10,17 151:24 168:6,9 174:6 182:3 205:10		ways 52:20 82:4
understand 12:6,23 24:20 26:6 39:21 58:11 59:11 63:11 65:9 77:21 82:7 92:18 116:2 135:11 136:15 143:12 144:19 151:23 153:8, 23 156:11 158:19 170:25 171:4 183:21 185:23 190:2,8 192:14 193:13,23 194:14,19 210:13 221:24 222:5 226:25 241:11	unmarried 65:20 69:14 73:2	veterans' 76:15 83:21 216:22 229:7 230:13		week 51:2 227:19
understanding 13:11,20,24 14:13 19:11 25:8 26:21 58:15 66:6 68:10 69:10 73:14,17 74:5 75:2 78:10 104:24 131:24 133:13	unpersuasive 10:14 99:2,9,16	video 11:16		week's 50:5
	unpopular 52:24	videoconference 11:6		weeks 64:18,25
	unrelated 21:3	view 26:15 88:23 166:16 168:19 169:2, 14 170:5 171:9 183:4 186:4 211:18 213:14		Weidler 139:18,21 140:6,9,19 224:8,10
	unsuccessful 193:17	viewed 144:24		well-formed 205:18
	unwarranted 139:23 225:9	views 168:21		West 21:11,15,19 37:21 42:16 176:8
	update 170:24 197:8, 19	violates 153:6		Westlaw 229:15 234:9,14 235:7
	updated 206:7	Virginia 7:23 10:10 92:25 93:14,17 94:15 209:14		whiskey 221:25
	updates 37:14	visa 240:7		white 25:2 26:11 68:2,8 69:22 179:17 182:3 200:7 202:2 203:8
	upper 39:17	visa-related 239:18		whoa 13:16,17
	upper-level 41:13	visited 19:18,19		window 216:12
		voices 164:17		witnessed 241:19 244:6

witnessing 241:20 woefully 67:11 woman 53:13 women 21:7 23:22 26:4,5,7 28:8,10,12 40:8 46:8,9,11 47:7, 13,24 50:20,24 51:9 53:10,20,21 65:20,25 66:14 67:23 69:2,14 71:9 73:2 75:6 90:11 104:15,17,22 106:19 107:13 116:24 202:12 214:13 218:4 word 44:24 62:9 70:15 78:7,13 80:14 152:17,21 154:2 218:12 226:6 242:4 words 57:20 93:22 200:16 201:24 work 9:8,11 13:12, 15,21 14:20 15:10, 11,15 16:23 17:4,24 18:12 19:17,22 21:22 23:10 28:12 30:17,25 32:15,21 33:2,6,12, 14 34:16 35:6,12,19 46:19 47:13 48:7 49:5 50:5,20 54:16 56:25 71:5 105:3 113:8 119:17 122:20 162:21 169:21 175:24 239:18 245:18 worked 7:10 30:13 49:15 54:12 55:3 56:15 109:23 216:4, 7,9 238:8 242:15 working 18:4 20:3,5, 6 21:6 47:4 48:5 49:20 50:11,17 97:10 101:15 119:14,15 120:3 122:3 123:8 159:8 164:20,25 165:10 170:20 214:18 216:6 221:9 224:4 240:12 246:11 world 43:3 195:25 worth 50:5 52:11 worthy 197:10	Wright 7:19 write 45:23 47:2,7,21 56:7 59:12,14,17 70:9,25 76:24 101:13 116:17 134:19 138:4 140:3 141:18 144:23 167:8 184:23 writer 179:15 200:19 writers 197:11 writing 29:9 34:11 56:12 95:2 104:22 124:17 151:7 159:20 172:19 216:5 written 14:15 33:7 43:22,25 50:25 65:11,17 66:5 68:22 72:23 86:15 88:10 95:20 97:2 106:21 109:21 120:13 128:16 130:6 131:10 132:16,17 144:22 148:14 189:11 246:9 wrong 158:10 wrote 23:10 69:12 77:13 94:3 100:15 116:21 150:14 172:4 173:5 174:14 Y year 19:4 73:7 216:7 years 9:6 28:9 41:16 73:9 175:16 193:16 244:17 years' 52:11 yes-or-no 115:14 yesterday 6:16 248:10 yield 104:16 Young 116:20 117:8 Z Zohby 141:23 144:4 145:7

EXHIBIT 3



Deposition of:
Michael Waters

July 11, 2019

In the Matter of:
**Thompson, Treva, Et Al. Vs. State Of
Alabama, Et Al.**

Freedom Court Reporting
800.808.4958 | calendar-al@veritext.com | 205-397-2397

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA

3
4 CASE NUMBER: 2:16-CV-00783-ECM-SMD

5
6 TREVA THOMPSON, et al.,

7 Plaintiffs,

8 vs.

9 STATE OF ALABAMA, et al.,

10 Defendants.
11

12 S T I P U L A T I O N

13 IT IS STIPULATED AND AGREED by and
14 between the parties through their respective
15 counsel, that the deposition of Michael
16 Waters may be taken before Sara Wilson, CCR,
17 at the offices of Alabama Attorney General,
18 at 501 Washington Avenue, Montgomery, Alabama
19 36104, on the 11th day of July, 2019.
20

21 DEPOSITION OF MICHAEL WATERS
22
23

1 IT IS FURTHER STIPULATED AND AGREED
2 that the signature to and the reading of the
3 deposition by the witness is waived, the
4 deposition to have the same force and effect
5 as if full compliance had been had with all
6 laws and rules of Court relating to the
7 taking of depositions.

8 IT IS FURTHER STIPULATED AND AGREED
9 that it shall not be necessary for any
10 objections to be made by counsel to any
11 questions except as to form or leading
12 questions, and that counsel for the parties
13 may make objections and assign grounds at the
14 time of the trial, or at the time said
15 deposition is offered in evidence, or prior
16 thereto.

17 IT IS FURTHER STIPULATED AND AGREED
18 that the notice of filing of the deposition
19 by the Commissioner is waived.

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I N D E X
EXAMINATION

	PAGE	LINE
BY MS. LANG.....	10	20
BY MS. MESSICK.....	171	8

EXAMINATION CONTINUED

	PAGE	LINE
BY MS. DANAHY.....	247	12

PLAINTIFF'S EXHIBITS

	PAGE	LINE
Plaintiff's Exhibit P1 - Copy of excerpts from the Proposed Constitution from 1973	64	11
Plaintiff's Exhibit P2 - Copy of Proposed 1979 Constitution in newspaper format.....	101	16
Plaintiff's Exhibit P3 - Report of the Alabama Citizens' Commission on		

1	Constitutional Reform.....	159	1
2	Plaintiff's Exhibit P4 - This is		
3	similar to Exhibit 3		
4	but is more of a		
5	complete report.....	159	23
6	Plaintiff's Exhibit P5 - Copy of a		
7	agenda for a 2002		
8	committee meeting.....	162	13
9			
10	DEFENDANT'S EXHIBITS		
11		PAGE	LINE
12	Defendant's Exhibit 1 - Copy of		
13	Gov. James' inaugural		
14	address in Jan of '79.....	172	1
15	Defendant's Exhibit 2 - Copy of a		
16	speech that Mr. Waters		
17	gave to the AL Bar		
18	induction ceremony.....	174	20
19	Defendant's Exhibit 3 - Copy of a		
20	speech Mr. Waters put		
21	together on		
22	constitutional reform.....	177	12
23	Defendant's Exhibit 4 - Copy of a		

1	letter by Mr. Waters		
2	dated Feb. 20, 1979.....	180	23
3	Defendant's Exhibit 5 - Copy of a		
4	letter from Mr. Waters		
5	to Myron Thompson,		
6	dated Feb. 23, 1979.....	182	15
7	Defendant's Exhibit 6 - Copy of a		
8	memo from Keith Norman		
9	to Mr. Waters.....	186	8
10	Defendant's Exhibit 7 - Copy of a		
11	letter from Annette		
12	Dudgeon to Mr. Waters....	188	19
13	Defendant's Exhibit 8 - Copy of a		
14	synopsis of proposed		
15	amendments presented by		
16	the AL Constitutional		
17	Commission.....	191	9
18	Defendant's Exhibit 9 - Copy of		
19	the text of the		
20	proposal (draft)		
21	printed in a newspaper .	195	13
22	Defendant's Exhibit 10 - Copy of		
23	a memorandum to the		

1	constitutional		
2	committee that Gov		
3	Brewer appointed, dated		
4	Oct 1970.....	196	20
5	Defendant's Exhibit 11 -		
6	Comparisons of Section		
7	8, Suffrage & Elections		
8	on the 1901		
9	Constitution & the 1973		
10	proposal.....	199	20
11	Defendant's Exhibit 12 - Copies		
12	of documents from Gov.		
13	James' 1979,		
14	through '83		
15	constitution revision		
16	files.....	207	21
17	Defendant's Exhibit 13 - Copy of		
18	Vol. 2 of transcripts		
19	for committee hearings		
20	related to Gov. James'		
21	proposal.....	210	2
22	Defendant's Exhibit 14 - Copy of		
23	transcript entitled		

1	Joint Interim		
2	Committee, dated Feb 6th. 218	4	
3	Defendant's Exhibit 15 - Copy of		
4	a continuation of the		
5	Joint Legislative		
6	Committee's hearings on		
7	the Constitution &		
8	starts on p. 115..... 221	13	
9	Defendant's Exhibit 16 - Copy of		
10	the Feb. 28th		
11	continuation of the		
12	hearings on the		
13	Constitution..... 224	9	
14	Defendant's Exhibit 17 - Copy of		
15	a transcript dated Mar.		
16	7, 1979, of hearing on		
17	the Constitution..... 231	19	
18	Defendant's Exhibit 18 - Copy of		
19	Senator Bedford's draft		
20	constitution..... 241	11	

* * * * *

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3

4 CASE NUMBER: 2:16-CV-00783-ECM-SMD
5

6 TREVA THOMPSON, et al.,
7

8 Plaintiffs,
9

10 vs.
11

12 STATE OF ALABAMA, et al.,
13

14 Defendants.
15

16 BEFORE: Sara Wilson, Commissioner.
17

18 APPEARANCES:
19

20 DANIELLE LANG, ESQUIRE, of CAMPAIGN
21 LEGAL CENTER, 1101 14th Street NW, Suite 400,
22 Washington, DC 20005, appearing on behalf of
23 the Plaintiffs.

 MOLLY DANAHY, ESQUIRE, of CAMPAIGN
LEGAL CENTER, 1101 14th Street NW, Suite 400,
Washington, DC 20005, appearing on behalf of
the Plaintiffs.

1 APPEARANCES: (Cont.)

2 MISTY MESSICK, ESQUIRE, of ALABAMA
3 ATTORNEY GENERAL, 501 Washington Avenue,
4 Montgomery, Alabama 36104, appearing on
5 behalf of the Defendants.

6 WINFIELD SINCLAIR, ESQUIRE, of
7 ALABAMA ATTORNEY GENERAL, 501 Washington
8 Avenue, Montgomery, Alabama 36104, appearing
9 on behalf of the Defendants.

10 ALSO PRESENT: TALMEDGE BUTTS
11 TREASURE BAILEY
12

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1 I, Sara Wilson, CCR, a Court
2 Reporter of Pike Road, Alabama, acting as
3 Commissioner, certify that on this date, as
4 provided by the Federal Rules of Civil
5 Procedure and the foregoing stipulation of
6 counsel, there came before me at the offices
7 of Alabama Attorney General, 501 Washington
8 Avenue, Montgomery, Alabama 36104, beginning
9 at 10:05 a.m., Michael Waters, witness in the
10 above cause, for oral examination, whereupon
11 the following proceedings were had:

12 MICHAEL WATERS,
13 being first duly sworn, was examined and
14 testified as follows:

15 COURT REPORTER: Thank you.
16 Usual stipulations?

17 MS. LANG: Yes, that's fine.

18 MS. MESSICK: Yes, please.

19 EXAMINATION

20 BY MS. LANG:

21 Q. Good morning, Mr. Waters.

22 A. Good morning.

23 Q. We just met, but could you

1 state your full name for the Record.

2 A. Michael David Waters,
3 W-A-T-E-R-S.

4 Q. And, Mr. Waters, you're an
5 attorney; is that right?

6 A. Correct.

7 Q. Okay. So you're familiar
8 with depositions, but I'm still going to go
9 over the ordinary instructions. Have you
10 ever actually been deposed before?

11 A. I have.

12 Q. All right. In what
13 circumstances?

14 A. I've been an expert witness
15 in maybe -- I can't remember, three or four
16 cases involving -- over the last maybe twenty
17 years, involving corporate and securities
18 law. The most recent maybe was ten or twelve
19 years ago in my former law firm in the mid-
20 1980s, they were sued, a malpractice suit, on
21 some transactions that I was a witness for on
22 behalf of my law firm. And so it's five or
23 six depositions.

1 Q. Have you ever been deposed
2 about any of your work related to the
3 constitutional commissions or the attempt to
4 rewrite the Constitution?

5 A. I have not.

6 Q. Okay. And so the ordinary
7 instructions, and let's both try to always
8 ask, you know -- give our answers verbally,
9 no shaking our heads and whatnot.

10 A. Right.

11 Q. Say yes or no. I'll do my
12 very best not to speak over you when you're
13 giving an answer, and you'll do your best to
14 not speak over me while I'm asking a question
15 so the court reporter can take it all down.

16 Ms. Messick may object to the
17 form of my question. Unless -- Unless
18 there's a specific instruction otherwise, you
19 should just go ahead and answer the question.
20 If you don't understand my question, I won't
21 be offended. Please do let me know, and I'll
22 ask for clarification -- and ask for
23 clarification. If you don't ask, I'll assume

1 you understood my question. Is that fair?

2 A. That's fair.

3 Q. Okay. And we will, I
4 imagine, take some breaks today. And that's
5 totally fine. Ask whenever you want a break.
6 All I ask is, is that if I've already asked a
7 question, that you answer that particular
8 question, and then we can take a break. Does
9 that all sound good to you?

10 A. That sounds good.

11 Q. Okay. Are you aware -- Are
12 you on any medications today that would
13 affect your ability to -- your memory or your
14 ability to answer truthfully?

15 A. I am not.

16 Q. And do you know of any other
17 reason, other than the ordinary passage of
18 time for some of these events, that would
19 hinder your ability to answer truthfully
20 today?

21 A. I'm not aware of any.

22 Q. Okay. You were served with a
23 subpoena in this case; is that right?

1 A. Correct.

2 Q. And the subpoena asked you
3 for documents in addition to your testimony
4 today; is that right?

5 A. Correct.

6 Q. All right. For the Record,
7 I'll say I was given one box of documents
8 earlier this morning for me to review that I
9 understand that you gathered to respond to
10 this deposition. Are there any additional
11 documents that you have with you today?

12 A. There are.

13 Q. Okay. Do you -- Are those
14 them right there (indicating)?

15 A. These are the ones.

16 Q. Okay. Can you hand them over
17 to me? Thank you.

18 A. Yes.

19 Q. And so, can you tell me
20 who -- how did you go about preparing all of
21 these voluminous documents?

22 A. I have in my office some
23 bankers' boxes like that one behind you where

1 over the years, I just put stuff in boxes
2 that may have related to some of the
3 constitutional projects I was involved in.
4 There were four all together. The primary
5 one being when I was legal advisor for Fob
6 James. That's where most of the documents
7 are.

8 So when I received a subpoena
9 and talked to Misty about what to produce, I
10 went through those boxes and tried to pull
11 out the documents that looked like they would
12 be responsive to the subpoena.

13 Q. Thank you.

14 Did anybody help you with that
15 project?

16 A. Nobody, other than a file
17 clerk making some copies for me.

18 Q. Okay. And were there any
19 documents that you withheld because you
20 considered them to be privileged?

21 A. No. There were no documents
22 I withheld because I considered them
23 privileged, even though there's some

1 documents in there that relate to maybe some
2 notes on conversations with Governor James
3 when I was legal advisor. There's some
4 letters in there from outside parties, but I
5 did not -- I did not attempt to withhold
6 something on the basis of privilege.

7 Q. Okay. So I'm just going to
8 go through some background questions to try
9 to get to know you.

10 A. Sure. Uh-huh.

11 Q. Can you tell me about your
12 educational background?

13 A. I went to college at Duke
14 University. Graduated from the Cullman High
15 School in Cullman, Alabama, which is north of
16 Birmingham. I went to college at Duke
17 University and got a BA in History. Spent
18 two years at Oxford University and got a
19 Master's in what was called Philosophy,
20 Politics and Economics. It's sort of the
21 typical liberal arts program at Oxford. Then
22 attended law school at the University of
23 Alabama and received a J.D. in 1977.

1 Q. Thank you.

2 While you were in law school,
3 where did you spend your summers, if you
4 recall?

5 A. Yes. Actually, I -- I did
6 one year of law school after college.

7 Q. Okay.

8 A. Then I got a Rhodes
9 scholarship, so then I left law school after
10 the first year and went to Oxford, then came
11 back and finished law school. So after my
12 first year in law school -- No. I think
13 after my first year of law school I was at
14 home, getting ready to go to Oxford.

15 After my second year of law
16 school, I clerked at the law firm of Bradley
17 Arant Rose & White in Birmingham. That was
18 after my second year, and that's where I went
19 to work after graduation. But I spent one
20 summer clerking for the Office of the
21 Comptroller of the Currency in Washington,
22 working on banking, sort of banking legal
23 issues. And frankly, I'm trying to remember

1 which summer that was. That may have been
2 after -- I think that was -- I'm not sure.

3 Q. It doesn't matter.

4 A. That may have been after my
5 first year of law school before I went to
6 Oxford.

7 Q. Is that in Washington, D.C.?

8 A. In Washington, D.C.

9 Q. Okay. When you were in law
10 school, did you publish any academic papers?

11 A. I did.

12 Q. On what topics?

13 A. I was editor of something
14 called the Journal of the Legal Profession,
15 which was a journal that related to
16 professional issues, ethical issues. And I
17 did a student commentary, a student note, on
18 representing the vendor and vendee in a
19 single transaction and getting conflict
20 waivers.

21 Q. I'll take your word for it.

22 A. I don't think I've read it
23 since I wrote it.

1 Q. Fair enough.

2 You mentioned just a moment
3 ago after law school, you joined a law firm;
4 is that correct?

5 A. Correct.

6 Q. And what was that law firm
7 again?

8 A. Bradley Arant Rose & White.

9 Q. And what kind of law were you
10 practicing there?

11 A. I started in 1977, and was
12 with them until I went to work for Fob James
13 commencing in December of '78. In those
14 days, associates did a little bit of
15 everything. So I did some litigation, some
16 corporate work, some public finance work. A
17 little of everything that anybody wanted to
18 give me.

19 Q. And how was it that you came
20 to be hired by Governor James?

21 A. Yes. Let me give you a
22 little bit of background on that.

23 Q. Please do.

1 A. In the spring of my senior
2 year in college, I had one course remaining
3 to graduate. So I moved back to Alabama, and
4 did that course at Spring Hill College in
5 Mobile. I did that because Senator John
6 Sparkman was running for reelection as United
7 States Senator from Alabama. He was, I
8 think, fifth in seniority in the Senate.

9 Even though he was a Southern
10 Senator from the '40s and '50s, he was very
11 progressive. And one of his campaign
12 managers was a man named Jack Miller. Jack
13 was probably seven years older than me. And
14 he recruited me and some others to be -- to
15 be sort of youth coordinators in the Sparkman
16 campaign. And so I came back, and for about
17 six months, worked in the Sparkman campaign
18 as a youth coordinator. And that's where I
19 worked very closely with Jack Miller.

20 And part of Jack's approach in
21 working for Sparkman was to develop a group
22 of young people who wanted to make progress
23 in the State of Alabama. I was one. And

1 Sparkman got reelected and served one more
2 term. When Fob James then announced that he
3 was going to run for Governor in 1978, that
4 was six years after that Sparkman campaign.

5 His campaign was not -- was
6 having a difficult time getting off of the
7 ground, and a friend of his recommended that
8 he talk to Jack Miller, who -- and Jack
9 agreed to be his campaign manager, so that
10 Jack then recruited me to do some work in
11 Fob's campaign, which I did. And I was not
12 the only one that Jack recruited, but Jack's
13 philosophy and the reason he went to work for
14 Fob, and I think he believed that Fob agreed
15 with him, was to try to be progressive for
16 the State of Alabama, move away from the
17 Wallace heritage, Wallace at that point,
18 either Wallace or Ms. Wallace, had been
19 governor since 1972, other than the two years
20 that Albert Brewer was governor. And so Jack
21 recruited a number of people to work both in
22 the campaign and then encouraged people to go
23 to work for Fob as part of his staff, and I

1 was -- I was one of those.

2 Q. Thank you for that.

3 I have lots of follow-up
4 questions now.

5 You've mentioned Senator
6 Sparkman and then later Fob James, both, you
7 know, were relatively progressive, looking
8 for progress for Alabama, and you mentioned
9 the Wallace heritage. I wonder if you can
10 just tell me what you mean by progressive?

11 A. Sure. In 1972, when I was
12 working in the Sparkman campaign, and I'm
13 going to go back a little bit before that,
14 but just to lay the foundation, Bob Vance,
15 his son is a circuit judge in Birmingham.
16 I'm talking about the 11th Circuit Judge who
17 was killed -- murdered with a bomb that
18 showed up at his home. Bob Vance was very
19 liberal, a very liberal Democrat, very
20 progressive, very much opposed to George
21 Wallace and the segregation past.

22 In the 1972 Democratic
23 convention where McGovern was nominated,

1 there was a challenge to the elected
2 convention delegates from Alabama who were
3 what were then called National Democrats,
4 namely, Democrats that supported the
5 Democratic Party, not the George Wallace
6 faction. But there was a challenge by
7 Wallace delegates to try to get seated at the
8 convention. That's the year Wallace was
9 shot, and he was still technically a
10 candidate.

11 So Bob Vance recruited some
12 young people, I was one of them; Johnny Johns
13 from Birmingham was one; Palmer Hamilton, who
14 later was one of my law partners was one, to
15 go to down to Miami to the Democratic
16 convention and lobby for the seating of these
17 National Democrats who were properly elected.
18 And we were assigned various delegations to
19 lobby, and I did, and Vance prevailed, and
20 the National Democrats were seated.

21 When I grew up -- Well, in
22 1958, Wallace ran for governor the first
23 time. I may get a little choked up because

1 of my father. My dad was a disabled veteran.
2 And in '58, he voted for Wallace because
3 Wallace was the progressive running against
4 John Patterson, who was clearly the more
5 conservative. And my dad showed me the
6 ballot when he went to vote in the Primary
7 and he said, who are we voting for? And I
8 looked at it, and I was eight years old, and
9 it was a long list of names in the Primary.
10 He said: His last name begins with our last
11 name. So I found the W and I said: Wallace.
12 He said: That's right.

13 In '62, Wallace ran again. He
14 actually got elected in '62. And I remember
15 going to the polls with my dad, and I said:
16 Who are we voting for? Are we voting for
17 Wallace? And he said: No. He said:
18 Wallace preaches hate. Hate against the
19 Federal Government. Hate against people, and
20 I will not vote for him.

21 That laid a foundation in my
22 mind that in the State of Alabama, you had to
23 move away from George Wallace, and you had to

1 open up state government to people of all
2 ages and color. And I have essentially been
3 a liberal Democrat since. And that's in
4 large part because of my father's -- my
5 father's sort of training.

6 He was always very open, very
7 progressive, very much against the
8 segregation speeches that Wallace gave. And
9 that's just part of my background. And
10 that's what appealed to me about going to
11 work for Fob James, because although Fob was
12 a business person who had not been really
13 involved in politics in the past, and had
14 been a Republican at one point, given Jack
15 Miller's attitude, which paralleled mine, and
16 given the fact that Jack had been his
17 campaign manager, Fob appealed to me as a
18 clear break from the Wallace past. I
19 apologize for when I talk about my father, I
20 get choked up.

21 Q. Not at all. I say always
22 preach that folks should take their kids to
23 the polls. I'm glad that your father did

1 that, and it left an impression.

2 You mentioned Jack Miller.

3 Can you just fill me in on who Jack Miller
4 is?

5 A. Yes. Jack, he died ten years
6 ago of cancer. He was from Mobile. He was a
7 lawyer. He practiced law briefly in
8 Montgomery. He went to Duke University, and
9 then went to Alabama law school. After a
10 brief law practice in Montgomery, he moved to
11 Washington to go to work for Congressman
12 Walter Flowers. And then he was executive
13 assistant to George LeMaistre, who was
14 chairman of the Federal Deposit Insurance
15 Corporation.

16 When he finished that in about
17 1978, he moved back to Alabama to start his
18 law firm. That's when he worked -- ran the
19 campaign for Fob James. But he also
20 established a law firm, and had his own law
21 firm until he died in 2009. And, in fact,
22 when I finished working for Fob James, I went
23 to work for that law firm for about seventeen

1 years.

2 Q. And during the Fob James
3 election, was he campaigning on an explicitly
4 antisegregationist platform, or was it more
5 your understanding that that was his
6 underlying direction?

7 A. I think what Fob campaigned
8 on, I don't recall that he necessarily used
9 the term segregation. But what he did
10 campaign on was moving away from the past
11 moving away from Alabama's kind of -- I don't
12 think he used the term closed minded, but I
13 think that's what he meant -- to move away
14 from the past. His campaign slogan was:
15 It's time for a new beginning.

16 And he used that phrase with a
17 number of things. A new beginning in terms
18 of his education program. He called it: The
19 War on Illiteracy. He wanted to look for
20 ways to promote jobs, and part of that was to
21 improve highways and the infrastructure in
22 the state. He proposed a gasoline tax for
23 that.

1 He ran on a platform of a new
2 state Constitution. Part of that was we had,
3 under the state Constitution, particularly
4 then, it's been improved somewhat since, we
5 had a lot of statewide votes on local issues.
6 We still have that to some extent, but it was
7 rampant in those days where if there was a
8 constitutional amendment that related to one
9 county, the whole state had to vote. It was
10 expensive, time-consuming, and cumbersome as
11 a constitutional matter.

12 I -- I certainly think Fob ran
13 on that basis because in his inaugural
14 address, he quoted Dr. Martin Luther King and
15 quoted him very favorably. When he was
16 governor, he appointed Gary Cooper as part of
17 his cabinet. He was the first African
18 American to serve in a senior governor's
19 cabinet post.

20 When there was a vacancy on
21 the Alabama Supreme Court, he appointed Oscar
22 Adams, an African American, the first African
23 American on the Alabama Supreme Court.

1 It was -- justices are
2 elected; but if it was a vacancy, the
3 governor could fill it. He filled it with
4 Oscar Adams.

5 So while I don't think when
6 Governor James ran, he necessarily said I'm
7 going to get away from the segregationist
8 past -- I don't recall him using that term --
9 I think a lot of people that worked for him
10 and heard him felt that that's what he was
11 doing.

12 Q. Fair enough. I'm going to
13 skip over your work with Governor James for
14 now because I think we'll come back to it.

15 What did you do next?

16 A. After Fob James?

17 Q. Yes.

18 A. I went at Miller, Hamilton,
19 Snider, & Odom in Mobile. I moved to Mobile.
20 That was 1980. July of 1980. I was there --
21 I was at Miller Hamilton until 1997. In
22 1987, I moved to Montgomery to open Miller
23 Hamilton's office in Montgomery, because most

1 of my work was for Colonial Bank
2 headquartered here in Montgomery. In -- So I
3 lived in Montgomery then.

4 In 1997, Balch & Bingham,
5 which is headquartered in Birmingham, but had
6 a Montgomery office, asked me to join them in
7 Montgomery, which I did. And then maybe five
8 years later, I moved to the Balch office in
9 Birmingham. And I commuted between
10 Birmingham and Montgomery because my wife,
11 then my wife at the time, was executive
12 director of the Alabama Legal Services
13 Corporation here in Montgomery. And she did
14 that for ten years. And she wanted to
15 maintain that. She had various projects she
16 wanted to finish.

17 So I commuted until she
18 finished that, and our daughter graduated
19 from high school. And then we moved --
20 officially moved to Birmingham. And I was at
21 Balch until 2010, when I joined my current
22 firm, Jones Walker.

23 Q. And during these various

1 private practice positions that you had,
2 first with Miller, and then Balch, and then
3 Jones and Walker, did you have -- do you have
4 a specialty?

5 A. Yes. Corporate securities
6 primarily in the banking area. And a lot of
7 that -- A lot depends on the economic cycle.
8 Right now it's a lot of mergers and
9 acquisition work. There are a lot of banks
10 doing that. A few years back when we had the
11 depression, the recession, I did a lot of
12 enforcement work with banks that were getting
13 into difficulty with the regulators and
14 having to work out capital plans and work
15 through enforcement orders. So ninety
16 percent of my work, maybe ninety-five, is
17 representing banks. And it's in the
18 securities and acquisitions area.

19 Q. And has that been the case
20 since back in 1980?

21 A. Since I moved to -- When I
22 moved to Mobile to join Miller Hamilton, Jack
23 Miller said we don't have anybody -- It was a

1 small firm, ten lawyers. But it was focused
2 on banking. And Jack said: We don't have a
3 securities' lawyer. You're it. Learn it.
4 And I said: Okay. And I've been doing that
5 since.

6 Q. Fair enough.

7 I apologize that I'm eating.

8 A. That's okay.

9 Q. I'm just trying to keep my
10 calories up, so . . .

11 What, if any, pro bono work
12 have you done over the years in your private
13 practice?

14 A. I'm trying to remember
15 exactly. I've never done -- I don't know
16 that I've ever done actual pro bono work. In
17 terms of legal work what would be considered
18 typical pro bono, I don't think I've ever
19 done any.

20 Q. Fair enough.

21 You mentioned that you have
22 been a liberal Democrat for a number of
23 years. Other than the Governor James'

1 campaign, can you let me know -- and the work
2 you talked about already?

3 A. Correct.

4 Q. Can you tell me what kind of
5 political activity you've been involved in?

6 A. Yes. When I was living in
7 Mobile. I guess this was 19 -- it was when
8 Reagan was running for reelection and Mondale
9 was running for the -- well, he'd gotten the
10 nomination, I lived in Mobile. So I guess
11 that was '86. I think that's right. Or
12 maybe it was '84. I was Walter Mondale's
13 Mobile County co-chairman. I was sort of the
14 young person. There were three of us,
15 co-chairs. So I -- That was not heavy
16 detailed work, but it was going to local
17 events and being with Mr. Mondale when he was
18 in town a couple of times. So I did that.

19 And then in 1980 -- or maybe
20 1992, I'm not sure, Jim Folsom, Jr., had
21 become governor when Guy Hunt left office on
22 a criminal issue. Jim's father had been
23 governor. He was known as Big Jim Folsom.

1 And he was very progressive in the late '40s
2 and the mid-'50s. He was from my hometown.
3 His son became governor.

4 Jim and I were close friends.
5 We grew up together in Cullman. I worked
6 actively in his campaign for about six
7 months. When he ran for reelection,
8 ironically, he ran against Fob James. But at
9 the time that I told Jim I would work for
10 him, Fob had stated publicly he wasn't
11 running. So I had already committed to Jim,
12 and worked pretty substantially for as I say,
13 for about six months, in his campaign.

14 Q. Were either of these
15 positions paid positions?

16 A. No.

17 Q. Are those the only kind of
18 campaign activities you can recall, at least
19 of -- of significance?

20 A. Yes.

21 Q. Do you give political
22 contributions?

23 A. I have. And I'm trying to

1 remember -- I mean, I certainly contributed
2 to Jim. Bradley Byrne, who was a congressman
3 from Mobile, South Alabama. Bradley and I
4 were law partners together for many years.
5 He's a Republican. Back in the day, he was
6 one of the ones who worked for Fob James. He
7 was a Democrat then. Bradley ran for
8 governor when Governor Bentley was elected.
9 This was now a little over eight years ago.
10 And I contributed to him. I may have
11 contributed small amounts to people here and
12 there, but not -- not a great deal.

13 Q. Great. Let's talk about your
14 work on the various constitutional
15 commissions and attempts to rewrite the
16 Constitution.

17 A. Sure.

18 Q. Well, let me back up a
19 moment. You've been noticed as a witness for
20 the State in this case; right?

21 A. Correct.

22 Q. Okay. Can you tell me when
23 Ms. Messick or someone else with the

1 Defendant's counsel first contacted you?

2 A. Ms. Messick called me a while
3 back now. Maybe, this is July, maybe
4 February. Several months back. Something
5 like that.

6 Q. And how many conversations
7 did you have with Ms. Messick between her
8 first phone call and today?

9 A. Maybe three. A couple of
10 phone calls, and then she came by my office
11 last week to pick up some documents to get
12 copied.

13 Q. And when she called you in
14 February, did she tell you why she was
15 calling?

16 A. She did.

17 Q. And what did she -- What did
18 she explain to you?

19 A. She said there'd been a
20 lawsuit filed on regarding some
21 constitutional issues on the state
22 Constitution, particularly the provision that
23 disqualifies voters for crimes of moral

1 turpitude. She said she had been sort of
2 researching who may have been involved in
3 previous constitutional matters, and ran
4 across my name. A number of the people, I
5 think, that had been involved in are dead. I
6 mean, they were much older than me when I was
7 involved with Fob James, and she asked if I
8 would be willing to testify, and I said I
9 would.

10 Q. Did she ask you to gather any
11 documents for her?

12 A. I gathered a few. As I
13 recall, she said: Could you send me some
14 samples of some of the type issues you dealt
15 with or some of the work that you did, and I
16 sent her a few things.

17 Q. Okay. She didn't give any
18 more specific instructions than that?

19 A. No.

20 Q. All right. And did she tell
21 you like anything specifically about what she
22 might want you to testify about?

23 A. She was not very specific

1 except I think to say, if I had any
2 recollection or background or opinions or
3 thinking about the provision about the moral
4 turpitude language, that would be something
5 that they might -- she might ask me to
6 testify about.

7 Q. And did you share any of your
8 opinions about moral turpitude with Ms.
9 Messick?

10 A. I did. Very generally. We
11 didn't have any detailed discussion. The
12 moral turpitude language that was in Fob
13 James' draft essentially came from the 1973
14 constitutional commission draft, and I
15 can't -- I can't say that I remember
16 specifically discussions about the moral
17 turpitude per se, but what both the
18 commentary to the '73 Constitution stated --
19 '73 draft stated in the commentary to the Fob
20 James draft stated was, it was to eliminate
21 unnecessary and in some cases
22 unconstitutional language that was in the
23 previous constitutional section that had a

1 whole laundry list of sort of silly crimes or
2 silly activities that could disenfranchise
3 someone.

4 Q. Did you share anything else
5 with Ms. Messick about the content of your
6 potential testimony?

7 A. No.

8 Q. Did she share anything
9 specific with you about the claims in this
10 lawsuit?

11 A. I think she -- I have a copy
12 of the Complaint. I don't remember whether
13 she sent it, or I just pulled it off-line. I
14 don't recall.

15 Q. And have you read it?

16 A. I have read it once, yes.

17 Q. Okay. And what's your
18 understanding of the various claims in the
19 lawsuit?

20 A. Well, it appears -- it
21 appears as though that there's a claim that
22 there is either an effort or there is a
23 phenomenon in the State to disenfranchise

1 people for a variety of crimes or illegal
2 activities, many of which could be race
3 based. And that the State has not -- And
4 that that phenomenon of disenfranchising,
5 particularly African Americans, is a product
6 of the 1901 Constitution, which was clearly
7 race based. And it's been something that has
8 been continued in the State of Alabama
9 essentially to the present day.

10 Q. I think that's about right,
11 at least in part.

12 Do you have any opinions about
13 the allegations in the Complaint?

14 A. I do.

15 Q. Can you share some of them
16 with me?

17 A. Sure. Clearly, the 1901
18 Constitution was race based. And part of the
19 research I did when I was working for
20 Governor James was to read a lot of the
21 constitutional convention record. And it's
22 incredible what the background of the 1901
23 Constitution was. It wasn't just -- And it

1 wasn't just race, but it was designed to
2 eliminate authority for local governments and
3 put everything in the Legislature, and so
4 forth.

5 But what seemed clear to me,
6 even in the '50s, Governor Folsom, the first
7 Governor Folsom, Big Jim, called for
8 constitutional reform. And while he wasn't
9 basing it necessarily on an attack on
10 segregation -- he was governor in the late
11 '40s and the mid-'50s, I suspect he knew that
12 would not play very well -- but he clearly
13 wanted some constitutional reform.

14 But in the research that I did
15 when I began to work for Governor James, I
16 certainly looked at the 1973 constitutional
17 commission proposal, read it, read the
18 commentary. And Governor James had what was
19 called sort of an informal working group of
20 various lawyers to help provide ideas and
21 background, and some research on his
22 constitutional efforts. And Conrad Fowler,
23 who was chairman of the '73 commission, was

1 part of that working group?

2 Q. I'm sorry, what was the name
3 you said?

4 A. Conrad Fowler, F-O-W-L-E-R.
5 He was the chairman of Governor Brewer's
6 commission. And he was part of Governor
7 James' working group. And so in doing the
8 research that I did, in reviewing the '73
9 Constitution, and then in looking at what had
10 been done in some other states, and I don't
11 remember specifically some of the provisions,
12 but I know I think Louisiana had had a
13 constitutional -- substantial constitutional
14 revision. Virginia had. I think Maryland
15 had. There were a few other states. That
16 there'd seemed to be, and it seems to be
17 fairly standard in the Constitution to have
18 some sort of standard by which you judge
19 voting rights.

20 But clearly, I think there was
21 an effort on the part of Governor James, and
22 there was even -- I mean, I think I gave
23 speeches about it. I think the Governor gave

1 some speeches about it. There were plenty of
2 newspaper articles that said: This is a
3 break from the past. In fact, there was an
4 article in the Montgomery Independent, I
5 think it's in what I produced, and I'm not
6 sure if Ms. Messick may have had it, by Joe
7 Azbell that said: Governor James'
8 Constitution was the first Constitution that
9 was not based on race. And so --

10 Q. Let me interrupt you for just
11 one moment, so I don't forget.

12 A. Sure.

13 Q. You said that Governor James'
14 draft Constitution was the first one not
15 based on race; is that right?

16 A. That's what Joe Azbell said.

17 Q. And that was the 1979 draft?

18 A. '79, yeah.

19 Q. Okay.

20 A. Now, when you read that
21 comment that Mr. Azbell said, and then you
22 look back at what happened with the '73, of
23 course, I was not involved in the '73 issue,

1 but when you -- if you have a copy of the
2 yellow book or a copy of it of Governor -- of
3 what I called Governor Brewer's
4 constitutional commission, he's the one that
5 appointed it, it's pretty clear from the
6 comments, and also in Dr. McMillan's article,
7 that it's part of that constitutional
8 revision commission proposal, and Dr.
9 McMillan's makes it very clear, the
10 Constitution of 1901 was race based.

11 To me, you can't read the '73
12 proposal and conclude anything other than
13 that it was rejecting the -- the racist past
14 from the 1901 Constitution. So I think Mr.
15 Azbell was probably incorrect when he said
16 Fob's was the first. I think the '73 was
17 probably the first. But I think Fob's
18 clearly was.

19 And so I do think in reading
20 the Complaint, to kind of then conclude on
21 your question, yes, there was -- there's
22 constitutional history in the State of
23 Alabama that was designed to disenfranchise

1 African Americans, and that was part of the
2 1901 Constitution. But I do think the '73
3 draft, and I clearly believe Fob James'
4 draft, was intended to have a clear break
5 from that.

6 Q. Thank you.

7 So when you were hired by
8 Governor James, what was your title?

9 A. Legal advisor.

10 Q. And what were your
11 responsibilities in that role?

12 A. A number of things.
13 Certainly, particularly when he first took
14 office, working on the revision of the state
15 Constitution. There were also administrative
16 things, like looking at extradition
17 petitions. Dealing with to some extent
18 appointments. Dealing with in some cases
19 constituent issues. Looking at State
20 contracts. A lot of State contracts under
21 Alabama statutes have to be cosigned by the
22 governor. It's kind of a pain because it
23 could be the Department of Pension and

1 Security of the Highway Department that has a
2 lease for an office in Mobile, and it has to
3 be cosigned by the governor.

4 So generally, one of my jobs
5 was to look at those contracts to see if I
6 saw any reason why the governor couldn't
7 cosign. There was a lot of that. When the
8 Legislature went into session, I would review
9 bills that were presented to him -- that were
10 passed in the Legislature for him to sign, or
11 if he was going to veto or do an executive
12 amendment, I would work on that.

13 Not too long after he entered
14 office, maybe probably less than six months,
15 the Alabama Prison System had been under
16 Federal court order to reform and reduce
17 overcrowding. Judge Frank Johnson then was
18 the U.S. District Judge. He shortly
19 thereafter went on the 11th Circuit. But
20 Judge Johnson had a conversation with
21 Governor James and said: The Wallace
22 administration has ignored all my orders,
23 they've made no progress in prison reform. I

1 want to appoint you receiver of the prison
2 system. Will you take it? And he said:
3 Yeah, I'll take it.

4 And so I did a lot of work
5 with Governor James on prison reform, trying
6 to build a new prison. The governor, when I
7 was still legal advisor, the State was going
8 to buy land. It eventually did and built it.
9 But it was going to buy land in St. Clair
10 County to build a new prison. The local
11 people objected. The elected officials, they
12 did not want a prison in their backyard. So
13 we had to go to Court on that to get a court
14 order to build the prison.

15 So there was a lot of work
16 done that I did on the prison -- We've got
17 the same problem today. We had overcrowding
18 in the county jails because we didn't have
19 room in the State prisons. So we had to
20 build new prisons, and solved it for a while,
21 but now I think we're sort of back to where
22 we were.

23 Q. Was any part of the

1 activities to solve the prison system, did
2 any part of that involve sentencing reform?

3 A. I don't -- I don't think it
4 did. I think it was primarily to reduce
5 overcrowding in the county jails. I know I
6 think Governor James gave speeches, I think
7 maybe even to the Legislature, that if
8 someone is guilty of a crime and they're
9 sentenced to serve time, they have to serve
10 it, but the State has to have a prison system
11 that is designed for reform and
12 rehabilitation. And if the prisons are
13 overcrowded, you can't accomplish that goal.
14 I think that was one of his outspoken
15 statements about prison reform. I don't
16 recall any commentary on sentencing.

17 Q. Right. And by that I mean
18 more broadly that the focus on solving the
19 prison problem was to create more prison
20 space, not to reduce the number of people who
21 would be incarcerated?

22 MS. MESSICK: Object to the
23 form.

1 A. Offhand, I don't recall him
2 making a statement about that.

3 Q. When did -- Can you tell me
4 about the process that you went through in
5 1979 in order to create a draft Constitution?

6 A. Okay. Shortly after Governor
7 James was elected, that was in early November
8 of '78, maybe two or three weeks later, he
9 asked me if I would take a leave of absence
10 from my law firm, Bradley Arant, and work on
11 some research, and work with a few other
12 lawyers he had asked to help, one of whom was
13 Yetta Samford from Opelika, who was chairman
14 of this informal working group. To start
15 putting together some ideas on a new state
16 Constitution, including taking what was done
17 in '73 and looking at it and deciding whether
18 there was some of that we could use or some
19 of it that we would change, and we did change
20 some of it.

21 So for two months prior to his
22 inauguration, I commuted from Birmingham and
23 Bo Torbert, who was the chief justice in the

1 Alabama Supreme Court at the time gave me an
2 office to work out of in the Supreme Court
3 building. So for those really six or eight
4 week -- two months actually, I guess, most of
5 my work, in fact, all of it, was on
6 constitutional work. But then probably two
7 weeks, maybe three weeks before he was
8 inaugurated, he asked if I would become legal
9 advisor, and I would, and I talked to my law
10 firm, and then resigned from the law firm to
11 become his legal advisor.

12 After the inauguration, he had
13 originally planned to call a special session
14 to present his constitutional proposal. We
15 had been working on drafts all during that
16 time. And the Legislature actually held some
17 hearings on not just some of Fob James'
18 ideas, but ideas of anybody who wanted to
19 come speak. And I can't remember, the
20 hearings were maybe a week or two, and I
21 think maybe they were in March designed to be
22 done before special session was called. But
23 there was so much work, and it was

1 complicated, that Governor James decided not
2 to call the special session. But he
3 introduced it when the regular session came
4 in in mid-April. So much of my work really
5 from mid-November until the time it was
6 introduced in the Legislature was on the
7 Constitution.

8 Q. Okay. During that first two
9 months prior to his inauguration, who was
10 working with you on the research?

11 A. Yes. I was doing I would say
12 most of it. I think I mentioned earlier
13 there was a lot of -- there was some research
14 in books that I had that I sent to the
15 Archives when I left working for the
16 governor. But I had collected a number of
17 books on constitutional revision in other
18 states reading about issues and problems and
19 what state constitutions were about.

20 Yetta Samford, who was a
21 lawyer from Opelika, Mr. Samford was then on
22 the Board of Trustees at the University of
23 Alabama, he helped with some research. And

1 there were other people that had an interest
2 in constitutional revision that I would meet
3 with and get ideas from. Bob Harris, a
4 lawyer from Decatur, former, I think, State
5 Senator, was one of them.

6 Public finance bond issues was
7 a big issue under the state Constitution
8 because it was very difficult for the State
9 to issue bonds. So we had input from two or
10 three bond lawyers in Birmingham: Larry
11 Dumas, who had been a former State Senator
12 and was with Cabaniss Johnston then, that law
13 firm; John Adams, who was with my law firm,
14 Bradley Arant, a bond lawyer helped. But in
15 terms a lot of the basic sort of collecting
16 information, I did -- I did most of that.

17 Q. And during that time, you
18 were doing a lot of research and you were
19 talking to experts, did you do any drafting
20 of constitutional provisions at that time?

21 A. I did. As well as some of
22 the other folks, like John Adams. I think
23 Larry Dumas. I think Bob Harris did some of

1 the drafting. I certainly did not by any
2 means do all the drafting, because on certain
3 areas like public finance, state bond issues,
4 you know, we had input from some of the
5 volunteer people who were helping in that
6 effort.

7 Q. And after inauguration and
8 the Governor was in office, did you or his
9 office put together a more formal committee
10 to continue doing this work?

11 A. No. The committee was always
12 informal. I think it was generally called
13 the Governor's Working Group. And I'm trying
14 to remember now who all was on it.

15 Yetta Samford, as I mentioned,
16 was sort of the chairman. Jacob Walker was a
17 lawyer from Opelika. He was on it. His son
18 is now circuit judge over there, I think.
19 Bob Harris from Decatur, a lawyer, was on it.
20 Larry Dumas from Birmingham, John Adams from
21 Birmingham was on it. Bo Torbert was sort of
22 de facto on it. He had a great interest in
23 it, and he was not sort of -- wasn't official

1 at any time, but Judge Torbert was basically
2 on that committee.

3 Q. Who decided who would be on
4 the committee?

5 A. Governor James.

6 Q. Did you have any input on
7 that?

8 A. I think I recommended John
9 Adams from Bradley Arant, because he was a
10 very well respected bond lawyer, and public
11 finance was a -- was a key issue.

12 Q. And what were the key areas
13 of reform that the committee was focused on?

14 A. Yeah. Well, Governor James
15 had a number of key issues that he talked
16 about in this campaign. One was unearmarking
17 of public funds. The State has had a history
18 of earmarking revenue for certain purposes,
19 particularly primary, secondary education.
20 And the earmarking of funds ties up the
21 revenue so that it can't be used for other
22 items. And Governor James thought that that
23 was probably not a very workable or a very

1 wise public policy. So unearmarking of funds
2 was one.

3 Home rule was another one.
4 Under the Alabama Constitution, some of
5 that's been corrected by further amendments
6 since then. But at the time, basically the
7 state Constitution gave no power to county
8 governments. Whatever power county
9 governments had came from the Legislature.
10 The same thing was true with cities. But the
11 Legislature over the years had passed a
12 municipal code that had a fairly detailed
13 outline of how municipalities could be
14 governed, and what powers they had. County
15 governments typically didn't have that.

16 So when county governments
17 wanted authority to do certain things, often
18 they had to go to the Legislature, which was
19 very, very awkward. And so Governor James
20 wanted what was called a home rule provision
21 that would be optional. It wouldn't be
22 mandatory for any county that didn't want it,
23 but to set up a procedure where if local

1 citizens of a county wanted home rule, they
2 could vote and set up basically a commission
3 and have authority to kind of create their
4 own, within limits, create their own
5 governance process.

6 He wanted to eliminate, and
7 this was sort of part of the home rule, but
8 it was also part of sort of the tax area, he
9 wanted to eliminate statewide voting on local
10 bond issues, or local government issues,
11 which was part of home rule. If a county
12 wanted the ability to do a new sewer system,
13 I'm pulling that out of the hat, you had to
14 have a statewide constitutional amendment to
15 approve the county to do it. It was very
16 awkward. So that was one of his key issues.

17 Another issue that he had in
18 his constitutional reform, the unearmarking
19 of funds, the home rule, and then he liked --
20 he wanted to have what was called Referendum
21 and Recall, which was to allow citizens by
22 petition to pass legislation, and to allow
23 citizens by petition to recall public

1 officials. The Referendum and Recall
2 provisions goes back, my memory on the
3 research, was kind of a phenomenon from the
4 Mid-Western and Western states in the early
5 1920s. Governor James liked that. He
6 thought giving the populace the right to
7 either remove someone from office or a
8 proposed legislation would be helpful. Those
9 were his three key things.

10 His fourth thing, and he did
11 talk about this, he talked about it during
12 the campaign. He talked about it after he
13 was governor, was that the Constitution had a
14 lot of provisions in it that were now either
15 outdated or had been ruled unconstitutional
16 by the U.S. Supreme Court, and there was no
17 need to have those provisions, even though
18 they were technically no longer enforceable,
19 they were still there in black and white.
20 And he felt like getting those off the record
21 would be helpful, and that was part of his
22 approach to his reform effort.

23 Q. Were there any other

1 additional issues that you or other members
2 of the committee were particularly concerned
3 about during the drafting, or were you
4 primarily focused on the items you've just
5 discussed?

6 A. Probably focused mostly on
7 those items, but, for example, I mean, there
8 were other issues that would come up and did
9 come up in our preamble, which followed kind
10 of the Declaration of Independence preamble;
11 all men are created equal. We changed it to
12 all people are created equal to make it
13 gender neutral. That got kicked out when it
14 got to the Senate. The Legislature didn't
15 like it. There was objection that we were
16 trying to put the Equal Rights Amendment in
17 the state Constitution. That was not an
18 effort. The effort was to make it gender
19 neutral.

20 So there were -- there were
21 things like that that would come up that we
22 had in our draft that the Legislature took
23 out, or some things we took out they put back

1 in. For example, under the current Alabama
2 Constitution, the Governor, Lieutenant
3 Governor and Attorney General are all
4 constitutional officers.

5 In addition, the Secretary of
6 State, the State Treasurer, they're all
7 constitutional officers. We took those out
8 in the Fob James' draft, left the Governor,
9 the Attorney General, the Lieutenant Governor
10 in as constitutional officers. But we took
11 out the others, leaving it up to the
12 Legislature. We weren't trying to abolish
13 them; we just thought it wasn't needed in the
14 Constitution.

15 But naturally, the Secretary
16 of State, the State Auditor, and the State
17 Treasurer didn't like that and the
18 Legislature put that back in. So there were
19 things like that where we attempted to maybe
20 streamline the document somewhat, and the
21 Legislature did not, did not like it.

22 MS. MESSICK: Before you ask
23 your next question, I'd like a break in a

1 minute, and I'd like to deal with an issue
2 with those documents as well.

3 MS. LANG: Okay. Let's take
4 this break now. It's fine.

5 MS. MESSICK: Okay. Thank
6 you.

7 (Recess taken.)

8 Q. (Ms. Lang) So my
9 understanding from your testimony is that --
10 Strike that.

11 When you started the project
12 of drafting the 1979 Constitution, you used
13 the 1973 Constitution as your guide; is that
14 right?

15 MS. MESSICK: Object to the
16 form.

17 A. We used the '73 Constitution
18 as a starting point.

19 Q. And then you made some
20 changes, particularly to the priority issues
21 you identified, and some other changes, but
22 this was your starting point?

23 A. That was the starting point.

1 For example, that one did not have Referendum
2 and Recall in it. We used a different, and I
3 don't recall the specifics, but we used a
4 different form of home rule than what they
5 had there. And we used a different form of
6 public finance, bond issues, as I recall,
7 than what they had there. But a lot of the
8 provisions in the '73 draft, we used in the
9 '79.

10 Q. Were there sections of the
11 1973 draft that were untouched in your 1979
12 draft?

13 A. Oh, I think so.

14 Q. So if we were to compare the
15 1973 and 1979 draft, there would be
16 significant portions that were the same; is
17 that correct?

18 MS. MESSICK: Object to the
19 form.

20 A. I think it'd be fair to say
21 there would be portions, maybe significant,
22 that would either be the same or eighty
23 percent the same.

1 Q. When did your team complete a
2 final draft of a proposed Constitution?

3 A. I'm going on memory now. I
4 don't think we really completed the final
5 draft until right before the regular session
6 of a Legislature started, which was
7 approximately mid-April.

8 Q. And how involved was Governor
9 James in the process of drafting, and then
10 the approval of the final draft?

11 A. Well, he was not involved in
12 drafting. He did not, as I recall, do any
13 drafting. He was very much involved with
14 being kept up-to-speed on the issues, the
15 progress we were making, the criticisms we
16 were getting, the obstacles we thought we
17 might see in the Legislature, or coming from
18 other lobbyists. So he was very much aware
19 of all of that.

20 Several members of the -- sort
21 of the Informal Working Group would meet with
22 him. I don't recall how often, but fairly
23 regularly, to bring him up-to-date on issues,

1 or where we were. So he, up until the time
2 it was introduced and when we were trying to
3 get it passed in the Legislature, he was
4 pretty well up-to-speed on what was going on.

5 Q. And did Governor James ever
6 give kind of substantive feedback on drafts,
7 or on frameworks?

8 A. He did.

9 Q. What issues in particular do
10 you recall him --

11 A. Well, we certainly discussed
12 the Referendum and Recall with him. That was
13 something that he liked. He didn't
14 necessarily know how it worked in other
15 states, and I can't recall myself, frankly,
16 if we used any particular state model. I
17 suspect I did, but I don't recall the state.

18 We did -- We did have
19 discussions with him, I think, on the home
20 rule because that was a big issue for him.
21 We did discuss with him, I recall a brief
22 conversation on certain maybe changes we
23 would make, like and I think we alerted him

1 to the fact, as I recall, it's a vague
2 memory, but, for example, when we had in the
3 preamble all people were created equal versus
4 all men. We said: We're changing to people.
5 Here's why. We think it ought to be done
6 that way, it's gender neutral, could get some
7 kickback. He said: Fine. Try it. So there
8 would, you know, be things like that that
9 would come up that we would alert him to, or
10 -- or run by him.

11 (Plaintiff's Exhibit 1 was
12 marked for identification
13 purposes.)

14 MS. LANG: I'd like to
15 introduce the Proposed Constitution from 1973
16 as Exhibit 1.

17 MS. MESSICK: And that's some
18 sort of excerpts of it, or is that the whole
19 thing?

20 MS. LANG: It is excerpts from
21 the 1973 Proposed Constitution.

22 Q. (Ms. Lang) There you are. So
23 this is excerpts of the document that you

1 testified you used as kind of the starting
2 place for your work in 1979; is that right?

3 A. Correct.

4 Q. Okay. Do you know who was on
5 the 1973 constitutional commission?

6 A. No, I don't recall. I can't
7 certainly name all of them who were on there.
8 Conrad Fowler was the chairman. I think
9 Larry Dumas was a member, and he also
10 participated in Governor James' work. And if
11 I saw the names, I'd probably recognize most
12 of the names. I maybe knew some of the
13 people, but I can't name them from memory.

14 Q. And in 1973, was Governor
15 Wallace the governor?

16 A. Yes.

17 Q. Okay. So this -- the final
18 report of this constitutional commission was
19 submitted to Governor Wallace; is that
20 correct?

21 A. Correct.

22 Q. You mentioned that somebody
23 else maybe was involved in the starting of

1 the commission; is that correct?

2 A. Albert Brewer, who was then
3 governor. Governor Wallace's wife, Lurleen,
4 was elected governor in '66. She died of
5 cancer. Albert Brewer was the Lieutenant
6 Governor. He took over in, I think it was,
7 '68, appointed this commission to revise the
8 Constitution, but then was defeated in 1970
9 by George Wallace.

10 Q. So for the last three years
11 or so of the commission's work, it -- it was
12 under Governor Wallace; is that correct?

13 MS. MESSICK: Object to the
14 form.

15 A. That would be my assumption.
16 He was certainly Governor. I don't know what
17 the inner workings between the commission and
18 the governor's office was.

19 Q. And it says -- Was it the
20 case that -- Do you know who Jere Beasley is?

21 A. Yes.

22 Q. Who is he?

23 A. At the time, I think he was

1 on this commission. He was a lawyer. He
2 eventually became Lieutenant Governor of the
3 state. He was elected Lieutenant Governor in
4 '70. I guess -- So I guess he was Lieutenant
5 Governor for part of this. He ran -- He
6 served two terms, and ran for governor when
7 Fob James got elected in '78. He was one of
8 the candidates for governor.

9 Q. Is it possible that he was
10 President of the Senate at that time?

11 A. If he was Lieutenant
12 Governor, he would have been.

13 Q. Okay. And then are you
14 familiar with G. Sage Lyons?

15 A. Yes.

16 Q. And who was he?

17 A. He was a lawyer from Mobile,
18 and he served I think one term as Speaker of
19 the House.

20 Q. What were the politics of --
21 We've talked about George Wallace's politics,
22 at least at that time. Do you know anything
23 about the politics of Jere Beasley?

1 MS. MESSICK: It's Jere.

2 MS. LANG: Jere. Thank you.

3 THE WITNESS: Jere, yeah.

4 A. Not particularly. I mean,
5 certainly he ran against Fob James when I
6 working on the James campaign. He served
7 briefly as an interim governor when Wallace
8 was shot in 1972, and there was a provision
9 that if the Governor was out of state, the
10 Lieutenant Governor would step in.

11 I couldn't really name
12 specifics about his policies. He was
13 probably generally conservative, but not, at
14 least to my recollection, outwardly so.
15 Although, he served as lieutenant governor, I
16 guess he got elected in '70, and from -- I
17 was at Duke from '70 to '72. And then I was
18 at Oxford '73 to '75, so I was out of the
19 state most of the time that he was lieutenant
20 governor.

21 Q. Okay. Do you know if he was
22 a Democrat?

23 A. He was a Democrat.

1 Q. Was he what you would call a
2 National Democrat?

3 A. Probably not.

4 Q. Was G. Sage Lyons a Democrat?

5 A. I think he was, yes.

6 Q. And would you consider -- Do
7 you think he was probably a National
8 Democrat?

9 A. I don't know enough about his
10 politics to say.

11 Q. All right. I think you've
12 already spoken a bit about this, but could
13 you remind me what you know about Conrad
14 Fowler?

15 A. Yes. He was Probate Judge of
16 Shelby County, and I think had been for
17 years. He also worked with us with the Fob
18 James' project. I think Judge Fowler was
19 highly regarded. He was very affable. I
20 think he was very well respected in his home
21 county. One of his sons is a lawyer.

22 I don't -- His older son
23 played football at Alabama for Bear Bryant.

1 People like Conrad Fowler for that reason.
2 His son was named Conrad Fowler, too. His
3 younger son, Randy, is I guess still
4 practicing law. My recollection of Judge
5 Fowler is that he very much believed in
6 trying to reform the Constitution, and sort
7 of bring the State, quote, into the 20th
8 Century.

9 Q. Fair enough.

10 I found a list of the members
11 of the constitutional commission in 1973.
12 I'm going to run through these names. You
13 don't have to give me a whole history of
14 them.

15 A. Sure.

16 Q. But if you could tell me, you
17 know, a synopsis of what you know about these
18 individuals and why they might have been in
19 the commission, that would be helpful.

20 A. Okay.

21 MS. MESSICK: And I'm going to
22 object to the form to the extent it calls for
23 speculation.

1 Q. (Ms. Lang) Woodrow, and I
2 apologize ahead of time that I'm going to
3 butcher lots of people's names now, and I
4 apologize. I'm going to show that I'm not
5 from Alabama. So Woodrow Albea?

6 MS. MESSICK: Could you let us
7 see the list?

8 MS. LANG: Yeah. Absolutely.

9 A. I don't know him.

10 Q. Okay.

11 MS. LANG: I don't have copies
12 of this.

13 Q. (Ms. Lang) Jere Beasley we've
14 discussed. Lawrence Dumas, Jr.?

15 A. That's Larry Dumas, who I
16 mentioned, a bond lawyer from Birmingham.

17 Q. Robert Ellis, Jr.?

18 A. Don't know him.

19 Q. Rankin Fite?

20 A. Rankin Fite. I know who he
21 is. I think he was a state legislator from
22 Northeast Alabama somewhere, I think
23 Anniston, or somewhere along in there.

1 Q. E. Crum Foshee?

2 A. Crum Foshee I think was a
3 lawyer. I don't recall where he was from. I
4 remember the name, but that's all.

5 Q. W.E. Garrett?

6 A. I think he was from -- I
7 think he was a lawyer from South Alabama,
8 maybe from Brewton, or somewhere along in
9 there. A prominent lawyer, but other than
10 that, I didn't know him.

11 Q. O.J. Goodwyn?

12 A. I didn't know him.

13 Q. Peter Hall?

14 A. Did not know him.

15 Q. Brevard Hand?

16 A. Brevard Hand. Yes. He
17 became a federal judge in Mobile.

18 Q. When was that?

19 A. He was a judge in the early
20 '80s, I know. So it would have been maybe
21 not too long after that.

22 Q. George Hawkins?

23 A. Did not know him.

1 Q. Robert Hodnette, Jr.?

2 A. I knew he was -- I know the
3 name. I think he was from Mobile, but other
4 than that, I don't know him.

5 Q. Joseph F. Johnston?

6 A. Yes. He was as bond lawyer.
7 A very prominent lawyer in Birmingham, public
8 finance lawyer.

9 Q. Thomas A. Johnston?

10 A. Did not know him.

11 Q. G. Sage Lyons?

12 A. He's a former Speaker of the
13 House lawyer from Mobile.

14 Q. Malcolm C. McMillan?

15 A. Dr. McMillan was a professor
16 at Auburn. In fact, he wrote an article that
17 was published in the back of this proposed
18 Constitution. He was the uncle of George
19 McMillan, who was Lieutenant Governor when
20 Fob was Governor.

21 Q. Thomas Marr?

22 A. Did not know him.

23 Q. Hugh Merrill?

1 A. Hugh Merrill was a lawyer,
2 and later he may have been on the Alabama
3 Supreme Court at that time, but he later
4 became a Alabama Supreme Court Judge. I
5 think he did. It may have been Pelham
6 Merrill, and I may be mistaken on that.

7 Q. A. Stewart O'Bannon, Jr.?

8 A. He was a lawyer from
9 Florence, North Alabama, but did not -- I'd
10 met him, but didn't know him.

11 Q. H. H. O'Daniel?

12 A. I did not know him.

13 Q. J. J. Pierce?

14 A. Did not know him.

15 Q. Coleman Ransone, Jr.?

16 A. Did not know him.

17 Q. H. Gerald Reynolds?

18 A. Did not know him.

19 Q. Margaret D. Sizemore?

20 A. Did not know her.

21 Q. Charles A. Stakely, Jr.?

22 A. Charlie Stakely was a very
23 prominent lawyer in Montgomery. Rushton

1 Stakely Law Firm.

2 Q. Finis St. John?

3 A. Finis St. John from my
4 hometown. A state legislator, state senator.

5 Q. Was he a Democrat?

6 A. He was a Democrat.

7 Q. National Democrat?

8 A. Yes. He was very
9 progressive, very well regarded. Ran for
10 U.S. Senate, did not get elected, in probably
11 the late '80s.

12 Q. And J. Edward Tease?

13 A. Eddie Tease, T-E-A-S-E?

14 Q. Yes.

15 A. He was a lawyer from
16 Florence, and later a circuit judge, if it's
17 the one I'm thinking of.

18 (Off-the-Record discussion
19 was held.)

20 Q. (Ms. Lang) When you were
21 doing your work in 1979, did you talk to any
22 of the members of the 1973 Constitution about
23 their work?

1 MS. MESSICK: Object to the
2 form.

3 A. I certainly talked to Judge
4 Fowler, the chairman. I talked to Larry
5 Dumas, because he was working with Fob James
6 on the James' project. I talked to Finis St.
7 John, because he was then a state senator.
8 When Fob was Governor, he was state senator.
9 I'd known Senator St. John all my life. I
10 knew his son. He was, I won't say a mentor
11 to me when I was working for Fob, but he was
12 very kind of supportive, and would talk with
13 me about what was going on in the Senate.

14 And, in fact, just as an
15 aside, The Speaker, McCorquodale, appointed
16 three house members. And the lieutenant
17 governor appointed three senators to kind of
18 work closely with Fob on trying to get the
19 Constitution passed. And St. John was one of
20 the three that McMillan had asked. I think
21 the others you mentioned I probably did not
22 have discussions with.

23 Q. Do you recall what you --

1 What did you speak to Judge Fowler about when
2 it comes to the 1973 draft?

3 A. It was more conceptual, as I
4 recall, issues, and probably revolved around
5 two things. One, trying to, I think the term
6 we frequently used then, to streamline the
7 Constitution. Make it more workable, make it
8 less cumbersome. That's one of the things
9 that the '73, I think, commission focused on.
10 It was something that Fob James was focusing
11 on. And so, you know, we certainly talked
12 about that, and some of that related to home
13 rule issues and public finance issues.

14 The other thing, as I recall,
15 talking to him about was just the politics,
16 the difficulty of having it get passed in the
17 Legislature; that there would be so many
18 special interests that would have special
19 interests issues, that it would make it very
20 difficult. And the approach Governor James
21 took was a little different. What the '73
22 commission did was a commission to propose a
23 Constitution for a statewide vote. What

1 Governor James was doing was trying to get a
2 whole Constitution passed in the Legislature,
3 and that was a different approach. And I
4 think we had discussions about that, and the
5 difficulty it would be to get the Legislature
6 to pass a whole Constitution.

7 Q. Did you ever talk to Judge
8 Fowler about the voting rights sections of
9 the 1973 Constitution?

10 A. Not that I recall.

11 Q. What do you recall talking to
12 Senator St. John about?

13 A. St. John. It was more the
14 politics of, all right, if the governor's
15 going to propose a whole new Constitution,
16 how are you going to get it passed in the
17 Legislature? And as the progress developed,
18 I think, you know, we had conversations -- I
19 had some conversations with Senator St. John,
20 and, you know, he would meet with sometimes
21 two or three of us, and on occasions as I
22 recall the governor, about some of the issues
23 in the Legislature.

1 One of which was the
2 unearmarking of public funds, the Alabama
3 Educational Association, which was the lobby
4 group for secondary and public schools --
5 secondary and elementary and high schools was
6 very strong. And a lot of the public funds
7 that were earmarked were earmarked for those
8 schools, and eventually the -- that
9 unearmarking proposal got rejected and went
10 back to the earmarking because of the AEA had
11 strong influence in the Legislature.

12 So we would discuss issues,
13 kind of practical political issues like that.

14 Q. Do you recall having any
15 conversations with Senator St. John about his
16 work in 1973 on this commission in the
17 drafting of the Constitution?

18 A. I don't recall any.

19 Q. What do you recall talking to
20 Larry Dumas about?

21 A. With Mr. Dumas, it was to the
22 extent we had conversations, it would have
23 been probably in group meetings, talking

1 about the public finance issues. John Adams,
2 who was in public finance, and Larry Dumas,
3 as I recall, worked up most, and maybe Bob
4 Harris, I think a former state senator from
5 Decatur helped them, did most of the sort of
6 drafting on the public finance issues in the
7 Governor James' proposal.

8 So the discussions I would
9 have with him were just sort of conceptually
10 of how they thought it might work, and what
11 they thought maybe some of the political
12 issues would be.

13 Q. But you don't recall talking
14 to him about the particular goals or drafting
15 of the 1973 Constitution?

16 A. Not on the -- Not on the '73.

17 Q. Okay. Do you recall talking
18 to anybody about the voting-related language
19 in the 1973 Constitution?

20 MS. MESSICK: Object to the
21 form.

22 A. I don't recall, no.

23 Q. From your research into the

1 1973 draft Constitution, do you know what the
2 kind of primary goals were of the 1973 draft?
3 And by that I mean, you've identified several
4 primary goals that Governor James had. Are
5 you aware of what the primary goals were
6 during the 1973 draft?

7 A. I -- I would say my awareness
8 of it was primarily reading the draft,
9 reading the preamble they had. Reading
10 through Dr. McMillan's article that they had
11 as an appendix to their draft, which, to me,
12 showed that they were drafting this with that
13 historical background in mind to try to
14 overcome some of the problems in the history
15 the Alabama Constitution.

16 So I would say my thinking was
17 that their goal was to try to make the
18 Constitution, one, more workable, less
19 cumbersome. It seemed clear to me, I don't
20 recall a specific discussion with Judge
21 Fowler or anybody else, but it seemed to me
22 that what they were doing was trying to
23 remove some of the language that had been

1 ruled unconstitutional, or was about to be
2 ruled unconstitutional, but to rid their
3 draft of the hangovers of the Civil War that
4 reappeared in the 1901 Constitution. I mean,
5 I think, to me, that was -- seemed to be a
6 goal of what they were after.

7 Q. And your -- That
8 impression -- You formed that impression
9 based on reading the 1973 draft and Dr.
10 McMillan's article; is that correct?

11 MS. MESSICK: Object to the
12 form.

13 A. Well, I'd say not totally. I
14 mean, I -- I formed it on reading the draft,
15 and with the conversations that I had
16 particularly with Judge Fowler. I don't
17 recall specific conversations with Judge
18 Fowler about race issues or segregation
19 issues. But what I do recall with Judge
20 Fowler is that his attitude seemed to be, we
21 need to move away from the past and have a
22 state Constitution that is workable for
23 everybody.

1 That was sort of a basic, to
2 me, concept that I had when I was looking at
3 this. And I think that's one of the reasons
4 why we thought, Governor James probably
5 thought, and Governor James' working group
6 thought that, at least, starting with this
7 was a reasonable starting point.

8 Q. But you don't recall any
9 particular conversations with Judge Fowler or
10 any other members of the commission about
11 race or desegregation?

12 A. I do not recall.

13 Q. Did you have any
14 conversations about the 1973 draft
15 Constitution and voting rights in Alabama?

16 A. I do not recall having any.

17 Q. Flipping to page -- the
18 second page in Exhibit 1, you'll see at the
19 bottom of page 109 is Article 7, Suffrage and
20 Elections. Do you see that?

21 A. Okay.

22 Q. And the first section,
23 Section 7.01, is labeled: Qualifications for

1 Voting, and it bleeds onto the next page.
2 And it says that the qualifications are, I'll
3 paraphrase, that you be eighteen years old,
4 reside in the state and in a particular
5 county for the time period provided by law,
6 if registered as provided by law, shall have
7 the right to vote in the county of his
8 residence.

9 So it had an age requirement,
10 and a residency requirement with respect to
11 both state and county residency, and a
12 registration requirement; is that right?

13 MS. MESSICK: Object to the
14 form.

15 A. I see that appears to be
16 there.

17 Q. And among other things, the
18 comments says that it removed literacy and
19 poll tax requirements; is that correct?

20 A. Correct.

21 Q. Is that an example, in your
22 mind, of some of the updating that Judge
23 Fowler and the commission was trying to do

1 with this?

2 A. Yes.

3 Q. And the next section, Section
4 7.02, is about disqualifications for voting.
5 And it reads, no person convicted of a felony
6 involving moral turpitude, or who is mentally
7 incompetent, shall be qualified to vote until
8 restoration of civil and political rights or
9 removal of disability. Is that right?

10 A. I see that.

11 MS. MESSICK: Object to the
12 form.

13 Q. Okay. Do you have any
14 knowledge of where the commission -- of any
15 template that the commission relied upon in
16 drafting this language?

17 A. I don't recall any.

18 Q. Do you have any knowledge
19 about how or why this provision was drafted
20 as it is?

21 MS. MESSICK: Object to the
22 form.

23 A. No direct knowledge of any

1 conversation with anyone.

2 Q. And the comment indicates
3 that it was removing the language about
4 idiots and insane persons, and the laundry
5 list of thirty-three crimes that were
6 disqualifying in the prior 1901 Constitution;
7 is that correct?

8 A. I see that, yes.

9 Q. Okay. Does the comment
10 provide any information about why the
11 commission chose to use the language moral
12 turpitude?

13 A. You're asking my opinion?

14 Q. Yeah.

15 MS. MESSICK: Object to the
16 form.

17 Q. Yes.

18 A. The way I read it, yes.

19 Q. Okay. And how so?

20 A. Well, it says it would
21 replace the present Section 182, and it gives
22 a couple of examples. Disqualifies idiots
23 and insane persons, there's a whole laundry

1 list of things there. What it says is, we
2 are replacing that section. It's no longer
3 suitable to be in the Constitution, just as
4 if another section on bond issues is replaced
5 it's no longer suitable. There's no
6 particular commentary here about the theory
7 behind it, but it's pretty clear that the
8 commission did not -- did not like that
9 language or those items of disqualification.

10 Q. Fair enough. And I agree
11 with that. I think my question is slightly
12 different, which is from reading this draft,
13 did you have any specific understanding of
14 why they chose the phrase moral turpitude to
15 use in this section?

16 A. I did not.

17 Q. And are you aware that the
18 moral turpitude language -- the phrase
19 involving moral turpitude was in the 1901
20 Constitution?

21 A. I'd have to go back and look
22 at it to see if it's actually there or not.
23 I don't recall.

1 Q. Are you aware of a Supreme
2 Court case about felony disenfranchisement in
3 Alabama?

4 A. I think I've seen it
5 referenced. I don't know that I've read it.

6 Q. Okay. Does it refresh your
7 recollection if I tell you it was a case
8 called Hunter v. Underwood?

9 A. When you say the name Hunter,
10 I think I remember seeing -- that refreshes
11 my memory that it was Hunter. Underwood, I
12 don't remember.

13 Q. Fair enough. So you're not
14 aware of the Supreme Court case that held
15 that the language in the 1901 Constitution
16 about criminal disenfranchisement was
17 intentionally discriminatory?

18 MS. MESSICK: Object to the
19 form.

20 A. I'm not aware of -- I mean, I
21 think I've seen the Supreme Court case
22 referenced. I haven't read it. I do think
23 that it would be fair to say, and it would be

1 my view, that much in the 1901 Constitution
2 was intended to be discriminatory, whether it
3 relates to, say, this section disqualifying
4 voting rights for certain acts, or for that
5 matter eliminating home rule for counties so
6 that local people can't decide what they want
7 to do.

8 I mean, you could argue
9 that -- and it has been argued that the whole
10 framework of the 1901 Constitution was race
11 based. Again, getting back to not so much
12 '73, although this may relate to what Mr.
13 Azbell was getting at in his article, but
14 getting back to kind of the '79 project,
15 which was we want to get away from that. We
16 want to have a break.

17 Now, that doesn't mean that if
18 a phrase or a word or a synonym was used
19 that's found in the 1901 Constitution that
20 you're automatically taking the race
21 background from there and putting it in
22 another document. The word men is in both
23 constitutions. I don't think that

1 necessarily means it's race based.

2 Q. Fair enough. Have you
3 researched at all the evidence that the
4 language in the 1901 Constitution about
5 criminal disenfranchisement was specifically
6 race based?

7 A. I mean, I recall reading, I
8 think, some background of that.

9 MS. MESSICK: While he's
10 hesitating, I want to get an objection to the
11 form in.

12 THE WITNESS: Okay.

13 MS. MESSICK: Go ahead.

14 A. I mean, I can't say that I
15 recall sitting down and saying I'm going to
16 take this section and go try to research and
17 see what I can find that would tie these list
18 of crimes to some sort of racial profile.

19 Q. Uh-huh.

20 A. I certainly read a lot of the
21 record of the 1901 constitutional convention.
22 I don't recall reading the record on this
23 section.

1 Q. And have you researched at
2 all any evidence, particularly about the
3 phrase moral turpitude and it's connection to
4 race-based discrimination and the voting?

5 MS. MESSICK: Object to the
6 form.

7 A. I don't recall researching
8 that.

9 Q. So you don't have any
10 knowledge one way or another as to whether or
11 not there is evidence available that the
12 phrase moral turpitude was specifically used
13 for race-based reasons?

14 A. Are you talking about the
15 1973 draft?

16 Q. I'm talking about the 1901
17 draft.

18 A. 1901?

19 Q. Yeah.

20 A. No, I don't.

21 Q. And you don't have any
22 knowledge -- I apologize by the way I'm going
23 to ask you a number of questions about what

1 you do or do not know, just trying to get an
2 understanding of what areas you are expert or
3 not expert in.

4 A. Okay.

5 Q. Do you have any knowledge
6 about how the implementation of the moral
7 turpitude language may have related to
8 race-based discrimination in voting in
9 Alabama?

10 MS. MESSICK: Object to the
11 form.

12 MS. LANG: Do you want to tell
13 me just generally your objection to the form?

14 MS. MESSICK: I don't even
15 know what time period you're talking about
16 there. As you know, it's our theory that
17 moral turpitude -- Well, the 1901 convention
18 was dreadful, but that doesn't mean there's
19 something wrong with the phrase moral
20 turpitude, which was then in these drafts and
21 is currently in the Constitution.

22 So when you -- Your question
23 just now was talking about moral turpitude

1 and how it's been implemented. It was in use
2 in 1901, it's in use today. I don't know
3 what you're talking about.

4 MS. LANG: Okay. Fair enough.
5 I'm talking about at any time. So . . .

6 MS. MESSICK: Okay. And then
7 since it was different over time.

8 MS. LANG: Well, I'm asking
9 whether or not he has knowledge at any time.
10 Obviously, if he does have knowledge, that
11 knowledge might be different over time.

12 MS. MESSICK: Okay. So your
13 question is, does he have knowledge of how
14 the phrase moral turpitude has ever been
15 implemented in Alabama with respect to
16 voting?

17 MS. LANG: Yes.

18 A. No. I've not done any
19 research on that.

20 Q. (Ms. Lang) In your view, how
21 would a lawyer such as yourself go about
22 determining whether or not a felony in
23 Alabama is one involving moral turpitude?

1 A. Well, the phrase moral
2 turpitude is general, and I think it's fair
3 to say that a lot of concepts in
4 constitutions, including the U.S.
5 Constitution, are general in nature, and are
6 left to be determined either by the Congress
7 or the Legislature, or interpreted by the
8 Courts.

9 And I think that is part of
10 what you -- you do with a Constitution,
11 particularly a state Constitution, which is
12 to be typically, I think, more general,
13 rather than more specific. Because the more
14 specific you are, particularly if you're a
15 specific over a broad range of topics, then
16 you hamstring the way the Government works.

17 So a general concept like
18 moral turpitude, which is in the
19 Constitution, can be interpreted by the
20 Courts or can be refined by the Legislature
21 through legislation. But if the Legislature
22 does something that is not deemed
23 appropriate, or if the Court has an

1 interpretation that is -- like, Plessy versus
2 Ferguson was the law for decades and then was
3 reversed, if a court does an interpretation
4 of a general concept that you don't like,
5 that doesn't mean that the phrase or the
6 general concept, itself, was wrong. It's up
7 to the Legislature or the Courts to refine
8 based on, you know, what they perceive the
9 concept to be.

10 Q. So can I -- Tell me if this
11 is a fair characterization of your testimony
12 is that a phrase like moral turpitude would
13 need to be interpreted either by the Courts
14 or by the Legislature of the State of Alabama
15 in order to provide more specificity?

16 MS. MESSICK: Object to the
17 form.

18 A. I think that would be fair,
19 because you can have arguments about what is
20 moral turpitude, and that may -- that could
21 even change over time. I mean, we've seen it
22 on a national level in terms of the
23 development of human rights, generally. And

1 gender rights, and to some extent same sex
2 marriage; that our attitudes are a little
3 different now than they were ten years ago or
4 fifty years ago. So those things can
5 sometimes evolve and can involve with the
6 current environment that -- that we all live
7 in.

8 Q. Okay. So one thing I think
9 you said in your testimony, and tell me if
10 this is a correct characterization, is that
11 people could differ in their interpretation
12 of the phrase moral turpitude and which
13 convictions fall within that category?

14 MS. MESSICK: Object to the
15 form.

16 A. I think people could differ,
17 just as they could differ on any other item
18 in the Constitution, or for that matter, you
19 know, a legislative act. Again, getting back
20 to the preamble, all men are created equal.
21 People could differ and say, no, it says men,
22 it doesn't mean women. And other people
23 could say, no, men is generic, it means all

1 people, and you don't even have to be an
2 adult, it's children as well. So you can
3 have disagreements over general concepts.

4 Q. Would it be your
5 understanding that it would -- Take a step
6 back.

7 A significant portion of the
8 Constitution in all of these drafts kind of
9 discusses separation of powers and who has
10 authority to make law and whatnot. Would you
11 think it would be appropriate for a county
12 registrar to make determinations on an
13 individualized basis about which convictions
14 involved moral turpitude?

15 MS. MESSICK: Object to the
16 form.

17 A. I would -- Probably as a
18 lawyer, I would probably say I'm not sure,
19 because I've not done any research in that
20 area, whether or not there's legislation that
21 would leave that up to a local county
22 government, or whether that is dealt with by
23 the Legislature. I've not done any research

1 on it, so it's hard to say. But I would
2 think within the framework of a state
3 Constitution with general language like this,
4 normally you would look to the Legislature to
5 establish some framework.

6 Q. Or the Courts?

7 A. Or the Courts.

8 Q. Until 2017, are you aware of
9 either the Courts or the Legislature
10 providing a definition of moral -- of which
11 crimes fall within the category of moral
12 turpitude for voting?

13 A. I've not researched it, so I
14 couldn't tell you.

15 Q. If the 1901 Constitution
16 included the phrase moral turpitude, given
17 the comment in the 1973 Constitution about
18 what they were or were not changing about
19 criminal disenfranchisement, is it your
20 opinion that the phrase moral turpitude was
21 likely borrowed from the 1901 Constitution?

22 MS. MESSICK: Object to the
23 form.

1 A. I'm not sure I would say
2 borrowed in the sense of we're going to take
3 it and incorporate whatever that means. The
4 way, and, of course, I just -- I mean, I was
5 not part of the '73 commission, but just
6 reading it, I don't recall when I read it
7 originally exactly what I thought. But just
8 reading it now and thinking about what we did
9 in 1979, if that phrase were lifted and put
10 in the '73 draft, I don't read that as
11 meaning we hereby endorse any segregationist
12 or racial philosophy that was part of the
13 1901 Constitution.

14 And by eliminating the laundry
15 list, and I can't remember what they all
16 were, idiocy was one, but if you read them,
17 some of them were just really crazy. By
18 eliminating that laundry list, to me, and I
19 think that was part of 1979, but by
20 eliminating that laundry list and keeping it
21 general, you're saying, we don't endorse what
22 the 1901 Constitution was doing.

23 Q. Right.

1 A. Because I think you could
2 pick some of those items and say, well, we
3 think we can apply these more to a particular
4 class than somebody else.

5 Q. Right.

6 A. And by eliminating them, I
7 think you're trying to eliminate that
8 application.

9 Q. Yeah. That's not quite my
10 question, though. I'm not asking kind of
11 about an endorsement of an underlying purpose
12 or whatnot. I'm just asking if the language
13 involving moral turpitude is in this draft,
14 and the 1901 Constitution was the baseline
15 that this draft was amending or correcting or
16 changing, do you think that the drafters
17 likely used the phrase moral turpitude --
18 like they got the phrase moral turpitude from
19 the 1901 Constitution, as opposed to from a
20 different source?

21 MS. MESSICK: Object to the
22 form.

23 A. I certainly can't speak for

1 the '73 commission. And it's hard to say --
2 Granted, if the phrase moral turpitude is in
3 the 1901 section, and I don't recall, if you
4 go back and look at other state constitutions
5 maybe around the country, whether or not that
6 phrase or similar phrases were in other state
7 constitutions where there's been no perhaps
8 argument about a racist past, I don't -- I
9 don't know whether you could say, well, it
10 may have been in the '01, but it was in
11 Utah's and it was in somebody else's. I
12 don't know. But if the term moral
13 turpitude's in the '73 draft, and if the
14 words moral turpitude are in 1901, well,
15 they're in both.

16 (Plaintiff's Exhibit 2 was
17 marked for identification
18 purposes.)

19 Q. Fair enough. Okay. I'm
20 going to mark Exhibit 2, and I'll direct you
21 to what is labeled D 184929. It's page 4.

22 A. Okay.

23 Q. And in the second to last

1 column near the top, it says: Section 7.02
2 Disqualifications, and it has a phrase and
3 then a comment. I'd like to you compare it
4 to the language that we just reviewed in the
5 1973 Constitution.

6 MS. MESSICK: The statutory --
7 The constitutional language and the comment
8 both?

9 MS. LANG: Yes.

10 A. (Witness complies.) Okay.

11 Q. (Ms. Lang) Is the proposed
12 language the same in both drafts?

13 A. It is the same.

14 Q. And with the exception of the
15 references to where voting rights restoration
16 can be located, is the comment nearly
17 identical?

18 A. It is.

19 Q. Do you have any recollection
20 of the committee ever talking about this
21 particular provision, and whether or not to
22 change it?

23 A. I don't recall.

1 Q. If there were significant
2 debate about whether or not to change this,
3 would you recall it?

4 A. Probably.

5 Q. Do you have any reason to
6 believe that your committee did anything more
7 than just transferred this section from one
8 location to another?

9 A. Yes.

10 Q. Okay. And what is that?

11 A. Well, we clearly -- I mean,
12 we clearly relied to a large extent on a lot
13 of the work that the '73 commission did. And
14 this section is -- the actual section is
15 identical to what was in the '73 draft. I do
16 think, and this was -- is kind of what I was
17 getting at earlier, this was really
18 fundamental, I think, to what Governor James
19 was doing and what the people who were
20 working with him on a proposed Constitution
21 were doing, which was to say we're going to
22 have a break with the past, and we are
23 rejecting the 1901 Constitution. We are

1 rejecting how it set up government to make it
2 difficult to work, and we're rejecting the
3 principles on which it was founded.

4 And while I personally believe
5 that the '73 commission was doing that as
6 well, I wasn't a part of it, and I did not
7 have specific discussions with them about
8 that. And while the '73 commission was put
9 together by Albert Brewer, who was very
10 progressive and very open, and who I got to
11 know in later years, it was finished under
12 George Wallace, which I think had a bit of a
13 taint to it, even though Wallace said he was
14 sort of neutral on this and he would leave it
15 up to the Legislature and the people.

16 But Fob James was not tainted
17 with that, and did not want to be tainted
18 with that. So even though we lifted pieces
19 from the '73 draft, and we may have kept
20 certain provisions in from the 1901, like
21 declaration of rights and fundamental rights,
22 that did not mean that because we kept
23 something from the 1901 Constitution or the

1 '73 draft that related to fundamental rights
2 that are in the U.S. Constitution as well,
3 that we were somehow endorsing a racist
4 background. Because that is clearly not what
5 Fob James was about, or those of us that were
6 working with the governor on this were about.

7 So although the language may
8 be the same, the attitude and the projected
9 influence and effect on the state, I think,
10 was clearly different than what was thought
11 of in 1901.

12 Q. And to the extent that it's
13 helpful, I will pause that I don't think I
14 disagree with you on any of that.

15 A. Okay.

16 Q. Can you also look at the
17 language that precedes that, Section 7.01
18 about qualifications for voting?

19 A. Okay.

20 Q. It's the immediate prior
21 section, qualifications for voting, and
22 compare it to the qualifications for voting
23 in the 1973 draft?

1 A. (Witness complies.) Okay.

2 Q. Other than the removal of the
3 last sentence about the Legislature
4 prescribing reasonable nondiscriminatory
5 requirements as prerequisites to
6 registration, is the language the same?

7 A. It is.

8 Q. And is the comment the same?

9 A. The comment appears to be the
10 same, yes.

11 Q. Do you recall why your team
12 removed that last sentence in the Section
13 7.01?

14 A. I don't recall specifically.
15 I think what we probably did is, even
16 based -- even with the '73 Constitution
17 draft, we were trying to make, I think, some
18 refinements, and I think we failed -- Again,
19 I'm going on what I think probably was the
20 case. That the last sentence was probably
21 just not necessary. That it was up to the
22 Legislature anyway to make requirements or to
23 prescribe reasonable grounds, and so we were

1 trying to streamline the draft as much as we
2 could, and shorten it as much as we could.
3 And my guess is, we felt like that sentence
4 was obvious that it would be up to the
5 Legislature and was not needed.

6 Q. Fair enough. And can you
7 take a look at Section 7.03, both the
8 language and the comment, and compare it to
9 the 1973 draft?

10 MS. MESSICK: And for the
11 Record, you're saying 701, 702, 703. There's
12 actually a period in there. So it's 7.01,
13 7.02, 7.03.

14 A. (Witness complies.) Okay.

15 Q. And are those identical as
16 well?

17 A. Except for the insertion of
18 the word in the 1979 draft of uniform law.
19 The word uniform.

20 Q. Yes. Do you have any
21 specific recollection of the addition of the
22 word uniform?

23 A. No specific recollection,

1 other than to say part of the issue with the
2 '01 Constitution was you frankly didn't have
3 uniform laws. You had general laws of what
4 were called local law, general laws of local
5 application that really only applied to one
6 county, and things that required county votes
7 even though they were constitutional
8 amendments. And we may have been trying to
9 get at these laws needed to be uniform across
10 the board, as opposed to sort of getting back
11 to the localization concept. But that's my
12 theory. I don't have any specific
13 recollection.

14 Q. And is one of the reasons for
15 uniformity and your goal of uniformity in
16 this Constitution, that lack of uniformity
17 was one mechanism for racial discrimination
18 in the 1901 Constitution?

19 A. I think it'd be fair to say
20 lack of uniformity in the 1901 was a basis,
21 was a framework by which politicians could
22 discriminate.

23 Q. So is it fair to say based on

1 our comparison of these two drafts, that your
2 1979 Constitution largely relied upon the
3 1973 Constitution for the section about
4 Suffrage and Elections?

5 MS. MESSICK: Object to the
6 form.

7 A. That would be fair to say.

8 Q. And so your group didn't --
9 Did your group do much substantive work on
10 redrafting or reconceptualizing the section
11 about Suffrage and Elections?

12 MS. MESSICK: Object to the
13 form.

14 A. I probably -- although, I
15 can't specifically remember it because I
16 don't remember specifically looking at every
17 section even in our draft, but when I was in
18 the two months before James was elected when
19 I was doing a lot of the basic research and I
20 was collecting research material like law
21 review articles and some other books about
22 some other state constitutional reforms, I
23 probably looked at some of those and would

1 compare them, not just this section, I
2 probably did, but all of the sections just to
3 see what they looked like and were they
4 similar, or were they greatly different.

5 I can't say that I recall
6 looking at some other state Constitution and
7 finding the Suffrage and Election sections to
8 be similar to be what was in the '73 draft or
9 similar to what we had. But I probably was
10 looking, with all of these sections, to see
11 if we looked like we were doing something
12 radically different, as opposed to not
13 radically different. And to the extent we
14 did do something radically different, and
15 within the Alabama framework we did, but
16 proposing home rule, although other states
17 had home rule, but the home rule concept was
18 significantly different in Alabama.

19 The Referendum and Recall were
20 significantly different in Alabama and
21 eliminating those statewide votes on local
22 issues, part of home rule was significantly
23 different. That other state constitutions

1 did not have that quite the way we had in, as
2 I recall, in the 1901. But I was looking at
3 other state constitutions to see if what we
4 were doing overall looked particularly
5 different. I just don't remember Suffrage
6 and Election specifically.

7 Q. You've provided a lot of
8 helpful insight on the kind of general
9 direction of the 1973 and 1979 constitutions,
10 but I just want to perhaps reiterate my
11 understanding of your testimony, which is
12 that you don't have any specific knowledge as
13 to why the commission members chose to use
14 the phrase involving moral turpitude in the
15 1973 draft?

16 A. I do not.

17 Q. And you do not have any
18 specific recollection of why you imported
19 that language into the 1979 draft?

20 A. I have no -- That would be
21 correct. I have no specific knowledge of
22 putting together a draft saying, all right,
23 we're going to take this and put it over

1 here. I don't have a specific recollection
2 of that.

3 Q. And you had not done any
4 research into the phrase moral turpitude, in
5 particular, and its usage in Alabama?

6 A. I think what I said is, I
7 haven't -- since then I haven't done any. I
8 have done some when I was putting this
9 together in my research with other states, as
10 I mentioned, but I don't -- I can't
11 specifically recall that I did. But I do
12 recall gathering a lot of material from other
13 states, as I said, law review articles,
14 books. There were a number of books
15 published on other states, constitutional
16 forms.

17 There was a law professor at
18 the University of Virginia, A.E. Dick Howard,
19 who was the sort of the principal draft
20 person of the Virginia -- revised Virginia
21 Constitution. He kind of did for Virginia
22 three or four or five years earlier than what
23 we were doing. He did for Virginia what I

1 was doing for Fob James, and I had
2 conversations -- I called him and had
3 conversations about what they did.

4 Q. Right.

5 A. But I can't recall specific
6 concepts that we discussed.

7 Q. Right. And would you agree
8 with me that the significance of racially
9 discriminatory language in a Constitution
10 like the 1901 Constitution, isn't just about
11 the sentiments of the people who drafted it,
12 but also about the impact it had in real life
13 when it was enforced?

14 MS. MESSICK: Hold on. I need
15 you to read back the beginning of that,
16 please.

17 (Requested portion of the
18 Record was read by the
19 Reporter.)

20 MS. MESSICK: Okay.

21 A. Well, I would say that, not
22 only from reading the 1901 Constitution, but
23 reading a lot of the record of the

1 constitutional convention of 1901, and I
2 think it had an impact that they intended.

3 Q. Right. So the language is
4 usually -- it's drafted with intent, because
5 it will have also an intended racially
6 discriminatory impact?

7 MS. MESSICK: Object to the
8 form.

9 A. I -- I think it's accurate to
10 say if someone drafts language, be it in a
11 Constitution or a legislation or a letter,
12 and they want -- and they want it to have a
13 racial impact, particularly in a negative
14 context, they'll write it that way based on
15 their intention. But --

16 Q. And the impact of the 1901
17 Constitution was, in fact, to discriminate
18 against blacks; is that correct?

19 MS. MESSICK: Object to the
20 form.

21 A. In my view, based on having
22 read it and read a lot of the -- as I say,
23 the legislative history is, yes. They

1 intended it to have a disenfranchising and
2 otherwise negative impact on African
3 Americans. It was -- The 1901 Constitution
4 was sort of a reaction to reconstruction
5 after the Civil War.

6 Q. And it did have that impact?

7 MS. MESSICK: Object to the
8 form.

9 A. Based on my knowledge of
10 history and what I've seen, yes, it did.

11 Q. I'm going somewhere with
12 this, I promise.

13 A. Yeah.

14 Q. But -- And would you also
15 agree, based on your knowledge of history and
16 research, that some mechanisms of
17 discrimination were more or less obvious in
18 their appearance?

19 MS. MESSICK: Object to the
20 form.

21 A. Some methods are probably
22 obvious, maybe more obvious than others.
23 It's possible.

1 Q. For example, I'm not sure
2 that I would have necessarily understood that
3 certain home rule or local rule
4 determinations could have a racially
5 discriminatory impact. But you've described
6 that, in fact, they did. And some of that
7 was likely drafted for that purpose; is that
8 right?

9 MS. MESSICK: Object to the
10 form.

11 A. I think that would be
12 correct.

13 Q. And if -- Do you feel that
14 you were one hundred percent knowledgeable of
15 every piece of the 1901 Constitution that was
16 crafted for the purpose of having a racially
17 discriminatory impact on African Americans?

18 A. Certainly not.

19 Q. Right. So, for example, if
20 someone was drafting -- was working with you
21 on drafting the 1979 Constitution, and didn't
22 have the knowledge that a poll tax had a
23 racially discriminatory impact in Alabama,

1 and so they -- so somebody doesn't know about
2 the racially discriminatory impact of poll
3 taxes. Reads the poll tax amendment says, it
4 kind of seems to make sense to have people
5 help fund elections or whatnot, and so
6 somebody who has the goal of creating a new
7 Constitution that's going to remove racially
8 discriminatory elements might retain that
9 piece of the Constitution; is that possible?

10 A. Well, I suppose it's
11 possible. Although, something like a poll
12 tax, which is very specific, I think, is
13 fairly obvious. And getting back to your
14 previous question, which is really about sort
15 of general concepts and general language,
16 clearly in the 1901 Constitution, the
17 restrictions on home rule, the placing of
18 things -- of local government issues,
19 particularly county government issues in the
20 hands of the Legislature, and taking away the
21 ability of people in local citizens and
22 counties, to make decisions, I think in the
23 1901 Constitution had a racial basis for it.

1 And I think when we were
2 discussing some issues in 1979 on home rule,
3 you know, I would pick up from talking with
4 legislators, they weren't specific about it.
5 By then, people didn't -- they weren't as
6 obvious about that issue. But I would pick
7 up certain legislators who were white, they
8 didn't want local home rule. And there were
9 times when I wondered, well, did they not
10 want local home rule because they there were
11 too many African Americans in their county?

12 But the interesting thing
13 about it, and this kind of gets to your
14 question about sort of the general nature of
15 this moral turpitude, a couple of the people
16 that were most opposed to Governor James'
17 home rule were two very prominent state
18 senators from Jefferson County; Richmond
19 Pearson and U.W. Clemon. Both African
20 American. U.W. Clemon became U.S. District
21 Judge. They didn't like home rule. Because
22 by the time in the late '70s and they were in
23 office, and African Americans had become

1 throughout the state of Alabama, particularly
2 in Jefferson County, much more active and
3 much more in governing their local issues.

4 Senator Clemon and Senator
5 Pearson liked the fact that in the
6 Legislature, they had control over what
7 happened in Jefferson County. In other
8 words, they were relying on the lack of home
9 rule to do what they wanted to do in
10 Jefferson County based on -- based on their
11 kind of political position, so they flipped
12 it. And there was nothing wrong with that.
13 That was just the way it worked. So my point
14 is, yes, you can take something generic and
15 say, well, this was intended in 1901, but
16 that doesn't mean it's intended in 1979.

17 Q. With all due respect, I don't
18 think that was my question. So if you could
19 just try to answer my question.

20 Is it possible that somebody
21 who does not know that certain language was
22 crafted to have a discriminatory impact might
23 import that language into a new Constitution

1 simply because they did not know what its
2 initial purpose was?

3 MS. MESSICK: Object to the
4 form. Asked and answered. He started by
5 answering.

6 MS. LANG: I disagree.

7 A. If it's possible, yes, it's
8 possible.

9 Q. (Ms. Lang) And do you feel
10 confident that every single piece of the 1901
11 Constitution that was crafted to discriminate
12 against blacks was removed from the
13 Constitution that you drafted?

14 A. Yes.

15 MS. MESSICK: Object to the
16 form.

17 Q. You have not researched
18 whether or not the phrase moral turpitude was
19 specifically crafted to disenfranchise
20 blacks; is that right?

21 A. Correct.

22 MS. MESSICK: Object to the
23 form.

1 Q. So how could you be certain
2 that this draft does not have language that
3 at the time it was drafted in 1901 was
4 crafted to discriminate against blacks?

5 MS. MESSICK: Object to the
6 form.

7 A. Because it was not intended
8 to, and the public statements that Governor
9 James made, that I made, made it clear.
10 There was no intent in this document in any
11 shape, form or fashion to discriminate
12 against African Americans.

13 Q. That wasn't my question, Mr.
14 Waters. My question is, do you feel
15 confident that there is no language that at
16 the time it was drafted in 1901 was
17 specifically crafted for the purpose of
18 disenfranchising blacks, that none of that
19 language remains in this draft?

20 A. Well, the word tax is in the
21 1901 Constitution, and it's in the 1979
22 draft. That doesn't mean that because the
23 word tax is used that it's referring to poll

1 tax.

2 Q. That's not my question.

3 MS. MESSICK: He is answering
4 your question. Also, you know, I'm going to
5 lodge an objection because this is
6 irrelevant, because your impact claim has
7 been dismissed. It's gone. You can look at
8 impact as it goes to intent, but you're
9 trying to get him to say that --

10 MS. LANG: I'm not. That's **
11 not ** my purpose, so I get to litigate the
12 case how I want.

13 MS. MESSICK: Well, the
14 claim's dismissed, so I'm objecting on that
15 basis.

16 MS. LANG: Well, that's not
17 the purpose of my question.

18 MS. MESSICK: Okay. Well, you
19 seem to be asking him --

20 MS. LANG: Misty, I'm not
21 going to argue about the legal theory of the
22 case with you.

23 MS. MESSICK: Okay. I object

1 because it's irrelevant, the claim has been
2 dismissed, and because it's asked and
3 answered.

4 MS. LANG: Okay.

5 Q. (Ms. Lang) I'm not trying to
6 be difficult, Mr. Waters.

7 A. Right.

8 MR. SINCLAIR: She's done
9 harassed the witness.

10 MS. MESSICK: Yeah.

11 MS. LANG: I'd like to state
12 for the Record that Mr. Sinclair has accused
13 me of harassing the witness.

14 MR. SINCLAIR: I was making a
15 statement to my cocounsel.

16 MS. LANG: Yes, audibly. And
17 I don't think that I'm harassing the witness.

18 Q. (Ms. Lang) If you accept the
19 premise that there is -- As a hypothetical,
20 this could be true or not true or completely
21 made up, but as a hypothetical, if there is
22 significant historical evidence that shows
23 that the reason the phrase moral turpitude

1 was chosen in 1901 was because it was
2 inherently flexible, and so would allow
3 individual registrars to make determinations
4 about whose crimes ****we're**** were
5 disqualifying and whose **** we're **** were not,
6 and in that way could enable registrars to
7 discriminate against African Americans.

8 And hypothetically if there
9 was evidence that a -- 11th Circuit Court and
10 the Supreme Court found that that language
11 was kind of a serpent of discrimination,
12 that, you know, specifically was chosen to
13 have -- that this phrase of using criminal
14 disenfranchisement based on moral turpitude
15 was crafted because of the flexibility and
16 ambiguity that it had enabled registrars to
17 discriminate against blacks, if you take that
18 as all given, can you tell me is it true that
19 that mechanism for potential discrimination,
20 by no knowledge of yours, remained in the
21 1979 draft?

22 MS. MESSICK: Object to the
23 form.

1 A. If I follow your question, I
2 think the answer would be no, I don't agree
3 in this sense. In the '01 Constitution,
4 there was a long laundry list of crimes,
5 wrongdoings, some of which probably weren't
6 crimes but were wrongdoings, that could
7 disqualify something. And, yes, if moral
8 turpitude is in there some sort of a
9 catchall, you could argue that in the 1901
10 Constitution perhaps that the catchall maybe
11 had some race based. But the -- I mean, the
12 '73 draft did it, certainly the '79 draft
13 eliminated that laundry list of things.

14 And if it's suitable, which I
15 think probably we thought and I suspect most
16 state constitutions are this way, I've
17 certainly not looked at all of them or I may
18 have back then, I don't remember, but if it's
19 suitable for a Constitution to have some
20 mechanism for speaking to voter
21 disqualification, disqualification of voting
22 rights and reinstitution of voting rights,
23 some sort of generic language is reasonable.

1 And I don't think that the
2 fact that moral turpitude, those words may
3 have been used in the '79 draft, when the '79
4 draft I think is clear, was trying to get
5 away from the racist past, I do not think
6 that those words automatically incorporate
7 the history from 1901. And that's the way I
8 take your question. I don't think it -- I
9 don't think it comes in because you used the
10 same words.

11 Q. Yeah. That's not my
12 question.

13 A. Okay.

14 Q. So your draft removed a
15 mechanism of discrimination from the criminal
16 disenfranchisement language of the 1901
17 Constitution. It removed those thirty-three
18 crimes, which were found to be a mechanism of
19 racial discrimination by the Supreme Court.
20 And I believe you're pointing to that as
21 evidence, rightfully so, of a lack of
22 discriminatory intent in removing those --
23 that list of crimes; is that right?

1 MS. MESSICK: Object to the
2 form.

3 A. Yes. That would be evidence
4 of removing those, yes.

5 Q. There was a second mechanism
6 that the Court found was discriminatory,
7 which was the vagueness of the phrase moral
8 turpitude. You did not study that issue at
9 the time that you drafted this, to your
10 recollection?

11 MS. MESSICK: Object to the
12 form.

13 A. I certainly don't recall
14 researching the vagueness, if it was there,
15 of the term moral turpitude.

16 Q. And you have no recollection
17 of the specific reason why you would have
18 chosen the phrase moral turpitude,
19 specifically as the format of
20 disqualification for people with convictions?

21 MS. MESSICK: Object to the
22 form.

23 A. I think it would be fair to

1 say that it was a -- that it was a general
2 term. And it would be up to the Legislature
3 to define what those particular crimes might
4 be. And those particular crimes even could
5 vary over time. I mean, sometimes
6 Legislatures put something in place and then
7 they refine it over time, just like court
8 decisions refine things over time. It
9 doesn't mean that they were wrong to start
10 with. It just means as time passes there's
11 refinement.

12 So to the extent that we use
13 that language, and I could probably go
14 through here and take two hours and pick out
15 other general terms that we may have used, we
16 were leaving it up to the Legislature to
17 decide, all right, on a going-forward basis,
18 what type of actions or activities? What
19 type of crimes would the Legislature deem
20 significant or suitable to fit in that
21 category?

22 Q. But you have no recollection
23 of having such a discussion with your

1 committee members about the reasons for the
2 use of the phrase moral turpitude?

3 A. I do not recall.

4 Q. And it appears as though you
5 chose to use the same language that the 1973
6 Constitution used; is that right?

7 A. That's correct.

8 Q. And the 1973 Constitution
9 doesn't provide any information about why,
10 specifically, the phrase moral turpitude was
11 used; is that right?

12 MS. MESSICK: Object to the
13 form.

14 A. I don't think it provides
15 anything specific that says this is why we
16 used those two words.

17 Q. Right. Okay.

18 MS. LANG: I think now is a
19 good time for lunch.

20 MS. MESSICK: Yep. Let's go
21 off the Record.

22 (Recess taken.)

23 Q. (Ms. Lang) In or around

1 1986 -- Let me rephrase. First, welcome back
2 from lunch.

3 A. Thank you.

4 Q. I -- I think that the next
5 hopefully short amount of time we have left
6 here will probably move quicker if we can
7 both manage to try to talk about the facts,
8 rather than their legal import.

9 A. Okay.

10 Q. We're both lawyers, so I
11 imagine it's easy to do that, but I'm not
12 particularly interested in this deposition in
13 the kind of legal import of any of the facts
14 that we discover here or its application to
15 the racial intent claim, but rather just what
16 you know or don't know about what happened.

17 A. Okay.

18 Q. With that said, in the 1980s,
19 there was a Supreme Court decision that we've
20 discussed called Hunter v. Underwood that
21 struck down part of Alabama's criminal
22 disenfranchisement program. And for purposes
23 of this question, please assume I'm correctly

1 characterizing the decision, both by the 11th
2 Circuit and the Supreme Court, was that part
3 of the racial discrimination was the kind of
4 intentional use of vague language, such as
5 moral turpitude, to enable registrars to
6 engage in discriminatory application of the
7 law to disenfranchise blacks. And that that
8 is, in fact, what happened after the 1901
9 Constitution went into effect.

10 If that decision had been
11 handed down earlier, prior to 1979, and you
12 knew about it, do you think that might have
13 changed your choices in drafting the
14 language?

15 MS. MESSICK: Object to the
16 form.

17 A. It might have.

18 Q. Would it have changed your
19 approach to the moral turpitude language in
20 particular?

21 MS. MESSICK: Object to the
22 form.

23 A. If there had been a U.S.

1 Supreme Court case that says the use of the
2 words moral turpitude are disguised for
3 racial bias, or if someone had argued use a
4 different term, we might well have used a
5 different term. Because we were sensitive to
6 the racial issues that the state had gone
7 through in the '60s, and even to some extent
8 still went through, so we would wanted to be
9 clear from our point of view, and we felt we
10 were clear, but we would have wanted it to be
11 clear that there's no racial bias in what we
12 were doing, whether it was on that section or
13 any other section.

14 Q. Right. So if you were aware
15 that the moral turpitude language, at least
16 as used in Alabama in the 1901 Constitution,
17 was designed and used in a discriminatory
18 fashion, that would have affected your
19 drafting of that section?

20 MS. MESSICK: Object to the
21 form.

22 A. It would have affected the
23 drafting, or we would have maybe put in the

1 comment, we're using moral turpitude, but
2 we're not using it in the same sense as 1901,
3 we might have made that clear in the comment.

4 Q. Uh-huh. But you don't have
5 any sense of any particular reason why
6 your -- why you chose the phrase moral
7 turpitude?

8 MS. MESSICK: Object to the
9 form.

10 Q. I think you've already
11 testified?

12 A. Correct. I have.

13 Q. And if you knew -- Put aside
14 the Supreme Court. If you had had personal
15 knowledge that the moral turpitude language
16 had been designed for discriminatory purposes
17 and was being used in that manner by
18 registrars, would that have affected your
19 choices in drafting the Constitution?

20 MS. MESSICK: Object to the
21 form.

22 A. It may have affected it, but
23 I think it's fair to say -- I think it would

1 be fair to say, even if we had used moral
2 turpitude, as I say, we might have had it in
3 the comment. We might have said this is
4 not -- I mean, it's the same words, but it's
5 not the same intent. I mean, there were
6 other words from the 1901 Constitution that
7 were in our draft that were in 1901 infused
8 with racial issues that in our draft was not.

9 Q. Right. That's helpful. But,
10 I guess I'm trying to ask a different
11 question or an additional question, which is,
12 do you think you would have changed your mind
13 about wanting to use a term like moral
14 turpitude if you knew that it had been
15 designed for racially discriminatory purposes
16 in Alabama, and that had been used
17 effectively to disenfranchise African
18 Americans in Alabama, and thus presumably
19 would have the potential to continue to
20 disenfranchise African Americans in Alabama?

21 MS. MESSICK: Object to the
22 form.

23 A. If the question had been

1 presented in that format, we might well have
2 used, you know, different language. But the
3 difficulty I have is, that it gets to, at
4 least in what we did in 1979, what was our
5 intent? What was the governor's intent?

6 Q. No. I'm not asking that,
7 though. I'm only asking if you'd had certain
8 knowledge, would you have made a potentially
9 different decision? And I think you've
10 answered that question. But you didn't have
11 any knowledge of any specific racially
12 discriminatory intent behind the phrase moral
13 turpitude at the time?

14 A. We did not.

15 Q. Okay. Did you have any sense
16 of the racially discriminatory impact of
17 felony disenfranchisement overall in Alabama?

18 MS. MESSICK: Object to the
19 form.

20 A. I mean, I think certainly I
21 was aware just personally that generally
22 felons probably lost the right to vote, just
23 as a general rule. I don't know that I

1 ever -- I don't think I could say that I knew
2 precisely was it each felony or all felonies
3 or certain classes of felonies? So if your
4 question is, was I generally aware that if a
5 person is convicted of a felony, particularly
6 goes to prison, do they lose their right to
7 vote, generally speaking I would have said
8 yes, I was aware of that.

9 Q. And were you aware at the
10 time that such a rule had a discriminatory --
11 or had a disproportionate impact on African
12 Americans in Alabama?

13 MS. MESSICK: Object to the
14 form.

15 A. I don't think I would phrase
16 it that way. I think I would say that I was
17 probably generally aware that African
18 American -- that the criminal justice system
19 in terms of sentencing and sending people to
20 jail for crimes, and putting people in
21 prison, probably had discriminatory effects
22 that as a general rule, just generally, an
23 African American might be more likely for a

1 particular crime to be put in jail than maybe
2 a white person, or an affluent white person,
3 who might get probation or a suspended
4 sentence or something like that.

5 I mean, I think generally
6 speaking if people who may have thought about
7 the issue would have known that that was an
8 issue, a problem to be dealt with in the
9 criminal justice system.

10 Q. So as a general matter at the
11 time, you were aware that more -- as a
12 proportional matter, more African Americans
13 were convicted of felonies in Alabama than
14 whites?

15 A. I'm not sure I would say that
16 I was aware that more African Americans were
17 convicted of felonies. But I think there was
18 some discussion and some general concern that
19 in the sentencing process, African Americans
20 might have been more inclined to get
21 incarceration time versus probation or
22 suspended sentence -- probationary time
23 versus incarceration; that that was a general

1 sort of topic that probably needed to be
2 addressed.

3 Q. So is your testimony that you
4 were not aware that conviction rates might
5 have been disproportionately higher for
6 African Americans?

7 MS. MESSICK: Object to the
8 form.

9 A. I'm trying to recall whether
10 I have a recollection of actual conviction
11 rates. I can't say that I necessarily recall
12 that.

13 Q. When you were working on this
14 1979 Constitution, did you do any analysis of
15 the racial impact of the felony
16 disenfranchisement provision?

17 A. No, I don't think so.

18 Q. Did any of you -- Did anyone
19 during the 1979 process do any quantitative
20 racial impact analysis with respect to any of
21 the constitutional provisions?

22 A. Not that I know of. At
23 least, if you're talking about statistical

1 analysis or something along those lines, not
2 that I recall.

3 Q. And we've talked a great deal
4 about the general purpose of the 1979
5 Constitution as trying to move forward from a
6 past in Alabama that included segregation and
7 other racially discriminatory practices. But
8 do you recall any specific discussions about
9 how the newly drafted provisions might impact
10 the African American community in Alabama?

11 MS. MESSICK: Object to the
12 form.

13 A. Yes, I think so.

14 Q. Can you tell me about any
15 that you recall?

16 A. Well, it relates in part to
17 what Governor James' overall, I think,
18 purpose was, particularly in the first two
19 years that he was in office. He did want to
20 move away from the past. He did understand,
21 I think, that the 1901 Constitution did have
22 an extreme racial impact that was negative,
23 but he also understood that it hamstrung

1 government.

2 And I think he wanted to make
3 government more workable literally for
4 everybody. And I don't think that was
5 necessarily just a campaign approach. I
6 think he wanted to try to help everybody.
7 And, in part, I think that was his sort of
8 philosophical approach with this
9 Constitution.

10 It was also a part of his
11 initial legislative efforts on what he called
12 his War on Illiteracy. And to promote and to
13 try to be more effective with public schools
14 in terms of the effectiveness of the school
15 system, and the money allocated to it. Even
16 though a lot of it was earmarked, I think he
17 wanted to focus on that.

18 And I certainly had no reason
19 to think that -- that somehow in his
20 approach, he was attempting to or thinking
21 that he would exclude anybody. So I think --
22 I think that's all part of the overall
23 context, I think, in which he approached

1 being governor. And sometimes it got him
2 into difficulty, because one of the
3 criticisms of him, particularly in the start,
4 was that he did too much -- he tried to do
5 too much too soon, and it hindered his
6 accomplishing some of the things that he
7 wanted to accomplish.

8 Q. I think we have all that kind
9 of background on the Record. I think my
10 question is, do you recall any specific
11 conversations in the constitutional drafting
12 about specific provisions and determining
13 their racial impact?

14 MS. MESSICK: Object to the
15 form.

16 A. Yes.

17 Q. And can you share that with
18 me?

19 A. Well, the home rule
20 provisions. Because the home -- What
21 Governor James wanted was the opportunity for
22 people in counties to have their own form of
23 local government, and to have more authority.

1 And I think he understood that in some
2 counties in Alabama, like Greene County,
3 predominantly African American -- majority
4 African American, that home rule would allow
5 African Americans to have more say in local
6 government. I mean, you know, I think there
7 was opposition to home rule and nobody was
8 explicit about it in those days.

9 But there was this feeling
10 that when there was opposition to home rule,
11 there was some sense that in counties that
12 were predominantly African American, some
13 people didn't want home rule. So I think he
14 did understand that in that context, home
15 rule would be beneficial to African
16 Americans. Particularly in those counties
17 like Greene and Lowndes and others, where
18 African Americans were in the majority.

19 Q. But to be clear, I think your
20 testimony earlier was that prominent African
21 Americans opposed those sections; is that
22 correct?

23 A. No. Two prominent African

1 American Senators who were in Jefferson
2 County, that was predominantly African
3 American, opposed expanding home rule and
4 taking away the ability of a Legislature to
5 basically control what happened locally. And
6 I think the feeling was that African
7 Americans in Jefferson County had attained a
8 significant power and influence.

9 Senator Pearson, Senator
10 Clemon were very prominent in the
11 Legislature, so they weren't particularly in
12 favor of home rule. I think Governor James
13 understood that. But there were other
14 counties where like Greene County, and I
15 can't remember who was in control of Greene
16 County or Lowndes County, but there were
17 other counties where the legislators may not
18 have been African American and home rule
19 could have helped them.

20 So I think the concept of home
21 rule was to let the local people decide.
22 Now, Senator Clemon and Senator Pearson were
23 in the Legislature, so they weren't

1 particularly inclined to favor home rule. I
2 suspect there were others in Jefferson County
3 who weren't in the Legislature who would've
4 been happy to have home rule. So it kind of
5 depended on which side of the fence you were
6 on politically.

7 Q. Yeah. I understand. Were
8 you aware of any African American leaders
9 that specifically supported the change of
10 home rule in the 1979 draft?

11 A. I think he was a
12 representative then; Buskey from Mobile was
13 generally supportive. And I think Michael
14 Figures, State Senator; at the time, I think
15 he was from Mobile. I think he was generally
16 supportive of home rule.

17 Q. Great. I should have asked
18 this much earlier, but what happened with the
19 1973 draft Constitution after it was
20 submitted?

21 A. As I recall, it never got
22 presented to the Legislature. It just sort
23 of died on the vine, as I recall.

1 Q. And what happened to the
2 1979?

3 A. Uh-huh. It passed the
4 Senate. Now, the Senate amended it a number
5 of times. A couple of amendments significant
6 to remove I think -- I think they removed
7 Referendum and Recall in the Senate. I think
8 they put back in the earmarking and what was
9 called the Lid Bill, the limitation on
10 property tax.

11 So they took away some of
12 Governor James' key items, but they primarily
13 passed it intact. Then it got to the House
14 and failed in the House. It never actually
15 came up for a vote. It just -- There was
16 enough opposition to it in the House that the
17 legislative session ended without it ever
18 actually coming up for a vote.

19 MS. LANG: I want to make a
20 note for the Record before I forget, which is
21 that the documents that Mr. Waters brought
22 were clawed back for the purpose of searching
23 for any attorney-client privilege documents.

1 And have you all completed
2 that review, or will you be doing it at a
3 later time?

4 MS. MESSICK: We're going to
5 do it today at a break as you asked, but we
6 haven't had time yet.

7 MS. LANG: Sure.

8 Q. (Ms. Lang) Was Judge Myron
9 Thompson on the 1979 committee?

10 A. My recollection is I think we
11 spoke to him about it and he may have come to
12 some of our meetings. He was not very
13 active, as I recall.

14 Q. Who were the other African
15 Americans on the committee?

16 A. On the governor's committee,
17 I don't think -- and I'm trying to remember
18 who all -- it kind of fluctuated, and I'm
19 trying to remember who all was on it, and I
20 can't remember all of them. The ones who
21 were the most active were not African
22 Americans. I've mentioned Yetta Samford,
23 Conrad Fowler, Bob Harris, Bo Torbert.

1 Q. Are these African American
2 people?

3 A. No. I said the ones who were
4 most active were not African Americans.

5 Q. Okay. Can you think of any
6 other African Americans that were on the
7 committee?

8 A. No, not directly on the
9 committee.

10 Q. After the 1979 draft died in
11 the Legislature, did Governor James make an
12 additional attempt to revise the
13 Constitution?

14 A. He did not.

15 Q. Are you -- Who was
16 Representative Tony Harrison, do you know?

17 A. Tony, I'm trying to remember
18 where he was from. I think he was in South
19 Alabama, but I'm not sure if it was
20 Montgomery or maybe Mobile. I don't recall.

21 Q. Was he African American?

22 A. I think so, yes.

23 Q. Are you aware that during the

1 1979 hearings, Representative Harrison said,
2 quote, The nebulous language of moral
3 turpitude as is used in the qualifications
4 under the section under Suffrage is again
5 reappearing here, and I think that there
6 should be a deletion of that language?

7 Do you recall that discussion?

8 A. I don't.

9 Q. Did you attend the hearings?

10 A. Yes.

11 MS. MESSICK: Object to the
12 form.

13 Q. Do you know who
14 Representative Martha Smith is?

15 A. I'm sorry?

16 Q. Representative Martha Smith?

17 A. There were several women in
18 the Legislature. I'm trying to remember
19 who -- I'm not sure if I recall Martha Smith.

20 Q. Are you aware that an
21 additional representative stated, I have
22 trouble with the phrase of moral turpitude,
23 too, during the hearings?

1 A. I don't recall.

2 Q. Do you know what the section
3 about restoration of voting rights was in the
4 1979 Draft Constitution?

5 MS. MESSICK: Object to the
6 form.

7 A. I'd have to go look it up. I
8 don't have it memorized.

9 Q. Do you remember discussing
10 the restoration of rights provision in the
11 1979 draft?

12 A. I mean, I don't have a
13 specific recollection of it.

14 MS. MESSICK: And I wanted to
15 object to the form on that one.

16 Q. When you were drafting the
17 1979 Constitution, what was your
18 understanding of the purpose of felony
19 disenfranchisement, as a general matter?

20 A. Just general matter, if
21 citizens commit a felony, they can lose their
22 voting rights. That typically, if you've
23 committed some serious crime, you lose the

1 right to vote, just a general proposition.

2 Q. But why? What's the purpose
3 of taking away the right to vote from someone
4 who has been convicted of a crime?

5 MS. MESSICK: Object to the
6 form.

7 A. Yeah. I think the general
8 thinking would be that if you are
9 irresponsible enough to commit a felony, say
10 it's murder, but there could be other
11 felonies, then your judgment about voting is
12 not to be trusted. I think that would be
13 sort of the general, at least, my view of the
14 general concept.

15 Q. Would you consider the loss
16 of voting rights to be part of the punishment
17 for the crime?

18 A. Well, I don't -- I don't know
19 that it's ever specifically stated to be part
20 of the punishment. It's a consequence of the
21 crime.

22 Q. Would you consider it to be
23 part of the punishment?

1 MS. MESSICK: Object to the
2 form.

3 A. I guess I would in the sense
4 that whether it's a loss of voting rights or
5 loss of reputation or people looking at you
6 in a different way, even though that's not
7 legally the punishment, it's part of the
8 consequence.

9 Q. Do you know who a Mrs.
10 Weidler is?

11 A. Weidler?

12 Q. Yes.

13 A. The name, I don't recall.
14 Wilder or Weidler?

15 Q. W-E-I-D-L-E-R.

16 A. No. Sorry.

17 Q. It appears based on the
18 transcript that she was with the ACLU. Do
19 you recall her raising the question of
20 whether or not the moral turpitude language
21 was, itself, racially discriminatory?

22 A. I don't recall.

23 Q. At the point that these

1 hearings were held, on March 7th, 1979, and
2 thereabouts, where were you in the process of
3 drafting the 1979 proposed Constitution?

4 A. My recollection is we had a
5 draft. I don't think it was not the draft,
6 the actual draft that was submitted to the
7 Legislature. I think this draft right here
8 (indicating) was the one that was actually
9 submitted.

10 MS. MESSICK: For the Record,
11 he was touching Exhibit 2.

12 THE WITNESS: Exhibit 2, yes.
13 Correct.

14 A. And I think we did make some
15 revisions to the draft that we had at the
16 time. I don't recall what those revisions
17 were. I do recall -- You've been referencing
18 the hearings, and I think -- I don't recall
19 exactly, it took about a week, it took
20 several days, and there were, you know, lots
21 of suggestions made. Lots of sort of
22 criticism from all sides about all issues.
23 And I think we tried to take as much into

1 account as we could.

2 And my recollection is we -- I
3 mean, I'm certain we did have a draft,
4 because that's partly what the hearings were
5 about, people were looking at the draft. I
6 don't have that draft. I don't know what
7 happened to those early drafts. I think that
8 was part of what I sent to the Archives.

9 Q. And did the committee, to
10 your recollection, revisit the voting
11 provisions in the draft, based on statements
12 made in the hearings?

13 A. We may have, but I have no
14 recollection of revisiting that issue.

15 Q. So overall during the
16 hearings that took place in March 1979, you
17 don't recall any particular discussions about
18 moral turpitude, its vagaries, or its
19 potentially discriminatory nature?

20 MS. MESSICK: Object to the
21 form.

22 A. I don't recall. Sorry.

23 Q. When was the next time you

1 participated in any activities related to
2 Constitution reform after the 1979 effort?

3 A. I think it was 2000 when
4 Senator Roger Bedford tried to get a new
5 Constitution passed.

6 Q. And what was your role at
7 that time?

8 A. There were two of us. Ed
9 Gentle, who's a lawyer in Birmingham; and I.
10 Roger asked us to help putting something
11 together, and so we did.

12 Q. And what process did you go
13 through to put a draft together in 2000?

14 A. We did something similar to
15 what was done in 1979. I think, as I recall,
16 we looked at the '73 draft, the '79 draft.
17 We had discussions with Senator Bedford about
18 it. I think we did pull some of the things
19 from the '79 draft that I was familiar with.
20 And I've got it here, but I haven't reviewed
21 it.

22 My recollection is he may have
23 kept the limitation on property tax in, which

1 was a key political issue. I think he kept
2 that in. I think he may have had a limited
3 home rule, but I don't specifically recall
4 what was in the home rule provisions.

5 And I think he did introduce
6 it. I don't think it went anywhere. My
7 recollection is that Senator Bedford wanted
8 to -- to make an effort to bring attention
9 back to constitutional reform, and I think he
10 wanted to get something started and hoped
11 that it would take off from there. And
12 apparently it did not.

13 Q. Yeah. Do you remember the
14 passage of Amendment 579 in 1996?

15 A. I can't say I specifically
16 sitting here remember it passing. I mean, I
17 remember -- I know it's there, which I think
18 adopted that -- the moral turpitude language.

19 Q. Were you involved in any way
20 in the introduction of that language in the
21 Legislature, or on the ballot?

22 A. I was not.

23 Q. Did you attend any of the

1 hearings on that issue?

2 A. I did not.

3 MS. MESSICK: Object to the
4 form.

5 Q. Other than having a general
6 knowledge that this happened, do you have any
7 knowledge about the passage of Amendment 579
8 and its process?

9 A. I do not.

10 Q. Then when was the next time
11 you tried to work on constitutional reform?

12 A. The next failure was 2003.
13 Governor Riley appointed a constitutional
14 commission, similar to what was done in '73,
15 and I was a member of that one. So I was on
16 that commission.

17 Q. And Jim Bennett was the
18 chair; is that right?

19 A. He was.

20 Q. And remind me who Jim Bennett
21 is again.

22 A. He was a -- He'd been a state
23 senator, and he was Secretary of State.

1 Q. Can you describe to me the
2 work of the commission in 2003?

3 A. Yeah. I don't recall how
4 many meetings we had. We had a number of
5 meetings. I don't recall how many, and I
6 don't really recall the time frame. Maybe
7 over a period of about a year.

8 We had subcommittees. I was
9 on I think the earmarking -- or the
10 unearmarking subcommittee. And the
11 commission looked at various topics to
12 present to the Legislature, earmarking was
13 one. I think, I have to refresh my memory, I
14 think there was -- I don't remember if there
15 was an education section, but there was a
16 taxation, I think, section.

17 But I was on the kind of local
18 government -- well, not local government,
19 there was a home rule section, I think. I
20 was on the earmarking question.

21 Q. And I forgot to ask. With
22 respect to the 2000 Constitution, are you
23 aware of any changes to the voting sections

1 that you made in 2000?

2 A. I'm not aware of any.

3 Q. Do you recall any discussions
4 about changing the voting sections at that
5 time?

6 A. I don't recall.

7 Q. And in 2003, did the
8 commission create kind of a complete proposed
9 draft Constitution, like in 1973 and '79?

10 A. It did not.

11 Q. What did -- What was its
12 final product?

13 A. It had a report that had
14 certain suggested legislative pieces to
15 revise certain sections. And again, going on
16 memory, I'm not -- I'm not sure how many of
17 them actually got introduced. There was a
18 recompilation section, I think, that did get
19 passed that sort of recompiled the
20 Constitution to make it easier to read, but
21 it didn't make any substantive changes. And
22 I think that may have been the only thing
23 that really passed.

1 (Plaintiff's Exhibit 3 was
2 marked for identification
3 purposes.)

4 Q. And I'm going to introduce
5 Plaintiff's Exhibit 3. Can you let me know
6 if that's the final product that you were
7 referring to?

8 MS. LANG: I don't think I
9 have additional copies, but I'm not going to
10 ask any questions about it other than for him
11 to confirm that it is the final product.

12 MS. MESSICK: And you're
13 asking if it's the complete final product?

14 MS. LANG: Yes.

15 A. I think the final product had
16 some sample legislation in it, in addition to
17 this report.

18 Q. (Ms. Lang) Okay.

19 MS. MESSICK: Was that part of
20 what you produced?

21 THE WITNESS: That was part of
22 what I brought.

23 (Plaintiff's Exhibit 4 was

1 marked for identification
2 purposes.)

3 Q. (Ms. Lang) We'll introduce
4 this Exhibit as Exhibit 4.

5 MS. LANG: And let the Record
6 reflect that Exhibit 3 is a part of Exhibit
7 4, but Exhibit 4 is the complete report.

8 MS. MESSICK: Let him check
9 that it's complete. I knew there was a
10 bigger one that looked similar.

11 A. I mean, this is the one I
12 remember, the report, but then it's got
13 sample pieces of legislation in it. And it's
14 interesting, this one. Yeah, this is January
15 16th of '03. This is March 27th. And I
16 noticed it because this shows Sally Creel as
17 vice chair, and this shows Lenora Pate as
18 vice chair. I don't remember why they
19 switched. I remember Lenora Pate being on
20 the commission. I don't really remember
21 Sally.

22 But it looks like it's a
23 little bit different, because it looks like

1 this is maybe initial recommendations. This
2 is actually the final report, which is home
3 rule, which is what I was on. Recompile, which I think did pass. I'm sorry, home rule
4 I was not on. Earmarking I was on. Line
5 item veto and super majority vote for tax
6 increases, those are the things I think we
7 finally reported on, and it's got some sample
8 legislation in here.
9

10 MS. LANG: So let the Record
11 reflect that when Mr. Waters was referring to
12 the initial recommendations, he was referring
13 to Exhibit 3. And then he was referring to
14 Exhibit 4 when he discussed the more final
15 product created by the committee.

16 Q. (Ms. Lang) Did the 2003
17 report include any recommended changes to the
18 voting provisions of the Constitution?

19 A. I don't recall it did. And
20 it certainly doesn't look like it from the
21 table of contents.

22 Q. Do you recall any discussion
23 during the 2003 committee meetings about the

1 possibility of changing the voting
2 provisions?

3 MS. MESSICK: Object to the
4 form.

5 A. I don't recall. And as I
6 recall, the sort of the charge of the
7 committee was to focus on a handful of issues
8 that might be able to get passed.

9 Q. I think you testified earlier
10 that the only thing that actually passed
11 after 2003 was the recompilation?

12 A. That's my memory, yes.
13 (Plaintiff's Exhibit 5 was
14 marked for identification
15 purposes.)

16 Q. Okay. I'm going to mark
17 Plaintiff's Exhibit 5. And I just have one
18 question, so hopefully you two can look
19 together.

20 This looks to me like it's,
21 you know, an itinerary or a agenda for a
22 commission meeting for the 2003 committee,
23 although it took place in 2002; is that

1 right?

2 MS. MESSICK: Object to the
3 form.

4 A. Yeah. It's interesting. It
5 shows me on an education provision. Because
6 when I looked at that, when I looked at
7 Exhibit 4, which was the final report and it
8 didn't have anything on education and I had
9 written a law review article on education,
10 and I kept trying to remember how did I get
11 put on the education issue. So I'm on this
12 table of contents on Exhibit 5 with Martha
13 Morgan, who was a professor at the University
14 of Alabama.

15 Q. There's a reference on there
16 to an individual rights section. It's on the
17 first page?

18 A. Right.

19 Q. I was just wondering if you
20 could -- if you have any recollections of
21 about what would have fallen under the
22 category of individual rights?

23 A. No. Bryan Fair's still there

1 as a constitutional law professor at the
2 University of Alabama. But I don't recall --
3 I don't recall his presentation, or the
4 discussion on individual rights.

5 (Recess taken.)

6 Q. (Ms. Lang) Good evening, Mr.
7 Waters. I just have a couple of final
8 questions. Much earlier in your testimony
9 you described Governor James as progressive,
10 and that his progressive nature was part of
11 why you wanted to work for him; is that
12 right?

13 A. Correct.

14 Q. Governor James ran for
15 governor later again; is that right?

16 A. That is correct.

17 Q. And he was successful in that
18 run?

19 A. He was.

20 Q. Did Governor James' political
21 persuasion change at all between that earlier
22 governorship and his later run for governor?

23 A. I think they probably did.

1 Q. How so?

2 A. I think when he ran for
3 governor the first time, he was idealistic.
4 I think he thought that running state
5 government was very similar to running a
6 business, which is what he had done and had
7 made plenty of money doing it. One of his
8 campaign slogans running for governor the
9 first time was, lay the facts before the
10 Legislature. Give them the facts, and
11 they'll do the right thing every time. I
12 think he realized in his first term that that
13 did not always work. And that there wasn't
14 always one right answer to every question;
15 that there could be two or three different
16 approaches to an issue.

17 So I think he was a little
18 frustrated, which I think probably is one
19 reason he didn't run for reelection back to
20 back the first time. So he had about I think
21 a twelve-year period between the first term
22 and the second term. The second time he ran
23 as a Republican, and I think probably he was

1 being told that he had unfinished business
2 the first term; that he should run again and
3 try to do things maybe more effectively.

4 But I do think in his second
5 term, he focused more on sort of social
6 issues that his wife was particularly
7 interested in. He -- They had had a son die
8 of I think multiple sclerosis -- cystic
9 fibrosis at a young age. His wife was very
10 kind of evangelical in her religious beliefs.
11 And I think by the time he ran the second
12 time, he became more interested in sort of
13 the religious sort of social issues, and that
14 affected to some extent how he approached
15 government in his second term.

16 So he was -- he was more
17 focused on those types of issues, and less
18 focused on some of the -- what I would call
19 very difficult and complex things that were
20 needed to get the state on the right track
21 that did he in the first term. Like a
22 Constitution, whether you agreed with a new
23 Constitution or not, tax reform, building

1 highways, infrastructure, education, those
2 sorts of things. He focused more on sort of
3 these family social issues in his second
4 term.

5 Q. Do you also recall him taking
6 a relatively tough position on crime during
7 his second term?

8 A. I do. I recall it from the
9 newspapers, yes.

10 Q. And do you recall that he
11 reinstituted the chain gang in the prison
12 system?

13 MS. MESSICK: Object to the
14 form.

15 A. I recall, yes.

16 Q. Is there any topic on which
17 you have specific knowledge that relates to
18 the facts of this case that you're aware of
19 that we have not yet covered today?

20 A. No. I think -- I mean, I do
21 think Fob James in his first term was
22 progressive. I use the term progressive
23 because that's kind of a code word from the

1 '60s and '70s on liberal on race. Just like
2 racists would use code terms in the opposite.
3 Wallace got to where he talked like that.

4 But, you know, one thing I
5 thought I would mention, you'd asked about
6 it, is prison reform. Did he just reform the
7 prison to -- Was his prison reform to build
8 space and put criminals in as opposed to
9 sentencing? And I think in fairness to Fob
10 on that, Frank Johnson, Judge Johnson, who
11 most people would say in the 20th century is
12 one of the most outstanding federal judges
13 we've had in the country, appointed him
14 receiver of the prison system. And he said,
15 for I think it had been six years, Wallace
16 had failed to do anything about prison
17 reform. And he said: Will you take it over
18 if I appoint you receiver and build new
19 prisons? And he said: Yes.

20 So that was his charge from
21 Judge Johnson, to build prisons. Not that he
22 wouldn't have necessarily been interested
23 sentencing and reform, but I think he was

1 acting on what Judge Johnson appointed him to
2 do.

3 MS. MESSICK: Before you ask
4 anything else, the documents, we're returning
5 to you. There was the things that were
6 potentially privileged or work product,
7 there's no objection to.

8 Did those things get pulled
9 out of the file?

10 THE WITNESS: I pulled them
11 out. It looked like you had had these, but
12 if you need them, you can have them.

13 A. This is the 2000
14 (indicating), And this is my law review
15 article (indicating). And this is the 2014
16 commission report (indicating).

17 Q. (Ms. Lang) 2014?

18 A. Governor Bentley, when I was
19 a part of his -- I was on the staff of his
20 constitutional revision.

21 Q. I thought that was 2003?

22 A. There were two.

23 MS. MESSICK: That's Riley.

1 A. That was Riley.

2 Q. Oh.

3 A. And then there was Bentley.

4 MS. MESSICK: But I think in
5 both cases, if you'll allow me for time
6 purposes, I believe in both cases the focuses
7 were all on specific issues that did not
8 include elections.

9 THE WITNESS: Yeah.

10 A. And you're welcome to this.
11 I was a staff person to the commission on
12 this.

13 MS. MESSICK: The 2014?

14 THE WITNESS: Yeah.

15 MS. LANG: Thank you. I don't
16 think I'm going to have any questions on
17 these. I don't think I have any further
18 questions.

19 THE WITNESS: Okay.

20 MS. MESSICK: All right. I do
21 have some questions for you.

22 MS. LANG: And just so you
23 know, Mr. Waters, I'm going to allow Ms.

1 Danahy to defend this portion of the
2 deposition.

3 THE WITNESS: Okay.

4 MS. MESSICK: We talked about
5 that. We're doing it without objection under
6 special circumstances.

7 EXAMINATION

8 BY MS. MESSICK:

9 Q. Mr. Waters, I'm not sure if I
10 heard it clearly before. Could you just tell
11 me the time period during which you worked
12 for Fob James?

13 A. I took a leave of absence
14 from my law practice in roughly mid-November
15 of 1978, two weeks after Fob was elected.
16 Then he asked me to be his legal advisor. So
17 when he was inaugurated in I think it was
18 January 20th of '79, I became legal advisor
19 on his staff. And I was legal advisor until
20 late July of 1980, when I went back to law
21 practice. So I was -- worked for him for a
22 year and a half, a year and seven or eight
23 months.

1 (Defendant's Exhibit 1 was
2 marked for identification
3 purposes.)

4 Q. I'm going to hand you what I
5 am marking as Defendant's Exhibit 1. And
6 I'll ask you to take a look at it and tell me
7 if you believe that this is, in fact,
8 Governor James' inaugural address for the
9 term that you worked for him. Inaugural
10 address in January 1979?

11 A. It looks exactly like it. I
12 think I have a copy of it, or seen a recent
13 copy.

14 Q. And on page 3 is where he
15 talks about Martin Luther King, Jr., and a
16 new beginning free from racism and
17 discrimination; is that right?

18 A. That's correct.

19 Q. Could you read that paragraph
20 for us?

21 A. On this, the birthday of
22 Martin Luther King, Jr., I claim for all
23 Alabamians a new beginning free from racism

1 and discrimination. Let us bury forever the
2 negative prejudices of the past. The same
3 standards of justice, responsibility and
4 reward are for one and all. I stand on this
5 commitment without equivocation. So be it.

6 Q. Thank you.

7 You mentioned earlier that you
8 thought that Governor James and Governor
9 Brewer might be pursuing different methods of
10 constitutional reform. Can you explain to me
11 what methods you thought were being pursued?

12 A. Yeah. I may have misspoke a
13 little bit. I think on Governor Brewer's
14 effort, which was turned out to be the 1973
15 commission report, Brewer, I think appointed
16 a constitutional commission. It may have
17 been by the governor's appointment, or it may
18 have actually been by resolution of the
19 Legislature. I'm not -- I'm not so sure now.
20 But that commission was, as I viewed it, a
21 formal body that met sort of regularly, and
22 produced the -- some people called it the
23 yellow book, the report that was in a yellow

1 bound book.

2 But I think the way that
3 Constitution, had it been adopted, would have
4 been adopted was by introduction to the
5 Legislature. And technically that's exactly
6 what Fob James was doing. He just did not
7 have the formal committee. He had an
8 informal group, and he did a little bit more
9 of the work sort of in-house on the
10 governor's staff, rather than as Governor
11 Brewer originally envisioned it with a
12 commission that was meeting sort of on a
13 formal basis on its own.

14 Q. But either way, it would
15 result in a proposed constitutional amendment
16 that would need to be passed by the
17 Legislature, and then presented to the public
18 for a vote?

19 A. That's correct.

20 (Defendant's Exhibit 2 was
21 marked for identification
22 purposes.)

23 Q. Thank you.

1 I'm going to hand you what I'm
2 marking as Defendant's Exhibit 2, and ask you
3 if you recognize this document?

4 A. I do.

5 Q. And what is it, please, sir?

6 A. It's a speech that I gave to
7 the Alabama Bar induction ceremony for new
8 inductees of the bar. And it was given May
9 21st, 1979.

10 Q. And in this speech, did you
11 talk about the constitutional reform efforts?

12 A. I did.

13 Q. And would you turn please to
14 page 5?

15 A. (Witness complies.) Okay.

16 Q. And would you please read
17 that paragraph to yourself.

18 A. Read it out loud, or read it
19 to myself?

20 Q. To yourself, please.

21 A. Okay. (Witness complies.)
22 Yes.

23 Q. Okay. And the last sentence

1 says, It represents a cross section of
2 Alabamians consisting of old and young, male
3 and female, black and white.

4 What does it refer to?

5 A. The group of citizens called
6 Alabamians for a Modern Constitution.

7 Q. So that's a specific group
8 has that name?

9 A. Yes.

10 Q. And what group is -- what
11 group was that?

12 A. Yes. They were -- They were
13 not the drafting committee that Fob James put
14 together on an informal basis, but they were
15 chaired by, as this says: Sage Lyons; George
16 LeMaistre; and Pelham Merrill, retired
17 Supreme Court Justice. They were instituting
18 constitutional reform. They supported in
19 concept certainly what Governor James was
20 doing.

21 Sage Lyons has been pointed
22 out had been a member of the '73 commission.
23 George LeMaistre was former chairman of the

1 FDIC, as this says, lawyer in Tuscaloosa.
2 Bobby Kennedy's campaign manager for the
3 state of Alabama when he was running for
4 president until he was assassinated, and very
5 progressive in his outlook. And Pelham
6 Merrill was a retired Supreme Court Justice.

7 So they were putting together
8 groups that could give speeches to civic
9 groups; Kiwanas clubs, Rotary, whatever,
10 about the general need for a Constitution
11 reform.

12 (Defendant's Exhibit 3 was
13 marked for identification
14 purposes.)

15 Q. Thank you.

16 I'm handing you now what I'm
17 marking as Defendant's Exhibit 3. Do you
18 recognize this document?

19 A. I do.

20 Q. And can you tell me what it
21 is, please, sir?

22 A. It's a speech I put together
23 on constitutional reform. It doesn't have a

1 mark as to -- as the previous Exhibit 2
2 showed, where I was speaking to Bar
3 inductees, so this was probably a generic
4 speech I used. Because I gave a lot of talks
5 to civic clubs about what was going on in the
6 Constitution, and this was probably the basic
7 format I used.

8 Q. Would you look on that one as
9 well on page 5, and look at the top paragraph
10 for me.

11 A. (Witness complies.) Okay.

12 Q. And would you read that out
13 loud, please?

14 A. Our current Constitution also
15 contains material that is now
16 unconstitutional under federal law. For
17 example, we have restriction in our
18 Constitution that grant the right to vote to
19 males only and that require the payment of
20 poll taxes. Of course, these provisions are
21 no longer valid and, strictly speaking, are
22 not the law, yet they still exist within our
23 constitutional document. They add length to

1 it, and they represent outdated views of
2 state government. They should be eliminated.

3 Q. And did your proposal
4 eliminate those?

5 A. Yes.

6 Q. Do you remember if voting age
7 was an issue in the 19 -- or in the Fob
8 James' efforts?

9 A. I think we set -- the voting
10 age was set at eighteen. I don't recall
11 right offhand that it provoked controversy.

12 Q. Does page 8 of this speech
13 also have information related to elections?
14 And actually, since it starts on the other
15 hand, it might start on page 7.

16 A. Yes. At the bottom of page 7
17 it says that the Constitution calls on the
18 Legislature to deal with day-to-day problems
19 of government. For example, the current
20 Constitution has very detailed qualifications
21 for voting and for elections. As I've
22 already stated, the current Constitution
23 contains many restrictions in this area that

1 are unconstitutional, such as the requirement
2 for the payment of poll taxes and the
3 limitation of the vote to males only. In
4 addition, however, the current Constitution
5 has other very specific procedures relating
6 to elections. And then it goes on to say,
7 the approach taken by Governor James is to
8 have a short section. It says, Thus, the
9 proposed constitution's Article on Elections,
10 Article 8, is very short. It contains only
11 three sections and states basically that
12 every person who is a citizen of the United
13 States, eighteen years or older, and who has
14 resided in the state for a period of time
15 established by the Legislature, shall have
16 the right to vote in the state.

17 And then it goes on to say,
18 the rest of the qualifications as to how long
19 a person should be resident in a county or
20 city, as well as the procedures by which a
21 person registers, is left to the Legislature
22 to provide by legislation.

23 (Defendant's Exhibit 4 was

1 marked for identification
2 purposes.)

3 Q. Thank you.

4 I'm handing you what I'm
5 marking as Exhibit 4, and I'd ask you to turn
6 to the 2nd page.

7 A. (Witness complies.) Okay.

8 Q. Do you -- This is a letter --
9 This purports to be a letter dated February
10 20th, 1979, from you. Do you have any reason
11 to believe that it's not authentic?

12 A. I have no reason to believe
13 so. It looks authentic.

14 Q. Who was Representative Earl
15 Hilliard?

16 A. Earl Hilliard was a State
17 Representative from Birmingham, African
18 American.

19 Q. The first paragraph of your
20 letter refers to Governor James asking Mr.
21 James Wilson of Mobile and Mr. Myron Thompson
22 of Dothan to serve on his working committee
23 on the Constitution; is that right?

1 A. That is correct.

2 Q. And we've already --

3 Plaintiff's Counsel's asked you about Judge
4 Thompson. Who was James Wilson of Mobile?

5 A. I don't remember James Wilson
6 that well. I remember Myron Thompson very
7 well. I think James Wilson, I'm not sure,
8 may have been recommended by Representative
9 Hilliard. I think he was a lawyer, because I
10 think most of the people who worked on this
11 committee were lawyers. But in terms of
12 recalling if he walked into the room would I
13 recognize him immediately, I don't -- I don't
14 think I would.

15 (Defendant's Exhibit 5 was
16 marked for identification
17 purposes.)

18 Q. Thank you.

19 I'm handing you now Exhibit 5,
20 and this appears to be a letter from you to
21 Myron Thompson, dated February 23rd, 1979.
22 Do you have any reason to believe it's not
23 authentic?

1 A. I have no reason to believe
2 it's not.

3 MS. DANAHY: Misty, we're
4 happy to stipulate to the authenticity of
5 these documents.

6 MS. MESSICK: Okay. Thank
7 you.

8 Q. (Ms. Messick) Do you remember
9 the -- So the letter says that you're
10 confirming a telephone conversation that you
11 had with then Mr. Thompson about him joining
12 the committee. Do you remember -- Does this
13 help jog your recollection at all?

14 A. Yeah. I vaguely remember
15 talking to him on the phone. I knew now
16 Judge Thompson, then Myron, I called him. He
17 came to my wedding reception. And I do
18 recall talking with him and looking at these
19 letters, particularly the one to Earl
20 Hilliard. It refreshes my memory about
21 contacting Judge Thompson. I don't
22 specifically remember Mr. Wilson from Mobile,
23 but I had a lot of correspondence in those

1 days.

2 Q. Thank you.

3 Were there black leaders who
4 supported Governor James' proposed
5 Constitution?

6 A. Yes. I mean, I mentioned
7 earlier U.W. Clemon and Richmond Pearson, and
8 while they were not particularly supportive
9 of home rule, I think they were generally
10 supportive of what Governor James was doing.
11 I mentioned earlier Michael Figures, who was
12 a State Senator from Mobile. And I think he
13 was generally supportive of what the governor
14 had in mind.

15 Q. Thank you.

16 Did you do -- Did you do a lot
17 of speaking about the proposed Constitution
18 to the general public, trying to let people
19 know?

20 A. I did, yes.

21 Q. Can you tell me about some of
22 those efforts?

23 A. Well, I was invited to speak

1 frequently all over the state to various
2 groups; Kiwanas clubs, rotary clubs, as one
3 of these indicated, the Alabama Bar induction
4 ceremony. I actually was invited to Duke
5 University to give a speech at Duke on what I
6 was doing for the Governor.

7 It's hard to say exactly how
8 often, but maybe not once a week, but once
9 every ten days to two weeks I was probably
10 going somewhere to give a speech for the
11 governor. And in the first six months, most
12 of my speeches were focused on the
13 Constitution.

14 Q. Did you ever do radio talk
15 shows or interviews with newspapers, things
16 like that?

17 A. I did. I did a number of TV
18 interviews, some radio interviews. My father
19 was a radio announcer, so I got on the radio
20 with him a time or two. He died during the
21 time I was working for Governor James. I did
22 a lot of newspaper interviews, particularly
23 in Montgomery. There was a AP reporter,

1 Scott Shepherd, that interviewed me a number
2 of times. And a number of local reporters
3 for the Montgomery Advertiser that would just
4 call my office and have a short interview
5 about items, but particularly the
6 Constitution when it was before the
7 Legislature.

8 (Defendant's Exhibit 6 was
9 marked for identification
10 purposes.)

11 Q. Thank you.

12 I'm going to hand you what I'm
13 marking as Defendant's Exhibit 6. I'd like
14 you to take a minute and skim it to see if it
15 refreshes your recollection about anything
16 relevant to what we've been talking about
17 here today.

18 A. (Witness complies.) Okay.

19 Q. So this exhibit is a memo to
20 you from Keith Norman?

21 A. Correct.

22 Q. It talks about felonies, and
23 it talks about districts and jeopardy?

1 A. Correct.

2 Q. Well, and so my question was
3 going to be, was this anything to do with the
4 Constitution, but the in re line says, this
5 was definitions for the Constitution; right?
6 This was related to that project?

7 A. That is correct, yes.

8 Q. Do you remember specifically
9 why what the -- why you were asking about the
10 definition of a felony?

11 A. Yeah. I -- Keith was
12 basically a law clerk. He went on to be
13 executive director of the Alabama State Bar,
14 but he was a law clerk helping with research.
15 And I'd forgotten -- I mean, I certainly knew
16 he did a lot of work for me. I didn't
17 remember this memo in particular. But he's
18 talking about the definition of a felony.
19 And the general definition is whether the
20 conduct is punishable by confinement. He
21 makes references to the criminal code, and
22 then talks a bit about legislative history,
23 and that Alabama Courts are reluctant to

1 refer to extrinsic sources unless the
2 language is ambiguous. So I think he was
3 providing some background information on what
4 constitutes a felony.

5 Q. Do you know if this research
6 would have been at all related to
7 disenfranchisement for certain felonies, or
8 if it might have been for another part of the
9 Constitution entirely?

10 A. Looking at the date that it
11 was written, which was at the very beginning
12 of the James administration, I would think
13 this was for the background for the
14 disenfranchisement provisions. I can't say
15 my recollection for sure. I would have to go
16 back through the draft and see if I can find
17 other references, but I think was at least
18 background for that.

19 (Defendant's Exhibit 7 was
20 marked for identification
21 purposes.)

22 Q. And I'm now marking
23 Defendant's Exhibit 7. And this one might be

1 the winner for most hard to read exhibit of
2 the day, which I apologize for, but that can
3 happen with these older documents. I'd ask
4 you to take a minute, and do your best to see
5 if you can make out what it says.

6 A. (Witness complies.) Okay.

7 Q. Thank you, sir.

8 In the -- Or first of all, do
9 you know -- Well, is this letter to you?

10 A. It is.

11 Q. And do you know who it was
12 from?

13 A. It says Annette Dudgeon,
14 constitutional revision chair. The bottom is
15 kind of Xeroxed out, but it's probably the
16 League of Women Voters.

17 Q. And in the third paragraph,
18 the third paragraph appears to me to start
19 with the sentence, Experience from the past
20 session leads us to believe that introduction
21 of three of the less controversial Articles;
22 the Legislative, the Executive, and the
23 Suffrage and Elections, might be a good plan.

1 Is that what you read it to
2 say?

3 A. That's the way I read it,
4 yes. Do you remember this suggestion at all.
5 I can't say I remember this specific
6 suggestion because we had lots and lots of
7 suggestions, including suggestions like this,
8 which was to try to make this effort less
9 complicated and start with one or two
10 articles at a time, as was done with the
11 Judicial Article, which was passed as a
12 separate article several years before.

13 That was the one article that
14 came out of the 1973 commission. So there --
15 there were numerous suggestions to us about
16 taking a second look and rather than trying
17 to pass a whole new Constitution, focus on
18 one or two or three articles, as this letter
19 suggesting.

20 Q. And is it true that Governor
21 Bentley and Governor Riley each did something
22 similar to that, in terms of they were
23 focused on certain articles, and not on

1 rewriting the entire Constitution?

2 A. That's correct.

3 Q. At the time that you were
4 working on Governor James' proposal, did you
5 think that the Suffrage and Elections
6 provision was not controversial?

7 A. I did not think it was
8 controversial.

9 (Defendant's Exhibit 8 was
10 marked for identification
11 purposes.)

12 Q. Thank you.

13 I'm going to hand you what's
14 I've marked as Exhibit Number 8, and ask you
15 if you recognize this document?

16 A. It looks like this says it's
17 a synopsis of proposed amendments presented
18 by the Alabama constitutional commission.
19 I'm not sure I've actually seen this document
20 before. It -- It may be a synopsis of what
21 the 1973 commission was doing. I don't think
22 there's a date on here.

23 Q. Okay. Thank you.

1 MS. DANAHY: Do you know how
2 much longer you expect to go?

3 MS. MESSICK: Probably an
4 hour.

5 Q. (Ms. Messick) You mentioned
6 Judge Conrad Fowler was involved in the 1973
7 and '79 efforts. Is Judge Fowler still
8 alive?

9 A. He's not.

10 Q. You mentioned Yetta Samford
11 was involved with you in the 1979 efforts.
12 Is he still alive?

13 A. He's not.

14 Q. Do you know who
15 Representative Jack Venable was?

16 A. I do.

17 Q. And can you tell me who he
18 was?

19 A. He was a state
20 Representative, very well respected, from
21 Tallassee, Alabama, which is not far from
22 Montgomery. And he, for a number of years,
23 had an interest in constitutional reform.

1 Q. Was he involved at all in the
2 Governor James' efforts?

3 A. He was, in the sense that
4 Speaker McCorquodale, Joe McCorquodale, who
5 was Speaker of the House, asked certain
6 members of the House to be his liaison
7 between himself and the House of
8 Representatives and what the Governor was
9 doing. And Jack Venable was probably the
10 principal liaison between the House and the
11 efforts that Governor James was undertaking.

12 Q. Do you know if Representative
13 Venable is still alive?

14 A. He's not.

15 Q. Okay. I'd like to ask you to
16 take a look at Plaintiff's Exhibit 2, which
17 is this large newspaper article. Can you --
18 If -- You focus with plaintiffs a little bit
19 on some of the language that's on this, but
20 can you tell me what this document is?

21 A. That is the -- That is the
22 draft -- That's the final draft of Governor
23 James' proposal after these hearings that we

1 talked about a few minute earlier, that he
2 presented to the Legislature on April 17th.
3 So that was his final proposal for passage by
4 the Legislature.

5 Q. This appears to be a
6 newspaper article, rather than a piece of
7 legislation?

8 A. Oh, that's correct. That is.

9 Q. This particular version, what
10 is this?

11 A. When we were -- When we were
12 working on the Constitution, as I recall,
13 because I don't -- I guess it's in the
14 Archives, I don't have any of it, we were
15 working off legal-size -- legal paper with
16 the provisions typed and with the commentary
17 typed below it. But as a result, you know,
18 it was a document as thick as those two books
19 combined (indicating). It was just very
20 unwieldy.

21 And Bob McCurley, who was then
22 director of the Alabama Law Institute at the
23 law school, took a copy of our proposal, and

1 the Law Institute paid to have that document
2 printed so that it would be in readable form.
3 That the commentary would be in blue ink, the
4 actual text would be in black, and because it
5 was printed in newspaper format with several
6 columns, it was not an unwieldy document.

7 That looks like a newspaper
8 article, and I think some newspapers did, in
9 fact, print it like that. But the Law
10 Institute had, I think, hundreds of copies
11 printed for distribution to anybody that
12 wanted them.

13 (Defendant's Exhibit 9 was
14 marked for identification
15 purposes.)

16 Q. I'm handing you what I've
17 marked as Defendant's Exhibit 9. Does this
18 appear to be an example of the text of the
19 proposal being printed in a newspaper?

20 A. It appears to be. It looks
21 like it was printed in the Montgomery
22 Advertiser. Now, this was January 31 of
23 1979, so this would have been most likely the

1 first draft that we had come up with. And
2 what was printed in the newspaper format that
3 we just referred to was a little later draft
4 that it had revisions in it after these
5 hearings had been conducted.

6 Frankly, I don't recall the
7 specific changes we may have made between
8 this January draft and that April draft. But
9 otherwise, this appears to be the original
10 draft that Governor James was working off of.

11 Q. Thank you.

12 Are you familiar with Sam
13 Beatty?

14 A. Yes.

15 Q. Can you tell me who he is?

16 A. He was formerly a long-time
17 law professor at the University of Alabama
18 law school. And then he was an Associate
19 Justice on the Alabama Supreme Court.

20 (Defendant's Exhibit 10
21 was marked for
22 identification purposes.)

23 Q. I'm going to hand you what

1 I'm marking as Defendant's Exhibit 10, and
2 ask if you recognize this document?

3 A. Yes. I think I've seen this,
4 or at least parts of it before. It looks
5 familiar.

6 Q. Would you turn to the page,
7 and the page number's cut off on the top, but
8 the page that addresses section 182 of the
9 Constitution, and it's Bates number D 180811.

10 A. (Witness complies.) Okay.
11 I've got that.

12 Q. I'll ask you to read that
13 section, and tell me if you believe, to the
14 best of your ability to recall now forty
15 years later, if you saw this while you were
16 working on Governor James' proposal?

17 A. Yes, I did see it because
18 it's in some of the documents that I've
19 produced. I had this in some of my
20 documents. As I recall, I pulled it to be
21 put into the documents that I'm producing
22 today. So I've seen this before.

23 Q. Do you know what this

1 document is?

2 A. This appears to be -- in the
3 document I have did not have this cover page
4 on it, but it appears to be a memorandum to
5 the constitutional commission that Governor
6 Brewer appointed. It's dated October 6,
7 1970. And it's prepared by Dr. Beatty, that
8 would be, I assume, Sam Beatty, who was
9 probably helping with -- in fact, I think he
10 was on the commission. And so he apparently
11 wrote a legal memorandum about the Article 8,
12 of Suffrage and Elections.

13 Q. And could you look at the
14 last page of this document, please.

15 A. (Witness complies.) Yeah. I
16 think on the document that I had, oddly it
17 did not have the cover page. And in not -- I
18 don't recall whether it had this last page,
19 but the last page appears to the actual
20 proposal that was in the 1973 constitutional
21 commission proposal.

22 Q. If Dr. Beatty were, in fact,
23 the person who came up with the language, or

1 with the proposed language on
2 disqualifications in the Suffrage and
3 Elections proposal for the 1973 revisions,
4 would that give you comfort about the intent
5 of that proposal?

6 MS. DANAHY: Object to the
7 form.

8 A. Yes, it would.

9 Q. Did Dr. Beatty have a
10 reputation for supporting segregation or
11 racism?

12 A. Not to my knowledge. By the
13 time I got to law school, I think he had
14 ceased teaching. He may have been by then on
15 the Alabama Supreme Court, but he had a very
16 good representation I think as a good
17 teacher, and as a responsible person. I
18 certainly never heard anything derogatory
19 about him.

20 (Defendant's Exhibit 11
21 was marked for
22 identification purposes.)

23 Q. Thank you.

1 I'm handing you now what I've
2 marked as Defendant's Exhibit 11, and ask you
3 to take a look and tell me if you recognize
4 this document.

5 A. (Witness complies.) This
6 appears to be a comparison of the then
7 existent 1901 sections of the 1901
8 Constitution dealing with Suffrage and
9 Elections, Article 8. And the proposed
10 sections of the 1973 proposal dealing with
11 Suffrage and Elections.

12 Q. I'm sorry, did you say 1983?

13 A. I'm sorry. 1973. It's
14 possible it could have been a comparison with
15 Governor James', but I don't -- I don't see
16 anything that identifies the actual date,
17 whether it was for the 1973 effort, or
18 whether it was Governor James' effort.

19 Q. The first page of this
20 document is a certification from Archives
21 that I read to say that it was part of the
22 James' effort. Do you have any reason to
23 think it's not?

1 A. No. In fact, I didn't even
2 look at the cover page. And assuming that's
3 the case, it's possible I put this together,
4 but, and I don't remember. Or it's possible
5 that it was put together by someone else that
6 may have given it to us in the governor's
7 office or to someone else, and it made its
8 way to the Archives.

9 Q. And it looks like on the
10 first page of this document, it shows the
11 entire revised article, on the right-hand
12 side; is that right?

13 A. That's correct. Yes. It
14 shows -- Yes. It shows the entire revised
15 article.

16 Q. And then in the left column,
17 it's showing 1901 provision?

18 A. That's correct.

19 Q. And in the right column, the
20 different provisions that you had proposed to
21 replace them with?

22 A. That is correct.

23 Q. And so, if we look at the

1 page that addresses the disqualifications,
2 which is D 183895?

3 A. Okay. Yes.

4 Q. So the proposed revision for
5 Section 7.02, is, No person convicted of a
6 felony involving moral turpitude or who is
7 mentally incompetent shall be qualified to
8 vote until restoration of civil and political
9 rights or removal of disability.

10 Is that right?

11 A. That is correct.

12 Q. And on the left-hand side is
13 section 182 of the 1901 Constitution, that it
14 would be -- that your proposal would replace?

15 A. That is correct.

16 Q. And that section includes
17 what has been referred to as a laundry list
18 of crimes?

19 A. It does.

20 Q. And it looks like the page on
21 the left-hand side might have been literally
22 cut and paste or cut and taped. And where
23 there's a break in the text, if you'll focus

1 on that area, it says, or of any infamous
2 crime or crime involving moral turpitude. Do
3 you see that?

4 A. I see that.

5 Q. Do you remember knowing that
6 the 1901 Constitution, in fact, disqualified
7 not only for felonies of moral turpitude but
8 also for misdemeanors of moral turpitude?

9 A. I do seem to recall that the
10 1901 Constitution was very broad in terms of
11 the disqualification for voting, including --
12 the concept is including actions that should
13 never have been disqualifying actions. And
14 those could have been misdemeanors and
15 actions other than felonies.

16 Q. Okay. Thank you.

17 Does the term moral turpitude
18 differ from terms like due process, equal
19 protection, or cruel and unusual punishment
20 when it comes to the level of specificity
21 that is needed?

22 A. It would seem -- It would
23 seem to me that the former terms you're

1 mentioning are certainly well known, but that
2 terms like or concepts like moral turpitude
3 or due process or cruel and unusual
4 punishment are all, you might say, general in
5 nature, and subject to interpretation by the
6 Courts, and that that is probably appropriate
7 to be subject to interpretation.

8 Because over the years, as we
9 know, due process, equal protection of the
10 law, those things have developed over time,
11 generally in ways that I think are beneficial
12 to the country, even though they are general
13 or generic in terms. So moral turpitude, to
14 me, is another one of those terms that if
15 you're going to categorize something, would
16 be in the same category as due process or
17 equal protection.

18 Q. Thank you.

19 Were you, if you remember,
20 were you aware when you were working on the
21 proposal for Governor James of the fact that
22 the boards of registrars who would be
23 interpreting the phrase moral turpitude are

1 designated by statute as judicial officers?

2 A. I'm not sure at the time I
3 was aware of that. It could have been
4 discussed. I don't have a specific memory of
5 it.

6 Q. Do you remember if you were
7 aware that somebody who applied to vote and
8 was denied on the basis of a felony
9 conviction had a right to appeal to the court
10 system?

11 A. I think I was aware of that,
12 yes.

13 Q. And if people who were denied
14 took those appeals to the Courts, wouldn't
15 that be a way of developing the law around
16 moral turpitude in the same way that the
17 cruel and unusual punishment clause is
18 developed?

19 A. I would think so, yes.

20 MS. DANAHY: Can you read that
21 back? I'm sorry.

22 (Requested portion of the
23 Record was read by the

1 Reporter.)

2 Q. (Ms. Messick) Ms. Lang asked
3 you earlier if the lack of uniformity in the
4 law could be a basis for discrimination. And
5 I believe that you agreed with her that it
6 could be, and maybe even that it had been.
7 But at any point when you were working on
8 Governor James' proposal, were you concerned
9 that the phrase moral turpitude would be
10 interpreted in a nonuniform manner with
11 discriminatory results?

12 A. I certainly don't recall ever
13 having that concern. And just knowing what I
14 know and looking back on it, I certainly
15 don't think I would have, or we would have
16 had that concern. Because I think if we
17 thought that somehow moral turpitude would be
18 used to somehow discriminate or treat people
19 unfairly, we would have -- we would have
20 attempted to deal with that.

21 And, in fact, we attempted to
22 deal with it, I think, and I think the
23 commentaries to the section make it clear.

1 We were eliminating all of those items in the
2 1901 Constitution that were obvious, and most
3 of them obvious, that they were aimed at poor
4 blacks, and even to some extent maybe poor
5 whites. Some of them being stereo-typical
6 type viewpoints, but if you look at list of
7 those things that were disqualifying, we were
8 taking them out.

9 And I think everybody involved
10 would have said the purpose is to get rid of
11 that history and that -- that excuse or
12 opportunity for a discrimination application
13 of the law, and to provide something that
14 could be interpreted on a fair basis.

15 Q. And you were doing that in
16 1979, before the Hunter v. Underwood decision
17 with -- which dealt with misdemeanor
18 convictions; is that right?

19 A. That's my recollection. I
20 think that case was subsequent to that.

21 (Defendant's Exhibit 12
22 was marked for
23 identification purposes.)

1 Q. I'm handing you what I'm
2 marking as Defendant's Exhibit 12, and I'd
3 ask you to tell me if you recognize this
4 document.

5 A. Yeah. This relates to one of
6 the earlier documents. This says it's copies
7 of documents from Governor James 1979, '83
8 Constitution revision files. And as I recall
9 now, and this one is dated January 29th, '79,
10 and my recollection is that on the committee
11 that we had, even though it was informal, we
12 had different members drafting summaries of
13 various provisions. Not only for the
14 Governor to look at to try to keep it as
15 brief as possible, but to have summaries that
16 we all could look at. I don't recall
17 specifically who drafted this document.

18 Q. And this document contains
19 sections on home rule and local government,
20 on initiative and recall, on taxation and
21 debt limitation, on the Legislature, on the
22 Executive, on the Declaration of Rights, and
23 on the Judiciary; is that correct?

1 A. Correct.

2 Q. So there's nothing here
3 specific about voting; right -- or about the
4 Suffrage and Elections Article?

5 A. That is correct.

6 Q. And at the top of the
7 document, it says that this is a brief
8 summary of some of the major articles, but
9 does not summarize the entire draft; is that
10 right?

11 A. That is correct.

12 Q. So is it fair to say that
13 there were a lot of big issues being
14 considered, and that Suffrage and Elections,
15 that Article wasn't the focus of a lot of
16 attention? It wasn't controversial? It
17 wasn't a major focus?

18 A. That would be accurate to
19 say. And if you look at this document, the
20 first three items -- Home rule, local
21 government; initiative and recall; taxation
22 and debt limitation -- those were three of
23 the really large items that Governor James

1 was focusing on.

2 (Defendant's Exhibit 13
3 was marked for
4 identification purposes.)

5 Q. I'm handing you what I'm
6 marking as Defendant's Exhibit 13.

7 MS. DANAHY: I'm sorry, what
8 number did you say?

9 MS. MESSICK: 13.

10 Q. (Ms. Messick) And this
11 indicates that it is volume 2 of transcripts
12 for committee hearings related to Governor
13 James' proposal. Is that what you understand
14 this to be?

15 A. That's what it appears to be.

16 Q. And it's -- the dates on the
17 2nd page here are January 30th through
18 February 1st, 1979?

19 A. I see that, yes.

20 Q. And this document actually
21 starts on page 137. I believe that volume 1
22 would have been the first 136 pages for
23 testimony before this. Is that your

1 recollection of how this was done?

2 A. That appears to be the case.

3 And at the top of page 137, it's Speaker
4 McCorquodale asking me a question obviously
5 referring to something earlier. So there
6 must have been a previous volume.

7 Q. Okay. And isn't it true that
8 the way these hearings were generally done is
9 that somebody would make a presentation about
10 the proposal, and then there'd be a time for
11 questions and discussion?

12 A. That's correct.

13 Q. I'd ask you to turn to what
14 is number page 206 on the top. The original
15 transcript numbering.

16 A. (Witness complies.) Okay.
17 206.

18 Q. And I'd ask you to read to
19 yourself starting on line 8 with Mr. Yetta
20 Samford?

21 A. Okay.

22 Mr. Yetta Samford: I have a
23 suggestion, and we may not get very far into

1 it, but Article 7 on Suffrage, I believe, is
2 relatively noncontroversial. At least, the
3 voting age is eighteen.

4 Q. Okay. Let's stop there. On
5 page 207, it looks to me like he reads the
6 proposal for Section 7.01, and then asks for
7 questions, and there are none. Is that your
8 understanding of what happened?

9 MS. DANAHY: Object to the
10 form. Are you asking whether that's his
11 understanding of what's in the transcript, or
12 that's his memory of what happened?

13 A. It -- It does appear that he
14 reads the section, Section 7.01. The Speaker
15 asks for questions. There's a parenthetical
16 saying no response, and then Mr. Samford goes
17 to Section 7.02.

18 Q. And I want to give everybody
19 a moment to read the discussion concerning
20 Section 7.02, which begins on page 207. I
21 want you to just read the exchange between
22 Senator Figures and Mr. Yetta Samford, which
23 continues to page 209, and then stop there,

1 please.

2 A. (Witness complies.) Okay.

3 Q. Does Senator Figures raise a
4 concern that the moral turpitude language is
5 discriminatory in intent or impact?

6 A. The way I read Senator
7 Figures' question, and I mentioned him
8 earlier, he was very well respected. Died at
9 an early age. His wife took his place. He
10 was African American. A very articulate guy.
11 And he said that this clause, disqualifying a
12 person convicted of moral turpitude, is
13 really like double jeopardy. He said there
14 used to be a lot of things in the
15 constitutional section, like wife beating,
16 that has been in the Constitution for a long
17 time. Most states have similar provisions.
18 But he said: If we continue to disqualify a
19 person who served out his sentence, is that
20 like double jeopardy?

21 And Yetta Samford, who was the
22 chairman of the governor's working group,
23 says that there's a procedure for restoration

1 of the right to vote. And he states that --
2 the conclusion was it would be appropriate to
3 go through a procedure to regain voting
4 rights. But then he goes on to say: You've
5 brought up something I failed to mention.

6 Q. Can I stop you there?

7 A. Yes.

8 Q. I read Senator Figures'
9 concern to be grounded perhaps in an idea
10 that disenfranchisement was punishment, but
11 not to raise any sort of racial implications.
12 Do you read it that he raises any sort of
13 racial issues?

14 A. I do not read it that way.
15 And knowing Senator Figures, he was very
16 articulate and very outspoken. I think if
17 he -- The experience that I had with him and
18 listening to him in various capacities in the
19 Senate, I think had he had a concern about
20 race, he certainly would have raised it here.
21 I don't read this as raising a racial issue.

22 Q. And was Senator Michael
23 Figures a lawyer?

1 A. Yes. As I recall he was,
2 yes.

3 Q. Thank you.

4 And then on page 209, you were
5 about to read from what Mr. Samford said
6 about something he had failed to mention.
7 Would you please read that paragraph?

8 A. Yes. He says, You have
9 brought up something I failed to mention,
10 that there was an elimination of a list of
11 about 33 things in that old article that
12 would disqualify a person. And all of that
13 has been removed, and now it's just a felony
14 involving moral turpitude or who is mentally
15 incompetent. And both of those are pretty
16 serious disqualifications.

17 Q. Thank you.

18 So the issue that we have been
19 focused on was, in fact, presented there.
20 And then, Representative Harrison, would that
21 be Representative Tony Harrison, on page 209?

22 A. There was a Representative
23 Harrison from Montgomery who was not Tony

1 Harrison, I don't think. But this does not
2 give his first name, so I'm not sure which
3 one it is.

4 Q. Was there a Harris and a
5 Harrison?

6 A. Yes.

7 Q. Because I thought the
8 discussion earlier may have been a Harris?

9 A. Yes. It may have been.
10 Again, I'm going on memory from forty years
11 back, but I seem to recall a Representative
12 Harrison from the Montgomery area. But
13 this -- I may be mistaken on that.

14 Q. I've got the names Tony
15 Harrison and Bob Harris. Does that help out
16 at all?

17 A. Yeah. This Harrison may be
18 Tony Harrison. Bob Harris, as I recall, was
19 not a member of the Legislature. Although,
20 Bob Harris worked for the Legislature in some
21 capacity, and I think still does. If this is
22 Tony Harrison, as I recall, Tony Harrison was
23 African American.

1 Q. Thank you.

2 Immediately after Mr. Samford
3 talks about eliminating the thirty-three
4 items, and focusing on felonies of moral
5 turpitude and mental incompetence, what
6 concern does Representative Harrison raise,
7 beginning on the bottom of page 209?

8 A. He says he's got the same
9 kind of concern that once a person is
10 convicted and serve time, why do we then go
11 through an additional process to enable that
12 person to vote? In other words, the prison
13 term or the serving of the sentence should be
14 sufficient.

15 Q. So when he says the same kind
16 of concern -- I mean, it appears that he's
17 referring back to what Senator Figures said?

18 A. I read that as referring back
19 to Senator Figures, and it's a
20 double-jeopardy issue.

21 Q. And it looks like it
22 continues there over the discussion about
23 whether there should be consequences after

1 the prison sentence has ended?

2 A. That's what it looks like,
3 yes.

4 (Defendant's Exhibit 14
5 was marked for
6 identification purposes.)

7 Q. I'm now handing you what I
8 will mark as Defendant's Exhibit 14, and does
9 this appear to be another transcript from
10 these same hearings?

11 A. Appears to be. It's
12 entitled, on the page after the cover page,
13 Joint Interim Committee, dated February 6th.
14 This time Lieutenant Governor McMillan
15 appears to be chairing, rather than Speaker
16 McCorquodale.

17 Q. And it looks like our page
18 numbers started over again, but this was
19 actually after the transcript we just looked
20 at in time?

21 A. Yes. That's what it looks
22 like.

23 Q. I want to ask you to turn to

1 page 108.

2 A. (Witness complies.) Okay.

3 Q. And read from there to
4 yourself through page 111.

5 A. (Witness complies.) Okay.

6 Q. Okay. So in this part, it
7 appears that Representative Tony Harrison
8 thinks that saying felonies of moral
9 turpitude are disqualifying just makes things
10 more difficult when we could simply
11 disqualify on the basis of all felonies. Is
12 that the way you understand the testimony
13 recorded in this transcript -- I'm sorry, the
14 statements recorded?

15 A. That appears to be the case.
16 He says, Mine would be -- I'm not sure what
17 he means by mine would be a person convicted
18 of a felony, then I'm still hung up on the
19 moral turpitude question.

20 Q. But then they go on to talk
21 about that nearly all felonies involve moral
22 turpitude?

23 A. Involve moral turpitude. And

1 some don't, and they give a couple of
2 examples of felonies that don't involve moral
3 turpitude.

4 Q. And then starting on page
5 110, Representative Smith seems to be raising
6 concerns that disenfranchising felonies of
7 moral turpitude doesn't go far enough,
8 because there are, in fact, attempts. She's
9 saying attempted arson, attempted murder,
10 that those things involve moral turpitude,
11 but that they're not felonies?

12 A. Yeah. She seems to be saying
13 there's some misdemeanors that could involve
14 moral turpitude, such as various attempts
15 like attempted arson.

16 Q. And Senator Bob Harris
17 appears to understand her to be saying that
18 the language should be broader than it was?

19 A. And Senator Harris does. And
20 I mentioned the other minute I didn't
21 remember a Senator Bob Harris, but clearly
22 there was one. He's saying, Yes. She's
23 suggesting that it should be broader; where

1 if there's a misdemeanor, maybe adding the
2 word misdemeanor involving moral turpitude.

3 And then he says, Let me
4 simply say that we were trying to -- what we
5 were trying to do is get away from the
6 restraints and restrictions of the 1901
7 Constitution as far as we could, as safely as
8 we could, in the simplest language that we
9 could.

10 So he makes the point that
11 this language is attempting to get away from
12 the 1901 Constitution.

13 (Defendant's Exhibit 15
14 was marked for
15 identification purposes.)

16 Q. Thank you.

17 I'll hand you what I'm marking
18 Defendant's Exhibit 15. And what is this
19 document?

20 A. This appears to be a
21 continuation of the Joint Legislative
22 Committee's hearings on the Constitution.

23 Q. And this one begins on page

1 115?

2 A. Correct.

3 Q. And if we can turn to page
4 123. I think we will find there the
5 reference of Representative Harris --
6 Harrison about moral turpitude being
7 nebulous, being nebulous language. I ask you
8 to read to yourself Representative Harris'
9 statement beginning on 123. And really just
10 the -- there's two paragraphs. Actually,
11 just read for me into the Record the
12 paragraph beginning again the nebulous
13 language, and the paragraph that follows it?

14 A. Okay. Again, the nebulous
15 language of moral turpitude as is used in the
16 qualifications under the section under
17 Suffrage is again reappearing here. And I
18 think that there should be a deletion of that
19 language.

20 If we just want to keep the
21 language that is to address the conviction of
22 a crime, it would be no person convicted of a
23 felony. And then I continue to have problems

1 with this double punishment language that is
2 consistently projected throughout.

3 Q. Thank you.

4 So his recommendation is to
5 strike the, quote, nebulous language of moral
6 turpitude and disenfranchise for all
7 felonies?

8 A. That's what it appears to be,
9 yes.

10 Q. And I want to give you a
11 minute to look at the pages before and after
12 that discussion to see if you see any
13 indication that he has indicated that he
14 believes that that language would in any way
15 have a racially discriminatory impact?

16 A. (Witness complies.) Again, he
17 appears to be talking about double jeopardy,
18 or he refers to it at one point as double
19 punishment regarding the disqualification and
20 the language in the Suffrage Section.

21 Q. And actually, hasn't he
22 raised the Suffrage Article? This discussion
23 is, in fact, about a different provision of

1 the Constitution that uses the phrase moral
2 turpitude?

3 A. That's correct. I think
4 they're talking in this part of the hearing
5 about qualifications to be elected to the
6 Legislature. But he does relate that
7 language in that section back to the Suffrage
8 and Election Section.

9 (Defendant's Exhibit 16
10 was marked for
11 identification purposes.)

12 Q. Thank you.

13 I'm handing you now what I've
14 marked as Defendant's Exhibit 16, and I would
15 ask you what this document is?

16 A. It appears to be February
17 28th, a continuation of the hearings on the
18 Constitution before the Joint Interim
19 Committee.

20 Q. So we know that we've had
21 hearings on January 30th, February 1st,
22 February 6th, on February 7th, and now on
23 February 28th, at least; correct?

1 A. That's what it looks like,
2 yes.

3 Q. Okay. And this document
4 starts at page 381 or 382; correct?

5 A. Correct.

6 Q. And this appears to be where
7 Mary Weidler of the ACLU is allowed to make
8 comments. Would you turn to page 383, and
9 read to yourself her comment. And actually,
10 continue all the way through page 385 where
11 Representative Smith asks her a question and
12 she -- Ms. Weidler responds.

13 A. (Witness complies.) Okay.

14 Q. And would you agree that her
15 comment -- Ms. Wielder's comment begins by
16 essentially arguing that it is punishment to
17 disenfranchise someone after they have
18 completed their sentence?

19 A. She seems to be saying that.
20 She says: Once they've served their time,
21 they should be free to vote. And the
22 question is raised, but you're not suggesting
23 that while they're in prison they should be

1 able to vote. And she says: No, I'm not
2 suggesting that.

3 Q. Thank you.

4 And then on this page 383, she
5 says that the phrase moral turpitude is vague
6 and indefinite, and when added to the
7 disability of being a convicted felon appears
8 unwarranted and discriminatory.

9 Is that correct?

10 A. That's what she says, yes.

11 Q. Does she, in her statement,
12 offer any statistical evidence or factual
13 evidence of any kind to back up that
14 statement?

15 A. She does not, no.

16 Q. And, in fact, she instead
17 goes on to talk about that everyone who seeks
18 restoration of their rights gets it anyway,
19 so let's just do it automatically; correct?

20 A. She makes that point, yes.

21 Q. And then she says that on
22 page 384, that she believes that
23 disenfranchising a person for conviction of a

1 crime of moral turpitude denies that person
2 the right to vote, and violates the U.S.
3 Constitution. Do you see that?

4 A. I see that.

5 Q. Do you see anywhere there
6 where she makes an argument that it is moral
7 turpitude, itself, as opposed to -- Strike
8 that.

9 Do you see any statistical or
10 factual evidence backing up that statement,
11 that Ms. Weidler offered any?

12 A. I see none in which she makes
13 a reference that she -- it violates the U.S.
14 Constitution. My thought was what in the
15 U.S. Constitution does it violate? She
16 doesn't give any explanation of that.

17 Q. She then says: It was clear
18 from the legislative history of the 1901
19 Constitution that the section from which 7.02
20 is derived was specifically adopted because
21 of a supposed disparate impact on black
22 citizens with the intent to disenfranchise
23 blacks. And then the next paragraph: A

1 continuation of that thinking today is
2 clearly unacceptable. I urge you to delete
3 persons convicted of a felony involving moral
4 turpitude from Section 7.02. Do you see
5 that?

6 A. I see that.

7 Q. And in that statement, she's
8 essentially making the argument that
9 Plaintiffs are making in this case, isn't
10 she?

11 A. She is.

12 Q. Do you see that she is
13 provided in her -- Well, and that's the end
14 of her statement. The next page she says
15 thank you, and she's done; right?

16 A. Correct.

17 Q. Does she provide any factual
18 or statistical evidence to back up what she
19 has said?

20 A. She doesn't. She just
21 appears to be saying guilt by association.
22 It was a section in the '01 Constitution on
23 disenfranchisement, there was one in this

1 draft on disenfranchisement, so they must be
2 related. That seems to be her argument.

3 Q. And the question she then
4 receives focuses on her automatic restoration
5 point; right? Do you see any discussion that
6 that part of -- this part of her statement
7 arguing against Section 7.02 because of the
8 1901 Constitution, do you see any -- anything
9 in the transcript to suggest that the
10 committee then focused on that portion of her
11 testimony?

12 A. No, I don't -- I don't see
13 that.

14 Q. And this testimony was in
15 1979?

16 A. Correct.

17 Q. Did she provide, so far as
18 you can tell from this, any historical
19 documents backing up the statement that she
20 made?

21 A. She does not reference any
22 such backup.

23 Q. And this is page 384 of a

1 transcript, which goes on for that day, until
2 page 523?

3 A. Yes.

4 Q. Was the Suffrage Article the
5 main focus of these hearings?

6 A. No, it was not.

7 Q. Is it fair to say it was a
8 minor topic?

9 A. It would be fair to say it
10 was a minor topic.

11 Q. Would it be fair to say that
12 your committee received multiple suggestions
13 and criticisms on a wide variety of things?

14 A. Yes. One of the things that
15 was apparent, and it's been probably forty
16 years since I've even looked at these
17 transcripts, but just going on memory,
18 basically everybody that got up to say
19 something in the hearings, whether it was
20 legislators -- when the legislators were
21 commenting on items, like Representative Tony
22 Harrison was doing, or when outside parties,
23 like Ms. Weidler was doing.

1 Basically, everybody that got
2 up to say something, had something that they
3 wanted changed. And so I think what the
4 legislative committee probably had to do, and
5 certainly what we had to do working for
6 Governor James, was to try to assimilate the
7 comments and the suggestions, and try to work
8 them in as best we could when we thought that
9 we should. But basically, everybody who got
10 up to speak wanted some change made.

11 Q. If you had made every
12 requested change, would you have had a
13 proposal for the Legislature when the session
14 started?

15 A. No. We'd of just been busy
16 making changes, holding more hearings, and
17 then making more changes. We would have
18 never gotten to a final document.

19 (Defendant's Exhibit 17
20 was marked for
21 identification purposes.)

22 Q. Okay. I'm going to hand you
23 now what I'm marking as Defendant's Exhibit

1 17. Do you know who Tom Leonard is?

2 A. Tom Leonard?

3 Q. Actually, strike that. Let's
4 back up.

5 A. All right.

6 Q. What is document 17?

7 A. Documents 17 is a transcript
8 of the Joint Interim Committee on hearings
9 dated March 7th, 1979.

10 Q. So this appears to be yet
11 another day of hearings on this proposed
12 Constitution?

13 A. It -- It appears to be, yes.

14 Q. And what volume does this
15 transcript indicate that it is?

16 A. Volume 12.

17 Q. And what page does it start
18 on?

19 A. 1229 -- Actually, it
20 starts -- the cover page is 1228.

21 Q. And what page does it end on?

22 A. 1346.

23 Q. And the comments from Ms.

1 Weidler that we just looked at, they were two
2 pages?

3 A. They were two pages, I think.
4 Two and a half at most.

5 Q. Okay. I'm going to ask you
6 to turn to page 1308, and now ask you if you
7 know who Mr. Tom Leonard is?

8 MS. DANAHY: What page are we
9 on, I apologize?

10 MS. MESSICK: 1308.

11 A. (Witness complies.) Offhand,
12 I don't recall who he is. It appears as
13 though he's a minister or he's a
14 representative of what he says, Greater
15 Birmingham Ministries.

16 Q. Okay. And it looks to me
17 like over the next several pages, Mr. Leonard
18 raises concerns about a number of different
19 articles. Do you see that? I'm sorry, a
20 number of different sections, rather than
21 articles?

22 A. Yes. Different sections.
23 I'm seeing 3.08, 7.02 mentioned, 8.07. Yes,

1 several.

2 Q. So let's turn to page 1310
3 where he addresses Section 7.02. And that is
4 the section disqualifying persons convicted
5 of a felony involving moral turpitude. Would
6 you read to yourself what his comment is.

7 A. (Witness complies.) Okay.
8 I've read it.

9 Q. And his comment on this
10 section is limited to one paragraph, which is
11 less than a page long; is that correct?

12 A. That's correct.

13 Q. And the focus of his comment
14 is that he believes that disenfranchisement
15 is punishment; is that correct?

16 A. That's correct. That's what
17 he's saying.

18 Q. Do you see anything in his
19 comment about a racially disparate impact?

20 A. I see nothing there.

21 Q. Thank you.

22 It appears from page 1313 of
23 Exhibit 17 that Representative Venable was

1 there and participating in this committee
2 hearing; is that correct? In fact, he might
3 have been chairing it, looking at 1313 and
4 1314.

5 A. I see. He does look like
6 he's chairing because he's asking for
7 questions. Yes, he appears to be chairing
8 the meeting. And on page 1315, he's referred
9 to as Chairman Venable.

10 Q. Thank you.

11 You came to know Governor
12 Albert Brewer after his 1973 efforts to
13 reform the Constitution?

14 A. Correct.

15 Q. Tell us about that.

16 A. Governor Brewer actually ran
17 for governor in 1978 when Fob James ran. It
18 was Baxley, Beasley, Brewer, Fob James, and
19 Sid McDonald. Fob won the election. But I
20 got to know Governor Brewer in connection
21 with the work that I did on Governor
22 Bentley's constitutional commission, because
23 Governor Brewer was chairman of that

1 commission.

2 And so I had a lot of contact
3 with him. We had a lot of meetings. We
4 would have lunch together. When the
5 commission's work was done, he took Bob
6 McCurley, who was just retired from the
7 Alabama Law Institute and myself and Howard
8 Walthall, the three staff people, to lunch.
9 So over a period of a couple of years, I
10 spent a good bit of time with him and got to
11 know him very well.

12 Q. Is Governor Brewer still
13 alive?

14 A. He died about two -- well,
15 maybe two years ago.

16 Q. Did he have a reputation as a
17 racist?

18 A. Absolutely not. And, in
19 fact, when he ran against Wallace -- When he
20 became governor when George Wallace's wife
21 died in '68 and he served two years as
22 governor, he was very, very effective and
23 very positive in his efforts to try to move

1 Alabama along.

2 And when Wallace ran against
3 him, Wallace ran a very racist campaign
4 against Brewer. Brewer actually led in the
5 first primary. And then they had a runoff,
6 and Wallace, and you can read about it in all
7 the history books, Wallace really ran a
8 rabidly racist campaign against Brewer and
9 defeated him, which put Wallace back in
10 office for eight years.

11 Q. Do you have any doubt that
12 Governor Brewer would not intentionally
13 include a racist provision in his draft
14 Constitution?

15 A. I have no doubt he would --
16 that he would attempt to do something like
17 that. I think Governor Brewer when he became
18 governor --

19 Q. You have no doubt that he
20 would do that?

21 A. I have no doubt that he -- I
22 am convinced that he would not attempt to do
23 anything in his draft of a racist nature.

1 Q. Thank you.

2 After Governor James' proposed
3 Constitution was not implemented, are you
4 aware of Lieutenant Governor Bill Baxley
5 making efforts to revise the Constitution?

6 A. I'm aware of that, yes.

7 Q. Were you involved in those
8 efforts at all?

9 A. I was not.

10 Q. Does Bill Baxley have a
11 reputation as a racist?

12 A. Not at all. In fact, when he
13 was Attorney General of Alabama, you may
14 recall in the city of Birmingham in the early
15 '60s, there was a church bombing that killed
16 four African American children. And when
17 Baxley, some fifteen years later, was
18 Attorney General, he reopened the
19 investigation, found the perpetrators who set
20 the bomb, and sent them to prison. And
21 Baxley was very much, again, to use a term,
22 progressive person as Attorney General, and
23 he ran for governor twice. He would have

1 been a good governor. He did run against Fob
2 James once, but Baxley would have been a good
3 governor.

4 Q. Thank you.

5 We may have already captured
6 this, but you were involved in efforts under
7 Governor Bob Riley and under Governor Robert
8 Bentley to revise select portions of the
9 Constitution; is that correct?

10 A. That's correct.

11 Q. And neither one of those
12 efforts made -- involved revisions to the
13 Suffrage and Elections Article?

14 A. None did.

15 Q. Do you remember from the time
16 that you were working on either of those
17 efforts, any arguments, criticisms, or
18 suggestions that the Suffrage and Elections
19 Article should be revisited?

20 A. I don't recall any
21 suggestions to that effect.

22 Q. Okay. Were you aware of any
23 criticisms of the 1996 amendment that made

1 felonies of moral turpitude disenfranchising,
2 effectively using the same language that you
3 had used in 1979, were you aware of any
4 criticisms that that language or that
5 amendment was racist or discriminatory before
6 I brought this lawsuit to your attention?

7 A. I don't think I'd every heard
8 of anything of that nature before you brought
9 me the -- the lawsuit.

10 Q. Now, between Baxley and Riley
11 and Bentley, we skipped right over Senator
12 Roger Bedford.

13 A. Right.

14 Q. I believe you were asked if
15 he was a National Democrat?

16 A. Yes.

17 Q. And what was your answer?

18 A. Yes, I think Roger was, still
19 is. I haven't seen him in years. Very
20 progressive. And would be considered a --
21 when I was growing up, I'm a little older
22 than Roger, but we sort of had a distinction
23 between National Democrats and Southern

1 Democrats, or Wallace Democrats. Roger would
2 be in my view of the national side of the
3 Democratic Party.

4 Q. And he remains a Democrat
5 today, doesn't he?

6 A. As far as I know.

7 Q. And, in fact, he continued to
8 serve in the Alabama Legislature until he was
9 defeated by a Republican; correct?

10 A. That's correct.

11 (Defendant's Exhibit 18
12 was marked for
13 identification purposes.)

14 Q. I'm going to hand you what
15 I'm marking as Defendant's Exhibit 18. And
16 is this Senator Bedford's draft Constitution,
17 or proposed Constitution?

18 A. It appears to be, yes.

19 Q. And it says that it was
20 drafted at his request by you, Ed Gentle, and
21 Terry Turner?

22 A. Correct.

23 Q. You told us a little bit

1 about Ed Gentle earlier. Is he conservative
2 or liberal?

3 A. I would say Ed is liberal.
4 He's predominantly a plaintiff's lawyer. He
5 brings a lot of sort of plaintiffs' cases,
6 and I think sort of class-action cases. I've
7 known Ed for years.

8 Q. I'll ask you to -- Well, who
9 is Terry D. Turner, Jr.?

10 A. Terry -- I did not know him
11 well. I got to know him a little bit here,
12 obviously. Terry was a young lawyer that
13 worked in Ed Gentle's office at this time.

14 Q. Okay.

15 A. So when Roger asked us to
16 help, Ed recruited Terry to help as well.

17 Q. Thank you.

18 Would you turn to pages 37 and
19 38 of this document?

20 A. (Witness complies.) Okay.

21 Q. And I'd like you to read into
22 the Record, please, the -- Pages 37 and 38
23 are the Suffrage and Elections Article;

1 correct?

2 A. Correct.

3 Q. And there's a comment after
4 the proposed article; correct?

5 A. There is.

6 Q. And would you please read
7 into the Record the comment on page 38 for
8 the Suffrage and Elections part.

9 A. The comment reads: Amendment
10 579, no change. This amendment as ratified
11 June 19th, 1996, repealed and reenacted the
12 entirety of old Article VIII of the
13 Constitution of 1901. Amendment 579 removed
14 outdated, unlawful and offensive provisions.
15 The Amendment provides for legislative
16 authority to prescribe, quote, reasonable and
17 nondiscriminatory, quote, requirements as
18 prerequisites to voting.

19 Q. Thank you.

20 So this proposal from a
21 National Democrat included no change to the
22 Suffrage and Elections Article as it became
23 effective in 1996?

1 A. That's correct.

2 Q. Do you know if that 1996
3 amendment contained the same language that
4 you had proposed in 1979?

5 A. I think it contains the same
6 language, yes.

7 Q. And actually, let's just take
8 a minute and compare paragraph B on page 38,
9 which is the paragraph dealing with moral
10 turpitude, to Plaintiff's Exhibit 2, which is
11 the proposed 1979 Constitution. And I'm just
12 going to ask you if the language is indeed
13 the same?

14 A. (Witness complies.) It's the
15 same language.

16 Q. Thank you.

17 MS. MESSICK: Can we take a
18 break?

19 MS. DANAHY: Sure.

20 (Recess taken.)

21 Q. (Ms. Messick) I believe when
22 the subject of the hearings first came up, it
23 sounded like that you thought they might have

1 been five or seven condensed days. Looking
2 at these transcripts from different times,
3 does that refresh your recollection about how
4 that might have happened?

5 A. Yes. They were spread out
6 over time. They actually started a little
7 earlier than I thought. They started late
8 January, and they went into March. My
9 recollection was that they were probably over
10 about a seven- or ten-day period. But I was
11 wrong on that recollection. They were spread
12 out over about a six-week period.

13 Q. Okay. And when they started
14 and ended, you're just basing that on the
15 documents here today?

16 A. Correct.

17 Q. So if I thought it -- I don't
18 know as I sit here today what the other
19 transcripts say. One I know that one of them
20 refer to volume 12, and we haven't put twelve
21 of them in evidence. So if the Record shows
22 that they started sooner or ended later,
23 would you have any reason to dispute that?

1 A. I'd have no reason to.

2 Q. And as you sit here today, do
3 you know that you attended every minute of
4 every meeting, of these hearings, I'm sorry?

5 A. I can't say that I did. In a
6 number of them Yetta Samford was there, so it
7 may have been on some of them, he simply
8 said, you take care of other business and
9 he'll handle the hearing. So I don't know
10 that I was at every single one.

11 Q. All right. And I believe you
12 might have made reference to reading the
13 transcripts. Do you know if you've, in fact,
14 read all of the transcripts from these
15 hearings?

16 A. No. It occurred to me that
17 maybe I could go to the Department of
18 Archives and read them. I did not. And I
19 don't know that I read them when they were
20 prepared, cause, I guess, it was relatively
21 fresh on my mind, and we were moving to other
22 things. So I don't know that I've ever
23 actually read them.

1 MS. MESSICK: I don't have any
2 further questions at this time.

3 And just pursuant to our
4 discussion earlier, Molly's going to conduct
5 the redirect, limited to my cross, because of
6 extenuating circumstances.

7 MS. DANAHY: All right. I
8 have two clarifying questions that I'm going
9 to ask you, what I hope is a quick series of
10 yes-or-no questions.

11 EXAMINATION CONTINUED

12 BY MS. DANAHY:

13 Q. First, did -- we've just been
14 through a lot of the transcripts of various
15 hearings. Do you know if someone from the
16 committee went to every one of the hearing
17 days, even if it was not you?

18 A. Oh, I would feel certain. I
19 mean, I can't say I specifically remember who
20 did. But I would feel very confident that
21 somebody on behalf of Governor James was in
22 attendance in every hearing.

23 Q. Okay. Thank you.

1 And then I want to go back
2 very quickly to Defendant's Exhibit Number 6.

3 A. (Witness complies.)

4 Q. And this is . . .

5 MS. DANAHY: Do you have that
6 in front of you?

7 MS. MESSICK: Yes.

8 Q. (Ms. Danahy) This is the memo
9 from Keith Norman to you about definitions
10 for the Constitution?

11 A. Correct.

12 Q. And it contains the
13 definition of felony. And you testified
14 earlier that you believe this definition was
15 related to the disenfranchisement provision.
16 Is that accurate?

17 A. Yes. I don't think -- I
18 don't think this actually references the
19 disenfranchisement provision. And based on
20 some subsequent review of the documents, I
21 had forgotten that there's also a reference
22 in the legislative section on legislative
23 qualifications that could have been related

1 to that. But that was my testimony earlier.

2 Q. Okay. So you're not sure if
3 this was -- what this was specifically
4 referring to, and it's not clear from the
5 document if it relates to the
6 disenfranchisement provision or another one?

7 A. It does not say what
8 particular provision it's referring to.

9 Q. Okay. And it refers actually
10 to the Criminal Code of Alabama, is that
11 correct, for the definition?

12 A. It is quoting the Criminal
13 Code, yes.

14 Q. Okay. I just wanted to
15 clarify why you thought that was related to
16 the disenfranchisement provision, so I
17 appreciate that.

18 A. Okay.

19 Q. Okay. I'd like to ask what
20 I'm hopeful is a series of quick yes-or-no
21 questions. In each of the transcripts that
22 we just went through, was there anything that
23 gave you reason to doubt that the language

1 you used about moral turpitude in the 1979
2 proposal came from the 1973 proposal?

3 A. Was there anything that
4 caused me to doubt that it came from the
5 1973?

6 Q. Correct.

7 A. No.

8 Q. Okay. And did you have any
9 reason to doubt that the original source of
10 the moral turpitude language is the 1901
11 Constitution?

12 A. No. The moral turpitude --
13 MS. MESSICK: Object to the
14 form.

15 A. The moral turpitude
16 language -- The term moral turpitude appears
17 in the 1901 Constitution.

18 Q. Okay. And you don't have any
19 information to suggest that the phrase -- the
20 moral turpitude phrase came from some other
21 outside source?

22 A. No.

23 Q. All right. And I know you

1 testified earlier that you're aware of the
2 Supreme Court case Hunter v. Underwood. Did
3 anything in the transcripts that you reviewed
4 give you any reason to doubt that the holding
5 of that case was that the phrase crimes of
6 moral turpitude was adopted because it was
7 ambiguous and could be used for
8 discriminatory application?

9 MS. MESSICK: Object to the
10 form.

11 A. Well, I've not read the case,
12 so I don't feel comfortable trying to comment
13 on what the case says. But I didn't see
14 anything in the transcripts that would
15 suggest to me that the term moral turpitude,
16 the way it was discussed in the hearings and
17 the way it was responded to by Yetta Samford
18 and others, I don't -- there was nothing in
19 the transcript to suggest that that was a
20 race-based term.

21 Q. Correct. But there is also
22 nothing in the transcript to suggest that --
23 to cast doubt on the Supreme Court holding

1 that, in fact, the 1901 Constitution used
2 that for the purpose of -- for a
3 discriminatory purpose?

4 MS. MESSICK: Object to the
5 form.

6 A. Well, again, I haven't read
7 the Supreme Court decision, and the Supreme
8 Court may just be dead wrong on that. The
9 Supreme Court was wrong on Plessy versus
10 Ferguson.

11 Q. All right. Fair enough.
12 Assuming that the Supreme Court did not get
13 that wrong, that's going to -- we're just
14 going to assume that for the rest of these
15 questions. You testified that you -- the --
16 Strike that.

17 In the speech that you gave on
18 constitutional reform, I think this is
19 Defendant's Exhibit 4, Plessy versus
20 Ferguson. I apologize, Defendant's Exhibit
21 3. I apologize, I'm just finding it. In
22 this speech, you -- I lost the place. I
23 apologize.

1 MS. MESSICK: I believe I
2 asked him about pages 5 and 8.

3 MS. DANAHY: Correct.

4 Q. (Ms. Danahy) Okay. So at the
5 beginning of page 5, you referenced the poll
6 tax requirement, and the requirement that --
7 or the provision of the right to vote only to
8 men; is that correct?

9 A. Correct.

10 Q. And those were removed from
11 your proposed draft of the Constitution; is
12 that correct?

13 A. Yes.

14 Q. And at the time that you
15 drafted that language, you were aware -- were
16 you aware -- did you have specific knowledge
17 that poll taxes were used for discriminatory
18 purposes?

19 A. Yes.

20 Q. And that was why they were
21 unconstitutional?

22 A. Yes.

23 Q. And did you have specific

1 knowledge that the 19th Amendment had
2 enfranchised women, and therefore, limiting
3 their right to vote, to men was
4 unconstitutional?

5 A. Say that again. The 19th
6 Amendment had granted the women the right to
7 vote?

8 Q. Correct.

9 A. Yes.

10 Q. And that, therefore, limiting
11 the franchise to men would be discriminatory
12 and unconstitutional?

13 A. Of course.

14 Q. Okay. But you testified that
15 you had no specific knowledge that the moral
16 turpitude provision could have a -- could
17 have come from a discriminatory intent; is
18 that correct?

19 A. Well, in the 1901
20 Constitution, I suppose you could argue that
21 anything in that particular
22 disenfranchisement section could have had a
23 racial intent. But on the items that are

1 listed there, murder is one of them, most
2 people would probably -- if you're going to
3 have a disenfranchisement for a felony, most
4 people might say murder satisfies it, so does
5 treason. So not everything in that -- even
6 in that section of 1901 would necessarily
7 have had a racial intent. Similarly, moral
8 turpitude would not necessarily have had a
9 racial intent. But assuming that it did, it
10 did not have that intent -- we did not have
11 that intent for the use of that term when we
12 used it in the 1979 draft.

13 Q. I apologize. That's not --
14 That was not my question.

15 A. Okay.

16 Q. My question was, you
17 testified earlier that you didn't have
18 specific knowledge about the history of moral
19 turpitude and its use -- its use alleged or
20 potential that for discriminatory purposes
21 when you included it in the 1979 draft; is
22 that correct?

23 A. That's correct.

1 MS. MESSICK: Object to the
2 form.

3 Q. Okay. But you also
4 testified, then, that if you had known that,
5 and this is where we get to assuming that the
6 Supreme Court got it right in Hunter, and
7 that the moral turpitude provision was
8 adopted with the intent to discriminate
9 against African American voters, that that
10 might have changed whether you included it?

11 A. It might have. It might have
12 changed -- We might have used a different
13 term, or we might have put it in the comment
14 that the use of moral turpitude here is not
15 intended to have a discriminatory or a
16 racial -- a racist effect. I mean, we could
17 have used the term moral turpitude and just
18 stated in the commentary we were using it,
19 but it's not intended to be a racist term.

20 Q. Sure.

21 MS. MESSICK: And I've got a
22 belated objection to the form.

23 If you give me a minute to

1 object before you start answering.

2 THE WITNESS: I'm sorry.

3 Yeah.

4 Q. (Ms. Danahy) Would you have
5 used the term moral turpitude if you thought
6 that it was -- it would lead to
7 discriminatory disenfranchisement of African
8 Americans?

9 MS. MESSICK: Object to the
10 form.

11 A. Well, if I -- if you're
12 asking sitting in 1979 if someone said if you
13 use this term it'll be discriminatory, it'll
14 be used against African Americans, I would
15 have probably said let's find another term,
16 or let's approach it from a different point
17 of view. But that really relates to the
18 intention. It really relates to what did you
19 intend by the document, and what did you
20 intend by the use of the language?

21 I mean, I could probably look
22 through the 1979 proposal and find other bits
23 of language that could be argued to be

1 discriminatory in some way. I could probably
2 read the U.S. Constitution and find something
3 in it that would be discriminatory in some
4 way. So it depends on what the intent of the
5 use of language is when you -- when you use
6 it.

7 Q. Okay.

8 MS. DANAHY: I think that's
9 all I have.

10 THE WITNESS: Okay.

11 MS. MESSICK: No further
12 questions. Thank you for your time today.

13 MS. LANG: Thank you for your
14 time, Mr. Waters.

15

16

17

18 (The deposition was concluded at 5:15 p.m.,
19 July 11th, 2019.)

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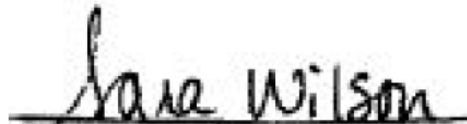
REPORTER'S CERTIFICATE

STATE OF ALABAMA,
MONTGOMERY COUNTY,

I, Sara Wilson, Certified Court
Reporter and Commissioner for the State of
Alabama at Large, do hereby certify that the
above and foregoing proceeding was taken down
by me by stenographic means, and that the
content herein was produced in transcript
form by computer aid under my supervision,
and that the foregoing represents, to the
best of my ability, a true and correct
transcript of the proceedings occurring on
said date and at said time.

I further certify that I am neither
of kin nor of counsel to the parties to the
action; nor in any manner interested in the
result of said case.

Signed the 30th of July, 2019.

A handwritten signature in cursive script that reads "Sara Wilson". The signature is written in dark ink and is positioned above a horizontal line.

Sara Wilson, CCR

ACCR #420 Expires 9/30/19

Notary Expiration 6/20/21

[& - 1st]

Page 260

&	1315 235:8	108:18,20 111:2	1978 21:3 26:17
& 6:7,9 7:7 17:17 19:8 29:19 30:4	1346 232:22	113:10,22 114:1,16	171:15 235:17
0	136 210:22	115:3 116:15	1979 3:18 5:2,6
00783 1:4 8:4	137 210:21 211:3	117:16,23 119:15	6:13 7:16 43:17
01 101:10 108:2	14 6:22 218:4,8	120:10 121:3,16,21	49:5 60:12 61:11
125:3 228:22	14th 8:16,20	124:1 125:9 126:7	61:15 65:2 75:21
03 160:15	15 5:6 7:3 221:13	126:16 131:8	99:9,19 107:18
1	221:18	132:16 133:2 134:6	109:2 111:9,19
1	159 4:1,5	134:7 139:21 200:7	116:21 118:2
1 4:1,12,14 64:11	16 3:20 7:9 224:9	200:7 201:17	119:16 121:21
64:16 83:18 172:1	224:14	202:13 203:6,10	124:21 131:11
172:5 210:21	162 4:8	207:2 221:6,12	135:4 138:14,19
10 3:5 5:22 196:20	16th 160:15	227:18 229:8	139:4 144:10 145:2
197:1	17 7:14 231:19	243:13 250:10,17	146:9 147:10 148:1
101 3:20	232:1,6,7 234:23	252:1 254:19 255:6	149:4,11,17 152:1
108 219:1	171 3:6	191 5:17	152:3 153:16 154:2
109 83:19	172 4:14	1920s 57:5	154:15 172:10
10:05 10:9	174 4:18	195 5:21	175:9 181:10
11 3:16 6:5 7:20	177 4:22	1958 23:22	182:21 192:11
199:20 200:2	17th 194:2	196 6:4	195:23 207:16
110 220:5	18 7:18 241:11,15	1970 6:4 66:8 198:7	208:7 210:18
1101 8:16,20	180 5:2	1972 21:19 22:11	229:15 232:9 240:3
111 219:4	180811 197:9	22:22 68:8	244:4,11 250:1
115 7:8 222:1	182 5:6 86:21 197:8	1973 3:16 6:9 38:13	255:12,21 257:12
11th 1:19 22:16	202:13	41:16 60:13 61:11	257:22
46:19 124:9 131:1	18334 259:21	61:15 64:15,21	1980 29:20,20
258:19	183895 202:2	65:5,14 70:11	31:20 33:19 171:20
12 3:9 4:22 6:11	184929 101:21	75:22 77:2 78:9	1980s 11:20 130:18
207:21 208:2	186 5:9	79:16 80:15,19	1983 200:12
232:16 245:20	188 5:12	81:1,2,6 82:9 83:14	1986 130:1
1228 232:20	19 5:12 7:17 33:7	91:15 98:17 102:5	1987 29:22
1229 232:19	179:7	105:23 107:9 109:3	199 6:10
123 222:4,9	1901 6:8 40:6,17,22	111:9,15 129:5,8	1992 33:20
13 4:8 5:21 6:17 7:8	44:10,14 45:2 82:4	144:19 158:9	1996 155:14 239:23
210:2,6,9	86:6 87:19 88:15	173:14 190:14	243:11,23 244:2
1308 233:6,10	89:1,10,19 90:4,21	191:21 192:6	1997 29:21 30:4
1310 234:2	91:16,18 92:17	198:20 199:3	19th 243:11 254:1
1313 234:22 235:3	93:2 98:15,21	200:10,13,17	254:5
1314 235:4	99:13,22 100:14,19	235:12 250:2,5	1st 210:18 224:21
	101:3,14 103:23	1977 16:23 19:11	
	104:20,23 105:11		

[2 - 9/30/19]

Page 261

2	27th 160:15	253:2,5	702 107:11
2 4:15 6:18,21	28th 7:10 224:17	501 1:18 9:3,7 10:7	703 107:11
101:16,20 152:11	224:23	50s 20:10 34:2 41:6	70s 118:22 168:1
152:12 174:20	29th 208:9	41:11	72 68:17
175:2 178:1 193:16	2:16 1:4 8:4	523 230:2	73 38:18,19 41:23
210:11 244:10	2nd 181:6 210:17	579 155:14 156:7	42:8 43:22,23
20 3:5 4:18 5:2 6:4	3	243:10,13	44:11,16 45:2
6:10	3 4:3,19 159:1,5	58 24:2	49:17 60:17 61:8
2000 154:3,13	160:6 161:13	5:15 258:18	68:18 77:9,21
157:22 158:1	172:14 177:12,17	6	80:16 89:12 99:5
169:13	252:21	6 5:7 186:8,13	99:10 101:1,13
20005 8:17,21	3.08 233:23	198:6 248:2	103:13,15 104:5,8
2002 4:7 162:23	30th 210:17 224:21	6/20/21 259:23	104:19 105:1
2003 156:12 157:2	259:19	60s 132:7 168:1	106:16 110:8
158:7 161:16,23	31 195:22	238:15	125:12 154:16
162:11,22 169:21	33 215:11	62 24:13,14	156:14 176:22
2009 26:21	36104 1:19 9:4,8	64 3:16	75 68:18
2010 30:21	10:8	66 66:4	78 19:13 49:8 67:7
2014 169:15,17	37 242:18,22	68 66:7 236:21	79 4:14 43:18 61:9
170:13	38 242:19,22 243:7	6th 7:2 218:13	89:14 125:12 126:3
2017 98:8	244:8	224:22	126:3 154:16,19
2019 1:19 258:19	381 225:4	7	158:9 171:18 192:7
259:19	382 225:4	7 5:10 7:16 83:19	208:9
206 211:14,17	383 225:8 226:4	179:15,16 188:19	7th 152:1 224:22
207 6:16 212:5,20	384 226:22 229:23	188:23 212:1	232:9
209 212:23 215:4	385 225:10	7.01 83:23 105:17	8
215:21 217:7	4	106:13 107:12	8 3:6 5:9,13 6:7
20th 70:7 168:11	4 4:23 7:2 101:21	212:6	179:12 180:10
171:18 181:10	159:23 160:4,7,7	7.01. 212:14	191:9,14 198:11
21 6:16	161:14 163:7	7.02 85:4 102:1	200:9 211:19 253:2
210 6:21	180:23 181:5	107:13 202:5	8.07. 233:23
218 7:2	252:19	212:20 227:19	80s 72:20 75:11
21st 175:9	400 8:16,20	229:7 233:23	83 6:14 208:7
221 7:8	40s 20:10 34:1	7.02. 212:17 228:4	84 33:12
224 7:13	41:11	234:3	86 33:11
23 4:5 5:2,6	420 259:22	7.03 107:7	9
231 7:17	5	7.03. 107:13	9 5:17,18 7:13
23rd 182:21	5 5:3 162:13,17	70 67:4 68:16,17	195:13,17
241 7:20	163:12 175:14	701 107:11	9/30/19 259:22
247 3:9	178:9 182:15,19		

[a.e. - ambiguous]

Page 262

a	actual 32:16 103:14 138:10 152:6 195:4 198:19 200:16 adams 28:22 29:4 52:13,22 53:20 54:9 80:1 add 178:23 added 226:6 adding 221:1 addition 14:3 59:5 107:21 159:16 180:4 additional 14:10 58:1 134:11 147:12 148:21 159:9 217:11 address 4:14 28:14 172:8,10 222:21 addressed 138:2 addresses 197:8 202:1 234:3 administration 46:22 188:12 administrative 45:15 adopted 155:18 174:3,4 227:20 251:6 256:8 adult 97:2 advertiser 186:3 195:22 advisor 15:5 16:3 45:9 47:7 50:9,11 171:16,18,19 aea 79:10 affable 69:19 affect 13:13 affluent 137:2 african 28:17,22,22 40:5 45:1 115:2	116:17 118:11,19 118:23 121:12 124:7 134:17,20 136:11,17,23 137:12,16,19 138:6 139:10 142:3,4,5 142:12,15,18,20,23 143:2,6,18 144:8 146:14,21 147:1,4 147:6,21 181:17 213:10 216:23 238:16 256:9 257:7 257:14 age 84:9 166:9 179:6,10 212:3 213:9 agenda 4:7 162:21 ages 25:2 ago 11:19 19:3 26:6 35:9 96:3,4 236:15 agree 87:10 113:7 115:15 125:2 225:14 agreed 1:13 2:1,8 2:17 21:9,14 166:22 206:5 ahead 12:19 71:2 90:13 aid 259:10 aimed 207:3 al 1:6,9 4:17 5:16 8:6,9 alabama 1:2,9,17 1:18 3:22 8:2,9 9:2 9:4,7,8 10:2,7,8 16:15,23 20:3,7,23 21:16 22:8 23:2 24:22 26:9,17 28:21,23 30:12 35:3 40:8 44:23 45:21 46:15 50:1	51:23 55:4 59:1 69:23 71:5,22 72:7 74:2,4,9 79:2 81:15 83:15 88:3 92:9 93:15,23 95:14 110:15,18,20 112:5 116:23 119:1 132:16 134:16,18 134:20 135:17 136:12 137:13 139:6,10 142:2 147:19 163:14 164:2 175:7 177:3 185:3 187:13,23 191:18 192:21 194:22 196:17,19 199:15 236:7 237:1 238:13 241:8 249:10 259:2,6 alabama's 27:11 130:21 alabamians 172:23 176:2,6 albea 71:5 albert 21:20 66:2,5 104:9 235:12 alert 64:9 alerted 63:23 alive 192:8,12 193:13 236:13 allegations 40:13 alleged 255:19 allocated 140:15 allow 56:21,22 124:2 142:4 170:5 170:23 allowed 225:7 ambiguity 124:16 ambiguous 188:2 251:7

[amended - articulate]

Page 263

amended 145:4 amending 100:15 amendment 28:8 46:12 56:14 58:16 117:3 155:14 156:7 174:15 239:23 240:5 243:9,10,13 243:15 244:3 254:1 254:6 amendments 5:15 55:5 108:8 145:5 191:17 american 28:18,22 28:23 118:20 136:18,23 139:10 142:3,4,12 143:1,3 143:18 144:8 147:1 147:21 181:18 213:10 216:23 238:16 256:9 americans 40:5 45:1 115:3 116:17 118:11,23 121:12 124:7 134:18,20 136:12 137:12,16 137:19 138:6 142:5 142:16,18,21 143:7 146:15,22 147:4,6 257:8,14 amount 130:5 amounts 35:11 analysis 138:14,20 139:1 annette 5:11 189:13 anniston 71:23 announced 21:2 announcer 185:19 answer 12:13,19 13:7,14,19 119:19 125:2 165:14	240:17 answered 120:4 123:3 135:10 answering 120:5 122:3 257:1 answers 12:8 antisegregationist 27:4 anybody 15:14 19:17 31:23 50:18 80:18 81:21 140:21 195:11 anyway 106:22 226:18 ap 185:23 apologize 25:19 32:7 71:2,4 91:22 189:2 233:9 252:20 252:21,23 255:13 apparent 230:15 apparently 155:12 198:10 appeal 205:9 appealed 25:10,17 appeals 205:14 appear 195:18 212:13 218:9 appearance 115:18 appearances 8:14 9:1 appearing 8:17,21 9:4,8 appears 39:20,21 84:15 106:9 129:4 151:17 182:20 189:18 194:5 195:20 196:9 198:2 198:4,19 200:6 210:15 211:2 217:16 218:11,15 219:7,15 220:17	221:20 223:8,17 224:16 225:6 226:7 228:21 232:10,13 233:12 234:22 235:7 241:18 250:16 appendix 81:11 application 100:8 108:5 130:14 131:6 207:12 251:8 applied 108:5 205:7 apply 100:3 appoint 47:1 168:18 appointed 6:3 28:16,21 44:5 66:7 76:15,17 156:13 168:13 169:1 173:15 198:6 appointment 173:17 appointments 45:18 appreciate 249:17 approach 20:20 57:22 77:20 78:3 131:19 140:5,8,20 180:7 257:16 approached 140:23 166:14 approaches 165:16 appropriate 94:23 97:11 204:6 214:2 approval 62:10 approve 56:15 approximately 62:7 april 51:4 62:7 194:2 196:8	arant 17:17 19:8 49:10 52:14 54:9 archives 51:15 153:8 194:14 200:20 201:8 246:18 area 31:6,18 56:8 97:20 179:23 203:1 216:12 areas 53:3 54:12 92:2 argue 89:8 122:21 125:9 254:20 argued 89:9 132:3 257:23 arguing 225:16 229:7 argument 101:8 227:6 228:8 229:2 arguments 95:19 239:17 arson 220:9,15 article 43:4 44:6 73:16 81:10 82:10 83:19 89:13 163:9 169:15 180:9,10 190:11,12,13 193:17 194:6 195:8 198:11 200:9 201:11,15 209:4,15 212:1 215:11 223:22 230:4 239:13,19 242:23 243:4,12,22 articles 43:2 109:21 112:13 189:21 190:10,18 190:23 209:8 233:19,21 articulate 213:10 214:16

[arts - bear]

Page 264

arts 16:21 aside 76:15 133:13 asked 13:6 14:2 30:6 37:7 49:9,12 50:8 76:20 120:4 123:2 144:17 146:5 154:10 168:5 171:16 182:3 193:5 206:2 240:14 242:15 253:2 asking 12:14 86:13 93:8 100:10,12 122:19 135:6,7 159:13 181:20 187:9 211:4 212:10 235:6 257:12 asks 212:6,15 225:11 assassinated 177:4 assign 2:13 assigned 23:18 assimilate 231:6 assistant 26:13 associate 196:18 associates 19:14 association 79:3 228:21 assume 12:23 130:23 198:8 252:14 assuming 201:2 252:12 255:9 256:5 assumption 66:15 attack 41:9 attained 143:7 attempt 12:3 16:5 147:12 237:16,22 attempted 59:19 206:20,21 220:9,9 220:15	attempting 140:20 221:11 attempts 35:15 220:8,14 attend 148:9 155:23 attendance 247:22 attended 16:22 246:3 attention 155:8 209:16 240:6 attitude 25:15 82:20 105:8 attitudes 96:2 attorney 1:17 9:3,7 10:7 11:5 59:3,9 145:23 238:13,18 238:22 auburn 73:16 audibly 123:16 auditor 59:16 authentic 181:11 181:13 182:23 authenticity 183:4 authority 41:2 55:17 56:3 97:10 141:23 243:16 automatic 229:4 automatically 89:20 126:6 226:19 available 91:11 avenue 1:18 9:3,8 10:8 aware 13:11,21 62:18 81:5 87:17 88:1,14,20 98:8 132:14 135:21 136:4,8,9,17 137:11,16 138:4 144:8 147:23 148:20 157:23	158:2 167:18 204:20 205:3,7,11 238:4,6 239:22 240:3 251:1 253:15 253:16 awareness 81:7 awkward 55:19 56:16 azbell 43:7,16,21 44:15 89:13	bailey 9:11 balch 30:4,8,21 31:2 ballot 24:6 155:21 bank 30:1 bankers 14:23 banking 17:22,22 31:6 32:2 banks 31:9,12,17 bar 4:17 175:7,8 178:2 185:3 187:13 based 40:3,7,18 43:9,15 44:10 82:9 89:11 90:1,6 91:4 91:13 92:8 95:8 106:16 108:23 114:14,21 115:9,15 119:10,10 124:14 125:11 151:17 153:11 248:19 251:20 baseline 100:14 basic 52:15 83:1 109:19 178:6 basically 54:1 55:6 56:2 143:5 180:11 187:12 230:18 231:1,9 basing 41:9 245:14 basis 16:6 28:13 97:13 108:20 117:23 122:15 128:17 174:13 176:14 205:8 206:4 207:14 219:11 bates 197:9 baxley 235:18 238:4,10,17,21 239:2 240:10 bear 69:23
		b b 244:8 ba 16:17 back 17:11 20:3,16 22:13 26:17 29:14 31:10,20 35:5,18 36:3,4 43:22 47:21 57:2 58:23 59:18 73:17 79:10 87:21 89:11,14 96:19 97:6 101:4 108:10 113:15 117:13 125:18 130:1 145:8 145:22 155:9 165:19,20 171:20 188:16 205:21 206:14 216:11 217:17,18 224:7 226:13 228:18 232:4 237:9 248:1 background 16:8 16:12 19:22 25:9 38:2 40:22 41:21 81:13 89:21 90:8 105:4 141:9 188:3 188:13,18 backing 227:10 229:19 backup 229:22 backyard 47:12	

[beasley - called]

Page 265

beasley 66:20 67:23 71:13 235:18 beating 213:15 beatty 196:13 198:7,8,22 199:9 bedford 154:4,17 155:7 240:12 bedford's 7:19 241:16 began 41:15 beginning 10:8 27:15,17 113:15 172:16,23 188:11 217:7 222:9,12 253:5 begins 24:10 212:20 221:23 225:15 behalf 8:17,21 9:5 9:9 11:22 247:21 belated 256:22 beliefs 166:10 believe 45:3 103:6 104:4 126:20 170:6 172:7 181:11,12 182:22 183:1 189:20 197:13 206:5 210:21 212:1 240:14 244:21 246:11 248:14 253:1 believed 21:14 70:5 believes 223:14 226:22 234:14 beneficial 142:15 204:11 bennett 156:17,20 bentley 35:8 169:18 170:3 190:21 239:8 240:11	bentley's 235:22 best 12:12,13 189:4 197:14 231:8 259:12 bias 132:3,11 big 33:23 41:7 52:7 63:20 209:13 bigger 160:10 bill 145:9 238:4,10 bills 46:9 bingham 30:4 birmingham 16:16 17:17 22:15 23:13 30:5,9,10,20 49:22 52:10 53:20,21 71:16 73:7 154:9 181:17 233:15 238:14 birthday 172:21 bit 19:14,22 22:13 69:12 104:12 160:23 173:13 174:8 187:22 193:18 236:10 241:23 242:11 bits 257:22 black 57:19 176:3 184:3 195:4 227:21 blacks 114:18 120:12,20 121:4,18 124:17 131:7 207:4 227:23 bleeds 84:1 blue 195:3 bo 49:23 53:21 146:23 board 51:22 108:10 boards 204:22 bob 22:14,18 23:11 52:3,23 53:19 80:3 146:23 194:21	216:15,18,20 220:16,21 236:5 239:7 bobby 177:2 body 173:21 bomb 22:17 238:20 bombing 238:15 bond 52:6,10,14 53:3 54:10 56:10 61:6 71:16 73:6 87:4 bonds 52:9 bono 32:11,16,18 book 44:2 173:23 174:1 books 51:14,17 109:21 112:14,14 194:18 237:7 borrowed 98:21 99:2 bottom 83:19 179:16 189:14 217:7 bound 174:1 box 14:7 boxes 14:23 15:1 15:10 bradley 17:16 19:8 35:2,3,7 49:10 52:14 54:9 break 13:5,8 25:18 43:3 45:4 59:23 60:4 89:16 103:22 146:5 202:23 244:18 breaks 13:4 brevard 72:15,16 brewer 6:3 21:20 66:2,5 104:9 173:9 173:15 174:11 198:6 235:12,16,18	235:20,23 236:12 237:4,4,8,12,17 brewer's 42:5 44:3 173:13 brewton 72:8 brief 26:10 63:21 208:15 209:7 briefly 26:7 68:7 bring 62:23 70:7 155:8 brings 242:5 broad 94:15 203:10 broader 220:18,23 broadly 48:18 brought 145:21 159:22 214:5 215:9 240:6,8 bryan 163:23 bryant 69:23 build 47:6,10,14,20 168:7,18,21 building 50:3 166:23 built 47:8 bury 173:1 business 25:12 165:6 166:1 246:8 buskey 144:12 busy 231:15 butcher 71:3 butts 9:10 buy 47:8,9 byrne 35:2
			c
			c 73:14 cabaniss 52:12 cabinet 28:17,19 call 36:8 50:13 51:2 69:1 166:18 186:4 called 16:19 18:14 23:3 27:18 36:2,13

[called - clear]

Page 266

41:7,19 44:3 50:22 53:12 55:20 56:20 88:8 108:4 113:2 130:20 140:11 145:9 173:22 176:5 183:16 calling 36:15 calls 36:10 70:22 179:17 calories 32:10 campaign 8:15,19 20:11,16,17 21:4,5 21:9,11,22 22:12 25:17 26:19 27:10 27:14 33:1 34:6,13 34:18 54:16 57:12 68:6 140:5 165:8 177:2 237:3,8 campaigned 27:7 campaigning 27:3 cancer 26:6 66:5 candidate 23:10 candidates 67:8 capacities 214:18 capacity 216:21 capital 31:14 captured 239:5 care 246:8 case 1:4 8:4 13:23 31:19 35:20 66:20 88:2,7,14,21 106:20 122:12,22 132:1 167:18 201:3 207:20 211:2 219:15 228:9 251:2 251:5,11,13 259:18 cases 11:16 38:21 45:18 170:5,6 242:5,6 cast 251:23	catchall 125:9,10 categorize 204:15 category 96:13 98:11 128:21 163:22 204:16 cause 10:10 246:20 caused 250:4 ccr 1:16 10:1 259:22 ceased 199:14 center 8:16,20 century 70:8 168:11 ceremony 4:18 175:7 185:4 certain 53:2 54:18 55:17 63:22 89:4 104:20 116:3 118:7 119:21 121:1 135:7 136:3 153:3 158:14 158:15 188:7 190:23 193:5 247:18 certainly 28:12 35:1 41:16 45:13 53:1 63:11 65:7 66:16 68:5 76:3 77:11 90:20 100:23 116:18 125:12,17 127:13 135:20 140:18 161:20 176:19 187:15 199:18 204:1 206:12,14 214:20 231:5 certificate 259:1 certification 200:20 certified 259:4 certify 10:3 259:6 259:15	chain 167:11 chair 156:18 160:17,18 189:14 chaired 176:15 chairing 218:15 235:3,6,7 chairman 26:14 33:13 41:23 42:5 49:13 53:16 65:8 76:4 176:23 213:22 235:9,23 chairs 33:15 challenge 23:1,6 change 49:19,19 95:21 102:22 103:2 144:9 164:21 231:10,12 243:10 243:21 changed 58:11 131:13,18 134:12 231:3 256:10,12 changes 60:20,21 63:22 157:23 158:21 161:17 196:7 231:16,17 changing 64:4 98:18 100:16 158:4 162:1 characterization 95:11 96:10 characterizing 131:1 charge 162:6 168:20 charles 74:21 charlie 74:22 check 160:8 chief 49:23 children 97:2 238:16	choices 131:13 133:19 choked 23:23 25:20 chose 86:11 87:14 111:13 129:5 133:6 chosen 124:1,12 127:18 church 238:15 circuit 22:15,16 46:19 53:18 75:16 124:9 131:2 circumstances 11:13 171:6 247:6 cities 55:10 citizen 180:12 citizens 3:22 56:1 56:21,23 117:21 149:21 176:5 227:22 city 180:20 238:14 civic 177:8 178:5 civil 10:4 82:3 85:8 115:5 202:8 claim 39:21 122:6 123:1 130:15 172:22 claim's 122:14 claims 39:9,18 clair 47:9 clarification 12:22 12:23 clarify 249:15 clarifying 247:8 class 100:4 242:6 classes 136:3 clause 205:17 213:11 clawed 145:22 clear 25:18 41:5 44:5,9 45:4 81:19 87:7 121:9 126:4

[clear - concerned]

Page 267

132:9,10,11 133:3 142:19 206:23 227:17 249:4 clearly 24:4 40:6 40:17 41:12 42:20 44:18 45:3 103:11 103:12 105:4,10 117:16 171:10 220:21 228:2 clemon 118:19,20 119:4 143:10,22 184:7 clerk 15:17 187:12 187:14 clerked 17:16 clerking 17:20 client 145:23 close 34:4 closed 27:12 closely 20:19 76:18 clubs 177:9 178:5 185:2,2 cocounsel 123:15 code 55:12 167:23 168:2 187:21 249:10,13 coleman 74:15 collected 51:16 collecting 52:15 109:20 college 16:13,16 17:6 20:2,4 colonial 30:1 color 25:2 column 102:1 201:16,19 columns 195:6 combined 194:19 come 29:14 50:19 58:8,9,21 64:9 146:11 196:1	254:17 comes 77:2 126:9 203:20 comfort 199:4 comfortable 251:12 coming 62:17 145:18 commencing 19:13 comment 43:21 86:2,9 98:17 102:3 102:7,16 106:8,9 107:8 133:1,3 134:3 225:9,15,15 234:6,9,13,19 243:3,7,9 251:12 256:13 commentaries 206:23 commentary 18:17 38:18,19 41:18 48:16 87:6 194:16 195:3 256:18 commenting 230:21 comments 44:6 84:18 225:8 231:7 232:23 commission 3:23 5:17 38:14 41:17 41:23 42:6 44:4,8 56:2 65:5,18 66:1,7 66:17 67:1 70:11 70:19 77:9,22,22 79:16 83:10 84:23 85:14,15 86:11 87:8 99:5 101:1 103:13 104:5,8 111:13 156:14,16 157:2,11 158:8 160:20 162:22	169:16 170:11 173:15,16,20 174:12 176:22 190:14 191:18,21 198:5,10,21 235:22 236:1 commission's 66:11 236:5 commissioner 2:19 8:12 10:3 259:5 commissions 12:3 35:15 commit 149:21 150:9 commitment 173:5 committed 34:11 149:23 committee 4:8 6:2 6:19 7:2 53:9,11 54:2,4,13 58:2 102:20 103:6 129:1 146:9,15,16 147:7 147:9 153:9 161:15 161:23 162:7,22 174:7 176:13 181:22 182:11 183:12 208:10 210:12 218:13 224:19 229:10 230:12 231:4 232:8 235:1 247:16 committee's 7:6 221:22 community 139:10 commuted 30:9,17 49:22 compare 61:14 102:3 105:22 107:8 110:1 244:8 comparison 109:1 200:6,14	comparisons 6:6 complaint 39:12 40:13 44:20 complete 4:5 62:1 158:8 159:13 160:7 160:9 completed 62:4 146:1 225:18 completely 123:20 complex 166:19 compliance 2:5 complicated 51:1 190:9 complies 102:10 106:1 107:14 175:15,21 178:11 181:7 186:18 189:6 197:10 198:15 200:5 211:16 213:2 219:2,5 223:16 225:13 233:11 234:7 242:20 244:14 248:3 comptroller 17:21 computer 259:10 concept 83:2 94:17 95:4,6,9 108:11 110:17 143:20 150:14 176:19 203:12 concepts 94:3 97:3 113:6 117:15 204:2 conceptual 77:3 conceptually 80:9 concern 137:18 206:13,16 213:4 214:9,19 217:6,9 217:16 concerned 58:2 206:8

[concerning - control]

Page 268

concerning 212:19 concerns 220:6 233:18 conclude 44:12,20 concluded 258:18 conclusion 214:2 condensed 245:1 conduct 187:20 247:4 conducted 196:5 confident 120:10 121:15 247:20 confinement 187:20 confirm 159:11 confirming 183:10 conflict 18:19 congress 94:6 congressman 26:11 35:2 connection 91:3 235:20 conrad 41:22 42:4 65:8 69:13 70:1,2 146:23 192:6 consequence 150:20 151:8 consequences 217:23 conservative 24:5 68:13 242:1 consider 69:6 150:15,22 considered 15:20 15:22 32:17 209:14 240:20 consistently 223:2 consisting 176:2 constituent 45:19 constitutes 188:4	constitution 3:15 3:19 6:9,15 7:7,13 7:17,20 12:4 28:2,3 35:16 36:22 38:18 40:6,18,23 42:9,17 43:8,8,14 44:10,14 45:2,15 49:5,16 51:7 52:7 55:4,7 57:13 58:17 59:2 59:14 60:12,13,17 62:2 64:15,21 66:8 70:6 73:18 75:22 76:19 77:7,23 78:2 78:6,9,15 79:17 80:15,19 81:1,15 81:18 82:4,22 83:15 86:6 87:3,20 88:15 89:1,10,19 90:4 92:21 94:5,10 94:11,19 96:18 97:8 98:3,15,17,21 99:13,22 100:14,19 102:5 103:20,23 104:23 105:2 106:16 108:2,16,18 109:2,3 110:6 112:21 113:9,10,22 114:11,17 115:3 116:15,21 117:7,9 117:16,23 119:23 120:11,13 121:21 125:3,10,19 126:17 129:6,8 131:9 132:16 133:19 134:6 138:14 139:5 139:21 140:9 144:19 147:13 149:4,17 152:3 154:2,5 157:22 158:9,20 161:18 166:22,23 174:3	176:6 177:10 178:6 178:14,18 179:17 179:20,22 180:4 181:23 184:5,17 185:13 186:6 187:4 187:5 188:9 190:17 191:1 194:12 197:9 200:8 202:13 203:6 203:10 207:2 208:8 213:16 221:7,12,22 224:1,18 227:3,14 227:15,19 228:22 229:8 232:12 235:13 237:14 238:3,5 239:9 241:16,17 243:13 244:11 248:10 250:11,17 252:1 253:11 254:20 258:2 constitution's 180:9 constitutional 4:1 4:22 5:16 6:1 12:3 15:3 28:8,11 35:14 36:21 37:3 38:14 38:23 40:21 41:8 41:13,16,22 42:13 42:13 44:4,7,22 50:6,14 51:17 52:2 52:20 56:14,18 59:4,7,10 65:5,18 70:11 90:21 102:7 108:7 109:22 112:15 114:1 138:21 141:11 155:9 156:11,13 164:1 169:20 173:10,16 174:15 175:11 176:18 177:23 178:23	189:14 191:18 192:23 198:5,20 213:15 235:22 252:18 constitutions 51:19 89:23 94:4 101:4,7 110:23 111:3,9 125:16 consuming 28:10 cont 9:1 contact 236:2 contacted 36:1 contacting 183:21 contained 244:3 contains 178:15 179:23 180:10 208:18 244:5 248:12 content 39:5 259:9 contents 161:21 163:12 context 114:14 140:23 142:14 continuation 7:4 7:11 221:21 224:17 228:1 continue 53:10 134:19 213:18 222:23 225:10 continued 3:7 40:8 241:7 247:11 continues 212:23 217:22 contracts 45:20,20 46:5 contributed 35:1 35:10,11 contributions 34:22 control 119:6 143:5 143:15

[controversial - cruel]

Page 269

controversial 189:21 191:6,8 209:16 controversy 179:11 convention 22:23 23:2,8,16 40:21 90:21 92:17 114:1 conversation 46:20 63:22 86:1 183:10 conversations 16:2 36:6 78:18,19 79:15,22 82:15,17 83:9,14 113:2,3 141:11 convicted 85:5 136:5 137:13,17 150:4 202:5 213:12 217:10 219:17 222:22 226:7 228:3 234:4 conviction 138:4 138:10 205:9 222:21 226:23 convictions 96:13 97:13 127:20 207:18 convinced 237:22 cooper 28:16 coordinator 20:18 coordinators 20:15 copied 36:12 copies 6:11 15:17 71:11 159:9 195:10 208:6 copy 3:13,17 4:6,12 4:15,19,23 5:3,7,10 5:13,18,22 6:17,22 7:3,9,14,18 39:11 44:1,2 172:12,13 194:23	corporate 11:17 19:16 31:5 corporation 26:15 30:13 correct 11:6 14:1,5 19:4,5 33:3 35:21 61:17 65:3,20,21 66:1,12 82:10 84:19,20 86:7 96:10 111:21 114:18 116:12 120:21 129:7 133:12 142:22 152:13 164:13,16 172:18 174:19 182:1 186:21 187:1 187:7 191:2 194:8 201:13,18,22 202:11,15 208:23 209:1,5,11 211:12 222:2 224:3,23 225:4,5 226:9,19 228:16 229:16 234:11,12,15,16 235:2,14 239:9,10 241:9,10,22 243:1 243:2,4 244:1 245:16 248:11 249:11 250:6 251:21 253:3,8,9 253:12 254:8,18 255:22,23 259:12 corrected 55:5 correcting 100:15 correctly 130:23 correspondence 183:23 cosign 46:7 cosigned 45:21 46:3	counsel 1:15 2:10 2:12 10:6 36:1 259:16 counsel's 182:3 counties 89:5 117:22 141:22 142:2,11,16 143:14 143:17 country 101:5 168:13 204:12 county 28:9 33:13 47:10,18 48:5 55:7 55:8,14,16,22 56:1 56:11,15 69:16,21 84:5,7,11 97:11,21 108:6,6 117:19 118:11,18 119:2,7 119:10 142:2 143:2 143:7,14,16,16 144:2 180:19 259:3 couple 33:18 36:9 86:22 118:15 145:5 164:7 220:1 236:9 course 20:2,4 43:23 99:4 178:20 254:13 court 1:1 2:6 8:1 10:1,15 12:15 28:21,23 46:16 47:13,13 50:1,2 57:16 74:3,4 88:2 88:14,21 94:23 95:3 124:9,10 126:19 127:6 128:7 130:19 131:2 132:1 133:14 176:17 177:6 196:19 199:15 205:9 251:2 251:23 252:7,8,9 252:12 256:6 259:4 courts 94:8,20 95:7 95:13 98:6,7,9	187:23 204:6 205:14 cover 198:3,17 201:2 218:12 232:20 covered 167:19 crafted 116:16 119:22 120:11,19 121:4,17 124:15 crazy 99:17 create 48:19 49:5 56:3,4 158:8 created 58:11,12 64:3 96:20 161:15 creating 117:6 creel 160:16 crime 48:8 137:1 149:23 150:4,17,21 167:6 203:2,2 222:22 227:1 crimes 36:23 39:1 40:1 86:5 90:18 98:11 124:4 125:4 125:6 126:18,23 128:3,4,19 136:20 202:18 251:5 criminal 33:22 88:16 90:5 98:19 124:13 126:15 130:21 136:18 137:9 187:21 249:10,12 criminals 168:8 criticism 152:22 criticisms 62:15 141:3 230:13 239:17,23 240:4 cross 176:1 247:5 cruel 203:19 204:3 205:17

[crum - died]

Page 270

crum 72:1,2 cullman 16:14,15 34:5 cumbersome 28:10 77:8 81:19 currency 17:21 current 30:21 59:1 96:6 178:14 179:19 179:22 180:4 currently 92:21 cut 197:7 202:22,22 cv 1:4 8:4 cycle 31:7 cystic 166:8	245:10 days 19:14 28:7 142:8 152:20 184:1 185:9 245:1 247:17 dc 8:17,21 de 53:22 dead 37:5 252:8 deal 35:12 60:1 139:3 179:18 206:20,22 dealing 45:17,18 200:8,10 244:9 dealt 37:14 97:22 137:8 207:17 debate 103:2 debt 208:21 209:22 decades 95:2 decatur 52:4 53:19 80:5 december 19:13 decide 89:6 128:17 143:21 decided 51:1 54:3 deciding 49:17 decision 130:19 131:1,10 135:9 207:16 252:7 decisions 117:22 128:8 declaration 58:10 104:21 208:22 deem 128:19 deemed 94:22 defeated 66:8 237:9 241:9 defend 171:1 defendant's 4:10 4:12,15,19,23 5:3,7 5:10,13,18,22 6:5 6:11,17,22 7:3,9,14 7:18 36:1 172:1,5	174:20 175:2 177:12,17 180:23 182:15 186:8,13 188:19,23 191:9 195:13,17 196:20 197:1 199:20 200:2 207:21 208:2 210:2 210:6 218:4,8 221:13,18 224:9,14 231:19,23 241:11 241:15 248:2 252:19,20 defendants 1:10 8:10 9:5,9 define 128:3 definition 98:10 187:10,18,19 248:13,14 249:11 definitions 187:5 248:9 delegates 23:2,7 delegations 23:18 delete 228:2 deletion 148:6 222:18 democrat 22:19 25:3 32:22 35:7 68:22,23 69:2,4,8 75:5,6,7 240:15 241:4 243:21 democratic 22:22 23:5,15 241:3 democrats 23:3,4 23:17,20 240:23 241:1,1 denied 205:8,13 denies 227:1 department 45:23 46:1 246:17 depended 144:5	depends 31:7 258:4 deposed 11:10 12:1 deposit 26:14 deposition 1:15,21 2:3,4,15,18 14:10 130:12 171:2 258:18 depositions 2:7 11:8,23 depression 31:11 derived 227:20 derogatory 199:18 describe 157:1 described 116:5 164:9 desegregation 83:11 designated 205:1 designed 41:1 44:23 48:11 50:21 132:17 133:16 134:15 detailed 33:16 38:11 55:12 179:20 determinations 97:12 116:4 124:3 determined 94:6 determining 93:22 141:12 develop 20:21 developed 78:17 204:10 205:18 developing 205:15 development 95:23 dick 112:18 die 166:7 died 26:5,21 66:4 144:23 147:10 185:20 213:8 236:14,21

[differ - doing]

Page 271

differ 96:11,16,17 96:21 203:18 different 61:2,4,5 77:21 78:3 87:12 93:7,11 96:3 100:20 105:10 110:4,12,13,14,18 110:20,23 111:5 132:4,5 134:10 135:2,9 151:6 160:23 165:15 173:9 201:20 208:12 223:23 233:18,20,22 245:2 256:12 257:16 difficult 21:6 52:8 77:20 104:2 123:6 166:19 219:10 difficulty 31:13 77:16 78:5 135:3 141:2 direct 85:23 101:20 direction 27:6 111:9 directly 147:8 director 30:12 187:13 194:22 disability 85:9 202:9 226:7 disabled 24:1 disagree 105:14 120:6 disagreements 97:3 discover 130:14 discriminate 108:22 114:17 120:11 121:4,11 124:7,17 206:18 256:8 discrimination 91:4 92:8 108:17	115:17 124:11,19 126:15,19 131:3 172:17 173:1 206:4 207:12 discriminatory 88:17 89:2 113:9 114:6 116:5,17,23 117:2,8 119:22 126:22 127:6 131:6 132:17 133:16 134:15 135:12,16 136:10,21 139:7 151:21 153:19 206:11 213:5 223:15 226:8 240:5 251:8 252:3 253:17 254:11,17 255:20 256:15 257:7,13 258:1,3 discuss 63:21 79:12 discussed 58:5 63:11 71:14 113:6 130:20 161:14 205:4 251:16 discusses 97:9 discussing 118:2 149:9 discussion 38:11 75:18 81:20 128:23 137:18 148:7 161:22 164:4 211:11 212:19 216:8 217:22 223:12,22 229:5 247:4 discussions 38:16 63:19 76:22 78:4 80:8 104:7 139:8 153:17 154:17 158:3	disenfranchise 39:2,23 44:23 120:19 131:7 134:17,20 223:6 225:17 227:22 disenfranchisement 88:2,16 90:5 98:19 124:14 126:16 130:22 135:17 138:16 149:19 188:7,14 214:10 228:23 229:1 234:14 248:15,19 249:6,16 254:22 255:3 257:7 disenfranchising 40:4 115:1 121:18 220:6 226:23 240:1 disguised 132:2 dismissed 122:7,14 123:2 disparate 227:21 234:19 disproportionate 136:11 disproportionately 138:5 dispute 245:23 disqualification 87:9 125:21,21 127:20 203:11 223:19 disqualifications 85:4 102:2 199:2 202:1 215:16 disqualified 203:6 disqualifies 36:23 86:22 disqualify 125:7 213:18 215:12 219:11	disqualifying 86:6 89:3 124:5 203:13 207:7 213:11 219:9 234:4 distinction 240:22 distribution 195:11 district 1:1,2 8:1,2 46:18 118:20 districts 186:23 document 59:20 64:23 89:22 121:10 175:3 177:18 178:23 191:15,19 193:20 194:18 195:1,6 197:2 198:1,3,14,16 200:4,20 201:10 208:4,17,18 209:7 209:19 210:20 221:19 224:15 225:3 231:18 232:6 242:19 249:5 257:19 documents 6:12 14:3,7,11,21 15:6 15:11,19,21 16:1 36:11 37:11 60:2 145:21,23 169:4 183:5 189:3 197:18 197:20,21 208:6,7 229:19 232:7 245:15 248:20 doing 29:11 31:10 32:4 42:7 51:11 52:18 53:10 75:21 78:1 81:22 99:22 103:19,21 104:5 109:19 110:11 111:4 112:23 113:1 132:12 146:2 165:7 171:5 174:6 176:20

[doing - eliminated]

Page 272

184:10 185:6 191:21 193:9 207:15 230:22,23 dothan 181:22 double 213:13,20 217:20 223:1,17,18 doubt 237:11,15,19 237:21 249:23 250:4,9 251:4,23 dr 28:14 44:6,8 73:15 81:10 82:9 198:7,22 199:9 draft 5:20 7:19 38:13,14,19,20 43:14,17 45:3,4 49:5 58:22 59:8 61:8,11,12,15 62:2 62:5,10 77:2 81:1,2 81:6,8,11 82:3,9,14 83:14 87:12 91:15 91:17 99:10 100:13 100:15 101:13 103:15 104:19 105:1,23 106:17 107:1,9,18 109:17 110:8 111:15,19,22 112:19 121:2,19,22 124:21 125:12,12 126:3,4,14 134:7,8 144:10,19 147:10 149:4,11 152:5,5,6 152:7,15 153:3,5,6 153:11 154:13,16 154:16,19 158:9 188:16 193:22,22 196:1,3,8,8,10 209:9 229:1 237:13 237:23 241:16 253:11 255:12,21 drafted 85:19 113:11 114:4 116:7	120:13 121:3,16 127:9 139:9 208:17 241:20 253:15 drafters 100:16 drafting 52:19 53:1 53:2 58:3 60:12 62:9,12,13 79:17 80:6,14 81:12 85:16 116:20,21 131:13 132:19,23 133:19 141:11 149:16 152:3 176:13 208:12 drafts 50:15 63:6 92:20 97:8 102:12 109:1 114:10 153:7 dreadful 92:18 dudgeon 5:12 189:13 due 119:17 203:18 204:3,9,16 duke 16:13,16 26:8 68:17 185:4,5 duly 10:13 dumas 52:11,23 53:20 65:9 71:14 71:15 76:5 79:20 79:21 80:2 e e 3:2 11:3 42:4 72:1 75:13,13 151:15,15 earl 181:14,16 183:19 earlier 14:8 51:12 103:17 112:22 131:11 142:20 144:18 162:9 164:8 164:21 173:7 184:7 184:11 194:1 206:3 208:6 211:5 213:8 216:8 242:1 245:7	247:4 248:14 249:1 251:1 255:17 early 49:7 57:4 72:19 153:7 213:9 238:14 earmarked 79:7,7 140:16 earmarking 54:18 54:20 79:10 145:8 157:9,12,20 161:5 easier 158:20 easy 130:11 eating 32:7 ecm 1:4 8:4 economic 31:7 economics 16:20 ed 154:8 241:20 242:1,3,7,13,16 eddie 75:13 editor 18:13 education 27:18 54:19 157:15 163:5 163:8,9,11 167:1 educational 16:12 79:3 edward 75:12 effect 2:4 105:9 131:9 239:21 256:16 effective 140:13 236:22 243:23 effectively 134:17 166:3 240:2 effectiveness 140:14 effects 136:21 effort 39:22 42:21 53:6 57:22 58:18 58:18 154:2 155:8 173:14 190:8 200:17,18,22	efforts 41:22 140:11 175:11 179:8 184:22 192:7 192:11 193:2,11 235:12 236:23 238:5,8 239:6,12 239:17 eight 24:8 35:9 50:3 171:22 237:10 eighteen 84:3 179:10 180:13 212:3 eighty 61:22 either 21:18 34:14 39:22 57:7,14 61:22 94:6 95:13 98:9 174:14 239:16 elected 23:1,17 24:14 29:2 35:8 47:11 49:7 66:4 67:3,7 68:16 75:10 109:18 171:15 224:5 election 27:3 110:7 111:6 224:8 235:19 elections 6:7 83:20 109:4,11 117:5 170:8 179:13,21 180:6,9 189:23 191:5 198:12 199:3 200:9,11 209:4,14 239:13,18 242:23 243:8,22 elementary 79:5 elements 117:8 eliminate 38:20 41:2 56:6,9 100:7 179:4 eliminated 125:13 179:2

[eliminating - fair]

Page 273

eliminating 89:5 99:14,18,20 100:6 110:21 207:1 217:3 elimination 215:10 ellis 71:17 else's 101:11 enable 124:6 131:5 217:11 enabled 124:16 encouraged 21:22 ended 145:17 218:1 245:14,22 endorse 99:11,21 endorsement 100:11 endorsing 105:3 enforceable 57:18 enforced 113:13 enforcement 31:12 31:15 enfranchised 254:2 engage 131:6 entered 46:13 entire 191:1 201:11 201:14 209:9 entirely 188:9 entirety 243:12 entitled 6:23 218:12 environment 96:6 envisioned 174:11 equal 58:11,12,16 64:3 96:20 203:18 204:9,17 equivocation 173:5 esquire 8:15,19 9:2 9:6 essentially 25:2 38:13 40:9 225:16 228:8	establish 98:5 established 26:20 180:15 et 1:6,9 8:6,9 ethical 18:16 evangelical 166:10 evening 164:6 events 13:18 33:17 eventually 47:8 67:2 79:8 everybody 82:23 140:4,6 207:9 212:18 230:18 231:1,9 evidence 2:15 90:3 91:2,11 123:22 124:9 126:21 127:3 226:12,13 227:10 228:18 245:21 evolve 96:5 exactly 32:15 99:7 152:19 172:11 174:5 185:7 examination 3:3,7 10:10,19 171:7 247:11 examined 10:13 example 58:7 59:1 61:1 64:2 84:21 116:1,19 178:17 179:19 195:18 examples 86:22 220:2 exception 102:14 excerpts 3:14 64:18 64:20,23 exchange 212:21 exclude 140:21 excuse 207:11 executive 26:12 30:11 46:11 187:13	189:22 208:22 exhibit 3:13,17,21 4:2,3,6,12,15,19,23 5:3,7,10,13,18,22 6:5,11,17,22 7:3,9 7:14,18 64:11,16 83:18 101:16,20 152:11,12 159:1,5 159:23 160:4,4,6,6 160:7 161:13,14 162:13,17 163:7,12 172:1,5 174:20 175:2 177:12,17 178:1 180:23 181:5 182:15,19 186:8,13 186:19 188:19,23 189:1 191:9,14 193:16 195:13,17 196:20 197:1 199:20 200:2 207:21 208:2 210:2 210:6 218:4,8 221:13,18 224:9,14 231:19,23 234:23 241:11,15 244:10 248:2 252:19,20 exhibits 3:11 4:10 exist 178:22 existent 200:7 expanding 143:3 expect 192:2 expensive 28:10 experience 189:19 214:17 expert 11:14 92:2,3 experts 52:19 expiration 259:23 expires 259:22 explain 36:18 173:10	explanation 227:16 explicit 142:8 explicitly 27:3 extent 28:6 45:17 70:22 79:22 96:1 103:12 105:12 110:13 128:12 132:7 166:14 207:4 extenuating 247:6 extradition 45:16 extreme 139:22 extrinsic 188:1
f			
f 42:4 73:5 fact 25:16 26:21 43:3 50:5 64:1 73:16 76:14 114:17 116:6 119:5 126:2 131:8 172:7 195:9 198:9,22 201:1 203:6 204:21 206:21 215:19 220:8 223:23 226:16 235:2 236:19 238:12 241:7 246:13 252:1 faction 23:6 facto 53:22 facts 130:7,13 165:9,10 167:18 factual 226:12 227:10 228:17 failed 106:18 145:14 168:16 214:5 215:6,9 failure 156:12 fair 13:1,2 19:1 29:12 32:6,20 61:20 70:9 87:10 88:13,23 90:2 93:4 94:2 95:11,18			

[fair - follow]

Page 274

101:19 107:6 108:19,23 109:7 127:23 133:23 134:1 207:14 209:12 230:7,9,11 252:11 fair's 163:23 fairly 42:17 55:12 62:22 117:13 fairness 168:9 fall 96:13 98:11 fallen 163:21 familiar 11:7 67:14 154:19 196:12 197:5 family 167:3 far 192:21 211:23 220:7 221:7 229:17 241:6 fashion 121:11 132:18 father 24:1 25:19 25:23 33:22 185:18 father's 25:4,5 favor 143:12 144:1 favorably 28:15 fdic 177:1 feb 5:2,6 7:2,10 february 36:4,14 181:9 182:21 210:18 218:13 224:16,21,22,22,23 federal 10:4 24:19 26:14 46:16 72:17 168:12 178:16 feedback 63:6 feel 116:13 120:9 121:14 247:18,20 251:12 feeling 142:9 143:6	felon 226:7 felonies 136:2,3 137:13,17 150:11 186:22 188:7 203:7 203:15 217:4 219:8 219:11,21 220:2,6 220:11 223:7 240:1 felons 135:22 felony 85:5 88:2 93:22 135:17 136:2 136:5 138:15 149:18,21 150:9 187:10,18 188:4 202:6 205:8 215:13 219:18 222:23 228:3 234:5 248:13 255:3 felt 29:10 57:20 107:3 132:9 female 176:3 fence 144:5 ferguson 95:2 252:10,20 fibrosis 166:9 fifteen 238:17 fifth 20:8 fifty 96:4 figures 144:14 184:11 212:22 213:3,7 214:8,15 214:23 217:17,19 file 15:16 169:9 filed 36:20 files 6:16 208:8 filing 2:18 fill 26:3 29:3 filled 29:3 final 62:2,4,10 65:17 158:12 159:6 159:11,13,15 161:2 161:14 163:7 164:7	193:22 194:3 231:18 finally 161:8 finance 19:16 52:6 53:3 54:11 61:6 73:8 77:13 80:1,2,6 find 90:17 188:16 222:4 257:15,22 258:2 finding 110:7 252:21 fine 10:17 13:5 60:4 64:7 finis 75:2,3 76:6 finish 30:16 finished 17:11 26:16,22 30:18 104:11 firm 11:19,22 17:16 19:3,6 26:18 26:20,21,23 30:22 32:1 49:10 50:10 50:10 52:13,13 75:1 first 10:13 17:10,12 17:13 18:5 23:22 28:17,22 31:2 36:1 36:8 41:6 43:8,14 44:16,17 45:13 51:8 83:22 130:1 139:18 163:17 165:3,9,12,20,21 166:2,21 167:21 181:19 185:11 189:8 196:1 200:19 201:10 209:20 210:22 216:2 237:5 244:22 247:13 fit 128:20 fite 71:19,20	five 11:22 30:7 31:16 112:22 245:1 flexibility 124:15 flexible 124:2 flipped 119:11 flipping 83:17 florence 74:9 75:16 flowers 26:12 fluctuated 146:18 fob 15:5 19:12 21:2 21:14,14,23 22:6 25:11,11,17 26:19 26:22 27:2,7 28:12 29:16 34:8,10 35:6 37:7 38:12,19 45:3 50:17 59:8 67:7 68:5 69:17 73:20 76:5,8,11,18 77:10 104:16 105:5 113:1 167:21 168:9 171:12,15 174:6 176:13 179:7 235:17,18,19 239:1 fob's 21:11 44:16 44:17 focus 48:18 140:17 162:7 190:17 193:18 202:23 209:15,17 230:5 234:13 focused 32:1 54:13 58:4,6 77:9 166:5 166:17,18 167:2 185:12 190:23 215:19 229:10 focuses 170:6 229:4 focusing 77:10 210:1 217:4 folks 25:22 52:22 follow 22:3 125:1

[followed - given]

Page 275

followed 58:9 following 10:11 follows 10:14 222:13 folsom 33:20,23 41:6,7 football 69:23 force 2:4 foregoing 10:5 259:7,11 forever 173:1 forget 43:11 145:20 forgot 157:21 forgotten 187:15 248:21 form 2:11 12:17 48:23 60:16 61:4,5 61:19 66:14 70:22 76:2 80:21 82:12 84:14 85:12,22 86:16 88:19 90:11 91:6 92:11,13 95:17 96:15 97:16 98:23 100:22 109:6 109:13 114:8,20 115:8,20 116:10 120:4,16,23 121:6 121:11 124:23 127:2,12,22 129:13 131:16,22 132:21 133:9,21 134:22 135:19 136:14 138:8 139:12 141:15,22 148:12 149:6,15 150:6 151:2 153:21 156:4 162:4 163:3 167:14 195:2 199:7 212:10 250:14 251:10 252:5 256:2,22 257:10 259:10	formal 53:9 173:21 174:7,13 format 3:20 127:19 135:1 178:7 195:5 196:2 formed 82:8,14 former 11:19 52:4 52:11 73:12 80:4 176:23 203:23 formerly 196:16 forms 112:16 forth 41:4 forty 197:14 216:10 230:15 forward 128:17 139:5 foshee 72:1,2 found 24:11 70:10 89:19 124:10 126:18 127:6 238:19 foundation 22:14 24:21 founded 104:3 four 11:15 15:4 112:22 238:16 fourth 57:10 fowler 41:22 42:4 65:8 69:14,18 70:1 70:2,5 76:4 77:1 78:8 81:21 82:16 82:18,20 83:9 84:23 146:23 192:6 192:7 frame 157:6 framework 89:10 98:2,5 108:21 110:15 frameworks 63:7 franchise 254:11	frank 46:17 168:10 frankly 17:23 63:15 108:2 196:6 free 172:16,23 225:21 frequently 77:6 185:1 fresh 246:21 friend 21:7 friends 34:4 front 248:6 frustrated 165:18 full 2:5 11:1 fund 117:5 fundamental 103:18 104:21 105:1 funds 54:17,20 55:1 56:19 79:2,6 further 2:1,8,17 55:5 170:17 247:2 258:11 259:15	136:22 137:10,18 137:23 139:4 149:19,20 150:1,7 150:13,14 156:5 177:10 184:18 187:19 204:4,12 238:13,18,22 generally 38:10 46:4 53:12 68:13 92:13 95:23 135:21 136:4,7,17,22 137:5 144:13,15 184:9,13 204:11 211:8 generic 96:23 119:14 125:23 178:3 204:13 gentle 154:9 241:20 242:1 gentle's 242:13 george 22:20 23:5 24:23 26:13 66:9 67:21 72:22 73:18 104:12 176:15,23 236:20 gerald 74:17 getting 17:14 18:19 21:6 31:12 57:20 62:16 89:11,13,14 96:19 103:17 108:10 117:13 give 12:8 19:18,21 34:21 37:17 63:6 70:13 165:10 177:8 185:5,10 199:4 212:18 216:2 220:1 223:10 227:16 251:4 256:23 given 14:7 25:14,16 98:16 124:18 175:8 201:6

[gives - hand]

Page 276

gives 86:21 giving 12:13 57:6 glad 25:23 go 11:8 12:19 14:20 16:8 17:14 21:22 22:13 23:15 26:11 47:13 55:18 87:21 90:13,16 93:21 101:4 128:13 129:20 149:7 154:12 188:15 192:2 214:3 217:10 219:20 220:7 246:17 248:1 goal 48:13 81:17 82:6 108:15 117:6 goals 80:14 81:2,4 81:5 goes 57:2 122:8 136:6 180:6,17 212:16 214:4 226:17 230:1 going 11:8 16:7 21:3 22:13 24:15 25:10 29:7,12 33:16 46:11 47:7,9 62:3 63:4 70:12,21 71:2,4 76:13 78:15 78:16 90:15 91:22 99:2 101:20 103:21 106:19 111:23 115:11 117:7 122:4 122:21 128:17 146:4 158:15 159:4 159:9 162:16 170:16,23 172:4 175:1 178:5 185:10 186:12 187:3 191:13 196:23 204:15 216:10 230:17 231:22	233:5 241:14 244:12 247:4,8 252:13,14 255:2 good 10:21,22 13:9 13:10 129:19 164:6 189:23 199:16,16 236:10 239:1,2 goodwyn 72:11 gotten 33:9 231:18 gov 4:13 6:2,12,20 governance 56:5 governed 55:14 governing 119:3 government 24:19 25:1 56:10 94:16 97:22 104:1 117:18 117:19 140:1,3 141:23 142:6 157:18,18 165:5 166:15 179:2,19 208:19 209:21 governments 41:2 55:8,9,15,16 governor 16:2 19:20 21:3,19,20 23:22 28:16 29:3,6 29:13 32:23 33:21 33:23 34:3 35:8,8 40:20 41:6,7,10,15 41:18 42:5,6,21,23 43:7,13 44:2,3 45:8 45:22 46:3,6,21 47:5,6 48:6 49:6 51:1,16 53:8 54:5 54:14,22 55:19 57:5,13 59:2,3,8,9 62:8 63:5 65:10,14 65:15,19 66:3,3,4,6 66:12,16 67:2,3,5,6 67:8,12 68:7,9,10 68:15,20 73:19,20	76:8,17 77:20 78:1 78:22 80:7 81:4 83:4,5 103:18 105:6 118:16 121:8 139:17 141:1,21 143:12 145:12 147:11 156:13 164:9,14,15,20,22 165:3,8 169:18 172:8 173:8,8,13 174:10 176:19 180:7 181:20 184:4 184:10,13 185:6,11 185:21 190:20,21 191:4 193:2,8,11 193:22 196:10 197:16 198:5 200:15,18 204:21 206:8 208:7,14 209:23 210:12 218:14 231:6 235:11,16,17,20,21 235:23 236:12,20 236:22 237:12,17 237:18 238:2,4,23 239:1,3,7,7 247:21 governor's 28:18 53:13 66:18 78:14 135:5 146:16 173:17 174:10 201:6 213:22 governorship 164:22 graduate 20:3 graduated 16:14 30:18 graduation 17:19 grant 178:18 granted 101:2 254:6	great 35:12,13 53:22 139:3 144:17 greater 233:14 greatly 110:4 greene 142:2,17 143:14,15 grew 23:21 34:5 ground 21:7 grounded 214:9 grounds 2:13 106:23 group 20:21 41:19 42:1,7 49:14 53:13 62:21 79:4,23 83:5 109:8,9 174:8 176:5,7,10,11 213:22 groups 177:8,9 185:2 growing 240:21 guess 33:7,10 50:4 67:4,4 68:16 70:3 107:3 134:10 151:3 194:13 246:20 guide 60:13 guilt 228:21 guilty 48:8 guy 33:21 213:10
h			
h 74:11,11,17 half 171:22 233:4 hall 72:13 hamilton 23:13 29:18,21 31:22 hamilton's 29:23 hamstring 94:16 hamstrung 139:23 hand 14:16 72:15 72:16 172:4 175:1 179:15 186:12 191:13 196:23			

[hand - identified]

Page 277

201:11 202:12,21 221:17 231:22 241:14 handed 131:11 handful 162:7 handing 177:16 181:4 182:19 195:16 200:1 208:1 210:5 218:7 224:13 handle 246:9 hands 117:20 hangovers 82:3 happen 189:3 happened 43:22 119:7 130:16 131:8 143:5 144:18 145:1 153:7 156:6 212:8 212:12 245:4 happy 144:4 183:4 harassed 123:9 harassing 123:13 123:17 hard 98:1 101:1 185:7 189:1 harris 52:3,23 53:19 80:4 146:23 216:4,8,15,18,20 220:16,19,21 222:5 222:8 harrison 147:16 148:1 215:20,21,23 216:1,5,12,15,17 216:18,22,22 217:6 219:7 222:6 230:22 hat 56:13 hate 24:18,18,19 hawkins 72:22 he'll 246:9 headquartered 30:2,5	heads 12:9 heard 29:10 171:10 199:18 240:7 hearing 7:16 224:4 235:2 246:9 247:16 247:22 hearings 6:19 7:6 7:12 50:17,20 148:1,9,23 152:1 152:18 153:4,12,16 156:1 193:23 196:5 210:12 211:8 218:10 221:22 224:17,21 230:5,19 231:16 232:8,11 244:22 246:4,15 247:15 251:16 heavy 33:15 held 50:16 75:19 88:14 152:1 help 15:14 41:20 49:12 117:5 140:6 154:10 183:13 216:15 242:16,16 helped 51:23 52:14 80:5 143:19 helpful 57:8,21 70:19 105:13 111:8 134:9 helping 53:5 187:14 198:9 heritage 21:17 22:9 hesitating 90:10 high 16:14 30:19 79:5 higher 138:5 highly 69:19 highway 46:1 highways 27:21 167:1	hill 20:4 hilliard 181:15,16 182:9 183:20 hinder 13:19 hindered 141:5 hired 19:20 45:7 historical 81:13 123:22 229:18 history 16:17 44:22 54:17 70:13 81:14 114:23 115:10,15 126:7 187:22 207:11 227:18 237:7 255:18 hodnette 73:1 hold 113:14 holding 231:16 251:4,23 home 17:14 22:18 55:3,20 56:1,7,11 56:19 61:4 63:19 69:20 77:12 89:5 110:16,17,17,22 116:3 117:17 118:2 118:8,10,17,21 119:8 141:19,20 142:4,7,10,13,14 143:3,12,18,20 144:1,4,10,16 155:3,4 157:19 161:2,4 184:9 208:19 209:20 hometown 34:2 75:4 hope 247:9 hoped 155:10 hopeful 249:20 hopefully 130:5 162:18 hour 192:4	hours 128:14 house 67:19 73:13 76:16 145:13,14,16 174:9 193:5,6,7,10 howard 112:18 236:7 hugh 73:23 74:1 huh 16:10 90:19 133:4 145:3 human 95:23 hundred 116:14 hundreds 195:10 hung 219:18 hunt 33:21 hunter 88:8,9,11 130:20 207:16 251:2 256:6 hypothetical 123:19,21 hypothetically 124:8 i idea 214:9 idealistic 165:3 ideas 41:20 49:15 50:18,18 52:3 identical 102:17 103:15 107:15 identification 64:12 101:17 159:2 160:1 162:14 172:2 174:21 177:13 181:1 182:16 186:9 188:20 191:10 195:14 196:22 199:22 207:23 210:4 218:6 221:15 224:11 231:21 241:13 identified 60:21 81:3

[identifies - introduce]

Page 278

identifies 200:16	incarcerated 48:21	individuals 70:18	119:15,16 121:7
idiocy 99:16	incarceration	inductees 175:8	256:15,19
idiots 86:4,22	137:21,23	178:3	intent 114:4 121:10
ignored 46:22	inclined 137:20	induction 4:18	122:8 126:22
illegal 40:1	144:1	175:7 185:3	130:15 134:5 135:5
illiteracy 27:19	include 161:17	infamous 203:1	135:5,12 199:4
140:12	170:8 237:13	influence 79:11	213:5 227:22
imagine 13:4	included 98:16	105:9 143:8	254:17,23 255:7,9
130:11	139:6 243:21	informal 41:19	255:10,11 256:8
immediate 105:20	255:21 256:10	49:14 53:12 62:21	258:4
immediately	includes 202:16	174:8 176:14	intention 114:15
182:13 217:2	including 49:16	208:11	257:18
impact 113:12	94:4 190:7 203:11	information 52:16	intentional 131:4
114:2,6,13,16	203:12	86:10 129:9 179:13	intentionally 88:17
115:2,6 116:5,17	incompetence	188:3 250:19	237:12
116:23 117:2	217:5	infrastructure	interest 52:1 53:22
119:22 122:6,8	incompetent 85:7	27:21 167:1	192:23
135:16 136:11	202:7 215:15	infused 134:7	interested 130:12
138:15,20 139:9,22	incorporate 99:3	inherently 124:2	166:7,12 168:22
141:13 213:5	126:6	initial 120:2 140:11	259:17
223:15 227:21	incorrect 44:15	161:1,12	interesting 118:12
234:19	increases 161:7	initiative 208:20	160:14 163:4
implementation	incredible 40:22	209:21	interests 77:18,19
92:6	indefinite 226:6	ink 195:3	interim 7:1 68:7
implemented 93:1	independence	inner 66:17	218:13 224:18
93:15 238:3	58:10	input 52:9 53:4	232:8
implications	independent 43:4	54:6	interpretation 95:1
214:11	indicate 232:15	insane 86:4,23	95:3 96:11 204:5,7
import 119:23	indicated 185:3	insertion 107:17	interpreted 94:7,19
130:8,13	223:13	insight 111:8	95:13 206:10
imported 111:18	indicates 86:2	institute 194:22	207:14
impression 26:1	210:11	195:1,10 236:7	interpreting
82:8,8	indicating 14:14	instituting 176:17	204:23
improve 27:21	152:8 169:14,15,16	instruction 12:18	interrupt 43:10
improved 28:4	194:19	instructions 11:9	interview 186:4
inaugural 4:13	indication 223:13	12:7 37:18	interviewed 186:1
28:13 172:8,9	individual 124:3	insurance 26:14	interviews 185:15
inaugurated 50:8	163:16,22 164:4	intact 145:13	185:18,18,22
171:17	individualized	intend 257:19,20	introduce 64:15
inauguration 49:22	97:13	intended 45:4 89:2	155:5 159:4 160:3
50:12 51:9 53:7		114:2,5 115:1	

[introduced - judge]

Page 279

introduced 51:3,6 63:2 158:17 introduction 155:20 174:4 189:20 investigation 238:19 invited 184:23 185:4 involve 48:2 96:5 219:21,23 220:2,10 220:13 involved 15:3 25:13 33:5 37:2,5,7 43:23 62:8,11,13 65:23 97:14 155:19 192:6,11 193:1 207:9 238:7 239:6 239:12 involving 11:16,17 85:6 87:19 93:23 100:13 111:14 202:6 203:2 215:14 221:2 228:3 234:5 ironically 34:8 irrelevant 122:6 123:1 irresponsible 150:9 issue 33:22 43:23 52:7,9 54:11 56:17 60:1 63:20 108:1 118:6 127:8 137:7 137:8 153:14 155:1 156:1 163:11 165:16 179:7 214:21 215:18 217:20 issues 17:23 18:16 18:16 28:5 36:21 37:14 45:19 51:18 52:6 53:3 54:15	56:10,10,16 58:1,8 60:20 61:6 62:14 62:23 63:9 77:4,13 77:13,19 78:22 79:12,13 80:1,6,12 82:18,19 87:4 110:22 117:18,19 118:2 119:3 132:6 134:8 152:22 162:7 166:6,13,17 167:3 170:7 209:13 214:13 it'd 61:20 108:19 it'll 257:13,13 item 96:17 161:6 items 54:22 58:4,7 87:9 100:2 145:12 186:5 207:1 209:20 209:23 217:4 230:21 254:23 itinerary 162:21 j j 74:13,13 75:12 j.d. 16:23 jack 20:12,12,19 21:8,8,10,12,20 25:14,16 26:2,3,5 31:22 32:2 192:15 193:9 jack's 20:20 21:12 jacob 53:16 jail 136:20 137:1 jails 47:18 48:5 james 4:13 6:13,20 15:6 16:2 19:12,20 21:2 22:6 25:11 26:19,22 27:2 29:6 29:13,16 32:23 34:8 35:6 37:7 38:13,20 40:20 41:15,18 42:7,21	43:7,13 45:3,8 46:21 47:5 48:6 49:7 50:17 51:1 54:5,14,22 55:19 57:5 59:8 62:9 63:5 65:10 67:7 68:5,6 69:18 76:5,6 77:10 77:20 78:1 80:7 81:4 83:4,5 103:18 104:16 105:5 109:18 113:1 118:16 121:9 139:17 141:21 143:12 145:12 147:11 164:9,14,20 167:21 171:12 172:8 173:8 174:6 176:13,19 179:8 180:7 181:20,21 182:4,5,7 184:4,10 185:21 188:12 191:4 193:2,11,23 196:10 197:16 200:15,18,22 204:21 206:8 208:7 209:23 210:13 231:6 235:17,18 238:2 239:2 247:21 jan 4:14 january 160:14 171:18 172:10 195:22 196:8 208:9 210:17 224:21 245:8 jefferson 118:18 119:2,7,10 143:1,7 144:2 jeopardy 186:23 213:13,20 217:20 223:17	jere 66:20 67:23 68:1,2,3 71:13 jim 33:20,23 34:4,9 34:11 35:2 41:7 156:17,20 jim's 33:22 jobs 27:20 46:4 joe 43:6,16 193:4 jog 183:13 john 20:5 24:4 52:13,22 53:20 54:8 75:2,3 76:7,9 76:19 78:12,13,19 79:15 80:1 johnny 23:12 johns 23:12 johnson 46:17,20 168:10,10,21 169:1 johnston 52:12 73:5,9 join 30:6 31:22 joined 19:3 30:21 joining 183:11 joint 7:1,5 218:13 221:21 224:18 232:8 jones 30:22 31:3 joseph 73:5 journal 18:14,15 jr 33:20 71:14,17 73:1 74:7,15,21 172:15,22 242:9 judge 22:15,16 42:18 46:17,18,20 53:18 54:1 69:15 69:18 70:4 72:17 72:19 74:4 75:16 76:3 77:1 78:7 81:20 82:16,17,19 83:9 84:22 118:21 146:8 168:10,21

[judge - larry]

Page 280

169:1 182:3 183:16 183:21 192:6,7 judges 168:12 judgment 150:11 judicial 190:11 205:1 judiciary 208:23 july 1:19 29:20 36:3 171:20 258:19 259:19 june 243:11 justice 49:23 136:18 137:9 173:3 176:17 177:6 196:19 justices 29:1	111:8 112:21 117:4 118:13 119:11 124:11 130:13 131:3 141:8 144:4 146:18 157:17 158:8 166:10 167:23 189:15 217:9,15 226:13 king 28:14 172:15 172:22 kiwanas 177:9 185:2 knew 41:11 65:12 73:2 76:10 131:12 133:13 134:14 136:1 160:9 183:15 187:15 know 12:8,21 13:16 16:9 22:7 32:15 33:1 42:12 48:5 53:4 63:14 64:8 65:4 66:16,20 67:22 68:21 69:9 69:13 70:17,17 71:9,18,20 72:10 72:12,14,20,23 73:2,4,10,22 74:10 74:12,14,16,18,20 77:11 78:18,20 81:1 88:5 92:1,15 92:16 93:2 95:8 96:19 101:9,12 104:11 117:1 118:3 119:21 120:1 122:4 124:12 130:16,16 135:2,23 138:22 142:6 147:16 148:13 149:2 150:18 151:9 152:20 153:6 155:17 159:5	162:21 168:4 170:23 184:19 188:5 189:9,11 192:1,14 193:12 194:17 197:23 204:9 206:14 224:20 232:1 233:7 235:11,20 236:11 241:6 242:10,11 244:2 245:18,19 246:3,9,13,19,22 247:15 250:23 knowing 203:5 206:13 214:15 knowledge 85:14 85:18,23 91:10,22 92:5 93:9,10,11,13 111:12,21 115:9,15 116:22 124:20 133:15 135:8,11 156:6,7 167:17 199:12 253:16 254:1,15 255:18 knowledgeable 116:14 known 33:23 76:9 137:7 204:1 242:7 256:4	102:9,11 120:6,9 122:10,16,20 123:4 123:5,11,16,18 129:18,23 145:19 146:7,8 159:8,14 159:18 160:3,5 161:10,16 164:6 169:17 170:15,22 206:2 258:13 language 38:4,12 38:22 80:18 81:23 85:16 86:3,11 87:9 87:18 88:15 90:4 92:7 98:3 100:12 102:4,7,12 105:7 105:17 106:6 107:8 111:19 113:9 114:3 114:10 117:15 119:21,23 121:2,15 121:19 124:10 125:23 126:16 128:13 129:5 131:4 131:14,19 132:15 133:15 135:2 148:2 148:6 151:20 155:18,20 188:2 193:19 198:23 199:1 213:4 220:18 221:8,11 222:7,13 222:15,19,21 223:1 223:5,14,20 224:7 240:2,4 244:3,6,12 244:15 249:23 250:10,16 253:15 257:20,23 258:5 large 25:4 103:12 193:17 209:23 259:6 largely 109:2 larry 52:10,23 53:20 65:9 71:15
k		l	
keep 32:9 208:14 222:20 keeping 99:20 keith 5:8 186:20 187:11 248:9 kennedy's 177:2 kept 62:14 104:19 104:22 154:23 155:1 163:10 key 54:11,12,15 56:16 57:9 145:12 155:1 kickback 64:7 kicked 58:13 kids 25:22 killed 22:17 238:15 kin 259:16 kind 19:9 27:11 33:4 34:17 44:20 45:22 56:3 57:3 58:9 63:6 65:1 76:12,17 79:13 81:2 89:14 97:8 100:10 103:16		labeled 83:23 101:21 lack 108:16,20 119:8 126:21 206:3 laid 24:21 land 47:8,9 lang 3:5 8:15 10:17 10:20 60:3,8 64:14 64:20,22 68:2 71:1 71:8,11,13 75:20 92:12 93:4,8,17,20	

[larry - little]

Page 281

76:4 79:20 80:2 late 34:1 41:10 75:11 118:22 171:20 245:7 laundry 39:1 86:4 86:23 99:14,18,20 125:4,13 202:17 law 11:18,19,22 16:22 17:2,6,9,11 17:12,13,15,16 18:5,9 19:3,3,6,9 23:14 26:7,9,10,18 26:20,20,23 35:4 49:10 50:9,10 52:12,13 70:4 75:1 84:5,6 95:2 97:10 107:18 108:4 109:20 112:13,17 131:7 163:9 164:1 169:14 171:14,20 178:16,22 187:12 187:14 194:22,23 195:1,9 196:17,18 199:13 204:10 205:15 206:4 207:13 236:7 lawrence 71:14 laws 2:6 108:3,3,4 108:9 lawsuit 36:20 39:10 39:19 240:6,9 lawyer 26:7 32:3 51:21 52:4,14 53:17,19 54:10 67:1,17 69:21 71:16 72:3,7,9 73:6 73:7,8,13 74:1,8,23 75:15 93:21 97:18 154:9 177:1 182:9 214:23 242:4,12	lawyers 32:1 41:20 49:12 52:10 130:10 182:11 lay 22:14 165:9 lead 257:6 leaders 144:8 184:3 leading 2:11 leads 189:20 league 189:16 learn 32:3 lease 46:2 leave 49:9 97:21 104:14 171:13 leaving 59:11 128:16 led 237:4 left 17:9 26:1 33:21 51:15 59:8 94:6 130:5 180:21 201:16 202:12,21 legal 8:16,20 15:5 16:3 17:22 18:14 30:12 32:17 45:9 47:7 50:8,11 122:21 130:8,13 171:16,18,19 194:15,15 198:11 legally 151:7 legislation 56:22 57:8 94:21 97:20 114:11 159:16 160:13 161:9 180:22 194:7 legislative 7:5 96:19 114:23 140:11 145:17 158:14 187:22 189:22 221:21 227:18 231:4 243:15 248:22,22	legislator 46:10 71:21 75:4 legislators 118:4,7 143:17 230:20,20 legislature 41:3 46:8 48:7 50:16 51:6 55:9,11,18 58:14,22 59:12,18 59:21 62:6,17 63:3 77:17 78:2,5,17,23 79:11 94:7,20,21 95:7,14 97:23 98:4 98:9 104:15 106:3 106:22 107:5 117:20 119:6 128:2 128:16,19 143:4,11 143:23 144:3,22 147:11 148:18 152:7 155:21 157:12 165:10 173:19 174:5,17 179:18 180:15,21 186:7 194:2,4 208:21 216:19,20 224:6 231:13 241:8 legislatures 128:6 lemaistre 26:13 176:16,23 length 178:23 lenora 160:17,19 leonard 232:1,2 233:7,17 letter 5:1,4,11 114:11 181:8,9,20 182:20 183:9 189:9 190:18 letters 16:4 183:19 level 95:22 203:20 liaison 193:6,10 liberal 16:21 22:19 22:19 25:3 32:22	168:1 242:2,3 lid 145:9 lieutenant 59:2,9 66:5 67:2,3,4,11 68:10,15,19 73:19 76:16 218:14 238:4 life 76:9 113:12 lifted 99:9 104:18 liked 56:19 57:5 63:13 119:5 limitation 145:9 154:23 180:3 208:21 209:22 limited 155:2 234:10 247:5 limiting 254:2,10 limits 56:4 line 3:4,8,12 4:11 39:13 161:5 187:4 211:19 lines 139:1 list 24:9 39:1 70:10 71:7 86:5 87:1 90:17 99:15,18,20 125:4,13 126:23 202:17 207:6 215:10 listed 255:1 listening 214:18 literacy 84:18 literally 140:3 202:21 litigate 122:11 litigation 19:15 little 19:14,17,22 22:13 23:23 35:9 77:21 96:2 160:23 165:17 173:13 174:8 193:18 196:3 240:21 241:23 242:11 245:6

[live - mcmillan's]

Page 282

live 96:6 lived 30:3 33:10 living 33:6 lobby 23:16,19 79:3 lobbyists 62:18 local 28:5 33:16 41:2 47:10 55:23 56:9,10 89:6 97:21 108:4,4 110:21 116:3 117:18,21 118:8,10 119:3 141:23 142:5 143:21 157:17,18 186:2 208:19 209:20 localization 108:11 locally 143:5 located 102:16 location 103:8 lodge 122:5 long 24:9 46:13 72:21 125:4 180:18 196:16 213:16 234:11 longer 57:18 87:2,5 178:21 192:2 look 27:19 43:22 46:5 87:21 98:4 101:4 105:16 107:7 122:7 149:7 161:20 162:18 172:6 178:8 178:9 190:16 193:16 198:13 200:3 201:2,23 207:6 208:14,16 209:19 223:11 235:5 257:21 looked 15:11 24:8 41:16 109:23 110:3 110:11 111:4	125:17 154:16 157:11 160:10 163:6,6 169:11 218:19 230:16 233:1 looking 22:7 42:9 45:16,19 49:17 83:2 109:16 110:6 110:10 111:2 151:5 153:5 183:18 188:10 206:14 235:3 245:1 looks 160:22,23 162:20 172:11 181:13 191:16 195:7,20 197:4 201:9 202:20 212:5 217:21 218:2,17,21 225:1 233:16 lose 136:6 149:21 149:23 loss 150:15 151:4,5 lost 135:22 252:22 lot 28:5 29:9 31:6,7 31:8,9,11 40:20 45:20 46:7 47:4,15 51:13 52:15,18 57:14 61:7 79:6 90:20 94:3 103:12 109:19 111:7 112:12 113:23 114:22 140:16 178:4 183:23 184:16 185:22 187:16 209:13,15 213:14 236:2,3 242:5 247:14 lots 22:3 71:3 152:20,21 190:6,6 loud 175:18 178:13	louisiana 42:12 lowndes 142:17 143:16 lunch 129:19 130:2 236:4,8 lurleen 66:3 luther 28:14 172:15,22 lyons 67:14 69:4 73:11 176:15,21	162:14 172:2 174:21 177:13 181:1 182:16 186:9 188:20 191:10,14 195:14,17 196:21 199:21 200:2 207:22 210:3 218:5 221:14 224:10,14 231:20 241:12 marking 172:5 175:2 177:17 181:5 186:13 188:22 197:1 208:2 210:6 221:17 231:23 241:15 marr 73:21 marriage 96:2 martha 148:14,16 148:19 163:12 martin 28:14 172:15,22 mary 225:7 maryland 42:14 master's 16:19 material 109:20 112:12 178:15 matter 18:3 28:11 89:5 96:18 137:10 137:12 149:19,20 matters 37:3 mccorquodale 76:15 193:4,4 211:4 218:16 mccurley 194:21 236:6 mcdonald 235:19 mcgovern 22:23 mcmillan 73:14,15 73:19 76:20 218:14 mcmillan's 44:6,9 81:10 82:10
		m	
		main 230:5 maintain 30:15 major 209:8,17 majority 142:3,18 161:6 making 15:17 49:2 62:15 123:14 228:8 228:9 231:16,17 238:5 malcolm 73:14 male 176:2 males 178:19 180:3 malpractice 11:20 man 20:12 manage 130:7 manager 21:9 25:17 177:2 managers 20:12 mandatory 55:22 manner 133:17 206:10 259:17 mar 7:15 march 50:21 152:1 153:16 160:15 232:9 245:8 margaret 74:19 mark 101:20 162:16 178:1 218:8 marked 64:12 101:17 159:2 160:1	

[mean - mobile]

Page 283

mean 22:10 35:1 37:6 42:22 48:17 58:7 68:4 81:3 82:4 82:14 88:20 89:8 89:17 90:7,14 92:18 95:5,21 96:22 99:4 103:11 104:22 119:16 121:22 125:11 128:5,9 134:4,5 135:20 137:5 142:6 149:12 153:3 155:16 160:11 167:20 184:6 187:15 217:16 247:19 256:16 257:21 meaning 99:11 means 53:2 90:1 96:23 99:3 128:10 219:17 259:8 meant 27:13 mechanism 108:17 124:19 125:20 126:15,18 127:5 mechanisms 115:16 medications 13:12 meet 52:2 62:21 78:20 meeting 4:8 162:22 174:12 235:8 246:4 meetings 79:23 146:12 157:4,5 161:23 236:3 member 65:9 156:15 176:22 216:19 members 58:1 62:20 70:10 75:22 76:16 83:10 111:13	129:1 193:6 208:12 memo 5:8 186:19 187:17 248:8 memorandum 5:23 198:4,11 memorized 149:8 memory 13:13 57:2 62:3 64:2 65:13 88:11 157:13 158:16 162:12 183:20 205:4 212:12 216:10 230:17 men 58:11 64:4 89:22 96:20,21,23 253:8 254:3,11 mental 217:5 mentally 85:6 202:7 215:14 mention 168:5 214:5 215:6,9 mentioned 19:2 22:5,8 26:2 32:21 51:12 53:15 65:22 71:16 76:21 112:10 146:22 173:7 184:6 184:11 192:5,10 213:7 220:20 233:23 mentioning 204:1 mentor 76:10 mergers 31:8 merrill 73:23 74:1 74:6 176:16 177:6 messick 3:6 9:2 10:18 12:16 35:23 36:2,7 38:9 39:5 43:6 48:22 59:22 60:5,15 61:18 64:17 66:13 68:1 70:21 71:6 76:1	80:20 82:11 84:13 85:11,21 86:15 88:18 90:9,13 91:5 92:10,14 93:6,12 95:16 96:14 97:15 98:22 100:21 102:6 107:10 109:5,12 113:14,20 114:7,19 115:7,19 116:9 120:3,15,22 121:5 122:3,13,18,23 123:10 124:22 127:1,11,21 129:12 129:20 131:15,21 132:20 133:8,20 134:21 135:18 136:13 138:7 139:11 141:14 146:4 148:11 149:5 149:14 150:5 151:1 152:10 153:20 156:3 159:12,19 160:8 162:3 163:2 167:13 169:3,23 170:4,13,20 171:4 171:8 183:6,8 192:3,5 206:2 210:9,10 233:10 244:17,21 247:1 248:7 250:13 251:9 252:4 253:1 256:1 256:21 257:9 258:11 met 10:23 74:10 173:21 methods 115:21 173:9,11 miami 23:15 michael 1:15,21 10:9,12 11:2 144:13 184:11	214:22 mid 11:19 34:2 41:11 51:4,5 57:4 62:7 171:14 middle 1:2 8:2 miller 20:12,19 21:8 26:2,3 29:18 29:21,22 31:2,22 31:23 miller's 25:15 mind 24:22 81:13 84:22 134:12 184:14 246:21 minded 27:12 mine 25:15 219:16 219:17 minister 233:13 ministries 233:15 minor 230:8,10 minute 60:1 186:14 189:4 194:1 220:20 223:11 244:8 246:3 256:23 misdemeanor 207:17 221:1,2 misdemeanors 203:8,14 220:13 misspoke 173:12 mistaken 74:6 216:13 misty 9:2 15:9 122:20 183:3 mobile 20:5 26:6 29:19,19 31:22 33:7,10,13 35:3 46:2 67:17 72:17 73:3,13 144:12,15 147:20 181:21 182:4 183:22 184:12

[model - noticed]

Page 284

model 63:16 modern 176:6 molly 8:19 molly's 247:4 moment 19:2 35:19 43:11 212:19 mondale 33:8,17 mondale's 33:12 money 140:15 165:7 montgomery 1:18 9:4,8 10:8 26:8,10 29:22,23 30:2,3,6,7 30:10,13 43:4 74:23 147:20 185:23 186:3 192:22 195:21 215:23 216:12 259:3 months 20:17 34:7 34:13 36:4 46:14 49:21 50:4 51:9 109:18 171:23 185:11 moral 36:23 38:3,8 38:12,16 85:6 86:11 87:14,18,19 91:3,12 92:6,17,19 92:23 93:14,23 94:1,18 95:12,20 96:12 97:14 98:10 98:11,16,20 100:13 100:17,18 101:2,12 101:14 111:14 112:4 118:15 120:18 123:23 124:14 125:7 126:2 127:7,15,18 129:2 129:10 131:5,19 132:2,15 133:1,6 133:15 134:1,13	135:12 148:2,22 151:20 153:18 155:18 202:6 203:2 203:7,8,17 204:2 204:13,23 205:16 206:9,17 213:4,12 215:14 217:4 219:8 219:19,21,23 220:2 220:7,10,14 221:2 222:6,15 223:5 224:1 226:5 227:1 227:6 228:3 234:5 240:1 244:9 250:1 250:10,12,15,16,20 251:6,15 254:15 255:7,18 256:7,14 256:17 257:5 morgan 163:13 morning 10:21,22 14:8 move 21:16 24:23 27:13 82:21 130:6 139:5,20 236:23 moved 20:3 26:10 26:17 29:19,22 30:8,19,20 31:21 31:22 moving 27:10,11 246:21 multiple 166:8 230:12 municipal 55:12 municipalities 55:13 murder 150:10 220:9 255:1,4 murdered 22:17 myron 5:5 146:8 181:21 182:6,21 183:16	n n 1:12 3:2 name 11:1 24:10,11 37:4 42:2 65:7,13 68:11 72:4 73:3 88:9 151:13 176:8 216:2 named 20:12 70:2 names 24:9 65:11 65:12 70:12 71:3 216:14 national 23:3,17,20 69:2,7 75:7 95:22 240:15,23 241:2 243:21 naturally 59:15 nature 94:5 118:14 153:19 164:10 204:5 237:23 240:8 near 102:1 nearly 102:16 219:21 nebulous 148:2 222:7,7,12,14 223:5 necessarily 27:8 29:6 41:9 63:14 90:1 116:2 138:11 140:5 168:22 255:6 255:8 necessary 2:9 106:21 need 57:17 82:21 95:13 113:14 169:12 174:16 177:10 needed 59:13 107:5 108:9 138:1 166:20 203:21 negative 114:13 115:2 139:22 173:2	neither 239:11 259:15 neutral 58:13,19 64:6 104:14 never 32:15 144:21 145:14 199:18 203:13 231:18 new 27:15,17 28:1 47:6,10,20 49:15 56:12 78:15 117:6 119:23 154:4 166:22 168:18 172:16,23 175:7 190:17 newly 139:9 newspaper 3:20 5:21 43:2 185:22 193:17 194:6 195:5 195:7,19 196:2 newspapers 167:9 185:15 195:8 ninety 31:15,16 nominated 22:23 nomination 33:10 noncontroversial 212:2 nondiscriminatory 106:4 243:17 nonuniform 206:10 normally 98:4 norman 5:8 186:20 248:9 north 16:15 74:9 northeast 71:22 notary 259:23 note 18:17 145:20 notes 16:2 notice 2:18 noticed 35:19 160:16

[november - ought]

Page 285

november 49:7 51:5 171:14 number 1:4 8:4 21:21 27:17 32:22 37:4 45:12 48:20 51:16 54:15 91:23 112:14 145:4 157:4 185:17 186:1,2 191:14 192:22 197:9 210:8 211:14 233:18,20 246:6 248:2 number's 197:7 numbering 211:15 numbers 218:18 numerous 190:15 nw 8:16,20	156:3 162:3 163:2 167:13 199:6 212:9 250:13 251:9 252:4 256:1 257:1,9 objected 47:11 objecting 122:14 objection 58:15 90:10 92:13 122:5 169:7 171:5 256:22 objections 2:10,13 obstacles 62:16 obvious 107:4 115:17,22,22 117:13 118:6 207:2 207:3 obviously 93:10 211:4 242:12 occasions 78:21 occurred 246:16 occurring 259:13 oct 6:4 october 198:6 oddly 198:16 odom 29:19 offended 12:21 offensive 243:14 offer 226:12 offered 2:15 227:11 offhand 49:1 179:11 233:11 office 14:22 17:20 29:23 30:6,8 33:21 36:10 45:14 46:2 46:14 50:2 53:8,9 57:7 66:18 118:23 139:19 186:4 201:7 237:10 242:13 officers 59:4,7,10 205:1 offices 1:17 10:6	official 53:23 officially 30:20 officials 47:11 57:1 oh 61:13 170:2 194:8 247:18 okay 11:7 12:6 13:3 13:11,22 14:13,16 15:18 16:7 17:7 18:9 32:4,8 35:22 37:17 39:17 43:19 49:6 51:8 60:3,5 65:4,17 67:13 68:21 70:20 71:10 80:17 83:21 85:13 86:9,19 88:6 90:12 92:4 93:4,6,12 96:8 101:19,22 102:10 103:10 105:15,19 106:1 107:14 113:20 122:18,23 123:4 126:13 129:17 130:9,17 135:15 147:5 159:18 162:16 170:19 171:3 175:15,21,23 178:11 181:7 183:6 186:18 189:6 191:23 193:15 197:10 202:3 203:16 211:7,16,21 212:4 213:2 219:2 219:5,6 222:14 225:3,13 231:22 233:5,16 234:7 239:22 242:14,20 245:13 247:23 249:2,9,14,18,19 250:8,18 253:4 254:14 255:15 256:3 258:7,10	old 24:8 84:3 176:2 215:11 243:12 older 20:13 37:6 69:22 180:13 189:3 240:21 once 39:16 185:8,8 217:9 225:20 239:2 ones 14:15 35:6 146:20 147:3 opelika 49:13 51:21 53:17 open 25:1,6 29:22 104:10 opinion 86:13 98:20 opinions 38:2,8 40:12 opportunity 141:21 207:12 opposed 22:20 100:19 108:10 110:12 118:16 142:21 143:3 168:8 227:7 opposite 168:2 opposition 142:7 142:10 145:16 optional 55:21 oral 10:10 order 46:16 47:14 49:5 95:15 orders 31:15 46:22 ordinary 11:9 12:6 13:17 original 196:9 211:14 250:9 originally 50:13 99:7 174:11 oscar 28:21 29:4 ought 64:5
o			
o 1:12 42:4 o'bannon 74:7 o'daniel 74:11 o.j. 72:11 object 12:16 48:22 60:15 61:18 66:13 70:22 76:1 80:20 82:11 84:13 85:11 85:21 86:15 88:18 91:5 92:10 95:16 96:14 97:15 98:22 100:21 109:5,12 114:7,19 115:7,19 116:9 120:3,15,22 121:5 122:23 124:22 127:1,11,21 129:12 131:15,21 132:20 133:8,20 134:21 135:18 136:13 138:7 139:11 141:14 148:11 149:5,15 150:5 151:1 153:20			

[outdated - period]

Page 286

outdated 57:15 179:1 243:14 outline 55:13 outlook 177:5 outside 16:4 230:22 250:21 outspoken 48:14 214:16 outstanding 168:12 outwardly 68:14 overall 111:4 135:17 139:17 140:22 153:15 overcome 81:14 overcrowded 48:13 overcrowding 46:17 47:17 48:5 oxford 16:18,21 17:10,14 18:6 68:18	221:23 222:3 225:4 225:8,10 226:4,22 228:14 229:23 230:2 232:17,20,21 233:6,8 234:2,11 234:22 235:8 243:7 244:8 253:5 pages 210:22 223:11 233:2,3,17 242:18,22 253:2 paid 34:15 195:1 pain 45:22 palmer 23:13 paper 194:15 papers 18:10 paragraph 172:19 175:17 178:9 181:19 189:17,18 215:7 222:12,13 227:23 234:10 244:8,9 paragraphs 222:10 paralleled 25:15 paraphrase 84:3 parenthetical 212:15 part 20:20 21:23 25:4,9 27:20 28:2 28:16 40:11,18 42:1,6,21 44:7 45:1 47:23 48:2 56:7,8 56:11 57:21 67:5 94:9 99:5,12,19 104:6 108:1 110:22 130:21 131:2 139:16 140:7,10,22 150:16,19,23 151:7 153:8 159:19,21 160:6 164:10 169:19 188:8 200:21 219:6 224:4	229:6,6 243:8 participated 65:10 154:1 participating 235:1 particular 13:7 63:9,16 80:14 83:9 84:4 87:6 100:3 102:21 112:5 128:3 128:4 131:20 133:5 137:1 153:17 187:17 194:9 249:8 254:21 particularly 28:3 36:22 40:5 45:13 54:19 58:2 60:20 68:4 82:16 91:2 94:11,14 111:4 114:13 117:19 119:1 130:12 136:5 139:18 141:3 142:16 143:11 144:1 166:6 183:19 184:8 185:22 186:5 parties 1:14 2:12 16:4 230:22 259:16 partly 153:4 partners 23:14 35:4 parts 197:4 party 23:5 241:3 pass 56:22 78:6 161:4 190:17 passage 13:17 155:14 156:7 194:3 passed 46:10 55:11 63:3 76:19 77:16 78:2,16 145:3,13 154:5 158:19,23 162:8,10 174:16 190:11	passes 128:10 passing 155:16 paste 202:22 pate 160:17,19 patterson 24:4 pause 105:13 payment 178:19 180:2 pearson 118:19 119:5 143:9,22 184:7 pelham 74:5 176:16 177:5 pension 45:23 people 20:22 21:21 21:22 23:12 24:19 25:1 29:9 35:11 37:4 40:1 47:11 48:20 52:1 53:5 58:12 64:3,4 65:13 70:1 89:6 96:11,16 96:21,22 97:1 103:19 104:15 113:11 117:4,21 118:5,15 127:20 136:19,20 137:6 141:22 142:13 143:21 147:2 151:5 153:5 168:11 173:22 182:10 184:18 205:13 206:18 236:8 255:2 255:4 people's 71:3 perceive 95:8 percent 31:16 61:23 116:14 period 84:5 92:15 107:12 157:7 165:21 171:11 180:14 236:9
p p 1:12 7:8 p.m. 258:18 p1 3:13 p2 3:17 p3 3:21 p4 4:2 p5 4:6 page 3:4,8,12 4:11 83:17,18,19 84:1 101:21 163:17 172:14 175:14 178:9 179:12,15,16 181:6 197:6,7,8 198:3,14,17,18,19 200:19 201:2,10 202:1,20 210:17,21 211:3,14 212:5,20 212:23 215:4,21 217:7 218:12,12,17 219:1,4 220:4			

[period - presentation]

Page 287

245:10,12 perpetrators 238:19 person 25:12 33:14 85:5 112:20 136:5 137:2,2 170:11 180:12,19,21 198:23 199:17 202:5 213:12,19 215:12 217:9,12 219:17 222:22 226:23 227:1 238:22 personal 133:14 personally 104:4 135:21 persons 86:4,23 228:3 234:4 persuasion 164:21 peter 72:13 petition 56:22,23 petitions 45:17 phenomenon 39:23 40:4 57:3 philosophical 140:8 philosophy 16:19 21:13 99:12 phone 36:8,10 183:15 phrase 27:16 87:14 87:18 89:18 91:3 91:12 92:19 93:14 94:1 95:5,12 96:12 98:16,20 99:9 100:17,18 101:2,6 102:2 111:14 112:4 120:18 123:23 124:13 127:7,18 129:2,10 133:6 135:12 136:15	148:22 204:23 206:9 224:1 226:5 250:19,20 251:5 phrases 101:6 pick 36:11 100:2 118:3,6 128:14 piece 116:15 117:9 120:10 194:6 pieces 104:18 158:14 160:13 pierce 74:13 pike 10:2 place 65:2 128:6 153:16 162:23 213:9 252:22 placing 117:17 plaintiff's 3:11,13 3:17,21 4:2,6 64:11 101:16 159:1,5,23 162:13,17 182:3 193:16 242:4 244:10 plaintiffs 1:7 8:7,18 8:22 193:18 228:9 242:5 plan 189:23 planned 50:13 plans 31:14 platform 27:4 28:1 play 41:12 played 69:23 please 10:18 12:21 19:23 113:16 130:23 175:5,13,16 175:20 177:21 178:13 198:14 213:1 215:7 242:22 243:6 plenty 43:1 165:7 plessy 95:1 252:9 252:19	point 21:17 25:14 60:18,22,23 83:7 119:13 132:9 151:23 206:7 221:10 223:18 226:20 229:5 257:16 pointed 176:21 pointing 126:20 policies 68:12 policy 55:1 political 33:5 34:21 79:13 80:11 85:8 119:11 155:1 164:20 202:8 politically 144:6 politicians 108:21 politics 16:20 25:13 67:20,21,23 69:10 77:15 78:14 poll 84:19 116:22 117:2,3,11 121:23 178:20 180:2 253:5 253:17 polls 24:15 25:23 poor 207:3,4 populace 57:6 portion 97:7 113:17 171:1 205:22 229:10 portions 61:16,21 239:8 position 119:11 167:6 positions 31:1 34:15,15 positive 236:23 possibility 162:1 possible 67:9 115:23 117:9,11 119:20 120:7,8	200:14 201:3,4 208:15 post 28:19 potential 39:6 124:19 134:19 255:20 potentially 135:8 153:19 169:6 power 55:7,8 143:8 powers 55:14 97:9 practical 79:13 practice 26:10 31:1 32:13 171:14,21 practiced 26:7 practices 139:7 practicing 19:10 70:4 preach 25:22 preaches 24:18 preamble 58:9,10 64:3 81:9 96:20 precedes 105:17 precisely 136:2 predominantly 142:3,12 143:2 242:4 prejudices 173:2 premise 123:19 prepared 198:7 246:20 preparing 14:20 prerequisites 106:5 243:18 prescribe 106:23 243:16 prescribing 106:4 present 9:10 40:9 50:14 86:21 157:12 presentation 164:3 211:9

[presented - provide]

Page 288

presented 5:15 46:9 135:1 144:22 174:17 191:17 194:2 215:19 president 67:10 177:4 presumably 134:18 pretty 34:12 44:5 63:4 87:7 215:15 prevailed 23:19 previous 37:3 38:23 117:14 178:1 211:6 primarily 31:6 48:4 58:4 81:8 145:12 primary 15:4 24:6 24:9 54:19 81:2,4,5 237:5 principal 112:19 193:10 principles 104:3 print 195:9 printed 5:21 195:2 195:5,11,19,21 196:2 prior 2:15 49:21 51:9 86:6 105:20 131:11 priority 60:20 prison 46:15,23 47:1,5,6,10,12,14 47:16 48:1,10,15 48:19,19 136:6,21 167:11 168:6,7,7 168:14,16 217:12 218:1 225:23 238:20 prisons 47:19,20 48:12 168:19,21	private 31:1 32:12 privilege 16:6 145:23 privileged 15:20,23 169:6 pro 32:11,16,18 probably 20:13 44:15,17 46:14 50:6 54:23 58:6 65:11 68:13 69:3,7 75:10 76:21 77:4 79:23 83:4 97:17 97:18 103:4 106:15 106:19,20 109:14 109:23 110:2,9 115:21 125:5,15 128:13 130:6 135:22 136:17,21 138:1 164:23 165:18,23 178:3,6 185:9 189:15 192:3 193:9 198:9 204:6 230:15 231:4 245:9 255:2 257:15,21 258:1 probate 69:15 probation 137:3,21 probationary 137:22 problem 47:17 48:19 137:8 problems 51:18 81:14 179:18 222:23 procedure 10:5 55:23 213:23 214:3 procedures 180:5 180:20 proceeding 259:7 proceedings 10:11 259:13	process 49:4 56:5 62:9 137:19 138:19 152:2 154:12 156:8 203:18 204:3,9,16 217:11 produce 15:9 produced 43:5 159:20 173:22 197:19 259:9 producing 197:21 product 40:5 158:12 159:6,11,13 159:15 161:15 169:6 profession 18:14 professional 18:16 professor 73:15 112:17 163:13 164:1 196:17 profile 90:18 program 16:21 27:18 130:22 progress 20:22 22:8 46:23 62:15 78:17 progressive 20:11 21:15 22:7,10,20 24:3 25:7 34:1 75:9 104:10 164:9,10 167:22,22 177:5 238:22 240:20 project 15:15 60:11 69:18 76:6 89:14 187:6 projected 105:8 223:2 projects 15:3 30:15 prominent 72:9 73:7 74:23 118:17 142:20,23 143:10	promise 115:12 promote 27:20 140:12 properly 23:17 property 145:10 154:23 proportional 137:12 proposal 5:20 6:10 6:21 41:17 44:8,12 50:14 79:9 80:7 179:3 191:4 193:23 194:3,23 195:19 197:16 198:20,21 199:3,5 200:10 202:14 204:21 206:8 210:13 211:10 212:6 231:13 243:20 250:2,2 257:22 propose 77:22 78:15 proposed 3:15,18 5:14 27:22 57:8 62:2 64:15,21 73:17 102:11 103:20 152:3 158:8 174:15 180:9 184:4 184:17 191:17 199:1 200:9 201:20 202:4 232:11 238:2 241:17 243:4 244:4 244:11 253:11 proposing 110:16 proposition 150:1 protection 203:19 204:9,17 provide 41:20 86:10 95:15 129:9 180:22 207:13 228:17 229:17

[provided - racist]

Page 289

provided 10:4 84:5 84:6 111:7 228:13 provides 129:14 243:15 providing 98:10 188:3 provision 36:22 38:3 55:20 68:8 85:19 102:21 138:16 149:10 163:5 191:6 201:17 223:23 237:13 248:15,19 249:6,8 249:16 253:7 254:16 256:7 provisions 42:11 52:20 57:2,14,17 61:8 104:20 138:21 139:9 141:12,20 153:11 155:4 161:18 162:2 178:20 188:14 194:16 201:20 208:13 213:17 243:14 provoked 179:11 public 19:16 52:6 53:3 54:10,17 55:1 56:23 61:6 73:7 77:13 79:2,4,6 80:1 80:2,6 121:8 140:13 174:17 184:18 publicly 34:10 publish 18:10 published 73:17 112:15 pull 15:10 154:18 pulled 39:13 169:8 169:10 197:20	pulling 56:13 punishable 187:20 punishment 150:16 150:20,23 151:7 203:19 204:4 205:17 214:10 223:1,19 225:16 234:15 purports 181:9 purpose 100:11 116:7,16 120:2 121:17 122:11,17 139:4,18 145:22 149:18 150:2 207:10 252:2,3 purposes 54:18 64:13 101:18 130:22 133:16 134:15 159:3 160:2 162:15 170:6 172:3 174:22 177:14 181:2 182:17 186:10 188:21 191:11 195:15 196:22 199:22 207:23 210:4 218:6 221:15 224:11 231:21 241:13 253:18 255:20 pursuant 247:3 pursued 173:11 pursuing 173:9 put 4:20 15:1 41:3 53:9 58:16,23 59:18 99:9 104:8 111:23 128:6 132:23 133:13 137:1 145:8 154:13 163:11 168:8 176:13 177:22 197:21 201:3,5	237:9 245:20 256:13 putting 49:15 89:21 111:22 112:8 136:20 154:10 177:7 q qualifications 83:23 84:2 105:18 105:21,22 148:3 179:20 180:18 222:16 224:5 248:23 qualified 85:7 202:7 quantitative 138:19 question 12:14,17 12:19,20 13:1,7,8 44:21 59:23 87:11 92:22 93:13 100:10 117:14 118:14 119:18,19 121:13 121:14 122:2,4,17 125:1 126:8,12 130:23 134:11,11 134:23 135:10 136:4 141:10 151:19 157:20 162:18 165:14 187:2 211:4 213:7 219:19 225:11,22 229:3 255:14,16 questions 2:11,12 16:8 22:4 91:23 159:10 164:8 170:16,18,21 211:11 212:7,15 235:7 247:2,8,10 249:21 252:15 258:12	quick 247:9 249:20 quicker 130:6 quickly 248:2 quite 100:9 111:1 quote 70:7 148:2 223:5 243:16,17 quoted 28:14,15 quoting 249:12 r r 11:3 42:4 151:15 rabidly 237:8 race 40:2,7,18 41:1 43:9,15 44:10 82:18 83:11 89:10 89:20 90:1,6 91:4 91:13 92:8 125:11 168:1 214:20 251:20 racial 90:18 99:12 108:17 114:13 117:23 126:19 130:15 131:3 132:3 132:6,11 134:8 138:15,20 139:22 141:13 214:11,13 214:21 254:23 255:7,9 256:16 racially 113:8 114:5 116:4,16,23 117:2,7 134:15 135:11,16 139:7 151:21 223:15 234:19 racism 172:16,23 199:11 racist 44:13 101:8 105:3 126:5 236:17 237:3,8,13,23 238:11 240:5 256:16,19

racists 168:2	212:19,21 213:6	reasonable 83:7	233:12 238:14
radically 110:12,13	214:8,12,14,21	106:4,23 125:23	239:20
110:14	215:5,7 217:18	243:16	recalling 182:12
radio 185:14,18,19	219:3 222:8,11	reasons 83:3 91:13	received 15:8 16:23
185:19	225:9 234:6,8	108:14 129:1	230:12
raise 213:3 214:11	237:6 242:21 243:6	recall 17:4 27:8	receiver 47:1
217:6	246:14,18,19,23	29:8 34:18 37:13	168:14,18
raised 214:20	251:11 252:6 258:2	39:14 48:16 49:1	receives 229:4
223:22 225:22	readable 195:2	56:21,23 57:1 61:2	reception 183:17
raises 214:12	reading 2:2 44:19	61:3,6 62:12,22	recess 60:7 129:22
233:18	51:18 81:8,9,9 82:9	63:10,12,15,17,21	164:5 244:20
raising 151:19	82:14 87:12 90:7	64:1 65:6 72:3	recession 31:11
214:21 220:5	90:22 99:6,8	76:23 77:4,14	recognize 65:11
rampant 28:7	113:22,23 246:12	78:10,11,22 79:14	175:3 177:18
ran 23:22 24:13	reads 85:5 117:3	79:18,19 80:3,13	182:13 191:15
26:18 28:1,12 29:6	212:5,14 243:9	80:17,22 81:20	197:2 200:3 208:3
34:7,8 35:7 37:3	ready 17:14	82:17,19 83:8,12	recollection 38:2
67:5,6 68:5 75:9	reagan 33:8	83:16 85:17 87:23	68:14 70:4 88:7
164:14 165:2,22	real 113:12	90:7,15,22 91:7	102:19 107:21,23
166:11 235:16,17	realized 165:12	99:6 101:3 102:23	108:13 111:18
236:19 237:2,3,7	really 25:12 50:3	103:3 106:11,14	112:1 127:10,16
238:23	51:4 62:4 68:11	110:5,19 111:2	128:22 138:10
randy 70:3	99:17 103:17 108:5	112:11,12 113:5	146:10 149:13
range 94:15	117:14 157:6	127:13 129:3 138:9	152:4 153:2,10,14
rankin 71:19,20	158:23 160:20	138:11 139:2,8,15	154:22 155:7
ransone 74:15	209:23 213:13	141:10 144:21,23	183:13 186:15
rates 138:4,11	222:9 237:7 257:17	145:7 146:13	188:15 207:19
ratified 243:10	257:18	147:20 148:7,19	208:10 211:1 245:3
reaction 115:4	reappeared 82:4	149:1 151:13,19,22	245:9,11
read 18:22 39:15	reappearing 148:5	152:16,17,18	recollections
39:16 40:20 41:17	222:17	153:17,22 154:15	163:20
41:17 43:20 44:11	reason 13:17 21:13	155:3 157:3,5,6	recommendation
86:18 88:5,22	46:6 70:1 103:5	158:3,6 161:19,22	223:4
90:20 99:6,10,16	123:23 127:17	162:5,6 164:2,3	recommendations
113:15,18 114:22	133:5 140:18	167:5,8,10,15	161:1,12
114:22 158:20	165:19 181:10,12	179:10 183:18	recommended 21:7
172:19 175:16,18	182:22 183:1	194:12 196:6	54:8 161:17 182:8
175:18 178:12	200:22 245:23	197:14,20 198:18	recompilation
189:1 190:1,3	246:1 249:23 250:9	203:9 206:12 208:8	158:18 161:3
197:12 200:21	251:4	208:16,20 209:21	162:11
205:20,23 211:18		215:1 216:11,18,22	

[recompiled - report]

Page 291

recompiled 158:19	110:19 145:7	133:18 204:22	remember 11:15
reconceptualizing	referred 196:3	registration 84:12	17:23 24:14 32:14
109:10	202:17 235:8	106:6	35:1 38:15 39:12
reconstruction	referring 121:23	regular 51:3 62:5	42:11 50:19 53:14
115:4	159:7 161:11,12,13	regularly 62:23	72:4 88:10,12
record 11:1 14:6	211:5 217:17,18	173:21	99:15 109:15,16
40:21 57:20 75:18	249:4,8	regulators 31:13	111:5 125:18
90:21,22 107:11	refers 181:20	rehabilitation	143:15 146:17,19
113:18,23 123:12	223:18 249:9	48:12	146:20 147:17
129:21 141:9	refine 95:7 128:7,8	reinstated 167:11	148:18 149:9
145:20 152:10	refined 94:20	reinstitution	155:13,16,17
160:5 161:10	refinement 128:11	125:22	157:14 160:12,18
205:23 222:11	refinements 106:18	reiterate 111:10	160:19,20 163:10
242:22 243:7	reflect 160:6	rejected 79:9	179:6 182:5,6
245:21	161:11	rejecting 44:13	183:8,12,14,22
recorded 219:13,14	reform 4:1,22 41:8	103:23 104:1,2	187:8,17 190:4,5
recruited 20:14	41:13 46:16,23	relate 16:1 89:12	201:4 203:5 204:19
21:10,12,21 23:11	47:5 48:2,11,15	224:6	205:6 220:21
242:16	54:13 56:18 57:22	related 6:20 12:2	239:15 247:19
redirect 247:5	70:6 154:2 155:9	15:2 18:15 28:8	remind 69:13
redrafting 109:10	156:11 166:23	77:12 80:18 92:7	156:20
reduce 46:16 48:4	168:6,6,7,17,23	105:1 154:1 179:13	removal 85:9 106:2
48:20	173:10 175:11	187:6 188:6 210:12	202:9
reelected 21:1	176:18 177:11,23	229:2 248:15,23	remove 57:7 81:23
reelection 20:6	192:23 235:13	249:15	117:7 145:6
33:8 34:7 165:19	252:18	relates 89:3 139:16	removed 84:18
reenacted 243:11	reforms 109:22	167:17 208:5 249:5	106:12 120:12
refer 176:4 188:1	refresh 88:6 157:13	257:17,18	126:14,17 145:6
245:20	245:3	relating 2:6 180:5	215:13 243:13
reference 163:15	refreshes 88:10	relatively 22:7	253:10
222:5 227:13	183:20 186:15	167:6 212:2 246:20	removing 86:3
229:21 246:12	regain 214:3	relevant 186:16	126:22 127:4
248:21	regarded 69:19	relied 85:15 103:12	reopened 238:18
referenced 88:5,22	75:9	109:2	repealed 243:11
253:5	regarding 36:20	religious 166:10,13	rephrase 130:1
references 102:15	223:19	reluctant 187:23	replace 86:21
187:21 188:17	registered 84:6	relying 119:8	201:21 202:14
248:18	registers 180:21	remained 124:20	replaced 87:4
referencing 152:17	registrar 97:12	remaining 20:2	replacing 87:2
referendum 56:20	registrars 124:3,6	remains 121:19	report 3:21 4:5
57:1 61:1 63:12	124:16 131:5	241:4	65:18 158:13

[report - rights]

Page 292

159:17 160:7,12 161:2,17 163:7 169:16 173:15,23 reported 161:8 reporter 10:2,15 12:15 113:19 185:23 206:1 259:5 reporter's 259:1 reporters 186:2 represent 179:1 representation 199:16 representative 144:12 147:16 148:1,14,16,21 181:14,17 182:8 192:15,20 193:12 215:20,21,22 216:11 217:6 219:7 220:5 222:5,8 225:11 230:21 233:14 234:23 representatives 193:8 representing 18:18 31:17 represents 176:1 259:11 republican 25:14 35:5 165:23 241:9 reputation 151:5 199:10 236:16 238:11 request 241:20 requested 113:17 205:22 231:12 require 178:19 required 108:6 requirement 84:9 84:10,12 180:1 253:6,6	requirements 84:19 106:5,22 243:17 research 40:19 41:14,21 42:8 49:11 51:10,13,23 52:18 57:3 80:23 90:16 93:19 97:19 97:23 109:19,20 112:4,9 115:16 187:14 188:5 researched 90:3 91:1 98:13 120:17 researching 37:2 91:7 127:14 reside 84:4 resided 180:14 residence 84:8 residency 84:10,11 resident 180:19 resigned 50:10 resolution 173:18 respect 84:10 93:15 119:17 138:20 157:22 respected 54:10 69:20 192:20 213:8 respective 1:14 respond 14:9 responded 251:17 responds 225:12 response 212:16 responsibilities 45:11 responsibility 173:3 responsible 199:17 responsive 15:12 rest 180:18 252:14 restoration 85:8 102:15 149:3,10	202:8 213:23 226:18 229:4 restraints 221:6 restriction 178:17 restrictions 117:17 179:23 221:6 result 174:15 194:17 259:18 results 206:11 retain 117:8 retired 176:16 177:6 236:6 returning 169:4 revenue 54:18,21 reversed 95:3 review 14:8 46:8 109:21 112:13 146:2 163:9 169:14 248:20 reviewed 102:4 154:20 251:3 reviewing 42:8 revise 66:7 147:12 158:15 238:5 239:8 revised 112:20 201:11,14 revision 6:15 42:14 44:8 45:14 51:17 52:2 169:20 189:14 202:4 208:8 revisions 152:15,16 196:4 199:3 239:12 revisit 153:10 revisited 239:19 revisiting 153:14 revolved 77:4 reward 173:4 rewrite 12:4 35:15 rewriting 191:1 reynolds 74:17	rhodes 17:8 richmond 118:18 184:7 rid 82:2 207:10 right 11:5,12 12:10 13:23 14:4,6,14 24:12 31:8 33:11 35:20 37:20 40:10 43:15 48:17 57:6 60:14 62:5 65:2 69:11 78:14 84:7 84:12 85:9 99:23 100:5 111:22 113:4 113:7 114:3 116:8 116:19 120:20 123:7 126:23 128:17 129:6,11,17 132:14 134:9 135:22 136:6 150:1 150:3 152:7 156:18 163:1,18 164:12,15 165:11,14 166:20 170:20 172:17 178:18 179:11 180:16 181:23 187:5 201:11,12,19 202:10 205:9 207:18 209:3,10 214:1 227:2 228:15 229:5 232:5 240:11 240:13 246:11 247:7 250:23 252:11 253:7 254:3 254:6 256:6 rightfully 126:21 rights 42:19 58:16 78:8 83:15 85:8 89:4 95:23 96:1 102:15 104:21,21 105:1 125:22,22 149:3,10,22 150:16

[rights - select]

Page 293

151:4 163:16,22 164:4 202:9 208:22 214:4 226:18 riley 156:13 169:23 170:1 190:21 239:7 240:10 road 10:2 robert 71:17 73:1 239:7 roger 154:4,10 240:12,18,22 241:1 242:15 role 45:11 154:6 room 47:19 182:12 rose 17:17 19:8 rotary 177:9 185:2 roughly 171:14 rule 55:3,20 56:1,7 56:11,19 61:4 63:20 77:13 89:5 110:16,17,17,22 116:3,3 117:17 118:2,8,10,17,21 119:9 135:23 136:10,22 141:19 142:4,7,10,13,15 143:3,12,18,21 144:1,4,10,16 155:3,4 157:19 161:3,4 184:9 208:19 209:20 ruled 57:15 82:1,2 rules 2:6 10:4 run 21:3 64:10 70:12 164:18,22 165:19 166:2 239:1 running 20:6 24:3 33:8,9 34:11 165:4 165:5,8 177:3 runoff 237:5	rushton 74:23 s s 1:12 11:3 75:13 safely 221:7 sage 67:14 69:4 73:11 176:15,21 sally 160:16,21 sam 196:12 198:8 samford 49:13 51:20,21 53:15 146:22 192:10 211:20,22 212:16 212:22 213:21 215:5 217:2 246:6 251:17 sample 159:16 160:13 161:8 samples 37:14 sara 1:16 8:12 10:1 259:4,22 satisfies 255:4 saw 46:6 65:11 197:15 saying 90:15 99:21 107:11 111:22 212:16 219:8 220:9 220:12,17,22 225:19 228:21 234:17 says 66:19 84:2,18 86:20 87:1 96:21 102:1 117:3 129:15 132:1 176:1,15 177:1 179:17 180:8 183:9 187:4 189:5 189:13 191:16 203:1 208:6 209:7 213:23 215:8 217:8 217:15 219:16 221:3 225:20 226:1 226:5,10,21 227:17	228:14 233:14 241:19 251:13 scholarship 17:9 school 16:15,22 17:2,6,9,11,12,13 17:16 18:5,10 19:3 26:9 30:19 140:14 194:23 196:18 199:13 schools 79:4,5,8 140:13 sclerosis 166:8 scott 186:1 se 38:17 searching 145:22 seated 23:7,20 seating 23:16 second 17:15,18 83:18 101:23 127:5 165:22,22 166:4,11 166:15 167:3,7 190:16 secondary 54:19 79:4,5 secretary 59:5,15 156:23 section 6:6 38:23 83:22,23 85:3,3 86:21 87:2,4,15 89:3 90:16,23 101:3 102:1 103:7 103:14,14 105:17 105:21 106:12 107:7 109:3,10,17 110:1 132:12,13,19 148:4 149:2 157:15 157:16,19 158:18 163:16 176:1 180:8 197:8,13 202:5,13 202:16 206:23 212:6,14,14,17,20	213:15 222:16 223:20 224:7,8 227:19 228:4,22 229:7 234:3,4,10 248:22 254:22 255:6 sections 61:10 78:8 110:2,7,10 142:21 157:23 158:4,15 180:11 200:7,10 208:19 233:20,22 securities 11:17 31:5,18 32:3 security 46:1 see 46:5 62:17 71:7 83:18,20 84:15 85:10 86:8 87:22 90:17 110:3,10 111:3 186:14 188:16 189:4 197:17 200:15 203:3,4 210:19 223:12,12 227:3,4 227:5,9,12 228:4,6 228:12 229:5,8,12 233:19 234:18,20 235:5 251:13 seeing 88:10 233:23 seeks 226:17 seen 88:4,21 95:21 115:10 172:12 191:19 197:3,22 240:19 segregation 22:21 25:8 27:9 41:10 82:18 139:6 199:10 segregationist 29:7 99:11 select 239:8

[senate - sorry]

Page 294

senate 20:8 58:14 67:10 75:10 76:13 145:4,4,7 214:19 senator 7:19 20:5,7 20:10 22:5 52:5,11 75:4 76:7,8,9 78:12 78:19 79:15 80:4 119:4,4 143:9,9,22 143:22 144:14 154:4,17 155:7 156:23 184:12 212:22 213:3,6 214:8,15,22 217:17 217:19 220:16,19 220:21 240:11 241:16 senators 76:17 118:18 143:1 send 37:13 sending 136:19 senior 20:1 28:18 seniority 20:8 sense 99:2 117:4 125:3 133:2,5 135:15 142:11 151:3 193:3 sensitive 132:5 sent 37:16 39:13 51:14 153:8 238:20 sentence 106:3,12 106:20 107:3 137:4 137:22 175:23 189:19 213:19 217:13 218:1 225:18 sentenced 48:9 sentencing 48:2,16 136:19 137:19 168:9,23 sentiments 113:11	separate 190:12 separation 97:9 series 247:9 249:20 serious 149:23 215:16 serpent 124:11 serve 28:18 48:9,9 181:22 217:10 241:8 served 13:22 21:1 67:6,18 68:6,15 213:19 225:20 236:21 services 30:12 serving 217:13 session 46:8 50:13 50:22 51:2,3 62:5 145:17 189:20 231:13 set 55:23 56:2 104:1 179:9,10 238:19 seven 20:13 171:22 245:1,10 seventeen 26:23 sewer 56:12 sex 96:1 shaking 12:9 shape 121:11 share 38:7 39:4,8 40:15 141:17 shelby 69:16 shepherd 186:1 short 130:5 180:8 180:10 186:4 shorten 107:2 shortly 46:18 49:6 shot 23:9 68:8 show 71:4 showed 22:18 24:5 81:12 178:2	showing 201:17 shows 123:22 160:16,17 163:5 185:15 201:10,14 201:14 245:21 sid 235:19 side 144:5 201:12 202:12,21 241:2 sides 152:22 sign 46:10 signature 2:2 259:21 signed 259:19 significance 34:19 113:8 significant 61:16 61:21 97:7 103:1 123:22 128:20 143:8 145:5 significantly 110:18,20,22 silly 39:1,2 similar 4:3 101:6 110:4,8,9 154:14 156:14 160:10 165:5 190:22 213:17 similarly 255:7 simplest 221:8 simply 120:1 219:10 221:4 246:7 sinclair 9:6 123:8 123:12,14 single 18:19 120:10 246:10 sir 175:5 177:21 189:7 sit 245:18 246:2 sitting 90:15 155:16 257:12	six 11:23 20:17 21:4 34:6,13 46:14 50:3 168:15 185:11 245:12 size 194:15 sizemore 74:19 skim 186:14 skip 29:13 skipped 240:11 slightly 87:11 slogan 27:14 slogans 165:8 small 32:1 35:11 smd 1:4 8:4 smith 148:14,16,19 220:5 225:11 snider 29:19 social 166:5,13 167:3 solve 48:1 solved 47:20 solving 48:18 somebody 65:22 100:4 101:11 117:1 117:6 119:20 205:7 211:9 247:21 somewhat 28:4 59:20 son 22:15 34:3 53:17 69:22 70:2,3 76:10 166:7 sons 69:21 soon 141:5 sooner 245:22 sorry 42:2 148:15 151:16 153:22 161:4 200:12,13 205:21 210:7 219:13 233:19 246:4 257:2

[sort - statewide]

Page 295

sort 16:20 17:22 20:15 25:5 33:13 37:1 39:1 41:19 42:18 47:21 52:15 53:16,21,23 56:7,8 62:20 64:18 70:6 80:5,9 83:1 90:18 104:14 108:10 112:19 115:4 117:14 118:14 125:8,23 138:1 140:7 144:22 150:13 152:21 158:19 162:6 166:5 166:12,13 167:2 173:21 174:9,12 214:11,12 240:22 242:5,6 sorts 167:2 sound 13:9 sounded 244:23 sounds 13:10 source 100:20 250:9,21 sources 188:1 south 35:3 72:7 147:18 southern 20:9 240:23 space 48:20 168:8 sparkman 20:6,15 20:17,21 21:1,4 22:6,12 speak 12:12,14 50:19 77:1 100:23 184:23 231:10 speaker 67:18 73:12 76:15 193:4 193:5 211:3 212:14 218:15	speaking 125:20 136:7 137:6 178:2 178:21 184:17 special 50:13,22 51:2 77:18,18 171:6 specialty 31:4 specific 12:18 37:18,23 39:9 81:20 82:17 87:13 94:13,14,15 104:7 107:21,23 108:12 111:12,18,21 112:1 113:5 117:12 118:4 127:17 129:15 135:11 139:8 141:10,12 149:13 167:17 170:7 176:7 180:5 190:5 196:7 205:4 209:3 253:16 253:23 254:15 255:18 specifically 37:21 38:16 42:11 90:5 91:12 106:14 109:15,16 111:6 112:11 120:19 121:17 124:12 127:19 129:10 144:9 150:19 155:3 155:15 183:22 187:8 208:17 227:20 247:19 249:3 specificity 95:15 203:20 specifics 61:3 68:12 speculation 70:23 speech 4:16,20 175:6,10 177:22 178:4 179:12 185:5	185:10 252:17,22 speeches 25:8 42:23 43:1 48:6 177:8 185:12 speed 62:14 63:4 spend 17:3 spent 16:17 17:19 236:10 spoke 146:11 spoken 69:12 spread 245:5,11 spring 20:1,4 st 47:9 75:2,3 76:6 76:9,19 78:12,13 78:19 79:15 staff 21:23 169:19 170:11 171:19 174:10 236:8 stakely 74:21,22 75:1 stand 173:4 standard 42:17,18 standards 173:3 start 26:17 49:14 128:9 141:3 179:15 189:18 190:9 232:17 257:1 started 19:11 60:11 62:6 120:4 155:10 218:18 231:14 245:6,7,13,22 starting 60:18,22 60:23 65:1,23 83:6 83:7 211:19 220:4 starts 7:8 179:14 210:21 225:4 232:20 state 1:9 8:9 11:1 20:23 21:16 24:22 25:1 27:22 28:2,3,9 35:20 36:21 39:23	40:3,8 44:22 45:14 45:19,20 47:7,19 48:10 49:15 51:19 52:4,7,8,11 53:3 54:17 55:7 58:17 59:6,6,16,16,16 63:16,17 67:3 68:9 68:19 70:7 71:21 75:4,4 76:7,8 80:4 82:22 84:4,11 94:11 95:14 98:2 101:4,6 105:9 109:22 110:6,23 111:3 118:17 119:1 123:11 125:16 132:6 144:14 156:22,23 165:4 166:20 177:3 179:2 180:14,16 181:16 184:12 185:1 187:13 192:19 259:2,5 stated 34:10 38:18 38:19,20 148:21 150:19 179:22 256:18 statement 49:2 123:15 222:9 226:11,14 227:10 228:7,14 229:6,19 statements 48:15 121:8 153:11 219:14 states 1:1 8:1 20:7 42:10,15 51:18 57:4 63:15 110:16 112:9,13,15 180:11 180:13 213:17 214:1 statewide 28:5 56:9 56:14 77:23 110:21

[statistical - talking]

Page 296

statistical 138:23 226:12 227:9 228:18 statute 205:1 statutes 45:21 statutory 102:6 stenographic 259:8 step 68:10 97:5 stereo 207:5 stewart 74:7 stipulate 183:4 stipulated 1:13 2:1 2:8,17 stipulation 10:5 stipulations 10:16 stop 212:4,23 214:6 streamline 59:20 77:6 107:1 street 8:16,20 strictly 178:21 strike 60:10 223:5 227:7 232:3 252:16 strong 79:6,11 struck 130:21 student 18:17,17 study 127:8 stuff 15:1 subcommittee 157:10 subcommittees 157:8 subject 204:5,7 244:22 submitted 65:19 144:20 152:6,9 subpoena 13:23 14:2 15:8,12 subsequent 207:20 248:20 substantial 42:13	substantially 34:12 substantive 63:6 109:9 158:21 successful 164:17 sued 11:20 sufficient 217:14 suffrage 6:7 83:19 109:4,11 110:7 111:5 148:4 189:23 191:5 198:12 199:2 200:8,11 209:4,14 212:1 222:17 223:20,22 224:7 230:4 239:13,18 242:23 243:8,22 suggest 229:9 250:19 251:15,19 251:22 suggested 158:14 suggesting 190:19 220:23 225:22 226:2 suggestion 190:4,6 211:23 suggestions 152:21 190:7,7,15 230:12 231:7 239:18,21 suit 11:20 suitable 87:3,5 125:14,19 128:20 suite 8:16,20 summaries 208:12 208:15 summarize 209:9 summary 209:8 summer 17:20 18:1 summers 17:3 super 161:6 supervision 259:10 supported 23:4 144:9 176:18 184:4	supporting 199:10 supportive 76:12 144:13,16 184:8,10 184:13 suppose 117:10 254:20 supposed 227:21 supreme 28:21,23 50:1,2 57:16 74:3,4 88:1,14,21 124:10 126:19 130:19 131:2 132:1 133:14 176:17 177:6 196:19 199:15 251:2,23 252:7,7,9 252:12 256:6 sure 16:10 18:2 22:11 33:20 35:17 40:17 43:6,12 70:15 97:18 99:1 116:1 137:15 146:7 147:19 148:19 158:16 171:9 173:19 182:7 188:15 191:19 205:2 216:2 219:16 244:19 249:2 256:20 suspect 41:11 63:17 125:15 144:2 suspended 137:3 137:22 switched 160:19 sworn 10:13 synonym 89:18 synopsis 5:14 70:17 191:17,20 system 46:15 47:2 48:1,10 56:12 136:18 137:9 140:15 167:12	168:14 205:10 t t 1:12,12 11:3 75:13 table 161:21 163:12 taint 104:13 tainted 104:16,17 take 12:15 13:4,8 18:21 25:22 47:2,3 49:9 60:3 90:16 97:5 99:2 107:7 111:23 119:14 124:17 126:8 128:14 152:23 155:11 168:17 172:6 186:14 189:4 193:16 200:3 244:7 244:17 246:8 taken 1:16 60:7 129:22 164:5 180:7 244:20 259:7 talk 21:8 25:19 35:13 57:11 75:21 76:12 78:7 130:7 175:11 185:14 219:20 226:17 talked 15:9 33:2 50:9 54:15 57:11 57:12 67:21 76:3,4 76:6 77:11 139:3 168:3 171:4 194:1 talking 22:16 52:19 77:15 78:11 79:19 79:23 80:13,17 91:14,16 92:15,23 93:3,5 102:20 118:3 138:23 183:15,18 186:16 187:18 223:17 224:4

[talks - think]

Page 297

talks 172:15 178:4 186:22,23 187:22 217:3 tallasse 192:21 talmedge 9:10 taped 202:22 tax 27:22 56:8 84:19 116:22 117:3 117:12 121:20,23 122:1 145:10 154:23 161:6 166:23 253:6 taxation 157:16 208:20 209:21 taxes 117:3 178:20 180:2 253:17 teacher 199:17 teaching 199:14 team 62:1 106:11 tease 75:12,13 technically 23:9 57:18 174:5 telephone 183:10 tell 14:19 16:11 22:10 33:4 35:22 36:14 37:20 49:3 70:16 88:7 92:12 95:10 96:9 98:14 124:18 139:14 171:10 172:6 177:20 184:21 192:17 193:20 196:15 197:13 200:3 208:3 229:18 235:15 template 85:15 ten 11:18 26:5 30:14 32:1 96:3 185:9 245:10 term 21:2 27:9,12 29:8 67:18 77:5	101:12 127:15 128:2 132:4,5 134:13 165:12,21 165:22 166:2,5,15 166:21 167:4,7,21 167:22 172:9 203:17 217:13 238:21 250:16 251:15,20 255:11 256:13,17,19 257:5 257:13,15 terms 27:17 32:17 52:15 67:6 95:22 128:15 136:19 140:14 168:2 182:11 190:22 203:10,18,23 204:2 204:13,14 terry 241:21 242:9 242:10,12,16 testified 10:14 65:1 133:11 162:9 248:13 251:1 252:15 254:14 255:17 256:4 testify 37:8,22 38:6 testimony 14:3 39:6 60:9 95:11 96:9 111:11 138:3 142:20 164:8 210:23 219:12 229:11,14 249:1 text 5:19 195:4,18 202:23 thank 10:15 14:17 15:13 17:1 22:2 45:6 60:5 68:2 130:3 170:15 173:6 174:23 177:15 181:3 182:18 183:6 184:2,15 186:11	189:7 191:12,23 196:11 199:23 203:16 204:18 215:3,17 217:1 221:16 223:3 224:12 226:3 228:15 234:21 235:10 238:1 239:4 242:17 243:19 244:16 247:23 258:12,13 theory 87:6 92:16 108:12 122:21 thereabouts 152:2 thereto 2:16 thick 194:18 thing 55:10 57:10 64:19 77:14 96:8 118:12 158:22 162:10 165:11 168:4 things 27:17 37:16 45:12,16 55:17 57:9 58:21,23 59:19 64:8 77:5,8 84:17 87:1 96:4 108:6 117:18 125:13 128:8 141:6 154:18 161:7 166:3 166:19 167:2 169:5 169:8 185:15 204:10 207:7 213:14 215:11 219:9 220:10 230:13,14 246:22 think 17:12 18:2,22 20:8 21:14 27:7,12 27:13 28:12 29:5,9 29:14 32:18 33:11 37:5 38:1 39:11 40:10 42:12,14,20	42:22,23 43:5 44:14,16,17,19 45:2 47:21 48:3,4,6 48:6,14 50:21 51:12 52:4,22,23 53:12,18 54:8 61:13,20 62:4 63:19,23 64:5 65:8 66:6,23 67:18 69:5 69:7,11,16,18,20 71:21,22 72:2,6,7 73:3 74:5 76:20 77:5,9 78:4,18 80:4 82:5 83:3 87:11 88:4,10,21,22 89:23 90:8 94:2,9 94:12 95:18 96:8 96:16 97:11 98:2 99:19 100:1,3,7,16 103:16,18 104:12 105:9,13 106:15,17 106:18,19 108:19 112:6 114:2,9 116:11 117:12,22 118:1 119:18 123:17 125:2,15 126:1,4,5,8,9 127:23 129:14,18 130:4 131:12 133:10,23,23 134:12 135:9,20 136:1,15,16 137:5 137:17 138:17 139:13,17,21 140:2 140:4,6,7,16,19,21 140:22,23 141:8,9 142:1,6,13,19 143:6,12,20 144:11 144:13,14,15 145:6 145:6,7 146:10,17 147:5,18,22 148:5

[think - try]

Page 298

150:7,12 152:5,7 152:14,18,23 153:7 154:3,15,18 155:1 155:2,5,6,9,17 157:9,13,14,16,19 158:18,22 159:8,15 161:4,7 162:9 164:23 165:2,4,12 165:17,18,20,23 166:4,8,11 167:20 167:21 168:9,15,23 170:4,16,17 171:17 172:12 173:13,15 174:2 179:9 182:7 182:9,10,14 184:9 184:12 188:2,12,17 191:5,7,21 195:8 195:10 197:3 198:9 198:16 199:13,16 200:23 204:11 205:11,19 206:15 206:16,22,22 207:9 207:20 214:16,19 216:1,21 222:4,18 224:3 231:3 233:3 237:17 240:7,18 242:6 244:5 248:17 248:18 252:18 258:8 thinking 38:3 75:17 81:16 99:8 140:20 150:8 228:1 thinks 219:8 third 189:17,18 thirty 86:5 126:17 217:3 thomas 73:9,21 thompson 1:6 5:5 8:6 146:9 181:21 182:4,6,21 183:11 183:16,21	thought 54:22 57:6 59:13 62:16 80:10 80:11 83:4,5,6 99:7 105:10 125:15 137:6 165:4 168:5 169:21 173:8,11 206:17 216:7 227:14 231:8 244:23 245:7,17 249:15 257:5 three 11:15 33:14 36:9 49:8 50:7 52:10 57:9 66:10 76:16,17,20 78:21 86:5 112:22 126:17 165:15 180:11 189:21 190:18 209:20,22 217:3 236:8 tie 90:17 ties 54:20 time 2:14,14 13:18 21:6 23:23 27:15 28:10 30:11 34:9 48:9 50:1,16 51:5 52:17,20 54:1 55:6 63:1 66:23 67:10 67:22 68:19 71:2 74:3 84:5 92:15 93:5,7,9,11 95:21 118:22 121:3,16 127:9 128:5,7,8,10 129:19 130:5 135:13 136:10 137:11,21,22 144:14 146:3,6 152:16 153:23 154:7 156:10 157:6 158:5 165:3,9,11 165:20,22 166:11 166:12 170:5	171:11 180:14 185:20,21 190:10 191:3 196:16 199:13 204:10 205:2 211:10 213:17 217:10 218:14,20 225:20 236:10 239:15 242:13 245:6 247:2 253:14 258:12,14 259:14 times 33:18 118:9 145:5 186:2 245:2 title 45:8 today 13:4,12,20 14:4,11 36:8 47:17 93:2 146:5 167:19 186:17 197:22 228:1 241:5 245:15 245:18 246:2 258:12 told 34:9 166:1 241:23 tom 232:1,2 233:7 tony 147:16,17 215:21,23 216:14 216:18,22,22 219:7 230:21 top 102:1 178:9 197:7 209:6 211:3 211:14 topic 138:1 167:16 230:8,10 topics 18:12 94:15 157:11 torbert 49:23 53:21 54:1 146:23 totally 13:5 82:13 touching 152:11 tough 167:6	town 33:18 track 166:20 training 25:5 transaction 18:19 transactions 11:21 transcript 6:23 7:15 151:18 211:15 212:11 218:9,19 219:13 229:9 230:1 232:7,15 251:19,22 259:9,13 transcripts 6:18 210:11 230:17 245:2,19 246:13,14 247:14 249:21 251:3,14 transferred 103:7 treason 255:5 treasure 9:11 treasurer 59:6,17 treat 206:18 treva 1:6 8:6 trial 2:14 tried 15:10 141:4 152:23 154:4 156:11 trouble 148:22 true 55:10 123:20 123:20 124:18 190:20 211:7 259:12 trusted 150:12 trustees 51:22 truthfully 13:14,19 try 12:7 16:8 21:15 23:7 64:7 81:13,17 90:16 119:19 130:7 140:6,13 166:3 190:8 208:14 231:6 231:7 236:23

[trying - vagaries]

Page 299

trying 17:23 32:9 32:14 34:23 47:5 53:13 58:16 59:12 63:2 70:6 76:18 77:5 78:1 81:22 84:23 92:1 100:7 106:17 107:1 108:8 122:9 123:5 126:4 134:10 138:9 139:5 146:17,19 147:17 148:18 163:10 184:18 190:16 221:4,5 251:12 turn 175:13 181:5 197:6 211:13 218:23 222:3 225:8 233:6 234:2 242:18 turned 173:14 turner 241:21 242:9 turpitude 37:1 38:4 38:8,12,17 85:6 86:12 87:14,18,19 91:3,12 92:7,17,20 92:23 93:14,23 94:2,18 95:12,20 96:12 97:14 98:12 98:16,20 100:13,17 100:18 101:2,14 111:14 112:4 118:15 120:18 123:23 124:14 125:8 126:2 127:8 127:15,18 129:2,10 131:5,19 132:2,15 133:1,7,15 134:2 134:14 135:13 148:3,22 151:20 153:18 155:18 202:6 203:2,7,8,17 204:2,13,23 205:16	206:9,17 213:4,12 215:14 217:5 219:9 219:19,22,23 220:3 220:7,10,14 221:2 222:6,15 223:6 224:2 226:5 227:1 227:7 228:4 234:5 240:1 244:10 250:1 250:10,12,15,16,20 251:6,15 254:16 255:8,19 256:7,14 256:17 257:5 turpitude's 101:13 tuscaloosa 177:1 tv 185:17 twelve 11:18 165:21 245:20 twenty 11:16 twice 238:23 two 16:18 21:19 49:8,21 50:4,6,20 51:8 52:9 67:6 77:5 78:21 109:1,18 118:17 128:14 129:16 139:18 142:23 154:8 162:18 165:15 169:22 171:15 185:9,20 190:9,18 194:18 222:10 233:1,3,4 236:14 236:15,21 247:8 type 37:14 128:18 128:19 207:6 typed 194:16,17 types 166:17 typical 16:21 32:18 207:5 typically 55:15 94:12 149:22	u u 1:12 u.s. 46:18 57:16 75:10 94:4 105:2 118:20 131:23 227:2,13,15 258:2 u.w. 118:19,20 184:7 uh 16:10 90:19 133:4 145:3 unacceptable 228:2 uncle 73:18 unconstitutional 38:22 57:15 82:1,2 178:16 180:1 253:21 254:4,12 underlying 27:6 100:11 understand 12:20 14:9 139:20 142:14 144:7 210:13 219:12 220:17 understanding 27:5 39:18 60:9 87:13 92:2 97:5 111:11 149:18 212:8,11 understood 13:1 116:2 139:23 142:1 143:13 undertaking 193:11 underwood 88:8,11 130:20 207:16 251:2 unearmarking 54:16 55:1 56:18 79:2,9 157:10 unfairly 206:19 unfinished 166:1	uniform 107:18,19 107:22 108:3,9 uniformity 108:15 108:15,16,20 206:3 united 1:1 8:1 20:6 180:12 university 16:14,17 16:18,22 26:8 51:22 112:18 163:13 164:2 185:5 196:17 unlawful 243:14 unnecessary 38:21 untouched 61:11 unusual 203:19 204:3 205:17 unwarranted 226:8 unwieldy 194:20 195:6 updating 84:22 urge 228:2 usage 112:5 use 49:18 86:11 87:15 93:1,2 111:13 128:12 129:2,5 131:4 132:1,3 134:13 167:22 168:2 238:21 255:11,19 255:19 256:14 257:13,20 258:5,5 uses 224:1 usual 10:16 usually 114:4 utah's 101:11 v v 88:8 130:20 207:16 251:2 vacancy 28:20 29:2 vagaries 153:18

[vague - welcome]

Page 300

vague 64:1 131:4 226:5 vaguely 183:14 vagueness 127:7,14 valid 178:21 vance 22:14,18 23:11,19 variety 40:1 230:13 various 23:18 30:15,23 35:14 39:18 41:20 157:11 185:1 208:13 214:18 220:14 247:14 vary 128:5 venable 192:15 193:9,13 234:23 235:9 vendee 18:18 vendor 18:18 verbally 12:8 version 194:9 versus 64:3 95:1 137:21,23 252:9,19 veteran 24:1 veto 46:11 161:6 vice 160:17,18 view 89:1 93:20 114:21 132:9 150:13 241:2 257:17 viewed 173:20 viewpoints 207:6 views 179:1 viii 243:12 vine 144:23 violate 227:15 violates 227:2,13 virginia 42:14 112:18,20,20,21,23	vol 6:18 volume 210:11,21 211:6 232:14,16 245:20 voluminous 14:21 volunteer 53:5 vote 24:6,20 28:9 56:2 77:23 84:7 85:7 135:22 136:7 145:15,18 150:1,3 161:6 174:18 178:18 180:3,16 202:8 205:7 214:1 217:12 225:21 226:1 227:2 253:7 254:3,7 voted 24:2 voter 125:20 voters 36:23 189:16 256:9 votes 28:5 108:6 110:21 voting 24:7,16,16 42:19 56:9 78:8 80:18 83:15 84:1 85:4 89:4 91:4 92:8 93:16 98:12 102:15 105:18,21,22 125:21,22 149:3,22 150:11,16 151:4 153:10 157:23 158:4 161:18 162:1 179:6,9,21 203:11 209:3 212:3 214:3 243:18 vs 1:8 8:8	waived 2:3,19 waivers 18:20 walked 182:12 walker 30:22 31:3 53:16 wallace 21:17,17 21:18,18 22:9,21 23:5,7,8,22 24:2,3 24:11,13,17,18,23 25:8,18 46:21 65:15,19 66:9,12 68:7 104:12,13 168:3,15 236:19 237:2,3,6,7,9 241:1 wallace's 66:3 67:21 236:20 walter 26:12 33:12 walthall 236:8 want 13:5 37:22 47:1,12 55:22 89:6 89:15,16 90:10 92:12 104:17 111:10 114:12,12 118:8,10 122:12 139:19 142:13 145:19 212:18,21 218:23 222:20 223:10 248:1 wanted 19:17 20:22 27:19 30:14 30:16 41:13 50:18 55:17,20 56:1,6,9 56:12,20 119:9 132:8,10 140:2,6 140:17 141:7,21 149:14 155:7,10 164:11 195:12 231:3,10 249:14 wanting 134:13 war 27:19 82:3 115:5 140:12	washington 1:18 8:17,21 9:3,7 10:7 17:21 18:7,8 26:11 waters 1:16,21 4:16 4:20 5:1,4,9,12 10:9,12,21 11:2,4 121:14 123:6 145:21 161:11 164:7 170:23 171:9 258:14 way 64:6 86:18 91:10,22 94:16 99:4 111:1 114:14 119:13 124:6 125:16 126:7 136:16 151:6 155:19 174:2,14 190:3 201:8 205:15 205:16 211:8 213:6 214:14 219:12 223:14 225:10 251:16,17 258:1,4 ways 27:20 204:11 we've 47:16 67:21 71:13 95:21 130:19 139:3 168:13 182:2 186:16 224:20 247:13 wedding 183:17 week 36:11 50:4,20 152:19 185:8 245:12 weeks 49:8 50:7,7 171:15 185:9 weidler 151:10,11 151:14 225:7,12 227:11 230:23 233:1 welcome 130:1 170:10
	w		
	w 11:3 24:11 42:4 151:15 w.e. 72:5		

[went - yetta]

Page 301

went 15:10 16:13 16:16 17:10,18 18:5 19:12 21:13 24:6 26:8,9,22 29:18 46:8,19 49:4 79:9 131:9 132:8 155:6 171:20 187:12 245:8 247:16 249:22 western 57:4,4 whatnot 12:9 97:10 100:12 117:5 white 17:17 19:8 57:19 118:7 137:2 137:2 176:3 whites 137:14 207:5 wide 230:13 wielder's 225:15 wife 30:10,11 66:3 166:6,9 213:9,15 236:20 wilder 151:14 willing 37:8 wilson 1:16 8:12 10:1 181:21 182:4 182:5,7 183:22 259:4,22 winfield 9:6 winner 189:1 wise 55:1 withheld 15:19,22 withhold 16:5 witness 2:3 10:9 11:14,21 35:19 68:3 90:12 102:10 106:1 107:14 123:9 123:13,17 152:12 159:21 169:10 170:9,14,19 171:3 175:15,21 178:11	181:7 186:18 189:6 197:10 198:15 200:5 211:16 213:2 219:2,5 223:16 225:13 233:11 234:7 242:20 244:14 248:3 257:2 258:10 women 96:22 148:17 189:16 254:2,6 won 235:19 wonder 22:9 wondered 118:9 wondering 163:19 woodrow 71:1,5 word 18:21 89:18 89:22 107:18,19,22 121:20,23 167:23 221:2 words 101:14 119:8 126:2,6,10 129:16 132:2 134:4 134:6 217:12 work 12:2 17:19 19:12,16,16 21:10 21:13,21,23 25:11 26:11,23 29:13 30:1 31:9,12,14,14 31:16 32:11,16,17 33:1,16 34:9 35:14 37:15 41:15 46:12 47:4,15 49:10,11 50:2,5,6,23 51:4 53:10 65:2,10 66:11 75:21,23 76:18 79:16 80:10 103:13 104:2 109:9 156:11 157:2 164:11 165:13 169:6 174:9 187:16	231:7 235:21 236:5 workable 54:23 77:7 81:18 82:22 140:3 worked 20:17,19 26:18 29:9 34:5,12 35:6 63:14 69:17 80:3 119:13 171:11 171:21 172:9 182:10 216:20 242:13 working 17:22 20:21 22:12 26:22 40:19 41:19 42:1,7 45:14 49:14 50:15 51:10,15 53:13 62:21 68:6 76:5,11 83:5 103:20 105:6 116:20 138:13 181:22 185:21 191:4 194:12,15 196:10 197:16 204:20 206:7 213:22 231:5 239:16 workings 66:17 works 94:16 would've 144:3 write 114:14 written 163:9 188:11 wrong 92:19 95:6 119:12 128:9 245:11 252:8,9,13 wrongdoings 125:5 125:6 wrote 18:23 73:16 198:11	x x 3:2 xeroxed 189:15 y yeah 43:18 47:3 54:14 68:3 71:8 86:14 91:19 100:9 115:13 123:10 126:11 144:7 150:7 155:13 157:3 160:14 163:4 170:9 170:14 173:12 183:14 187:11 198:15 208:5 216:17 220:12 257:3 year 17:6,10,12,13 17:15,18 18:5 20:2 23:8 157:7 165:21 171:22,22 years 11:17,19 15:1 16:18 20:13 21:4 21:19 24:8 26:5 27:1 30:8,14 31:10 32:12,23 35:4,9 55:11 66:10 69:17 84:3 96:3,4 104:11 112:22 139:19 168:15 180:13 190:12 192:22 197:15 204:8 216:10 230:16 236:9,15,21 237:10 238:17 240:19 242:7 yellow 44:2 173:23 173:23 yep 129:20 yetta 49:13 51:20 53:15 146:22

[yetta - youth]

Page 302

192:10 211:19,22

212:22 213:21

246:6 251:17

young 20:22 23:12

33:14 166:9 176:2

242:12

younger 70:3

youth 20:15,18

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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EXHIBIT 4

CLAY HELMS 9/18/2018

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TREVA THOMPSON, et al.,
Plaintiffs,

vs. Civil Action No. 2:16-cv-783ECM-SRW

JOHN H. MERRILL, in his official
capacity as Secretary of State, et al.,
Defendants.

* * * * *

DEPOSITION OF CLAY HELMS, taken
pursuant to notice and stipulation on
behalf of the Plaintiffs, at the Office of
the Attorney General, 501 Washington
Avenue, Montgomery, Alabama, before
Bridgette Mitchell, Shorthand Reporter and
Notary Public in and for the State of
Alabama at Large, on September 18, 2018,
commencing at 10:10 a.m.

CLAY HELMS 9/18/2018

Page 2

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2

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CLAY HELMS 9/18/2018

Page 3

1 STIPULATIONS

2 It is hereby stipulated and agreed
3 by and between counsel representing parties
4 that the deposition of CLAY HELMS is taken
5 pursuant to the Federal Rules of Civil
6 Procedure and that said deposition may be
7 taken before Bridgette Mitchell, Shorthand
8 Reporter and Notary Public in and for the
9 State of Alabama at Large, without the
10 formality of a commission; that objections
11 to questions, other than objections as to
12 the form of the questions, need not be made
13 at this time, but may be reserved for a
14 ruling at such time as the deposition may
15 be offered in evidence or used for any
16 other purpose as provided for by the
17 Federal Rules of Civil Procedure.

18 It is further stipulated and agreed
19 by and between counsel representing the
20 parties in this case that said deposition
21 may be introduced at the trial of this case
22 or used in any other manner by either party
23 hereto provided for by the Federal Rules of

1 Civil Procedure.

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CLAY HELMS 9/18/2018

Page 5

1

INDEX

2

3

EXAMINATION	Page
By Mr. Gaber.....	7
By Ms. Messick.....	273
By Mr. Gaber.....	286
By Ms. Messick.....	309

4

5

6

EXHIBITS	Page
Exhibit 1.....	39

7

8

Section 17-4-35 job description	
Supervisor of Voter	
Registration job	
Exhibit 2.....	44

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

Resolution, Voter Registration	
Advisory Board	
Exhibit 3.....	72
Alabama Voter Registration	
Advisory Board 2/13/18 Meeting	
Minutes	
Exhibit 4.....	76
12/19/16 e-mail re: Texas	
Offender	
Exhibit 5.....	96
1/11/18 e-mail re: Removable	
Offense	
Exhibit 6.....	105
3/7/18 e-mail re: Felon	
Question	
Exhibit 7.....	108
State of Alabama Board of	
Pardons and Paroles Voting	
Information Sheet	
Exhibit 8.....	144
4/11/18 John Merrill letter	
re: Act 2017-378	
Exhibit 9.....	148
Declaration of Clay Helms	
Exhibit 10.....	163
Declaration of Edward Packard	
Exhibit 11.....	169
Mississippi Mail-In Voter	
Registration Application	

CLAY HELMS 9/18/2018

Page 6

1	INDEX (continued)	
2	EXHIBIT	Page
3	Exhibit 12.....	177
4	4/5/18 e-mail re: Auburn	
5	Materials	
6	Exhibit 13.....	178
7	BOR Training 2018 Material	
8	Revisions	
9	Exhibit 14.....	188
10	10/10/17 e-mail re: Felon	
11	Notices	
12	Exhibit 15.....	209
13	5/14/15 e-mail re: Felons	
14	Exhibit 16.....	214
15	3/24/15 e-mail re: Moral	
16	turpitude crime	
17	Exhibit 17.....	222
18	2/23/17 e-mail re: Bribery?	
19	Moral turpitude?	
20	Exhibit 18.....	225
21	7/28/15 e-mail re: Voting	
22	rights	
23	Exhibit 19.....	232
24	1/6/18 e-mail re: Birmingham	
25	forum	
26	Exhibit 20.....	238
27	Alabama Board of Registrars	
28	Board of Registrars Handbook	
29	Exhibit 21.....	257
30	9/13/17 e-mail, felon question	
31	from Shelby County Registrar	
32	Exhibit 22.....	261
33	Alabama Voter Guide 2018	
34	excerpts	
35	Exhibit 23.....	279
36	State of Alabama Mail-in Voter	
37	Registration Form	

CLAY HELMS 9/18/2018

Page 7

1 COURT REPORTER: Usual

2 stipulations?

3 MR. GABER: Yes.

4 MS. MESSICK: Yes. But we would
5 like to read and sign.

6 CLAY HELMS, having first been duly
7 sworn or affirmed to speak the truth, the
8 whole truth, and nothing but the truth,
9 testified as follows:

10 EXAMINATION

11 BY MR. GABER:

12 Q. Good morning, Mr. Helms. How are you?

13 A. Doing well.

14 Q. My name is Mark Gaber. I'm an attorney for
15 plaintiffs in this case. I'll be taking
16 your deposition today. Have you been
17 deposed before?

18 A. Yes.

19 Q. How many times?

20 A. I think two previous.

21 Q. And what were those cases?

22 A. I don't know the names of them
23 specifically.

1 Q. What was the topic of the cases?

2 A. Photo ID was one and I think UOCAVA was the
3 other.

4 Q. Say the second again.

5 A. Uniform overseas voting, absentee voting.

6 Q. And the second case, what was the nature of
7 the allegations in the lawsuit?

8 A. The second being which one?

9 Q. The uniform overseas -- I lost the rest of
10 the --

11 A. I don't recall.

12 Q. Do you know when that lawsuit was filed?

13 A. No.

14 Q. How long have you -- how long have you been
15 employed by the secretary of state's
16 office?

17 A. About five and a half years.

18 Q. Do you have a general sense of when in that
19 five and a half years the uniform absent --
20 overseas absentee voting case was filed?

21 A. No.

22 Q. Do you recall the substance of your
23 testimony in that deposition?

1 A. No.

2 Q. Okay. How about the photo ID case, when
3 was that deposition taken?

4 A. 2016, I believe.

5 Q. So you're familiar with depositions, then.
6 I'll go over a couple of the rules. The
7 court reporter has to be able to record
8 your answers and my questions. And you're
9 already doing a good job of not talking
10 over me. I'll do my best to do the same
11 with you. And it's important that you give
12 a verbal answer as she can't record a head
13 nod or the like. Okay?

14 A. Right.

15 Q. If I ask a question that you don't
16 understand, please let me know and I'll do
17 my best to clarify. And unless you tell me
18 otherwise, we'll assume that you understood
19 the question. Agreed?

20 A. Okay.

21 Q. If you remember something later on in the
22 deposition that you want to amend an answer
23 or add to make it more truthful or

1 complete, please just let me know and then
2 we'll give you the chance to do that.

3 Okay?

4 A. Okay.

5 Q. And if at any point you need a break during
6 the deposition, let me know. We'll just
7 ask that you complete the -- answer the
8 question that's been posed at the time and
9 then we'll take a break.

10 A. Okay.

11 Q. And we'll try to do that, you know, every
12 hour or so along the way. Are you taking
13 any medications that would affect your
14 ability to answer my questions truthfully
15 and honestly?

16 A. No.

17 Q. And is there any other reason that you
18 cannot answer my questions truthfully
19 today?

20 A. No.

21 Q. Can you please describe your educational
22 background?

23 A. I have a bachelor's degree from Auburn

1 University in political science.

2 Q. And when did you graduate?

3 A. Fall of 2011.

4 Q. Any post undergrad degrees?

5 A. No.

6 Q. How are you currently employed?

7 A. The secretary of state's office.

8 Q. And what is your title there?

9 A. I am the assistant director of elections
10 and supervisor of voter registration.

11 Q. How long have you had that position?

12 MS. MESSICK: Object to the form.

13 A. Which position?

14 Q. The assistant director of elections/
15 supervisor of voter registration.

16 A. Supervisor of voter registration since --
17 at some point in 2014. Assistant director
18 of elections, I'd say maybe late 2015.

19 Q. And so it sounds like those are two
20 separate --

21 A. Yes.

22 Q. -- positions. Can you describe that a
23 little bit more?

1 MS. MESSICK: Object to the form.

2 A. I guess what are you wanting me to describe
3 about those?

4 Q. Well, just what are the -- why is assistant
5 director of elections and supervisor of
6 voter registration different titles? And
7 how do you hold both of them at the same
8 time, I guess?

9 A. I would say different forms of
10 responsibility. Supervisor of voter
11 registration is, I guess, separate in the
12 personnel system. It's in the statute.
13 It's a different role than assistant
14 director of elections, which I guess can be
15 considered a relative title.

16 Q. There's no statutory responsibilities for
17 the assistant director position, or are
18 there?

19 A. No.

20 Q. And is that just a title that you got
21 internally through promotions or the like?

22 A. Yes.

23 Q. When did you first start with the secretary

1 of state's office?

2 A. I interned prior to 2012, and I started
3 working as an actual employee January of
4 2012.

5 Q. What was your first position with the
6 secretary of state's office?

7 A. Student professional trainee.

8 Q. And that was during your pre 2012
9 internship?

10 A. No.

11 Q. And how long did you hold that position?

12 A. I don't recall.

13 Q. What was your next position after that
14 student professional trainee?

15 A. Election specialist.

16 Q. And do you recall the dates that you had
17 that role?

18 A. No.

19 Q. Do you recall roughly how long that was?

20 A. Roughly, student professional trainee is
21 basically an entrance into the position
22 that you're actually going to be hired to
23 hold, and that is, I believe, a two-year

1 period. So wouldn't know the dates, but
2 that would give you a relative answer.

3 Q. And then with respect to the second
4 position, which I think you said was
5 election specialist -- is that right?

6 A. Yes.

7 Q. -- do you know how long you held that
8 position or was it --

9 A. It was a short time.

10 Q. -- during the same time?

11 A. I went from specialist to analyst in a very
12 short time. I would definitely not know
13 the answer to that.

14 Q. And then after you were an analyst, what
15 was your next position?

16 A. Supervisor of voter registration.

17 Q. And you said that was since 2014; is that
18 right?

19 A. Estimate, yes.

20 Q. So starting with the student professional
21 trainee position, what were your general
22 job duties in that role?

23 A. Mostly clerical, learning the job, so

1 filing, scanning, errands, answering the
2 phones.

3 Q. And that was with respect to election
4 matters?

5 A. Yes.

6 Q. Did you cover -- in that role, did you
7 cover any substantive areas outside of
8 elections?

9 A. No.

10 Q. Who was your supervisor at the time?

11 A. Janice McDonald.

12 Q. Is Ms. McDonald still with the secretary of
13 state's office?

14 A. She's a retired state employee now.

15 Q. Was she your supervisor the entire time you
16 held that role as student professional
17 trainee?

18 A. Yes.

19 MS. MESSICK: Let me stop for one
20 second.

21 MR. GABER: Sure.

22 MS. MESSICK: Retired state
23 employee is actually like a merit system

CLAY HELMS 9/18/2018

Page 16

1 classification, so he doesn't mean she's
2 retired at the beach. He means -- the
3 answer was yes.

4 MR. GABER: Okay.

5 MS. MESSICK: And I just -- because
6 that's a strange title, I --

7 MR. GABER: Yeah.

8 MS. MESSICK: -- didn't want it to
9 be confusing.

10 MS. LANG: Thank you.

11 MR. GABER: Thanks, Misty.

12 Q. (By Mr. Gaber) I forget what the question
13 was, but the answer was yes. So she's
14 still an employee of the -- she still works
15 at the secretary of state's office?

16 A. Yes.

17 Q. Does she still have any supervisory
18 authority over you?

19 A. No.

20 Q. And then I believe the next title was
21 election specialist. What were your
22 general job responsibilities in that role?

23 A. Relatively the same -- filing, phones,

1 little bit of preparation of documents,
2 assisting candidates and political action
3 committees, assisting election officials in
4 the county.

5 Q. When you say "phones," what exactly -- can
6 you just describe more broadly who you
7 would speak to on the phone?

8 A. Sure. So you get calls from the general
9 public with questions like voter
10 registration, absentee voting, deadlines,
11 general things like that. You get calls
12 from candidates asking about campaign
13 finance reports being due, political action
14 committees the same, get questions from
15 election officials about deadlines or when
16 is this due, what is due.

17 Q. So your office covers both voting and
18 campaign finance regulations?

19 A. Yes.

20 Q. How much of your time would you say was
21 spent on -- when you were the election
22 specialist was spent on voting versus
23 campaign finance?

1 A. Estimate, half.

2 Q. And when you talked about assisting
3 candidates and political action committees,
4 was that generally with respect to the
5 campaign finance side of your duties?

6 A. Yes.

7 Q. Did you interact with registrars from the
8 counties during that time period?

9 A. No.

10 Q. Were your interactions related to voting,
11 then, mostly with members of the general
12 public?

13 A. Yes.

14 MS. MESSICK: Object to the form.

15 Q. I think you said you were an analyst for a
16 short period of time after you were a
17 specialist?

18 A. (Witness nods head.)

19 Q. Did your job responsibilities change in any
20 way from specialist to analyst?

21 A. Not much. Just a little added
22 responsibility.

23 Q. What was added?

1 A. I would say the only thing that's added is
2 you gain more of a trust in answering
3 questions. So depending on who you're
4 talking to, you wouldn't have to push that
5 answer to -- or that question to somebody
6 more reliable or responsible or has been
7 there longer, so that's really the extent
8 of it.

9 Q. And you became the supervisor of -- is it
10 supervisor of voter registration?

11 A. Yes.

12 Q. -- after that. Who was the prior
13 supervisor of voter registration?

14 A. Ed Packard.

15 Q. Do you know how long Mr. Packard held that
16 position?

17 A. No.

18 Q. Was he the supervisor of voter registration
19 the entire time that you worked at the
20 secretary of state's office prior to you
21 taking that role?

22 A. Yes.

23 Q. And what are your general job duties as

1 supervisor of voter registration?

2 A. Basically training, evaluating registrars,
3 serving as a liaison between the secretary
4 of state and registrars.

5 Q. Anything else?

6 A. Voter registration generally -- documents,
7 applications, working with probate judges,
8 absentee managers.

9 Q. When you say "documents," what do you mean
10 by that?

11 A. Voter guides, photo ID guide, voter
12 registration forms.

13 Q. And is it your responsibility to create
14 these various guides and documents that
15 you've listed?

16 A. Not solely.

17 Q. And what do you mean by that?

18 A. In the preparation, it's not a sole
19 responsibility assigned to me or anyone
20 else, really, in the office. It's a
21 collective thing.

22 Q. Do you supervise the creation of these
23 documents?

1 A. Not solely, no.

2 Q. Who's the point person for creating these
3 documents?

4 A. Well, define "creating."

5 Q. Drafting them, editing them, making sure
6 that they comply with whatever rules and
7 regulations or -- who manages their
8 creation from beginning to end?

9 MS. MESSICK: Object to the form.

10 A. I would say the elections division does,
11 so . . .

12 Q. And who has the ultimate sign-off on these
13 documents?

14 A. The secretary of state.

15 Q. Is the secretary of state involved in the
16 drafting and editing of the voter guides
17 and the voter registration forms?

18 A. No.

19 Q. Would he be copied on the exchange of
20 drafts or the finalization of the
21 documents?

22 MS. MESSICK: Object to the form.

23 A. Say that again, please.

1 Q. Is the secretary of state, in your
2 experience, copied on, say, e-mails where
3 you exchange drafts of the documents that
4 you've referenced?

5 A. No.

6 Q. Is he involved in any meetings or committee
7 discussions about the drafting of these
8 documents?

9 MS. MESSICK: Object to the form.

10 A. No.

11 Q. But they're ultimately provided to him so
12 that he can sign off on them. Is that what
13 you meant?

14 A. Yes. Review and sign off.

15 Q. Is there anyone in particular who manages
16 the flow of the document from its beginning
17 to its end?

18 MS. MESSICK: Object to the form.

19 A. The chief of staff.

20 Q. And who is that?

21 A. David Brewer.

22 Q. How involved are you in the creation of the
23 voter guides, for example?

1 A. Involved.

2 Q. You draft language that goes into the
3 guide?

4 A. Yes. Again, not solely, though.

5 Q. Who were the other people who were involved
6 in the drafting of the voter guides?

7 MS. MESSICK: I'm going to object
8 to the form. I think it might be helpful
9 for you to know that there are years and
10 years and years of these.

11 MR. GABER: Right.

12 MS. MESSICK: So I would assume
13 that it changes very little over time. And
14 like your question, if you want to go back
15 to the '80s, he's not -- I don't know if he
16 was born then.

17 MR. GABER: I think he started in
18 2012.

19 MS. MESSICK: Right. So maybe if
20 you could be specific and ask him about the
21 last "this document" so that --

22 MR. GABER: Sure.

23 MS. MESSICK: -- we're all on the

1 same page.

2 Q. How many voter guides have there been
3 distributed or created by your office since
4 you've been employed there?

5 A. So are -- question on that. Are you
6 talking about how many have been
7 distributed to the public as in --

8 Q. Is it different between the number of --
9 how many final voter guides have been
10 created and distributed?

11 MS. MESSICK: You mean how
12 editions, not how many --

13 THE WITNESS: Yeah.

14 MS. MESSICK: -- thousands were
15 printed.

16 THE WITNESS: That's my question.

17 Q. (By Mr. Gaber) Right. Yeah, yeah. Oh,
18 yeah. How many unique. Is there one every
19 year?

20 A. For the most part, annually, yes.

21 Q. And have you been involved in the creation
22 of them since you started at the secretary
23 of state's office?

1 A. Yes.

2 Q. Do you know how many iterations of the
3 Alabama mail-in voter registration form
4 have been created in your time working at
5 the office?

6 A. No.

7 Q. Do you know if it's more than one?

8 A. No.

9 Q. Have you ever worked on a draft version of
10 the voter registration form?

11 A. No.

12 Q. You mentioned that you're involved in
13 evaluating registrars. Did I hear that
14 right?

15 A. Yes.

16 Q. What does that entail?

17 A. Just basically informing them of their
18 duties and then ensuring or trying to
19 ensure that they accomplish those duties.

20 Q. Is there any, like, formal evaluation
21 process, a written evaluation or the like?

22 A. No.

23 Q. What's your interaction with probate

1 judges?

2 A. Are you asking me how do I help them?

3 Q. Yeah. Like, what is their role with your
4 job?

5 A. Sure. Probate judge is the chief election
6 official in the county, so they're working
7 with certification of candidates, they
8 handle campaign finance locally, you know,
9 poll workers, different publications
10 that -- that wrap around an election that
11 we assist them with, so.

12 Q. And how do they interact with the county
13 board of registrars?

14 MS. MESSICK: Object to the form.

15 Q. Or do they interact with county board of
16 registrars?

17 A. Yes. The main job of the registrars is
18 wrapped around voter registration, and the
19 probate judge is the chief election
20 official in the county and manages the
21 actual election administration. So there
22 is some cooperation, I guess you would say.

23 Q. What sort of written products do you create

1 in the course of your work?

2 MS. MESSICK: Object to the form.

3 A. What do you mean by "written products"?

4 Q. Do you keep a -- like I have this notepad
5 here. Do you keep a handwritten notepad of
6 meeting notes or outlines or any other
7 aspect of your work?

8 A. Like a journal?

9 Q. I guess you could say journal, but any sort
10 of handwritten -- do you take notes on
11 notepads?

12 A. My notes would extend to voice mails
13 needing returned, things like that, jot
14 down something for later. But as far as
15 taking notes in a meeting to recall the
16 meeting later, no.

17 Q. Do you keep your -- do you still have a
18 copy of your handwritten notes of voice
19 mails that need to be returned?

20 A. Maybe.

21 Q. Other than voice mails, are there any other
22 types of handwritten notes that you take in
23 the course of your work?

CLAY HELMS 9/18/2018

Page 28

1 MS. MESSICK: Object to the form.

2 A. No. Just general to-do list stuff, you

3 know, to my knowledge.

4 Q. Has it been your practice to keep those to-
5 do lists?

6 A. Not really.

7 MS. MESSICK: Object to the form.

8 Q. Do you know whether you have any such
9 documents still?

10 A. I'm sure I have some. If the question is
11 whether I have a process for retaining it
12 or stacking it in a certain place, no.

13 Q. What about electronic notes of to-do lists
14 or meetings or the like, do you keep, like,
15 a Word document of any items like that?

16 A. Yes.

17 Q. And how frequently do you do that?

18 A. About weekly, maybe.

19 Q. And what sort of document is that?

20 A. Word --

21 Q. Or can you describe it more generally?

22 A. Sure. Word document.

23 Q. What topics would be included in that?

1 A. General to-do list items for the division
2 and myself.

3 Q. Is that a running document or is it -- do
4 you save it in iterations?

5 A. Differs.

6 Q. Do you have some that are ongoing in their
7 life and others that are for a specific
8 period of time?

9 A. Basically, some it may go -- I have a
10 header for one week and then I'll just use
11 the next page on the same document for the
12 next week, and then others I create a
13 brand-new document. So that's really what
14 I mean by it differs. There's no running,
15 like, long document.

16 Q. And has this been a practice of yours since
17 you started in the secretary of state's
18 office?

19 A. No.

20 Q. When did you start keeping a Word document
21 like this?

22 A. Really once I started supervising staff, I
23 started having staff meetings weekly. And

1 that was a good way to stay on track in the
2 staff meeting.

3 Q. Other than the few to-do list notepads and
4 handwriting and these Word documents that
5 we've been talking about, are there other
6 written materials that you create to help
7 you do your job?

8 MS. MESSICK: Object to the form.

9 A. You have to specify. What do you mean by
10 that?

11 Q. Do you keep notes or to-do lists or minutes
12 in any other place other than these Word
13 documents or whatever handwritten notes you
14 have?

15 A. No.

16 Q. Was there a process for collecting
17 documents from you to produce in this
18 litigation?

19 A. Yes.

20 Q. And were you involved in collecting
21 documents?

22 A. No.

23 Q. Do you know how that process unfolded?

1 A. Yes and no.

2 Q. Let's start with the yes. What is your --

3 A. We performed e-mail searches, things like
4 that, queries to try to find the
5 information you were requesting.

6 Q. When you say "we," did you perform those
7 searches or was your e-mail box just handed
8 over?

9 A. E-mail box handed over.

10 Q. Okay. Did you identify any particular
11 documents outside of the e-mails?

12 A. No.

13 Q. Do you know if your office has a standard
14 period of time in which documents or
15 e-mails are deleted after they've been sent
16 or received?

17 A. To my knowledge, we don't delete much of
18 anything.

19 Q. Have you ever used an e-mail address other
20 than your government account to send any
21 communications that in any way relate to
22 your position at the secretary of state's
23 office?

1 A. No.

2 Q. Do you store any files, electronic files,
3 in any way related to your position at the
4 secretary of state's office on any
5 nongovernment-owned computer?

6 A. Not to my knowledge, no.

7 Q. You don't use your personal computer to do
8 any work product?

9 A. I would say the only work product I perform
10 on a personal computer I can access from a
11 website, so there are no files, really,
12 that you're saving.

13 Q. So, like, if you're working from home or
14 something?

15 A. Yeah. You're just signing into a website.

16 MR. GABER: Misty, I don't think
17 that we've received any -- I know that we
18 sent -- we got some notes yesterday for, I
19 think, John Bennett. I don't think we've
20 received any notes for Mr. Helms or I don't
21 think we've received any of the kind of non
22 e-mail Word documents that he's created in
23 his job.

1 MS. MESSICK: It's not appropriate
2 to discuss that at the deposition. If you
3 want to send me a letter after, you can.

4 MR. GABER: Okay. I just want to
5 make a note for the record that I don't
6 think we've received those and I think they
7 may well be relevant to the deposition, so
8 that may be something that we need to
9 address, whether we need to reopen the
10 deposition depending on the content of that
11 material and if it's relevant.

12 MS. MESSICK: And for the record, I
13 would note that if you think you haven't
14 received those things, you could have told
15 us before the deposition.

16 MR. GABER: Well, I just learned
17 that they exist, so that's why you didn't
18 receive that information prior to the
19 deposition.

20 MS. MESSICK: And I disagree.

21 MR. GABER: Your disagreement is
22 what?

23 MS. MESSICK: You had no idea that

CLAY HELMS 9/18/2018

Page 34

1 anybody might write a document before you
2 asked him? You've gotten, like, 2,000
3 documents from the secretary of state.
4 You've been reviewing them. If you were
5 concerned about this, I believe that, just
6 being a human, you were on notice and could
7 have said something before now.

8 MR. GABER: Okay.

9 MS. MESSICK: And I also don't
10 think that you've established that any of
11 them are necessarily responsive.

12 Q. (By Mr. Gaber) Mr. Helms, do any of the
13 Word documents or notepads that you keep
14 pertain to voter registration?

15 MS. MESSICK: I'm going to object
16 to the form.

17 A. Generally?

18 Q. We'll start with generally.

19 A. Yeah.

20 Q. What are the topics that you have taken
21 notes on in your Word documents?

22 MS. MESSICK: Object to the form.

23 A. Again, the Word documents are, like, what

1 I'm talking about is staff meeting
2 deadlines, to-do's for myself. So it's,
3 like, a line item that says finish this,
4 next line item finish this. So that's the
5 extent of the Word documents. So is voter
6 registration a part of that? Generally,
7 the subject, yes.

8 Q. What about felony disenfranchisement?

9 A. I don't recall.

10 Q. It's possible that you've taken to-do notes
11 for the like that pertain to felony
12 disenfranchisement?

13 MS. MESSICK: Object to the form.

14 A. What do you mean by "felony
15 disenfranchisement"? Like, those words?

16 Q. No. Just generally speaking, the topic. I
17 mean, would it be possible over the course
18 of your position that you have taken notes
19 in your Word document, for example, that
20 generally pertain to the system of felony
21 disenfranchisement or the duties of the
22 secretary of state's office as it relates
23 to implementing that system?

1 A. Yes.

2 Q. Would the same be true with respect to the
3 written notepads that you've kept?

4 A. I would say probably not on that.

5 MR. GABER: And I guess, Misty, we
6 can send a follow-up letter, but all I'm
7 asking is that you take a look at them and
8 identify whether they're responsive and
9 then we can address whether it's something
10 that needs to, you know, have further
11 followup with my reopening the deposition.
12 I'm not trying to be nonhuman or rude or
13 the like.

14 MS. MESSICK: I wasn't saying you
15 were rude. And I wasn't saying you weren't
16 human. I was saying you should know humans
17 take notes.

18 Q. (By Mr. Gaber) Have we covered all of your
19 post college jobs that you've held?

20 A. Yes.

21 Q. Generally speaking, how does your job touch
22 on issues related to felony
23 disenfranchisement?

1 A. When you say "felony disenfranchisement,"
2 what -- what specifically are you referring
3 to?

4 Q. When I say felony disenfranchisement, I'm
5 just speaking generally about the
6 eligibility or noneligibility of persons
7 with prior felony convictions to vote in
8 Alabama. So, you know, just for the
9 purposes of our own understanding, that's
10 sort of a general term that I'll use.

11 A. Right.

12 Q. If I mean something more specific, or
13 HB 282 or the prior system or something in
14 between, I'll try to specify it. But I'm
15 just speaking generally in the kind of
16 broad sense.

17 A. Okay. So by me saying that we work in
18 disqualification of voters due to moral
19 turpitude and you're asking about the
20 disenfranchisement of voters, that's
21 different because you're asking me to tell
22 you how I'm disenfranchising voters.

23 Q. So I mean just the process of

1 disqualifying.

2 A. Sure.

3 Q. Right.

4 A. Voter registration and disqualification is
5 handled at the county level by the board of
6 registrars, and so specifically it would be
7 to provide guidance to the county level to
8 then register and disqualify voters.

9 Q. Can you explain to me, generally speaking,
10 how the current felony disqualification
11 system works in Alabama?

12 A. Sure. The board of registrars receives
13 notification of people convicted of
14 felonies of moral turpitude and they
15 disqualify those voters after having
16 notified them.

17 Q. And what is your role in the process?

18 A. Generally ensuring they get the notices and
19 they have their list of moral turpitude
20 crimes to know who to disqualify.

21 Q. When you said "they" there, that they get
22 the notices, are you talking about the
23 registrars or the voters?

1 A. Registrars and -- well, yeah, and voters.

2 Q. And the notice to the registrars is notice
3 of the conviction?

4 A. Correct.

5 Q. I am going to have an exhibit marked.

6 (Helms Exhibit 1 was marked for
7 identification.)

8 Q. And so this is Helms Exhibit No. 1. Do you
9 recognize this as the Alabama code
10 provision that defines the job
11 responsibilities of the supervisor of voter
12 registration?

13 A. Yes.

14 Q. Can you describe the voter registration
15 advisory board to me?

16 A. Sure. A group of appointed officials that
17 serve on this board that are required to
18 meet quarterly annually to discuss voter
19 registration matters, the voter
20 registration system, things like that.

21 Q. Who appoints the members of the board?

22 A. To my knowledge, the governor, commissioner
23 of agriculture and industries, and the

1 auditor.

2 Q. Do you know if that's, like, a joint
3 process or does each position get to
4 nominate a certain number of folks?

5 A. For the most part, it's each.

6 Q. How many members are there?

7 A. I don't recall. To my knowledge, I think
8 there's eight.

9 Q. Eight, you said?

10 A. Eight.

11 Q. What authority does the board have?

12 A. Well, there is a voter registration
13 advisory board statute that tells you
14 exactly what it's about, and that's what I
15 would look to to answer your question.

16 Q. To your knowledge, is it generally, as the
17 name suggests, giving advice to the
18 secretary of state's office about voter
19 registration?

20 A. I would say they have the ability to form,
21 like, resolutions to submit too. I think
22 that statute talks about advising the
23 legislature, I would think our office as

1 well, for procedures they'd like to see
2 implemented.

3 Q. And you said quarterly it meets, so four
4 times a year?

5 MS. MESSICK: Object to the form.

6 A. Yeah.

7 Q. Does the advisory board ever consider
8 issues related to felony disqualification?

9 MS. MESSICK: Object to the form.

10 A. Not to my knowledge. Not that I can think
11 of. Mainly it's the registration of
12 voters, not the disqualification of voters
13 that's being discussed.

14 Q. Those two issues will overlap, though --
15 right? -- to the extent that someone who
16 might be disqualified is attempting to
17 register, whatever the policies are or the
18 laws are related to?

19 A. Sure. Sure.

20 Q. And your role is to do what with respect to
21 the board? I see in the statute it says
22 you keep minutes of the meetings.

23 A. Generally, you're serving as a secretary.

1 You're not a member, you're not voting,
2 you're not telling them what they're going
3 to talk about. You're making sure
4 everybody gets into the room and allow them
5 to meet and you keep the minutes and post
6 them. So the position is mostly secretary.

7 Q. Are those minutes publicly available
8 anywhere?

9 A. Yes.

10 Q. And where is that?

11 A. Our website.

12 Q. Do you know if the website keeps archives
13 to a certain point back in time?

14 A. Don't know.

15 Q. Is it more than just the current -- the
16 most recent meeting as --

17 A. Yes.

18 Q. -- as opposed to -- who's the chair of that
19 committee -- board?

20 A. Currently, it's Jo Stiefel.

21 Q. And what -- outside of the board, what is
22 his position?

23 MS. MESSICK: Object to the form.

1 A. Job?

2 Q. Right.

3 A. It's a she and --

4 Q. Oh, sorry.

5 A. -- it's -- she is a registrar in DeKalb

6 County.

7 Q. Did the board have any discussions when you
8 were present about the change in Alabama's
9 laws in 2017 with respect to HB 282 and the
10 lead-up to that?

11 A. I can't recall. I would assume so.

12 Q. What about prior to that and your
13 recollection, did the board discuss issues
14 or concerns about the prior moral turpitude
15 standard?

16 MS. MESSICK: Object to the form.

17 A. Not that I recall.

18 Q. Did you begin attending meetings of the
19 board in 2014?

20 A. Yes.

21 Q. Did you ever attend prior to that in your
22 other roles at the secretary of state's
23 office?

1 A. To my knowledge, I believe I attended one,
2 and that was just to tag along.

3 Q. Other than the minutes, are there any other
4 written product that are created in the
5 board's work?

6 A. The only written product other than the
7 minutes and -- or the agenda -- is in a
8 meeting, I think in the last meeting, the
9 board decided to write a letter to the
10 Probate Judges Association and the County
11 Commission Association presidents promoting
12 or asking or -- I guess promoting the use
13 of electronic poll booths. So other than
14 minutes and agenda, unless they come up
15 with a resolution or letter, no, no other
16 documents.

17 Q. I want to mark an exhibit, which will be
18 Helms Exhibit No. 2.

19 (Helms Exhibit 2 was marked for
20 identification.)

21 Q. And I'll let you take a look. Do you
22 recognize this resolution?

23 A. Yes and no.

1 Q. What do you mean by that?

2 A. Well, this resolution was before I took
3 over as the secretary of the voter
4 registration advisory board. I've also
5 seen it before I became the supervisor of
6 voter registration. So I knew there was a
7 resolution passed before -- or created by
8 the board before I took over, but I didn't
9 know what it entailed.

10 Q. Do you know if anything -- if any
11 discussions happened after this resolution
12 was passed?

13 MS. MESSICK: Object to the form.

14 A. Ask me again, please.

15 Q. Are you aware of any discussions in the
16 secretary of state's office about this
17 resolution after it was passed?

18 A. I honestly don't think it ever came up when
19 I was there.

20 Q. Do you recall when in 2014 you took over
21 the supervisor position?

22 A. No.

23 Q. Did this resolution come up at any meetings

1 of the board when you were the supervisor?

2 A. To my knowledge, not specifically, no. I
3 don't think it was something that carried
4 or we continued to . . .

5 Q. Going back to the Exhibit 1, the statute,
6 No. 3 on the list is to provide to the
7 county boards of registrars such
8 information as would allow them to
9 determine which names should be stricken by
10 them from the voter lists in accordance
11 with state laws. Do you see that?

12 A. Yes.

13 Q. What types of information do you provide to
14 the county boards of registrars to fulfill
15 this duty?

16 A. So we supply them with death notices, felon
17 notices, cancelations in which, say, a
18 voter moved out of state or wished to be
19 removed for whatever personal reason they
20 no longer want to be registered, furnish
21 that to the county. Other information
22 would be just the guidance we talked about
23 earlier on the law changes, listings,

1 things like that.

2 Q. You said felon notices. What do you mean
3 by that?

4 A. Well, felon notices come in electronically
5 or hard copy, electronically coming in from
6 administrative office of courts through the
7 voter registration system in batches. So
8 we're ensuring that that makes it from A to
9 B. Hard-copy notices, we're getting those
10 from US attorney offices, you know, rarely
11 out of state or anything like that. But
12 basically just ensuring that, again, it
13 gets from A to B.

14 Q. With respect to the AOC notices -- and I
15 guess let's break this down into two time
16 periods, so starting with post HB 282.

17 A. Sure.

18 Q. What do you have to do to ensure that those
19 notices get from the AOC to the relevant
20 registrars?

21 MS. MESSICK: I want to have a
22 standing objection to calling the
23 legislation HB 282. So objection to the

1 form.

2 MR. GABER: Do you have something
3 else you'd rather me call it?

4 MS. MESSICK: You could call it by
5 the statutory name. It's -- you could use
6 the Alabama statute that it is or you could
7 use the acronym. But there's probably an
8 HB 282 every year, and that suggests not
9 legislation, which it is. The act number
10 is 2017-378.

11 Q. Mr. Helms, if I refer to HB 282, would you
12 understand it as the Act 2017-378 that
13 changed the -- or identified the list of
14 convictions that qualifies moral turpitude?
15 It will just be much easier for me to
16 remember that than to remember --

17 MS. MESSICK: And I think he's
18 asking you to agree for purposes of the
19 deposition. I don't think he's asking you
20 if you would have understood. He's asking
21 for --

22 MR. GABER: Right, right.

23 MS. MESSICK: -- your agreement.

1 Q. (By Mr. Gaber) Just like when we talk
2 today.

3 A. Sure. Sure.

4 MR. GABER: Thank you for
5 clarifying.

6 MS. MESSICK: So you had a question
7 on the table.

8 MR. GABER: Can you re-read the
9 question? Sorry.

10 (Court reporter reads back the
11 pending question.)

12 Q. And I think this was after HB 282 was
13 enacted.

14 A. Sure. So really the work went into making
15 sure that it worked to begin with. Ongoing
16 work not so much other than ensuring your
17 voter registration system doesn't crash,
18 because then the batches wouldn't make it
19 there. But I'm not getting up every
20 morning pressing buttons to make sure that
21 it -- it's an automated process.

22 Q. Okay. Prior to HB 282 being enacted, what
23 was the process to ensure that information

CLAY HELMS 9/18/2018

Page 50

1 got from the AOC to the relevant registrars
2 with respect to voters who may have felony
3 convictions?

4 A. It was the same process.

5 Q. There was an automated process to send that
6 from the AOC to the counties?

7 A. Yes.

8 Q. Do you know which convictions were
9 transmitted to the counties?

10 MS. MESSICK: Object to the form.

11 A. Yeah, what do you mean by "which
12 convictions"?

13 Q. Which --

14 MS. MESSICK: What time period?

15 You're saying before.

16 Q. This is pre HB 282 now.

17 A. Okay.

18 Q. And when I say "convictions," I can clarify
19 it. Was it the case that the AOC
20 transmitted all information about people
21 who had had convictions in the state to the
22 relevant counties that they resided in?

23 A. Yes. My understanding is that the AOC sent

1 a much broader list. I don't know if you
2 would say -- I don't think you would say
3 all, but a much broader list to the
4 registrars to then determine to disqualify.

5 Q. And when you say a broader list, are you
6 talking about a list of categories of
7 convictions or specific felonies that would
8 be included on the list or what did you
9 mean by that?

10 A. No.

11 MS. MESSICK: Object to the form.

12 Q. So what did --

13 A. My understanding --

14 Q. -- you mean?

15 A. -- is that they would send all felonies
16 to -- for the registrars to determine to
17 remove.

18 Q. And so were you just saying -- you said
19 that it was perhaps not all but a broader
20 list, so I'm just trying to understand. Is
21 that a list of people or perhaps they
22 missed some of the convictions for persons
23 or what did you mean by that?

1 MS. MESSICK: Object to the form.

2 A. Really what I mean by that is that

3 post 378, worked with AOC and made sure

4 that only the specific listing of crimes

5 that was now set out in statute was sent

6 from them to the registrars' offices.

7 Before that I said it was broader, because

8 it was. My understanding it was all

9 felonies. I don't think that it was --

10 they had this bigger list that they sent

11 and it shrunk with the statute. I just

12 think they sent everything.

13 Q. So any time someone had a conviction that

14 would be entered into the AOC database,

15 that information would be sent along to the

16 registrars to make a determination about

17 whether that felony disqualified the

18 particular person? Is that your

19 understanding?

20 MS. MESSICK: Object to the form.

21 A. My understanding is yes.

22 MS. MESSICK: Mark, are you trying

23 to use the word "conviction"

CLAY HELMS 9/18/2018

Page 53

1 interchangeable with "felon"? because we
2 have misdemeanors, and so I think that's
3 creating some ambiguity.

4 MR. GABER: Sure.

5 MS. MESSICK: But I think that you
6 mean to talk about felonies.

7 MR. GABER: Right.

8 Q. (By Mr. Gaber) So misdemeanor convictions
9 were not sent to the registrars?

10 A. To my knowledge, no.

11 Q. So this is --

12 A. All felonies, I would say.

13 MR. GABER: Thank you, Misty.

14 Q. Is there an arrangement between the US
15 attorney's offices in Alabama and the
16 secretary of state's office to send notices
17 of federal felony convictions to the
18 registrars? Is there, like, a written
19 agreement for it?

20 A. Yeah. I believe it's in the statute it
21 requires them to send notices.

22 Q. After HB 282 was enacted, do you know
23 whether it's the case that the US attorneys

CLAY HELMS 9/18/2018

Page 54

1 sent any particular smaller list of federal
2 felony convictions or is it all federal
3 felony convictions?

4 MS. MESSICK: Object to the form.

5 A. I don't think that their process -- I don't
6 think -- from my eyes, I haven't seen a
7 change. You don't get that many to begin
8 with, so -- not like a huge sample size to
9 say, Oh, this is now way different than it
10 was previously.

11 Q. Do you know what -- what the practice is?
12 Is it the case that any federal felony
13 conviction is -- in Alabama is sent forward
14 to the registrars for them to make a
15 determination about whether it disqualifies
16 a particular voter?

17 A. Ask me again, please.

18 Q. Is it the practice that the US attorney's
19 offices will send notices to the registrars
20 any time there's a federal felony
21 conviction for someone in Alabama?

22 MS. MESSICK: Object to the form.

23 A. To my knowledge, yeah.

CLAY HELMS 9/18/2018

Page 55

1 Q. And that's been the case, I gather, pre
2 HB 282 and post HB 282, to your knowledge?

3 A. To my knowledge, yes.

4 Q. You mention that there are -- I think you
5 said there are rarely out-of-state notices;
6 is that right?

7 A. Yes.

8 Q. And can you just describe more specifically
9 what you mean by that?

10 A. We don't receive many.

11 Q. How would it come to be that you would
12 receive an out-of-state conviction, felony
13 conviction notice?

14 A. Ask me again, please. How would --

15 Q. I guess are you thinking of any particular
16 illustrations or examples of times that
17 you've seen an out-of-state felony
18 conviction notice about a potential voter?

19 A. No. I'm just saying the notices we receive
20 are very rare. I would assume it's because
21 when someone commits a crime in another
22 state, you rarely have information that
23 says that they're -- were registered in

1 Alabama previously and know to send it to
2 us. Then you also have to be willing to
3 send it to us. And so that's really where
4 I'm coming from.

5 Q. Does your office have any agreements with
6 any other states about transferring that
7 sort of information?

8 A. Not that I'm aware of, no.

9 Q. You talk about guidance as well to the
10 county registrars. How often do you
11 interact with the registrars to provide
12 information to permit them to identify
13 names who should be stricken from the voter
14 lists?

15 MS. MESSICK: Object to the form.

16 A. I would say -- how often? Not overly
17 often. You know, once you provide the
18 guidance, which is the law, and the listing
19 that was prepared, based specifically on
20 the law, there's not that many questions
21 that come up.

22 Q. What about pre HB 282's enactment, how
23 often did you provide, say, written

1 guidance to registrars about striking
2 names?

3 MS. MESSICK: Object to the form.

4 A. Well, what do you mean by guidance to the
5 registrars? General guidance?

6 Q. I guess it's your word.

7 A. Well, as far as providing them a listing
8 that was provided by AOC, that would really
9 be the extent of it.

10 Q. Did you get questions from -- so prior to
11 HB 282, did you get questions from county
12 registrars after they would receive the
13 list from AOC of -- of felony convictions?

14 A. Yes.

15 Q. And how frequently would that have been?

16 A. I guess if your question is was it more
17 frequently, yes. How frequently, I
18 don't -- I can't recall. That was a long
19 time ago.

20 Q. Would you say that it was on a daily basis,
21 a weekly basis?

22 A. No. I would say maybe one a week, but not
23 daily.

1 Q. And was it generally about particular
2 individuals and particular types of
3 convictions?

4 A. Not particular individuals. Particular
5 convictions, yes. I mean, that would be
6 the basis of their question they're
7 asking -- does it fit, does it not.

8 Q. And what is your understanding of your role
9 pre HB 282 in giving that type of guidance?
10 Was it your view that you were sort of
11 authoritative on the topic?

12 A. Well, pre 282, as you're calling it -- I
13 probably need to define my guidance. I'm
14 providing the list and general guidance,
15 but I'm not answering questions as to
16 whether this conviction falls on this list
17 or not. I'm not an attorney and I'm not
18 their attorney, so.

19 Q. When you say list prior to HB 282, what
20 list are you referring to?

21 A. The list by administrative office of
22 courts. When you hear me say AOC, that's
23 what I mean. And I don't recall the year

1 that that was prepared.

2 Q. Were there any other lists that you would
3 send to registrars or refer registrars to?

4 A. I believe there were AG opinions that we
5 sent out, either Ed Packard or myself, to
6 them to assist in that as well.

7 Q. Any other lists?

8 A. No, not that I recall.

9 Q. Are you familiar with a list of moral
10 turpitude felony convictions that was
11 prepared by Judge Jean Brown?

12 MS. MESSICK: Object to the form.

13 A. No.

14 Q. And as we've been talking about this -- I
15 think you said probably weekly guidance --
16 are these in the form of phone calls or
17 e-mails?

18 MS. MESSICK: Object to the form.

19 Q. Or both?

20 A. Probably -- likely both, yeah.

21 Q. Any more -- any medium of communication
22 more frequent than the other?

23 A. No, not that I recall. I'm sure that it

1 probably swayed one side or the other, but
2 not overly.

3 Q. Are there any particular county registrars
4 who you recall having more questions than
5 others prior to HB 282 being enacted?

6 A. No, not specifically.

7 Q. What about after HB 282 was enacted, are
8 there any particular county registrars who
9 have had more questions than others have,
10 in your experience?

11 A. No, not about this. I'd say the questions
12 have definitely shrunk. And there's really
13 not that many questions now, to be honest.

14 Q. You said not about this. Is there another
15 area in which there's a particular
16 registrar that has more questions than
17 others for your office?

18 A. No. What I meant by "not about this" is,
19 like, questions tailored for something
20 else, same genre but different -- you know,
21 procedurally, things like that, not should
22 I remove John Doe or not. That's what I
23 meant.

1 MS. MESSICK: Are you going to be
2 at a good stopping place soon?

3 MR. GABER: Sure. Do you want to
4 stop now?

5 MS. MESSICK: That would be great
6 if it's okay with you.

7 MR. GABER: Yeah. That's fine.

8 MS. MESSICK: Thank you.

9 (Short recess.)

10 Q. (By Mr. Gaber) Okay, Mr. Helms. Looking
11 back at Exhibit 1, which was the statutory
12 list of duties, and, again, back to
13 paragraph 4, I want to talk for a little
14 bit about out-of-state convictions. So
15 paragraph 4 provides that one of your
16 responsibilities is providing assistance to
17 county board of registrars in determining
18 what names of particular persons who might
19 have disqualifying convictions; is that
20 right?

21 A. Yes.

22 Q. And focusing on the period of time prior to
23 the enactment of HB 282, how did you go

1 about providing guidance with respect to
2 out-of-state convictions and whether they
3 were disqualifying?

4 MS. MESSICK: Object to the form.

5 A. Right. So my guidance was providing them,
6 again, with the election handbook, which
7 was sent out. They would get a hard copy
8 and electronically, which would have the
9 information about removing felons. It
10 would have the list provided by AOC. If
11 your question is asking me did I tell them
12 this person should be removed, this person
13 shouldn't be removed, it did not.

14 Q. Was it the position of the secretary of
15 state's office that the AOC list was the
16 exclusive list of crimes of moral turpitude
17 prior to HB 282?

18 MS. MESSICK: Object to the form.

19 A. Ask me again, please.

20 Q. You said that you sent the handbook and
21 that that would contain the AOC list. Did
22 you advise registrars that the AOC list was
23 the authoritative list of convictions that

1 were of moral turpitude and would result in
2 the loss of voting rights?

3 MS. MESSICK: Object to the form.

4 A. I advised them that that was the list we
5 had, that was the list, basically, yes.

6 Now, questions beyond that have gone to an
7 attorney, one of our attorneys.

8 Q. Was it your position that registrars were
9 able to make determinations that
10 convictions that did not fall in the AOC
11 list were crimes of moral turpitude that
12 resulted in the loss of voting rights?

13 A. Ask --

14 MS. MESSICK: Object to the form.

15 A. Yeah. Ask me again, please.

16 Q. Was it your position that convictions for
17 felonies that were not included on the AOC
18 list might nonetheless be crimes of moral
19 turpitude in a board of registrar's view
20 that they could then disqualify the voter
21 on the basis of those convictions?

22 A. No. My position was that here's your list,
23 you know. Questions to be answered outside

1 of that list would have gone to, at the
2 time, Jean Brown, our attorney. But I did
3 not answer questions that fell outside of
4 that list. Now, if somebody asked is this
5 one moral turpitude and I see it's Item
6 No. 2 on the list, I would say it's on your
7 list. But if they want to ask or dig
8 deeper, the attorney's answering that.

9 Q. And is it your understanding that if a
10 conviction was among those on the AOC list,
11 was the registrar required to take the
12 position that it was a crime of moral
13 turpitude or could they decide that in
14 their view it was not and, therefore,
15 allowed that voter to register?

16 A. Well, to answer that, because that's sort
17 of a hypothetical, I've never had the
18 instance in which a registrar or a group of
19 registrars decided to not remove someone
20 that was clearly on the list.

21 Q. Setting aside whether you had that
22 particular instance occur, is it your
23 understanding that the registrars would

1 have had that authority to make the
2 determination that, notwithstanding the
3 presence of the conviction on the AOC list,
4 they were authorized to determine that it
5 was not a crime of moral turpitude?

6 A. Well, that's sort of leading down a
7 different road. Okay. We provided the
8 registrars the list and the guidance; and
9 in every scenario I've seen, they used our
10 guidance, because it comes from us to them
11 and they use that because they understand
12 that's the best guidance they're going to
13 get. Now, if you want to dig deeper and
14 ask hypothetically if registrars as a board
15 can sit down and say we don't like this
16 list, I mean, it just never happened so I
17 didn't have to answer that question.

18 Q. If the question were posed to you prior to
19 HB 282, what would your answer have been?

20 A. Follow the guidance.

21 MS. MESSICK: Object to the form.

22 Q. Your answer to the registrars would have
23 been to follow the guidance of the AOC

1 list?

2 A. Yes.

3 Q. And is it your understanding that they
4 would be required to follow that guidance
5 to use the AOC list as the authoritative
6 source?

7 MS. MESSICK: Object to the form.

8 A. Ask me again.

9 Q. So I think you said that your -- it would
10 be your understanding that -- or your
11 answer would be to them that they should
12 follow the -- the fact that a particular
13 conviction was included on the AOC list.
14 My question is, is it your understanding
15 that the registrars would be required to
16 follow that guidance or could they make
17 their own determination as to whether or
18 not a conviction was moral turpitude, you
19 know, or not even if it was included on the
20 AOC list?

21 A. Sure.

22 MS. MESSICK: Object to the form.

23 A. Yeah. My understanding is that they

1 hypothetically could go outside of that.

2 Now, I think that would have dragged --

3 drug them into a much larger problem.

4 COURT REPORTER: I'm sorry. I
5 can't hear you.

6 A. Yeah. My understanding is that the
7 registrars hypothetically could have gone
8 outside of that listing.

9 Q. And that includes disregarding the fact
10 that a conviction is listed and nonetheless
11 registering the voter?

12 A. Yeah. I mean, you can.

13 Q. And it would also then include deeming
14 convictions that were not on the AOC list
15 to be ones of moral turpitude?

16 MS. MESSICK: Object to the form.

17 A. Ask me again, please.

18 Q. Would that also mean that registrars would
19 be authorized to deem convictions that were
20 not on the AOC list to nonetheless be
21 convictions involving moral turpitude that
22 would permit them to deny registration to
23 an applicant?

1 MS. MESSICK: Object to the form.

2 A. Yeah. And this is all pre -- again, pre?

3 Q. Right.

4 A. And you're going to let me know when we
5 switch over; correct?

6 Q. Absolutely.

7 A. Yeah. I would say yes to your question.

8 Q. Now, I think we started and we kind of got
9 off track of what I first asked about,
10 which was out-of-state convictions. Those
11 convictions -- am I right? -- would not be
12 on the AOC list because they aren't Alabama
13 code provisions. Is that your
14 understanding?

15 MS. MESSICK: Object to the form.

16 A. Yeah. Well, are you asking whether they
17 could use the list to remove someone for an
18 out-of-state conviction?

19 Q. Well, I guess what I'm asking is what the
20 actual process was. So if a registrar
21 prior to HB 282 called you and had a
22 particular -- an applicant who had an out-
23 of-state conviction and their question was

1 whether or not it was a crime of moral
2 turpitude, how would you go about making
3 that determination and providing guidance?

4 MS. MESSICK: Object to the form.

5 A. Yes. The list is the same regardless of
6 whether it's in state or out of state that
7 we would use on an out-of-state listing.
8 And, again, when that question would come
9 up, it would be issued to the attorney to
10 answer that question, so -- whether it fit
11 or whether it fell outside of.

12 Q. And the attorney was Judge Jean Brown; is
13 that --

14 A. Correct.

15 Q. During what time period was she responsible
16 for making these -- providing this guidance
17 or making these determinations?

18 A. Well, I can only answer for the time period
19 in which I was there, but -- well, I would
20 say from the time I became supervisor of
21 board of registration until -- I don't
22 know. Judge Brown left at some point in
23 time and I really can't recall the day she

1 left.

2 Q. Do you know if she left before or after
3 HB 282 was enacted? So that would have
4 been --

5 A. To my knowledge, before.

6 Q. I think it was, like, August or July of
7 2017.

8 A. I think it would be very close.

9 Q. Was it the practice that if a question from
10 a registrar came in about an out-of-state
11 conviction, did you automatically refer
12 those to Judge Brown or would you first
13 send them some response, whether in the
14 form of the AOC list or otherwise?

15 MS. MESSICK: Object to the form.

16 A. Yeah. To my knowledge, the way I would
17 handle that is ask them if they have that
18 information. And once they say they do and
19 they still need further clarification, then
20 it would go to the attorney.

21 Q. Would you stay involved after you referred
22 that on to the attorney? Is that -- it's
23 Judge Brown; is that --

1 A. Yeah.

2 Q. Is there anyone else?

3 A. No, not at that time.

4 Q. Okay. Who is it now?

5 A. Well, now it's -- they really don't --

6 MS. MESSICK: Object to the form.

7 A. Yeah.

8 Q. Well, let's actually address that now. So
9 out-of-state convictions, are they still
10 eligible to disqualify someone from
11 registering to vote, in your understanding?

12 A. Yes.

13 Q. Okay. So have you received questions after
14 HB 282 was enacted about out-of-state
15 convictions?

16 A. I don't know whether out of state or not.
17 I mean, it could have been.

18 Q. And I think, actually, I might have one or
19 two, so we'll --

20 A. Okay.

21 Q. -- address them specifically, but I'm just
22 trying to get to the process now.

23 A. Sure.

1 Q. And so if you did have one, who would be --
2 would you still refer it to an attorney in
3 your office for assistance?

4 A. Really now we have a specific listing in
5 the statute. I think my guidance would be
6 for them to check and see if it fits, and
7 if it doesn't, then it doesn't.

8 Q. I'm going to hand you what will be Helms
9 Exhibit 3.

10 (Helms Exhibit 3 was marked for
11 identification.)

12 Q. This is a document titled Alabama Voter
13 Registration Advisory Board Minutes,
14 February 13, 2018. Do you recognize this?

15 A. Yes.

16 Q. Did you prepare these minutes?

17 A. I have a staff person -- her name is Rachel
18 Jarrett -- that initially prepares these
19 and then I review them and make edits and
20 then finalize it.

21 Q. Does Ms. Jarrett attend the meetings of the
22 board of -- the advisory board?

23 A. She -- just recent meetings, yes. So,

1 like, three, maybe, or two.

2 Q. So she would have attended this and
3 prepared these minutes?

4 A. Yes.

5 Q. You were present at the meeting?

6 A. Let's see. Make sure I'm recalling the
7 correct meeting.

8 Q. I think --

9 A. Yeah.

10 Q. -- the answer might be --

11 A. I'm in "new business," so I assume so.

12 Q. So I want to direct your attention to, I
13 guess, the third to last sentence under new
14 business where it says the board discussed
15 board of pardons and paroles with felons
16 from different states registering. Do you
17 recall that conversation?

18 (Witness reviews document.)

19 A. No. I don't know what that would have been
20 about other than maybe the form the pardons
21 and parole sent us.

22 Q. What form are you referring to?

23 A. So Act 2017-378 had a specific provision

1 that said pardons and paroles was supposed
2 to counsel felons that were in that
3 predicament and then notify the board of
4 registrars; and the only way to do that
5 would be via form, so created a form to
6 send. And I don't know how that would
7 have -- I don't think that was the case
8 because it -- I don't think it would have
9 had anything to do with registering from
10 different states, so I don't really know
11 what was being discussed there.

12 Q. So you're saying that you don't recall this
13 sentence, I guess, or what the conversation
14 was that was recorded in this sentence
15 about felony convictions from different
16 states registering?

17 A. I really don't.

18 MS. MESSICK: Object to the form.

19 Q. Has any guidance been -- written guidance
20 been distributed to registrars regarding
21 how to handle registration applicants --
22 applications from people with out-of-state
23 felony convictions?

1 A. I would say our guidance is general. It's
2 not -- there's not specific guidance for,
3 hey, if you receive a registration for
4 somebody with an out-of-state felony
5 conviction on file, treat them this way. I
6 mean, we would just have general guidance
7 for how to handle the registration process.
8 And I haven't had an instance where the
9 process needed to be separated and treated
10 differently.

11 Q. Did you say you have had an instance or you
12 have not?

13 A. I have not that I can recall at this time.

14 Q. Have any registrars asked that such
15 guidance be provided with respect to out-
16 of-state convictions in particular?

17 A. Not to my knowledge, no.

18 Q. And what is the general guidance that you
19 give when questions are raised regarding
20 how to handle out-of-state convictions?

21 MS. MESSICK: Object to the form.

22 A. Or convictions in general, right, because
23 our guidance is the same, so.

1 Q. Does your guidance include any information
2 about how to assess whether an out-of-state
3 conviction is disqualifying?

4 A. No.

5 Q. I'm going to hand you what will be marked
6 as Helms Exhibit No. 4.

7 (Helms Exhibit 4 was marked for
8 identification.)

9 Q. This is an e-mail sent from Cheryl Levins
10 to you, Ed Packard, and Secretary Merrill,
11 with several other folks copied, dated
12 December 19, 2016. Do you recognize this
13 document?

14 A. No.

15 Q. Have you had a chance to take a look?
16 (Witness reviews document.)

17 A. Yeah.

18 Q. Does reading it refresh your recollection
19 as to the question from Ms. Levins?

20 (Witness reviews document.)

21 A. No. I still don't have recollection of it.

22 Q. Who is Ms. Cheryl Levins?

23 A. Cheryl Levins is a clerk in the Mobile

1 County Board of Registrars office.

2 Q. So she's not an actual registrar?

3 A. Correct.

4 Q. Well, in the e-mail, Ms. Levins inquires
5 about her inability to verify whether a
6 voter has accurately reported the nature
7 and type of a Texas conviction for
8 possession of controlled substances, if I
9 accurately characterized --

10 MS. MESSICK: Object to the form.

11 Q. -- what you see there.

12 A. Ask me again, please.

13 Q. In this e-mail, Ms. Levins inquires about
14 her inability to verify whether an
15 applicant has accurately reported what his
16 Texas conviction was. Is that a fair
17 characterization of the e-mail?

18 MS. MESSICK: Object to the form.

19 I don't want to interfere with this
20 substantive question, but I notice that
21 it's signed by somebody different than it
22 says it's from, and I don't know what's
23 going on. So if you want to refer to the

CLAY HELMS 9/18/2018

Page 78

1 e-mail and not the sender, because I don't
2 think that's important to your question.

3 MR. GABER: Okay.

4 MS. MESSICK: But I don't know
5 what's happening there.

6 MR. GABER: Yeah. I see Rebecca
7 Bedford, office assistant.

8 MS. MESSICK: Yeah.

9 Q. (By Mr. Gaber) I mean, I guess regardless
10 of -- I'm more interested in the substance
11 than the -- would you characterize the
12 nature of the request?

13 A. Yeah. I would say she got information from
14 the registrant and -- to make her show
15 pause and then she was seeking more
16 information to determine if the information
17 she received was going to affect the
18 registration process.

19 Q. When you received questions like this, did
20 you generally respond via e-mail or would
21 you call the sender to have a phone
22 discussion?

23 A. I would say both, generally. Much of that

1 would depend on if I fully understood the
2 e-mail or if I needed more information, it
3 may be easier to call.

4 Q. And I gather since you didn't remember this
5 particular question, you probably -- do you
6 remember how you responded to this e-mail
7 or if you did?

8 A. Yeah, I don't remember responding or if it
9 was me that responded to this one.

10 Q. Is it necessary for a county registrar to
11 verify the accuracy of an applicant's
12 statement with respect to the nature of
13 their out-of-state conviction?

14 A. What do you mean the accuracy of their
15 statement?

16 Q. I mean, is there an obligation for the
17 registrar to invest this and contact the
18 authorities from the other state and
19 determine whether or not the applicant has
20 correctly told them what they were
21 convicted of in that state?

22 A. I would say the registrars as a board, not
23 one solely, are authorized to seek further

1 information whenever information is
2 presented to them that, you know, prompts
3 that, so -- yeah. That's the answer.

4 Q. You say they're authorized to. If they're
5 unable to ascertain whether or not from
6 outside records whether or not the
7 applicant has correctly identified the
8 nature of the out-of-state conviction
9 should they proceed to register that voter
10 or not?

11 A. Definitely should register the voter.

12 Q. So there's no -- it would be improper for
13 them to deny registration based on their
14 inability to confirm that the voter has
15 correctly identified their out-of-state
16 conviction?

17 A. Yes.

18 Q. Do you know whether that has happened in
19 the past?

20 A. All I can say on that is our guidance is if
21 you -- if you can't match it in terms of
22 felony convictions, if you can't match it
23 to the listing or if you can't gather

1 enough information like in this instance or
2 if there's any -- you're always in the --
3 benefit of the doubt goes to the voter, tie
4 goes to the voter. So in this instance and
5 in others, our guidance would be to
6 register the voter. You could always get
7 information later to remove the voter if
8 necessary.

9 Q. Has any guidance been distributed to
10 registrars to make them aware that the
11 inability to confirm from an out-of-state
12 authority the nature of the conviction is
13 not a barrier to registering the voter?

14 MS. MESSICK: Object to the form.

15 A. I would say it likely came up -- it would
16 come up in our trainings, going through
17 hypothetical situations and things like
18 that. And since our guidance is consistent
19 that lack of information -- you know, you
20 can't hold up a registration for a period
21 of time while you're seeking that
22 information; so the answer, I think, would
23 be yes. But I would assume by now they all

1 know that that's the case.

2 Q. But there's no specific, like, memo that's
3 been sent on this topic about the inability
4 to independently verify through contact
5 with out-of-state authorities the nature of
6 the conviction?

7 A. To be honest, I think this scenario, type
8 of scenario, may be covered in our
9 registrar training. I don't have material,
10 obviously, in front of me, but I know that
11 it -- something like this has come up and
12 has been answered in the way I just
13 answered it. A memo, no.

14 Q. Is the registrar training, is that
15 reflected in the handbook that's
16 distributed to registrars or is there a
17 separate --

18 A. Separate training course, curriculum.

19 Q. Is that the training that's conducted by
20 Auburn University or is --

21 A. Yes.

22 Q. -- there a different --

23 A. Yes.

1 Q. Okay. And does the material for that
2 training consist of PowerPoint slides or
3 are there additional written materials?

4 MS. MESSICK: Object to the form.

5 A. Majority PowerPoint slides. There's
6 exercises included, but it's all a training
7 packet, so nothing other than what's in the
8 packet.

9 Q. Who is ultimately responsible for making
10 the determination whether a federal or out-
11 of-state felony is a crime of moral
12 turpitude?

13 MS. MESSICK: Object to the form.

14 A. Board of registrars.

15 Q. Is it --

16 A. Let me -- let me answer that -- ask me that
17 again, if you will. I think that's a
18 deeper question than my answer covered.

19 Q. I think my question was who ultimately
20 makes the determination whether a federal
21 or out-of-state felony is a crime of moral
22 turpitude.

23 A. So by determination, we have a listing and

1 we have the law, and so those convictions
2 apply the same way that the state ones do
3 as far as the registrars performing that
4 job and looking at that list.

5 Q. Let's talk for a minute about the -- the
6 list that's contained in the new law, in
7 HB 282. It's your understanding -- is it
8 your understanding that that list lists a
9 name of the conviction as it's codified
10 under the Alabama code and then the Alabama
11 code provision?

12 A. Yes.

13 Q. And so is it the case, then, necessarily
14 that because federal crimes and other
15 states' felonies are not part of the
16 Alabama code that they will not necessarily
17 correlate to a listed conviction on the
18 HB 282 list?

19 MS. MESSICK: Object to the form.

20 A. Yes.

21 Q. And is it the case that it's the county
22 board of registrars who has the ultimate
23 authority to determine whether or not a

1 particular federal crime correlates to a
2 listed and disqualifying conviction under
3 the current law in Alabama?

4 MS. MESSICK: Object to the form.

5 A. Yes.

6 Q. And is it also the same answer with respect
7 to determining whether out-of-state
8 felonies constitute a corollary conviction
9 to one listed in the law under HB 282?

10 A. Yes.

11 Q. Is that also the case prior to the
12 enactment of HB 282, that it was the
13 authority of the board of registrars on the
14 county level to determine whether or not
15 either an out-of-state conviction or a
16 federal conviction was one of moral
17 turpitude?

18 MS. MESSICK: Object to the form.

19 A. I would say it was much different
20 previously.

21 Q. How so?

22 A. Well, previously the law wasn't there, so
23 the listing was -- I mean, it's the same

1 process, I guess you would say, if that's
2 what you're getting at.

3 Q. What did you mean when you said it was much
4 different?

5 A. I really was referring to the listing and
6 the state statute being there, being
7 obvious and being, you know . . .

8 Q. But the authority still rested with the
9 county board of registrars?

10 A. Yeah.

11 MS. MESSICK: Object to the form.

12 Q. Was it your responsibility under your
13 statutory obligations to provide guidance
14 to the registrars to make the determination
15 about whether an out-of-state or felony --
16 sorry -- out-of-state or felony conviction
17 was disqualifying?

18 MS. MESSICK: Object to the form.

19 A. Ask me that again, please.

20 Q. Was it your responsibility as supervisor of
21 voter registration, or is it your
22 responsibility as supervisor of voter
23 registration, to provide guidance to the

1 county board of registrars to assist in
2 determining whether an out-of-state
3 conviction or a federal conviction
4 constitutes a crime of moral turpitude?

5 MS. MESSICK: Object to the form.

6 A. Yes.

7 Q. And is there a centralized or uniform
8 method that you follow to provide that
9 guidance with respect to any particular
10 out-of-state or felony conviction question
11 that you receive?

12 MS. MESSICK: Object to the form.

13 A. Well, again, my guidance is not answering
14 those specific case-by-case questions. My
15 guidance is provide the law, provide the
16 list, does it fit, does it not.

17 Q. Do you provide any substantive guidance
18 about whether any particular federal or
19 out-of-state conviction fits within the
20 listed convictions under HB 282?

21 A. No.

22 Q. If there is a specific question to that
23 effect, is that something that you would

1 forward on to the legal counsel in the
2 secretary of state's office?

3 MS. MESSICK: Object to the form.

4 A. Basically, the answer to that is -- it's
5 the same, does it fit the list, does it
6 not. And if it does not, you don't
7 disqualify the voter, you don't register
8 the voter --

9 Q. I know, but I'm talking about the --

10 A. -- or do register the voter.

11 Q. -- process of determining whether or not it
12 does fit. So the form doesn't -- I think
13 we've established that the list in HB 282
14 is explicitly Alabama code provisions;
15 right?

16 A. Correct.

17 Q. So have you received questions about
18 whether either a federal or an out-of-state
19 conviction is an analogous conviction that
20 should be disqualifying?

21 A. Yes, I'm sure I have.

22 Q. And you -- I think what you're saying is
23 you don't give a specific answer to whether

1 a specific out-of-state or federal
2 conviction is disqualifying; is that
3 correct?

4 A. My answer is the same; it is that they have
5 the listing. Does it fit or does it not.
6 If there's any question that it does not
7 fit or it doesn't clearly fit, then the
8 answer is to register the voter. So I
9 understand -- the scenario you're bringing
10 up of all these instances in which there's
11 uncertainty, it's just -- I haven't
12 witnessed that.

13 Q. Do you view it as your responsibility to
14 ensure that there's uniform treatment
15 throughout the state of Alabama of a
16 particular federal conviction, for example?

17 A. Do I think it's my responsibility? Is that
18 the question?

19 Q. Right.

20 A. I think it's our responsibility, yeah.

21 Q. By "our" you mean the secretary of state's
22 office?

23 A. Sure. Not solely, but the board of

1 registrars.

2 Q. Are there any processes followed to check
3 whether county board of registrars are
4 uniformly treating a federal conviction,
5 for example, in terms of whether it's
6 disqualifying under the new law?

7 A. We ensure that all the registrars have the
8 same guidance, the same law, the same list,
9 the same board of registrars handbook, the
10 same training. That's really the extent
11 that it goes. I mean, there's really . . .

12 Q. So it's possible, then, that a given
13 federal conviction in one county could be
14 treated differently than that same federal
15 conviction in another county based upon the
16 determination made by the county board of
17 registrars looking at the guidance that
18 you've provided; is that right?

19 MS. MESSICK: Object to the form.

20 A. No. I'm of the belief that they would be
21 able to make the right decision based on
22 the information whether it fit or not, fit
23 the listing or not. If it doesn't, they

1 register the voter. If it does, they
2 disqualify the voter.

3 Q. But that's a decision that's made at the
4 local county board of registrars level;
5 right?

6 A. Yes.

7 Q. And so there's nothing that prohibits one
8 county board of registrars coming to a
9 different conclusion with respect to the
10 same federal conviction as another county
11 board of registrars?

12 MS. MESSICK: Object to the form.

13 Q. Is that correct?

14 MS. MESSICK: Object to the form.

15 A. Once the registrars actually look into a
16 crime, look in to get all the information,
17 which if you don't, you register the voter;
18 right? I mean, they can seek further
19 information to match that crime to one of
20 Alabama's crimes. So in the scenario
21 you're bringing up, that they just are --
22 don't have enough information to make the
23 right decision and there's difference among

1 the counties, if they don't have enough
2 information they would register the voter.

3 Q. I guess that's not really my question. My
4 question is, is there anything that
5 stops -- regardless of what information
6 they have, is there anything in place to
7 stop one county board of registrars from
8 coming to a different conclusion with
9 respect to the same federal conviction as
10 another county board of registrars would
11 come to?

12 MS. MESSICK: Object to the form.

13 A. They have the listing, they make the
14 decision, and then there's an appeal
15 process with the judge of probate that a
16 person, if they felt that they were wrongly
17 removed, has the ability to take advantage
18 of.

19 Q. But the initial determination under the
20 current law with respect to federal
21 convictions could be different in each
22 county.

23 MS. MESSICK: Object to the form.

1 Q. Is that right?

2 MS. MESSICK: Object to the form.

3 A. I haven't seen that, so hypothetically
4 anything -- I mean, hypothetically,
5 registrars could make the wrong decision,
6 yeah. Hypothetically, they could do a lot
7 of things.

8 Q. So HB 282 makes it -- am I correct that
9 HB 282 makes it so that the specified
10 Alabama code convictions will be uniformly
11 treated throughout the entire state? Is
12 that right?

13 MS. MESSICK: Object to the form.

14 A. Yes.

15 Q. But it's the case that with respect to
16 whether a federal conviction is a corollary
17 to one of the specified Alabama code
18 provisions, that determination is still
19 left to the individual registrars --

20 MS. MESSICK: Object to the form.

21 Q. -- in the individual counties; is that
22 right?

23 A. The board of registrars and -- I haven't

1 seen that happen. I don't know. I mean, I
2 don't really know where you're going with
3 that one.

4 Q. I'm just asking as a matter of the
5 authority to make the decision as to
6 whether it constitutes a crime of moral
7 turpitude that's disqualifying.

8 A. I think the authority is in the law. I
9 think that -- now, there are matchmakers in
10 this, but that doesn't necessarily mean
11 authority is given to them for that. Now,
12 functionally is a different question.

13 Q. So functionally the county board of
14 registrars makes the determination whether
15 a federal conviction is disqualifying; is
16 that right?

17 A. No. They're making a determination whether
18 it matches the listing that they have.

19 Q. Okay. And so with respect to any given
20 federal offense, there's nothing requiring
21 one county board of registrars to come to
22 the same conclusion as any other county
23 board of registrars; is that right?

1 MS. MESSICK: Object to the form.

2 I'm also going to object very strongly to
3 relevance. I think we've gotten very far
4 from anything in this Complaint. It sounds
5 like you're trying to build some new,
6 strange, different claim.

7 MR. GABER: I'm trying to
8 understand how it's implemented.

9 Q. You can answer the question.

10 A. Ask me again.

11 Q. So with respect to a federal felony
12 offense, the ultimate determination as to
13 whether it is disqualifying under the
14 current law is made by each individual
15 county board of registrars; is that right?

16 MS. MESSICK: Object to the form.

17 A. Yeah. I -- I'll answer that, but I want to
18 be clear that they are not -- they don't
19 have the authority to determine if crimes
20 are disqualifying. Now, they're playing
21 the matchmaker to see if it fits the crimes
22 that have already been deemed disqualified.
23 But to answer that specific question, yes.

1 Q. And so necessarily, then, different county
2 board of registrars could come to different
3 conclusions as to whether that matchmaking
4 results in a disqualification with respect
5 to the same federal offense; is that right?

6 MS. MESSICK: Object to the form.

7 A. There is that possibility, yes.

8 Q. And so the same is true -- am I right? --
9 with respect to a given out-of-state
10 conviction, that there may be a different
11 conclusion reached by different county
12 boards of registrars as to whether or not a
13 single out-of-state conviction is
14 disqualifying?

15 MS. MESSICK: Object to the form?

16 A. There is that possibility, yes.

17 Q. I'm going to hand you what I will be
18 marking as Helms Exhibit No. 5.

19 (Helms Exhibit 5 was marked for
20 identification.)

21 Q. And this is an e-mail dated January 11,
22 2018, from Harry Butler to you and
23 Mr. Packard; is that right?

1 A. Yes.

2 Q. Do you recall this e-mail from Mr. Butler?

3 A. Not specifically, no.

4 Q. Who is Harry Butler?

5 A. Harry Butler is a registrar in Etowah
6 County.

7 Q. What is the county seat of Etowah County?

8 A. Gadsden.

9 Q. How frequently would you say you've
10 received similar questions as the one here
11 by Mr. Butler about whether a federal
12 conviction constitutes a crime of moral
13 turpitude?

14 MS. MESSICK: Object to the form.

15 A. I would say it's rare.

16 Q. Now, you said you don't recall this
17 particular question?

18 A. No.

19 Q. And I don't think that we received an
20 answer to this e-mail. Would it be your
21 practice to answer this question?

22 MS. MESSICK: Object to the form.

23 A. I guess a better way of putting that, we

1 would respond to the question. Now,
2 whether we answer the question is --

3 Q. Up to the registrar?

4 A. Yeah.

5 Q. So it's your -- but it would be your
6 practice to respond when you received a
7 question such as this?

8 MS. MESSICK: Object to the form.

9 A. Yeah. Someone from the office.

10 Q. Setting aside whatever answer was given to
11 Mr. Butler, sitting here today, how would
12 you answer his question?

13 A. Well, I'm not a registrar, so it's not --
14 I'm not authorized to perform that. But I
15 would first probably seek more information
16 from the Court that issued it to me.

17 Q. What information would you seek?

18 A. As much as I could find to see if it was
19 matchable with theft as he claims.

20 Q. And what sort of information would you need
21 to make that determination?

22 A. I don't know specifically. I have to look
23 at the Alabama statute and the listing of

1 moral turpitude crimes in our state law
2 compared to what information they provided.

3 And this is all hypothetical as a
4 registrar, which I don't perform this
5 function, so.

6 Q. But one of your functions is to provide
7 guidance for -- to county board of
8 registrars to permit them to make this
9 determination, isn't it?

10 A. Yes.

11 MS. MESSICK: Object to the form.

12 A. But that guidance would be, Here's the law,
13 here's the list that we took from the law
14 to make it user-friendly and, you know, and
15 then for them to seek as much information
16 as possible from the Court, does it match,
17 does it not. That's it.

18 Q. Have you advised county board of registrars
19 to examine the either federal code
20 provisions, if the question is about a
21 federal conviction, or the particular
22 state's code provisions in making the
23 determination as to whether or not it

1 constitutes a disqualifying crime?

2 A. Have I advised them specifically?

3 Q. Right.

4 A. No. But that's -- has been done.

5 Q. It's been done by whom?

6 A. Registrars.

7 Q. How do you know that?

8 A. Conversation.

9 Q. Do you recall any particular conversations?

10 A. No.

11 Q. But you recall that there have been

12 conversations?

13 A. Yeah. I remember -- well, this is as far
14 as the extent goes. I remember talking to
15 registrars and them saying they looked at
16 those provisions to see if it matched, so
17 it has been done.

18 Q. Do you know where that conversation took
19 place?

20 A. No.

21 Q. And you don't know who -- or do you know
22 who -- which registrars that conversation
23 involved?

1 A. No. I just remember that topic.

2 Q. Do you advise registrars to consult with an
3 attorney to assist in making the
4 determination as to whether a federal or
5 out-of-state conviction is disqualifying
6 under Alabama law?

7 MS. MESSICK: Object to the form.

8 A. We have advised registrars to work with
9 their county attorney. Now, I can't say
10 that it was specifically in this instance
11 or in something directly related to this,
12 but that is an avenue that we do send them
13 to, because our attorneys don't directly
14 represent them.

15 Q. I think you mentioned earlier that -- and I
16 think we were talking about the pre HB 282
17 process, that these types of questions
18 would be forwarded on to Judge Jean Brown.
19 Do I have that right?

20 A. Yes.

21 Q. And then what would be the process from
22 that point forward? How would Ms. Brown
23 provide that information or give that

1 guidance back to the county registrars?

2 MS. MESSICK: Object to the form.

3 A. She would respond to them directly, so -- I
4 think you asked earlier how I was involved
5 in that. From that point forward, I really
6 passed it off and then she would handle the
7 response.

8 Q. Do you know whether she typically responded
9 via e-mail or phone or how she responded?

10 A. No.

11 Q. And is it your understanding that the
12 advice that Judge Brown would give would
13 not be binding on the board of registrars
14 in making their determination?

15 A. You said would not be binding?

16 Q. Right.

17 A. So the guidance she gave them, no, it would
18 not be binding.

19 Q. In your experience, do any of the
20 registrars that you've worked with or
21 spoken to have strong feelings about
22 whether people with felony convictions
23 should lose their right to vote?

1 MS. MESSICK: Object to the form.

2 A. No.

3 Q. In your experience, are there any
4 particular registrars that you're aware of
5 who are more likely than others to
6 determine that a particular felony
7 conviction is disqualifying?

8 A. No.

9 Q. Has your office or you done any analysis or
10 studies about whether there are variations
11 in treatment with respect to particular
12 felony convictions prior to HB 282?

13 A. No. But I will say that by the time I
14 became involved in this, it was a very
15 short amount of time between now and then,
16 so I would have no idea about previous.

17 Q. And what about after HB 282 was enacted,
18 have there been any studies or analysis as
19 to whether there is uniformity in treatment
20 with respect to particular federal or
21 out-of-state felony convictions and how
22 they're determined to be qualifying or
23 disqualifying?

1 A. No, not that I'm aware of.

2 Q. Is that something that you think your
3 office should study?

4 A. Ask me the question again about -- study
5 what?

6 Q. Do you think that your office should study
7 or ensure through however means that there
8 is uniform treatment within Alabama's
9 counties with respect to how particular
10 federal or out-of-state convictions are
11 treated with respect to how they are
12 disqualifying or not?

13 MS. MESSICK: Object to the form.

14 A. I think it would be hard to study that.

15 Q. Does that mean that you think that the
16 office should not study that issue?

17 MS. MESSICK: Object to the form.

18 A. It hasn't really crossed my mind, to be
19 honest, whether we should or shouldn't or
20 could or couldn't.

21 Q. Do you believe that your office has a
22 responsibility to ensure that applicants
23 for voter registration are uniformly

1 treated throughout Alabama when it comes to
2 whether their federal felony conviction
3 disqualifies them?

4 MS. MESSICK: Object to the form.

5 A. Partially.

6 Q. What do you mean by that?

7 A. Well, I think the county level, that's
8 who's authorized to perform the function,
9 so ultimately that's who's responsible.
10 But from a guidance standpoint, yes.

11 Q. I'm going to hand you what will be marked
12 as Helms Exhibit No. 6.

13 (Helms Exhibit 6 was marked for
14 identification.)

15 Q. And this is an e-mail chain, the top e-mail
16 of which is from Cookie Adair to you dated
17 March 7, 2018. I'm sorry. From Clay --
18 from you to Ms. Adair dated March 7, 2018.
19 Sorry about that.

20 A. Yes.

21 Q. Do you recognize this e-mail?

22 A. Not specifically.

23 Q. Have you had a chance to take a look at it?

1 MS. MESSICK: I haven't.

2 A. Not her part.

3 MS. MESSICK: Can I have a minute?

4 MR. GABER: Sure.

5 (Witness reviews document.)

6 Q. Does reading the e-mail exchange refresh
7 your recollection as to this question and
8 answer?

9 A. The only recollection I remember responding
10 to her -- I don't remember her e-mail, but
11 I remember mine.

12 Q. Okay. Who is Cookie Adair?

13 A. She's a registrar in Talladega County.

14 Q. Do you know if you had any follow-up
15 conversations with Ms. Adair other than
16 this response that you sent?

17 A. I'm not aware of any, no.

18 Q. So looking at Ms. Adair's e-mail, it
19 appears that she asks several specific
20 questions that don't appear to be answered.

21 MS. MESSICK: Object to the form.

22 Q. Do you agree?

23 A. No.

1 Q. She notes that she'll receive documents
2 from the federal courts and that the
3 majority of the time the offense is, quote,
4 a felon in possession of a firearm, end
5 quote, and Ms. Adair notes that she assumes
6 that is not a crime of moral turpitude. Is
7 it your understanding that that conviction
8 is not a crime of moral turpitude?

9 MS. MESSICK: Object to the form.

10 A. I'm going to answer that I have to look at
11 the list of moral turpitude felonies, which
12 I don't have.

13 Q. She also notes with that -- she says this
14 is a, I guess, majority conviction that
15 comes up, and she says, quote, but it makes
16 you wonder what the original charge was
17 that caused them to become a felon, end
18 quote. Is that something -- you know, if a
19 registrar got this particular felon
20 conviction in front of them, should they
21 look to see what the underlying felony
22 conviction was for in the federal system?

23 MS. MESSICK: Object to the form.

1 A. There's a couple questions there. If they
2 have any information on this person
3 previously other than just receiving this,
4 a felon in possession of a firearm, I would
5 think they would have the ability to look
6 further, but I think they could also
7 register the voter.

8 Q. I'm going to hand you what will be marked
9 as Helms Exhibit 7, which we will come back
10 to a little later, but this has the list of
11 the moral turpitude convictions in small
12 print. But to be helpful.

13 (Helms Exhibit 7 was marked for
14 identification.)

15 MS. MESSICK: Object to the form.

16 Q. This document is entitled State of Alabama,
17 Board of Pardon and Paroles. It appears to
18 be an information sheet providing
19 information about certificate of
20 eligibility to register to vote. Do you
21 recognize this?

22 A. Yes.

23 MS. MESSICK: Object to the form.

1 Q. It says on the bottom left corner, Prepared
2 in conjunction with the Office of the
3 Alabama Secretary of State. Were you
4 involved in the preparation of this
5 document?

6 A. Yes, I believe so.

7 Q. And the third column on the right is
8 entitled, Convictions involving moral
9 turpitude. Do you understand this to be
10 the complete list of the Alabama code
11 provisions that are a part of HB 282?

12 A. Yeah. I assume it lines up with the act
13 and the listing that we prepared.

14 Q. So Ms. Adair asks about two particular
15 federal convictions. She asks about felon
16 in possession of a firearm.

17 MS. MESSICK: Object to the form.

18 MR. GABER: I haven't finished the
19 question yet.

20 Q. Would that federal conviction be one that
21 you would advise is a conviction involving
22 moral turpitude in response to Ms. Adair's
23 question?

1 MS. MESSICK: Object to the form.

2 (Witness reviews document.)

3 A. No, I would say it would not be moral
4 turpitude.

5 Q. Do you know what -- 60 percent of the way
6 down the list, possession or distribution
7 of a destructive device or weapon intended
8 to cause injury or destruction, is it your
9 view that it would not -- possession of a
10 firearm would not fall under that category?

11 A. It's my opinion it would not fall in that
12 category.

13 Q. Do you think it's possible that an
14 individual county board of registrars could
15 decide that it would fall in that category?

16 MS. MESSICK: Object to the form.

17 A. Yes.

18 Q. She also asks about -- above most of the
19 text in her e-mail, she asks about 18
20 U.S.C. Section 371, conspiracy to commit
21 bank robbery. Is that a conviction that,
22 comparing against the list of HB 282
23 convictions, that in your view would

1 disqualify a voter?

2 MS. MESSICK: Object to the form.

3 A. Well, I don't get in her e-mail -- she
4 asked what about convictions listed in
5 federal court, and she just throws that one
6 out there. She's not asking a question
7 about that one, so.

8 Q. Do you see at the bottom she says -- it's
9 in kind of fainter font -- I await your
10 response in order to continue with the
11 process on this particular voter. Your
12 quick response is much appreciated. Do you
13 see that?

14 A. Yes.

15 Q. Do you interpret that to be about the
16 particular 18 U.S.C. Section 371,
17 conspiracy to commit bank robbery
18 conviction that she lists there?

19 MS. MESSICK: Object to the form.

20 A. No. My understanding is she's asking about
21 the felon possession of a firearm and what
22 to do about that one.

23 Q. In your view, would conspiracy to commit

1 bank robbery, the federal offense that she
2 references there, would that be a
3 conviction involving a crime of moral
4 turpitude under HB 282?

5 A. Do you have that section?

6 Q. Is that something that you would need to
7 look at to determine whether or not the
8 federal offense was a -- involved conduct
9 involving moral turpitude?

10 A. I mean, if I'm going to make the
11 determination, I'd like to look at
12 everything.

13 Q. And "everything" would include the actual
14 federal code provision identifying the
15 unlawful conduct; is that right?

16 A. Yes.

17 Q. Would it be possible to make a
18 determination as to whether a federal
19 conviction involves conduct involving moral
20 turpitude without looking at the text of
21 the federal statute?

22 MS. MESSICK: Object to the form.

23 A. I guess it would depend on the crime.

1 Q. What would it depend upon with respect to
2 any given crime?

3 MS. MESSICK: Object to the form.

4 A. Well, again, my process would be the same,
5 to look at all the documentation
6 regardless, but I would think some
7 instances like murder it would be hard to
8 fit outside of moral turpitude.

9 Q. For other federal convictions, or federal
10 offenses, I should say, would you think it
11 is true that in order to determine whether
12 they constituted a crime of moral turpitude
13 that it would be necessary for the board of
14 registrars to view the text of the federal
15 code provision at issue to determine
16 whether it qualifies as a disqualifying
17 felony?

18 MS. MESSICK: Object to the form.

19 A. Yeah. I think that would be a great idea
20 for them to do, to be honest.

21 Q. And you said it would be a great idea. Do
22 you think it would be necessary to do that,
23 to make the determination as to whether a

1 particular federal conviction involved
2 moral turpitude?

3 MS. MESSICK: Object to the form.

4 A. I think looking at all relevant
5 documentation is -- is part of the job and
6 so, yes, I would think that would need to
7 be looked at.

8 MS. MESSICK: Can you wrap up this
9 line of questioning? It's one o'clock. We
10 would like to take a lunch break.

11 MR. GABER: Let's -- if we can
12 finish about this particular -- I just need
13 to see if there's other questions about
14 this document.

15 MS. MESSICK: That's fine.

16 Q. Ms. Adair asked specifically -- or mentions
17 specifically that the information she
18 receives from the federal court is the
19 Social Security number and the date of
20 birth to determine whether it is, you know,
21 actually the person that they think it is.
22 Do I understand your previous answer to
23 mean that you think that additional

1 information beyond that would be necessary
2 to determine whether the felony conviction
3 should be disqualifying under the law?

4 MS. MESSICK: Object to the form.

5 A. Well, what she's talking about the SSN and
6 the DOB is to match that person to the
7 voter registration database, so that's just
8 to match John Doe to the crime and then you
9 would determine from that point forward if
10 it was moral turpitude or not.

11 Q. But you would need more than knowing the
12 name of the conviction and the correct
13 identity of the person; is that right?

14 MS. MESSICK: Object to the form.

15 A. Yeah. Unless it was so clearcut you didn't
16 need to look further, I would think you
17 would need to look further.

18 Q. Looking at your answer on the first page,
19 in the second paragraph, you say, When you
20 receive one from a federal court, you will
21 contact the Court to obtain all relevant
22 information as you mentioned.

23 Did you mean information -- did you

1 mean that the date of birth and the Social
2 Security number and the name of the
3 conviction sufficed there or was additional
4 information necessary in order to make that
5 determination?

6 MS. MESSICK: Object to the form.

7 A. Well, I can't go back to this point, you
8 know, to know exactly what I -- but I would
9 think that that would mean all relevant
10 information about the person and the crime,
11 so further than DOB and SSN. I mean,
12 whatever you have, send it to me,
13 basically, would be my thinking there.

14 MR. GABER: Okay. I think we can
15 break for lunch. How long do you want?

16 MS. MESSICK: Let's go off the
17 record, please.

18 MR. GABER: Sure.

19 (Lunch recess.)

20 Q. (By Mr. Gaber) Mr. Helms, I'm going to ask
21 you to look back at Exhibit 1 -- I believe
22 it is the statute with the job duties --
23 and specifically No. 8 on the list, which

1 says, To recommend procedures and
2 administrative rules to the secretary of
3 state and prepare forms necessary to
4 properly carry out such duties set forth
5 herein.

6 What do you understand that statutory
7 job duty to require you to do?

8 A. I would say generally if -- like
9 administrative rules, for instance, and
10 procedures, really, if there's a gap in the
11 way something should go functionally
12 compared to, like, a gap of the law left
13 open, then that would be what you would
14 recommend to fill by administrative rule or
15 by procedure.

16 Q. And the prepare forms necessary to properly
17 carry out the duties, does this involve
18 preparing, for example, the state's voter
19 registration form?

20 MS. MESSICK: Object to the form of
21 the question.

22 A. Possibly, yeah.

23 Q. And I think we talked about this earlier

1 this morning. Was it your testimony that
2 the mail-in voter registration form hasn't
3 changed in your time in the secretary of
4 state's office?

5 A. I don't recall a substantive change. The
6 only change I can recall is the -- on the
7 form, it has the driver's license number
8 box and the Social Security number box and
9 then there was another checkbox added that
10 if you had neither of those -- or either of
11 those -- you would check that box. And
12 before that, it was you just had to write
13 something like "none" or "NA" or something
14 like that. So that's the only change that
15 comes to mind.

16 Q. Have you ever recommended any changes to
17 the -- and I know that there's more than
18 one voter registration form, so I'm going
19 to talk right now about the mail-in voter
20 registration form. Have you ever
21 recommended any changes to that voter
22 registration form?

23 A. Not specifically that I'm aware of. I

1 mean, I was a part of that change that I
2 just referenced. But other than that, I
3 don't remember anything.

4 Q. Do you believe that there are any changes
5 that should be made to the voter
6 registration form?

7 A. Not specifically, no.

8 Q. Has anyone in the secretary of state's
9 office recommended that any changes be made
10 to the voter registration form?

11 MS. MESSICK: I object to the
12 extent they're asking for anything -- do
13 not reveal any privileged communications.
14 I missed part of the question, though.
15 Your question was has anybody in the
16 secretary of state's office --

17 MR. GABER: Right.

18 MS. MESSICK: -- talked about
19 making a change to what form?

20 MR. GABER: The mail-in voter
21 registration application.

22 MS. MESSICK: Okay. And there are
23 lawyers in that office, so I would instruct

1 you not to reveal any privileged
2 communications with counsel in the event
3 that they are responsive to the question
4 that he's asked.

5 THE WITNESS: Okay.

6 Q. And that -- just generally, I'm not trying
7 to ask you any privileged questions. So to
8 the extent I inadvertently do that, please
9 let me know.

10 A. Sure.

11 Q. Or let your counsel know. So I think the
12 question was, has anyone in the secretary
13 of state's office, to your knowledge,
14 recommended a change be made to the voter
15 registration form?

16 A. No, outside of what we just discussed and
17 what I mentioned earlier. Other than name
18 changes when there's a new secretary of
19 state.

20 Q. Are you familiar with the National Voter
21 Registration Act?

22 A. Yes.

23 Q. As part of your job responsibilities as the

1 supervisor of voter registration, is it
2 your responsibility to ensure that
3 Alabama's practices and procedures comply
4 with the National Voter Registration Act?

5 A. Not solely, no, but in part, yes.

6 Q. Who else in your office would you say it is
7 the responsibility of to ensure that the
8 NVRA is complied with?

9 MS. MESSICK: Object to the form.

10 A. Well, there are election staff, the
11 attorneys, chief of staff.

12 Q. Is there any process that exists to ensure
13 that the practices and procedures are
14 complying with the NVRA?

15 MS. MESSICK: Object to the form.

16 A. Well, when there were -- I'm sure when they
17 were put into play it was first reviewed to
18 determine if it complied with NVRA the same
19 as the forms. Like the instance I just
20 mentioned, you know, I think, according to
21 NVRA, you're required to provide a license
22 number. If you don't have that, you're
23 required to provide the last four SSN. If

1 you don't have that, then you're required
2 to make a mark or somehow notify the
3 registrar that you have neither. So those
4 things are checked to make sure that we're
5 not putting something out there that we
6 will have to retract at some point in time.

7 Q. Are there any kind of regular reviews that
8 are done or meetings that are had to -- on
9 an ongoing basis to make sure that
10 compliance with NVRA is being satisfied?

11 MS. MESSICK: Object to the form.

12 A. No. But I would say that any time a new
13 procedure is brought about they would be
14 reviewed at that time. Or if for some
15 reason the NVRA was altered, then we would
16 need to re-review everything that we do.
17 But until something changes on one of the
18 other ends, then it's pretty much
19 continuing on.

20 Q. Are you familiar with the requirement of
21 the NVRA that the state's voter
22 registration forms specify the eligibility
23 requirements for voting in Alabama?

1 A. Well, I would like to look at it if I was
2 going to answer that question.

3 Q. So if I represent to you that the NVRA
4 requires that the state specify the voter
5 eligibility requirements, can you accept
6 that representation and proceed from that?

7 MS. LANG: I'll put it up.

8 Q. We can pull it up for you. What are the
9 eligibility requirements to vote in
10 Alabama?

11 A. To be registered to vote, you have to be 18
12 years of age, not be declared mentally
13 incompetent in court, not be convicted of a
14 disqualifying criminal offense, not be
15 dead.

16 Q. Is there a residency requirement?

17 A. Well, what do you mean by that?

18 Q. What must your residency be to vote in
19 Alabama?

20 A. Must have domicile in the state of Alabama.

21 Q. Have you ever considered listing the felony
22 convictions identified in HB 282 on the
23 voter registration form to specify which

1 are disqualifying?

2 A. Yeah, I think this would fall under what
3 you mentioned a minute ago.

4 MS. MESSICK: Do not answer to the
5 extent it reveals privileged communication.

6 Q. So outside of conversations with attorneys,
7 have you proposed drafts or otherwise
8 reviewed the possibility of listing the
9 disqualifying Alabama convictions on the
10 voter registration form?

11 A. Not that I recall, no.

12 MR. GABER: Can we go off the
13 record for a second?

14 (Off-the-record discussion.)

15 Q. (By Mr. Gaber) So I want to circle back.
16 When we went off the record, we looked at
17 the statutory text of the NVRA; is that
18 right?

19 A. Yes.

20 Q. And based on that review and our
21 discussions, is it our understanding that
22 both the federal EAC-produced voter
23 registration form and any state-produced

1 voter registration form are required to
2 specify the eligibility requirements for
3 voting?

4 A. Yes.

5 Q. Now, I think what -- the question that
6 triggered the break is whether you have had
7 any --

8 MS. MESSICK: Now, I want to just
9 register an objection to the last question.
10 It looks like the federal statute only says
11 that the state mail form has to comply.

12 MS. LANG: These are legal issues.
13 However, I will represent to you that there
14 is a separate -- there are parts of the
15 national voter registration form that apply
16 to agency-based forms, DMV-based forms,
17 mail-in based forms, and federal forms, so
18 there is a specification requirement for
19 all of those forms within the NVRA and
20 they've all been cited in the briefs.

21 MS. MESSICK: Okay.

22 MR. GABER: Would you mind reading,
23 just so we get it right, the question that

1 triggered the break, to the discussion
2 about the . . .

3 (Court reporter reads back the
4 requested question.)

5 MS. MESSICK: Object to the form.

6 A. Proposed those personally, no.

7 Q. Has anyone in your office proposed that the
8 specific disqualifying convictions be
9 listed on the voter registration form?

10 A. We've had discussions on it, yes.

11 Q. Has anyone recommended that they be listed?

12 A. No, not specifically. But we're reviewing
13 different possibilities, is the best answer
14 for that.

15 Q. Who is involved in that review?

16 A. Myself, Ed Packard, Brent Beal, David
17 Brewer, John Bennett.

18 MR. SINCLAIR: That question made
19 reference to anyone. The witness
20 understood that to be other than lawyers;
21 correct?

22 MR. GABER: I didn't quite hear
23 you. Sorry.

1 MR. SINCLAIR: You used "anyone,"
2 and by that I think the witness understood
3 you to mean anyone other than counsel. Is
4 that a fair understanding of your question?
5 because otherwise, he has to answer it
6 differently.

7 Q. So let's take that --

8 MR. SINCLAIR: You said has anyone
9 recommended changing the form --

10 MR. GABER: Right. Well --

11 MR. SINCLAIR: -- and he said no,
12 but that's not entirely --

13 MR. GABER: I mean other than
14 counsel.

15 MR. SINCLAIR: Yes.

16 MR. GABER: Right.

17 MR. SINCLAIR: As he understood the
18 question after our conversation.

19 MR. GABER: Yeah.

20 MR. SINCLAIR: I'm just making sure
21 we're clear.

22 Q. (By Mr. Gaber) So you said that you
23 considered different possibilities. Was a

1 draft created of the state voter

2 registration form that would list the

3 disqualifying felonies?

4 A. To my knowledge, one was worked on, I mean,

5 with different possibilities, and that

6 being one. I don't recall what it looked

7 like or anything like that, but I would

8 assume we would have attempted to see what

9 it would do.

10 Q. Did you see that draft of the state form

11 with the convictions listed?

12 A. I'm sure I did, but I can't picture it.

13 That's the best answer I can give on that.

14 Q. Was there a draft of the state form created

15 that would identify a website link to a

16 page that would list the disqualifying

17 convictions?

18 A. I believe that was one of the other

19 possibilities, yes.

20 Q. When were these discussions about potential

21 changes to the state form had?

22 A. Roughly within the last month.

23 Q. Not prior to that?

1 A. Possibly, but not much further than that.

2 Q. Are these discussions ongoing?

3 A. Well, define "ongoing."

4 Q. Has the decision been made at this point
5 whether to make any changes to the state
6 form?

7 A. No.

8 Q. And I suppose is the issue still being
9 considered whether such a change will be
10 made?

11 A. Yes.

12 Q. Do you have a recommendation as to whether
13 or not such a change should be made?

14 A. Well, from a functional standpoint, what --
15 I guess which -- what are my possibilities
16 in this scenario?

17 Q. The world is your oyster. Do you think
18 changes should be made to the state voter
19 registration form?

20 A. I think listing the link would be helpful.

21 Q. What about listing the specific
22 convictions?

23 A. Functionally, I don't think that makes

1 sense, because in your -- I don't know how
2 it would fit on the form. You're making a
3 form from one to three pages. The form is
4 currently two-sided so it can be folded and
5 mailed, and all the kinds of things like
6 that are disrupted and I don't see it being
7 helpful enough to do all of that.

8 Q. Would it be possible to include the list of
9 specific convictions?

10 MS. MESSICK: Object to the form.

11 A. I don't see it being possible without
12 completely changing the form and the way
13 that the form is used, mailed in, processed
14 by the counties. It would change your
15 process entirely on all ends.

16 Q. Have you considered having a part of the
17 form that does not need to be returned with
18 the application but provides information
19 regarding the eligibility requirements for
20 disqualifying felonies?

21 A. I don't recall that being said.

22 Q. Would such a structure of the form, in your
23 view, make it difficult to still have the

1 portion that's one or two pages returned to
2 the county?

3 A. Yeah, I would say it would still be
4 difficult.

5 Q. Why?

6 A. Well, again, say the registration
7 application right now, the mail-in, you
8 know, it's double-sided, it has
9 perforations, it has the seal, all of that.
10 How are you going to attach something to
11 that without just stapling it or -- I don't
12 see how that works. I mean, if you're -- I
13 don't see that being functional. And then
14 you're -- an attachment, I guess it's not a
15 part of the form itself so you're relying
16 on all these other agencies and everyone
17 else that does voter drives, et cetera, to
18 then themselves attach this to this form
19 before issuing it to John Doe to use. I
20 just don't see a great way of doing that.

21 Q. How many pages is the form right now?

22 A. One.

23 Q. Front and back?

1 A. Yeah.

2 Q. Do you believe that the form as it's
3 currently -- in its current form specifies
4 the eligibility requirements with respect
5 to disqualifying felonies?

6 MS. MESSICK: Object to the form.

7 A. I think it specifies your eligibility
8 requirements, yes.

9 Q. So the form currently -- do you know what
10 the current language in the form with
11 respect to disqualifying felonies is?

12 A. No. Roundabout I would, but not
13 specifically, no. I'd have to look at it.

14 Q. Is it your recollection that it generally
15 states that it must not -- you must not
16 have been convicted of a disqualifying
17 felony? Does that sound right?

18 A. Yes.

19 Q. How does that recitation provide notice to
20 registrants about the specific eligibility
21 requirements for felony disqualification?

22 MS. MESSICK: Object to the form.

23 A. I think that it's an indicator that if you

1 are in that scenario, you now know that
2 there's a requirement that you have to
3 meet. And if you believe you don't meet
4 that, you need to make sure you do before
5 you fill it out and submit it.

6 Q. So the form notifies the applicant that
7 there is a requirement related to a felony
8 status. Is that fair?

9 A. Right.

10 MS. MESSICK: Object to the form.

11 Q. But the form does not specify which felony
12 convictions in which -- which felony
13 convictions are disqualifying and which
14 felony convictions are not disqualifying;
15 is that right?

16 MS. MESSICK: Object to the form.

17 A. That's correct.

18 Q. Do you think -- so to register to vote in
19 Alabama, you have to be 18 years of age or
20 older, is that right, by the time of the
21 relevant election?

22 A. Correct.

23 Q. And does the voter registration form in its

1 current state specify that requirement and
2 tell voters that they need to be 18 years
3 of age?

4 A. Yes.

5 MS. MESSICK: Object to the form.

6 Q. If the voter registration form instead
7 specified that the voter must be of an
8 eligible age, do you think that that would
9 meet the NVRA's requirement for specifying
10 eligibility requirements?

11 MS. MESSICK: Object to the form.

12 A. What would the form say, again, in your
13 scenario?

14 Q. You must be of an eligible age.

15 A. I don't know the answer to that question,
16 whether it meets the requirement. Would it
17 be as helpful? No.

18 Q. Do you think that that would specify
19 Alabama's eligibility requirement with
20 respect to age of the voter?

21 MS. MESSICK: Object to the form.

22 A. It would depend on the exact language. I
23 mean, I don't think it would have to say

1 you must be 18. I think if it said you
2 must be of the required age to be
3 registered in the state or something like
4 that, then I would think it would meet the
5 requirement because it told you there is an
6 eligibility requirement regarding age. So
7 if you're asking must the number be there,
8 I don't think it would have to be there.
9 It would be more helpful if it was there.

10 Q. So you think that you can specify that
11 there are eligibility requirements, just
12 not what those requirements are?

13 MS. MESSICK: Object to the form.

14 A. Not necessarily, no.

15 Q. What do you mean by that?

16 A. So I don't agree with what you proposed,
17 that all you have to do is list that there
18 are requirements. That's not what I'm
19 saying.

20 Q. Okay.

21 A. In all, if -- should it say 18? Yes, if
22 that's what you're getting to.

23 Q. Now, if it said you must not be of a

1 disqualifying age, do you think that that
2 would specify the eligibility requirement
3 with respect to age?

4 MS. MESSICK: Object to the form.

5 A. Same question but just a different way.

6 It's -- no, I don't think that would be
7 good enough, that specific language.

8 Q. And is the same thing -- is your view the
9 same with respect to the residency
10 requirement that, for example, if the form
11 said you must not be of a disqualifying
12 resident status, would that adequately
13 specify the eligibility requirements with
14 respect to residency?

15 MS. MESSICK: Object to the form.

16 A. What does the application currently say
17 regarding residency? Do we know that
18 answer so I can --

19 MS. LANG: I'm sure we have it. It
20 currently says that you must reside in
21 Alabama. And the voter declaration says, I
22 live in the state of Alabama.

23 THE WITNESS: Okay. Thank you.

1 A. Would you ask me again, please?

2 Q. Sure. And so the question is, if instead
3 the form specified that or said that you
4 must not be of a disqualifying residency
5 status, do you think that that would
6 adequately specify the eligibility
7 requirement for residency?

8 A. No.

9 MS. MESSICK: I'm sorry. I object
10 to the form.

11 Q. And am I recalling correctly, did you say
12 that a draft has been prepared, one that
13 would list the convictions on the state
14 form and one that would provide information
15 that would link someone to such a list?

16 A. Well, let me correct that answer. To my
17 knowledge, I believe I have seen one with
18 the link. And I cannot recall having seen
19 one with the full list, but I'm sure that
20 at some point in time that would have
21 happened. I recall the conversation of
22 having -- of how that would extremely
23 disrupt the form, but I don't -- memory

1 lapse and actually seeing it and

2 remembering seeing it.

3 Q. You said that the conversation is ongoing
4 about whether and how to change the state
5 form. Do you know when -- is there a plan
6 for when that decision will be made?

7 A. In other words, is there a deadline or
8 something that's happening?

9 Q. Whether an internal -- is there an internal
10 goal or is there a meeting set for when a
11 final determination will be made?

12 A. No. I would say that I would think a
13 determination would come soon. So it's not
14 something that would drag on for years, but
15 I don't have -- there's not a meeting,
16 there's not a deadline, if that's what
17 you're asking, that I know of, at least.

18 Q. Is there a plan to make a change prior to
19 this fall's registration deadline?

20 A. Possibly. I guess if you're asking have I
21 heard the statement it must be done prior
22 to this date, no.

23 Q. More generally, you know, is there --

1 within your office, is there an attempt
2 being made to make a final determination
3 prior to the registration deadline for the
4 fall 2018 election?

5 A. I'm really not aware enough to answer that
6 question yes or no. I don't -- nothing
7 sticks in my mind of that being stated in a
8 meeting or something.

9 Q. It's your view -- correct me if I'm
10 wrong -- that the form should be changed to
11 include information where such -- the
12 eligibility -- sorry. Let me start over.

13 It's your position that a link should
14 be provided on the form where applicants
15 could see the list of disqualifying
16 felonies?

17 MS. MESSICK: Object to the form.

18 A. I think a link would be helpful, yes.

19 Q. Do you think making that change prior to
20 the fall 2018 elections would be an
21 important thing to do?

22 A. I think that would be helpful.

23 Q. Who will be responsible for making the

1 final determination about whether a change
2 to the state form should occur?

3 A. I believe that would be a collective
4 decision by the office.

5 Q. Is there anyone in the office, whether
6 Mr. Packard or Secretary Merrill, who will
7 make that final determination?

8 MS. MESSICK: Object to the form.

9 A. Well, I would say Secretary Merrill is the
10 boss. He would have the ability to make
11 the final determination if he chose to do
12 so.

13 Q. Would Secretary Merrill be -- would he have
14 to sign off on a change before it was made?

15 MS. MESSICK: Object to the form.

16 A. He would be aware of it if changes were
17 made.

18 Q. Would a change be made to a voter
19 registration form without his approval?

20 A. I think in any case he would be aware of
21 changes because he's -- I mean, he's, you
22 know, at the desk and does the job, not
23 just a name or whatever. But if it's a

1 small change or something, a cosmetic
2 change, then he's not going to sit there
3 and sign off and have a full-on meeting.
4 So I would think he would be aware of
5 substantive changes and have a say, yes.

6 Q. Have you reviewed any other state's
7 registration forms to see how they handle
8 the issue of felony disqualification?

9 A. No, not that I recall.

10 Q. Have any of your colleagues shared with you
11 other states' registration forms?

12 A. Not that I recall.

13 Q. Has Secretary Merrill been involved in any
14 of these discussions about whether and how
15 to change the voter registration form with
16 respect to disqualifying felonies?

17 MS. MESSICK: Object to the form.

18 A. Not that I'm aware of. Not thus far in our
19 meeting, no.

20 Q. Have you spoken to Secretary Merrill about
21 the voter registration form's treatment of
22 disqualifying felonies?

23 MS. MESSICK: Object to the form.

1 A. No, not that I recall.

2 Q. Were you involved in discussions about
3 whether to update the federal Election
4 Assistance Commission about the passage of
5 HB 282?

6 A. Ask me that again, please.

7 Q. Were you involved in discussions about
8 whether to update the federal Elections
9 Assistance Commission about the passage of
10 HB 282?

11 A. So we're talking about EAC; correct?

12 Q. Right.

13 A. This is with EAC?

14 Q. Right.

15 A. Was I involved in a discussion about
16 whether to update them?

17 Q. Right.

18 A. Not that I'm aware of.

19 Q. Who in your office has the primary
20 responsibility with respect to updating the
21 EAC when there's a change in voter
22 eligibility requirements?

23 A. I wouldn't say there's one specific point

1 person, somebody with the chief of staff
2 told to do it.

3 Q. Generally speaking, is the issue of
4 providing information to the EAC something
5 that falls within the purview of your
6 position?

7 MS. MESSICK: Object to the form.

8 A. Again, it would depend on whoever -- who
9 the secretary or chief of staff wanted to
10 communicate that. Possibly, yes.

11 Q. Have you spoken with the EAC before the
12 issue related to the content of the form?

13 A. Yes.

14 Q. And what issue was that?

15 A. That was a long time ago, but -- not
16 really, I guess. But I believe I sent them
17 instructions to change the state
18 instructions. I believe that they had
19 incorrect information about the voter
20 registration deadline and the ID
21 requirements, and we sent them a request to
22 update those. And then I believe I
23 e-mailed them a letter from Secretary

1 Merrill asking them to -- I really don't
2 recall what that letter said, but I think
3 y'all would have it in some e-mails.

4 Q. With respect to the -- the update you gave
5 them about the ID requirements and the -- I
6 think you said -- was it the time
7 requirement for registering prior to the
8 election? Is that --

9 A. Yes.

10 Q. How soon after you noticed the error on EAC
11 instructions did you provide them the
12 correct information?

13 MS. MESSICK: Object to the form.

14 A. I believe as soon as we noticed it and sat
15 down and talked about it, we notified them.

16 Q. I am going to hand you what will be marked
17 as Helms Exhibit 8.

18 (Helms Exhibit 8 was marked for
19 identification.)

20 Q. And this is an April 11, 2018 letter from
21 the secretary of state to the EAC
22 commissioners. Do you recognize this
23 document?

1 (Witness reviews document.)

2 A. I believe this is the document I e-mailed
3 them.

4 Q. Did you write the letter?

5 A. No.

6 Q. Do you know who did?

7 A. No, I don't recall.

8 Q. Do you know if Secretary Merrill did?

9 MS. MESSICK: Object to the form.

10 A. I don't know.

11 Q. Did you discuss the content of this letter
12 and its attachments with Secretary Merrill?

13 A. No.

14 Q. What about with anyone else in your office?

15 A. Yeah. I spoke to Brent Beal and David
16 Brewer about this and was asked to send it
17 out.

18 Q. What was the nature of that conversation?

19 MS. MESSICK: Brent Beal is
20 counsel, so please do not reveal any legal
21 advice that he gave you or -- I mean, if
22 the conversation was simply you were asked
23 to send it, that's fine. But if you were

1 asking for or receiving legal advice,
2 please don't reveal that.

3 THE WITNESS: Okay.

4 A. What was your question?

5 (Court reporter reads back the last
6 question.)

7 A. Really all I did about that is send this on
8 to EAC for them to review and see what
9 changes they think that we need to make.

10 Q. Do you know why this letter was not sent
11 until April 11, 2018?

12 A. No.

13 Q. When was the law changed in Alabama?

14 A. 2017. Look at the date, if this -- am I
15 able to look at this whole attachment?

16 Q. Yeah. I think it might be on one of them.

17 A. So effective --

18 Q. There's a stamp on the first page of
19 Act 2017-378 that lists May 18, 2017.

20 MS. MESSICK: That's the date the
21 governor received it. That's not --

22 Q. Page 14.

23 A. 13 says it should not become effective

1 until the first day of the third month
2 following its passage.

3 Q. And then do you see on page 14 Governor
4 Ivey signed on May 24, 2017?

5 A. Uh-huh.

6 Q. So this letter was sent roughly eleven
7 months after the law changed in Alabama; is
8 that right?

9 MS. MESSICK: Object to the form.

10 A. Roughly.

11 Q. Do you know if the EAC has made any changes
12 to the Alabama state instructions on the
13 federal form following receipt of this
14 letter?

15 A. To my knowledge, EAC has changed the
16 instructions to include the link that we're
17 also reviewing on our end.

18 Q. Is there any reason why that link should be
19 included on the federal form but not
20 included on the state form?

21 MS. MESSICK: Object to the form.

22 A. No.

23 Q. I'm going to pass you what will be Helms

1 Exhibit No. 9.

2 (Helms Exhibit 9 was marked for
3 identification.)

4 Q. This is a declaration that you submitted in
5 this case dated July 20, 2017. Do you
6 recognize this?

7 (Witness reviews document.)

8 A. Yes.

9 Q. And what is it?

10 A. It is my declaration.

11 Q. Do you believe that all of the statements
12 that you made in the declaration are still
13 accurate today?

14 (Witness reviews document.)

15 MS. MESSICK: While he's reviewing
16 it, just for the record, this is -- this is
17 the first six pages of his declaration
18 continuing through his signature, without
19 all of the exhibits.

20 MR. GABER: Right.

21 MS. MESSICK: And are you asking
22 him if anything has changed since -- are
23 you asking if -- there's a number on

1 page -- in paragraph 3. Are you asking him
2 if that's accurate today or are you asking
3 him if it was accurate when he signed it?

4 MR. GABER: I'm not asking the
5 former, so not if the numbers have changed,
6 no.

7 MS. MESSICK: Okay.

8 MR. GABER: I'm just -- at a
9 broader level, is there anything wrong
10 other than time has passed.

11 A. I would say some of the exhibits would be
12 different.

13 Q. (By Mr. Gaber) Okay.

14 A. Well, like the EAC form is an exhibit. I
15 don't know if they've changed that now.
16 The instructions would be different,
17 obviously.

18 Q. In paragraph 11 -- and I think we've
19 touched on this earlier; I just want to
20 clarify -- you talk about the AOC, the
21 process to develop codes for the
22 convictions listed in HB 282. Has that
23 process -- you said that you expected it to

1 be completed by August 1, 2017. Did that
2 happen?

3 A. Yes.

4 Q. Okay. And is it the case now that only
5 convictions that match those codes that
6 link to HB 282 crimes are forwarded on to
7 the registrars?

8 MS. MESSICK: Object to the form.

9 A. Correct.

10 Q. So if someone is convicted of something
11 that isn't listed on HB 282, the registrar
12 won't even get that conviction information;
13 is that --

14 A. Correct.

15 Q. In paragraph 14, you say that I understand
16 that the plaintiffs in this lawsuit believe
17 that the state and federal registration
18 forms should be changed to list the
19 approximately 60 specific felonies in
20 HB 282. You say that I agree with Ed
21 Packard that such changes would be
22 impractical and likely to cause confusion.

23 I want to focus on -- we talked about

1 the practicability of it. I want to focus
2 on the likely-to-cause-confusion statement.
3 Do you still believe that it would be the
4 case that listing the specific convictions
5 on the form would cause confusion?

6 A. Yes.

7 Q. And why is that?

8 A. Well, part of it ties in with the
9 impractical part. I mean, if it's -- it
10 would be more confusing to have that form
11 expanded into three forms than -- we
12 basically worked very hard to have that
13 where it's mailed -- you know, you can flip
14 it, fold it, hold the seal, put the stamp
15 on it, and mail it in. It's easy to use.
16 That's part of the confusing factor.

17 Q. How many -- so there's printed forms that
18 you've provided at state agencies; is that
19 right?

20 A. Yes.

21 Q. And then the same form exists in PDF form
22 on the secretary of state's website; is
23 that right?

1 A. Yes.

2 Q. Do you know what percentage of the forms
3 that are submitted are printed from the
4 secretary of state's website, roughly,
5 versus how many come from the preprinted
6 with the mailing and the folding?

7 A. No.

8 Q. You don't have any general sense of which
9 is more popular among applicants?

10 MS. MESSICK: Object to the form.

11 A. No.

12 Q. Who would it confuse to have the specific
13 disqualifying felonies listed?

14 A. People attempting to use the form.

15 Q. Would it confuse people who do not have a
16 disqualifying felony if it listed the
17 felonies that are disqualifying?

18 MS. MESSICK: Object to the form.

19 A. It's possible.

20 Q. Why do you think it's likely?

21 MS. MESSICK: Object to the form.

22 Q. Did you say in your declaration you thought
23 it was likely?

1 A. Yeah. So why do I think it's likely to
2 that subset solely or why do I think it's
3 likely to all people trying to use the
4 form?

5 Q. So I guess let's talk about that subset.
6 Do you think it's likely to cause confusion
7 to people who do not have a disqualifying
8 felony conviction for the form to list the
9 felony convictions that are disqualifying?

10 A. Possibly.

11 MS. MESSICK: Object to the form.

12 Q. And under what circumstances would that
13 cause confusion in your view?

14 A. Well, that depends on what the form looks
15 like, because first, now we've made it
16 three pages. Where does it drop off and
17 list those felonies? Is it clearcut to
18 notify them that this doesn't -- this
19 second page doesn't apply to you but the
20 first page does and the third page does and
21 I need your signature here. I mean,
22 there's possibilities of confusion
23 everywhere.

1 Q. What about if the form said something like
2 see page 3 for a list of disqualifying
3 felony convictions, would that be confusing
4 to people who do not have a felony
5 conviction?

6 MS. MESSICK: Object to the form.

7 A. Possibly not, but you get back to the
8 impracticality of it.

9 Q. So I'm just focusing on the confusion
10 aspect.

11 MS. MESSICK: Object to the form.

12 Q. Do you think it's likely that listing the
13 convictions in that manner directing to the
14 third page would cause confusion for people
15 who do not have a felony conviction?

16 A. I think my point there was forms get
17 cluttered as it is. The more you sling on
18 a form, the more confusing it gets. That's
19 just the way it is. When I fill out forms,
20 say for benefits or whatever, medical
21 stuff, the more stuff on that form that's
22 jammed on there, the more confusing and the
23 longer that takes for me to actually get

1 that filled out and submitted. That's a
2 confusing factor. So when you add pages
3 and when you add an enormous list or extra
4 information -- now, some people it would
5 not confuse. Some people I think it would
6 confuse.

7 Q. Do you think it would cause anyone who does
8 not have a disqualifying felony conviction
9 to believe that possibly they do if the
10 third page of the form provided a list of
11 the disqualifying felony convictions?

12 MS. MESSICK: Object to the form.

13 A. Some people out there, yes. There are
14 people -- there are people that get
15 confused by anything these days, so.

16 Q. Do you think that's a small subset of
17 people who might come to believe that they
18 in fact have a disqualifying felony
19 conviction?

20 MS. MESSICK: Object to the form.

21 A. Possibly yes, possibly no. I mean, of
22 the -- it would depend on, again, the way
23 the form was outlined and how those

1 pages -- it just would depend.

2 Q. What about with respect to people who have
3 a disqualifying felony conviction, do you
4 think it's more or less likely to cause
5 confusion to provide a list of the
6 disqualifying felony convictions as an
7 attachment to the form?

8 A. I think they would be the same as your
9 other subsets. I mean, it would confuse
10 some, it would not confuse others.

11 Q. But my question is, do you think that it
12 would be likely to cause confusion amongst
13 people who have a disqualifying felony
14 conviction if the list of disqualifying
15 felony convictions were provided as an
16 attachment to the form?

17 MS. MESSICK: Object to the form.

18 A. I think it would confuse them in the same
19 manner that it would confuse anyone else
20 using the form or not confuse them,
21 depending on if they were going to be
22 confused.

23 Q. Well, now you have me confused.

1 A. I don't think it would confuse them any
2 less than other subsets of people.

3 Q. Do you think it would help people who have
4 a disqualifying felony conviction if the
5 form listed the disqualifying felony
6 convictions?

7 A. I'm sure it would help some.

8 Q. Do you think it would help most people who
9 have such a conviction?

10 A. I don't know.

11 Q. If you had a disqualifying felony
12 conviction, would it be helpful to you if
13 the form identified such convictions?

14 A. Can I use the link?

15 Q. Let's -- for a moment, let's stick to the
16 list.

17 A. I think if you're uncertain about whether
18 you fall on the list and -- I'm sure it
19 would help some people. That's -- I guess
20 that's the answer.

21 Q. Do you find the actual list in HB 282 to be
22 confusing?

23 A. The actual language of the act?

1 Q. Right.

2 A. More confusing than other materials we've
3 created from that.

4 Q. What do you mean by that?

5 A. Let me look at it. So, like, for instance,
6 when registrars are looking at these
7 listings to determine if somebody lands on
8 the list or not, the list that we prepared
9 in conjunction with AOC is much more
10 helpful than them going and looking at this
11 act every day all day.

12 Q. What changes did you make to make it more
13 helpful?

14 A. Well, do we have that listing so I can show
15 you? I mean, it's just streamlined. It's
16 got this section, it's got this, it's got
17 it broken down. I mean, it's just --

18 Q. It names the conviction and --

19 A. Yeah.

20 Q. Okay. Is that list that you've prepared in
21 that manner confusing?

22 A. Is it confusing to --

23 Q. Do you think that it would be confusing to

1 a voter?

2 MS. MESSICK: Object to the form.

3 A. I guess the same as any other list.

4 Q. So to the extent someone is likely to
5 become confused by information, they would
6 be confused?

7 MS. MESSICK: Object to the form.

8 A. Yeah. I mean, if they were going to be
9 confused by what we have on the site, then
10 the list that AOC prepared would confuse
11 them as well. I mean, I think the site
12 language is fairly streamlined.

13 Q. In paragraph 15 of your declaration, you
14 say, I understand that the plaintiffs in
15 this lawsuit believe that the secretary
16 should mail individualized notices to
17 felons who have been disqualified. I agree
18 with Ed Packard that such mailings would be
19 impractical and likely to cause confusion.

20 In this paragraph, are you referring to
21 the plaintiffs' request that notice be
22 provided to people who are -- who became
23 newly eligible or whose convictions were

1 not disqualifying under HB 282?

2 MS. MESSICK: Object to the form.

3 A. Well, this statement is more general than
4 that.

5 Q. I guess that's what I'm trying to get at.
6 What were you referring to in paragraph 15
7 when you spoke to notice to felons who
8 have -- who have been disqualified?

9 A. In general. I mean --

10 Q. Prior to -- who have been disqualified
11 prior to --

12 A. Yeah, because --

13 Q. -- HB 282?

14 A. -- it doesn't say here disqualified then
15 but shouldn't be now. I mean, that's --

16 Q. I guess since you wrote it, I don't
17 understand what --

18 A. Okay.

19 Q. I'm just trying to get at what --

20 A. That makes sense.

21 MS. MESSICK: Do you have Ed
22 Packard's declaration? because he's
23 referring to that, and this is a year ago.

1 Q. Well, let me -- while Danielle looks, let
2 me ask, do you think it would be
3 impractical to send a notice to people who
4 have been denied registration in the past
5 who -- on the basis of a felony conviction
6 who under HB 282 are no longer
7 disqualified?

8 MS. MESSICK: And I'm going to
9 object to you asking him to answer that
10 without letting him look at the --

11 Q. I'm not even -- I'm not talking about what
12 Ed Packard suggested. I'm just asking as a
13 matter of fact, would that be impractical?
14 because I don't -- I actually don't think
15 that we're talking about the same thing.

16 A. I'd like to wait if it's not going to take
17 a long time. If it is, then I can go ahead
18 and answer.

19 Q. We'll come back to that particular
20 question, then. Do you have -- does the
21 data exist to identify the voters who were
22 previously denied registration on the basis
23 of their felony conviction?

1 A. That's one problem. I don't think that
2 there's a feasible way to -- or a good
3 way -- and I may be wrong -- to pull that
4 information for the subset that you're
5 referencing. I don't think that there's a
6 good way that the system currently performs
7 that.

8 Q. The data is -- you have data on denials
9 based on felony convictions; right?

10 A. Yes. But the specificity to say that John
11 Doe should be on this list but Jane Doe
12 shouldn't, I don't know of a way to be able
13 to do that. You just know John Doe and
14 Jane Doe were both disqualified for a
15 felony of moral turpitude.

16 Q. And does -- sorry. The specific conviction
17 that caused the disqualification, that data
18 exists as well; right?

19 MS. MESSICK: Object to the form.

20 A. Well, the data may be in an attachment. It
21 may be in a notes column. So, like, a
22 field that says that, no. So that's a
23 problem.

1 Q. The AOC, in your understanding, would they
2 have data as to what felony convictions
3 individuals had in the state of Alabama?

4 MS. MESSICK: Object to the form.

5 A. Assumably.

6 Q. And so both the data identifying a specific
7 conviction and the data identifying folks
8 who were denied registration on the basis
9 of a disqualifying felony exists?

10 MS. MESSICK: Object to the form.

11 A. Possibly, yeah.

12 Q. Now, you also -- again, this specific
13 question may not be what you were referring
14 to. And I have Mr. Packard's declaration
15 which we'll mark as Helms Exhibit 10.

16 (Helms Exhibit 10 was marked for
17 identification.)

18 (Witness reviews document.)

19 Q. And I think paragraph 9, 10, and 11 are
20 what we're . . .

21 (Witness reviews document.)

22 Q. So do you believe it would be likely to
23 cause confusion if notices were mailed to

1 people who were previously disqualified on
2 the basis of a felony conviction but under
3 HB 282 would no longer be disqualified?

4 MS. MESSICK: Object to the form.

5 A. So ask me that again, please.

6 Q. Do you believe it would cause confusion to
7 the recipients of a letter when the
8 recipient was previously denied
9 registration on the basis of a felony
10 conviction but under HB 282 they are no
11 longer disqualified?

12 MS. MESSICK: Object to the form.

13 A. I think part of the confusion factor comes
14 into, as I said earlier, there's no good
15 way to pull that list. And then there's no
16 good way to flow if they have secondary
17 crimes that put them back on the list from
18 being eligible according to their, you
19 know, first offense. Then you have people
20 that have, I guess like this says, applied
21 to pardons and parole for reinstatement.
22 So there's no good way to know where they
23 are in the process. And if you bust out

1 this large mailer to all these people
2 saying, Hey, you're now able to be
3 registered to vote, then yeah, that would
4 be very confusing to people that think they
5 can but can't or people that don't know
6 where they are in that process.

7 Q. But could the mailer -- could the content
8 of the mailer be designed such that it
9 provided information about HB 282 and which
10 convictions are now disqualifying and the
11 process for obtaining a CERV for
12 convictions that are on the list and the
13 like? I guess my questions is, can the
14 content of what's noticed in the mailer
15 that's sent as notice be designed so as to
16 alleviate the potential for confusion that
17 you've identified?

18 A. Well, I guess that's possible. You know, I
19 will say one last thing on that, is that
20 the addresses normally aren't very good, so
21 your target's going to shrink how many you
22 actually will reach. So that's just
23 another factor you have to deal with.

1 Q. Has there been any voter education done
2 following the enactment of HB 282 about the
3 new law by the secretary of state's office?

4 MS. MESSICK: Object to the form.

5 A. Voter education. Website changes.

6 Q. What website changes have been made?

7 A. Well, we changed the instructions if
8 they're registering electronically and it
9 included that extra link. Let's see. When
10 we do photo ID mobile units, we include the
11 poster and inform the people that are
12 requesting and holding the event, we send
13 this to them actually electronically and
14 ask them to share that with people. And so
15 there's a lot of education that goes on in
16 the field involving that type stuff in the
17 events that we hold.

18 MS. MESSICK: And for the record,
19 when he referred to a poster, he showed
20 opposing counsel Exhibit 7.

21 Q. Is there a frequently-asked questions
22 section on the secretary of state's website
23 about registration and eligibility?

1 A. Not that's coming to mind right now.

2 Q. Have you considered doing such an FAQ about
3 felony disqualification in particular and
4 HB 282's requirements?

5 A. No. We have FAQ in our voter guide. But
6 if that were deemed helpful, I wouldn't see
7 a problem with that in something like that.

8 Q. Do you think it would be helpful to have an
9 FAQ that addressed the issue of felony
10 disqualification on the website?

11 A. Yeah. Possibly.

12 Q. And I will represent to you that there is
13 actually an FAQ on the secretary's website
14 about voter registration.

15 A. Is that the voter guide electronically or
16 is it separate?

17 Q. No. It's separate. Under Alabama Votes,
18 frequently asked questions.

19 A. Okay.

20 Q. Including what age and residency and all
21 that, but it does not include any
22 information about finding disqualification.
23 Would it be helpful to people if it did?

1 MS. MESSICK: Object to the form.

2 A. It already exists so, sure, we could add to
3 it.

4 Q. And that's something you'd be willing to
5 do?

6 MS. MESSICK: Object to the form.

7 A. I mean, I can't answer the question for the
8 group, but it's something I would, you
9 know, be okay with.

10 Q. Do you know whether any instructions
11 regarding HB 282 have been sent by the
12 secretary of state's office to NVR agencies
13 such as the DMV, social services, public
14 health, and the like?

15 MS. MESSICK: Object to the form.

16 A. I'm not aware, but I'm not the point person
17 for dealing with the agencies.

18 Q. Who is?

19 A. I would say Ed Packard mostly.

20 Q. Do you want to take a -- we've been going
21 for an hour and a half. Do you want to
22 take a break or --

23 MS. MESSICK: Sure. Before we do

1 that, can you tell me where that is on the
2 website so we can look at it as well?

3 MS. LANG: I went to the
4 secretary's website and I clicked elections
5 and then it went directly to an FAQ
6 setting. Or, like, rather, there were
7 options after I clicked elections, and one
8 of them -- that is the --

9 MS. MESSICK: Is this?

10 MS. LANG: That is the page I was
11 looking at, yes.

12 MS. MESSICK: Okay. Thank you. We
13 can go off the record.

14 (Short recess.)

15 Q. (By Mr. Gaber) Mr. Helms, I'm going to hand
16 you what will be Helms Exhibit 11.

17 (Helms Exhibit 11 was marked for
18 identification.)

19 Q. And I will represent to you that this is
20 Mississippi's mail-in voter registration
21 application that I pulled from their
22 secretary of state's website. Do you see
23 the fourth bullet down from the top?

1 A. Yes.

2 Q. And that bullet lists the specific
3 convictions that under Mississippi law
4 disqualified a person from voting; is that
5 right?

6 MS. MESSICK: Object to the form.

7 Q. Is that what you understand it to do?

8 A. Yeah. I mean, it's a listing of crimes. I
9 haven't seen their law or anything, but I'm
10 assuming that's what it would offer.

11 Q. Would you be willing to consider an example
12 such as this in making recommendations as
13 to whether Alabama's form could do
14 something similar?

15 MS. MESSICK: Object to the form.

16 (Witness reviews document.)

17 A. Well, to that I would say they just didn't
18 make it -- I'm guessing it was probably
19 already two pages, but it is two pages
20 comparable to our one which is front and
21 back and basically this.

22 Q. Yeah. I just didn't have a printer that
23 was capable of that.

1 A. So theirs is front and back?

2 Q. Right.

3 A. Okay.

4 Q. Well, I looked at the PDF online, so --

5 A. Well, the PDF is two pages.

6 Q. It's two pages, right. So I assume that
7 they don't --

8 A. Also, their list looks considerably smaller
9 than the list on Exhibit 7, for instance,
10 so I don't know. Does their law list fewer
11 crimes or -- I mean, have you compared the
12 sizes of the state of Alabama and the state
13 of Mississippi?

14 Q. It looks like there are fewer. My question
15 is whether or not you would consider this
16 template as a possibility, whether you'd be
17 willing to consider this template as a
18 possible one that could be considered by
19 Alabama for its form.

20 MS. MESSICK: Object to the form.

21 A. Well, the problem with this is there are
22 certain requirements on there, like I
23 thought the map was required to be on the

1 application, which it's not on theirs. And
2 so we're comparing applications when we
3 have things we think are required to be on
4 there and they don't. And so I don't think
5 that our space is -- we would have -- we
6 have enough space that they apparently have
7 to add to that. So it's not a similar
8 application, in other words. It's
9 different. If it all landed on one page,
10 hypothetically, I think that, you know, I
11 wouldn't strike it down for no reason, in
12 other words.

13 Q. So if you could -- if you were able to fit
14 it onto one page, that's something you
15 would consider doing?

16 MS. MESSICK: Object to the form.

17 A. I mean, I wouldn't have a reason to strike
18 it down for no reason.

19 Q. Would you be willing to consider
20 suggestions that might be able to fit it
21 all onto one page?

22 A. Well, that wouldn't be up for me to decide,
23 but I don't see that happening in terms of

1 it fitting on one page or being functional
2 with the length of the list and all the
3 other things that we believe we're required
4 to leave on there to satisfy things like
5 NVRA. I don't see it. I mean, I think if
6 it was -- if we saw an avenue for that, we
7 would have already entertained it, so I
8 don't see it.

9 Q. If someone suggested it, you wouldn't
10 reject it out of hand?

11 MS. MESSICK: Object to the form.

12 A. I wouldn't if you came up with some
13 miraculous way of doing it.

14 Q. I don't do miracles, but I might be able to
15 design a form. Have you conducted
16 trainings of registrars about HB 282?

17 A. Yes.

18 Q. What sorts of trainings?

19 A. Well, registrars basically have a couple of
20 different types of training. They have
21 their biannual association training, which
22 is association-led, and we visit that and
23 sometimes partake in a small portion of

1 that. Then we have our trainings where we
2 have, basically, a contract with Auburn.
3 And we already have a contract with our VR
4 vendor. And we have seven regional
5 trainings annually. This contract is
6 currently for three years, so we're in year
7 two of three.

8 Q. That's the Auburn contract?

9 A. Yes.

10 Q. How many registrars has that training
11 reached so far?

12 A. Well, we've only had -- we've had five to
13 this point, and participation is probably
14 98 percent.

15 Q. Five regional trainings? Is that --

16 A. Yes.

17 Q. Okay. And how many -- how many of the
18 counties have been covered by that five
19 regional trainings, if you know?

20 MS. MESSICK: Object to the form.

21 A. That's hard to know, but we separate it out
22 so that about 30 registrars, maybe a little
23 over that, attend each training, because we

1 provide laptops for them to actually
2 undergo system training, so the number of
3 people, the number of laptops, et cetera,
4 your room space. I don't have a good
5 estimate, to be honest.

6 Q. Well, if it's --

7 A. I mean --

8 Q. If it's 30 registrars, is that 30
9 registrars per session? Is that what you
10 said?

11 A. Yeah. Depending on the location. Like one
12 training is in Florence, which is up in the
13 northern tip of Alabama. There's not many
14 people in that region. So more people
15 would go to the Birmingham training than to
16 the Florence training. So it really
17 depends.

18 Q. Does that -- would that equal -- are there
19 three registrars per county?

20 A. Except for two counties.

21 Q. Okay. And so if there's 30 attending, what
22 does that mean, that ten counties would
23 have been covered or is there a variation

1 in who attends?

2 A. Ballpark I would say there's 15 to 20
3 counties that remain that have yet to be
4 trained.

5 Q. Do you know -- are you aware of what
6 counties those are generally?

7 A. No. I mean, it's the ones in the
8 northern -- northwestern area. And then
9 the remaining two trainings are Birmingham
10 and Florence, so the surrounding counties
11 of those areas.

12 Q. Those are the --

13 A. Northwest and then central Alabama.

14 Q. So Birmingham has not yet had a training?

15 A. No. Their training is next week.

16 Q. Okay.

17 A. And then Florence, that final training will
18 be October, I think, 2nd.

19 Q. How many trainings under the Auburn
20 contract were conducted? When did that
21 Auburn contract start? Or when was the
22 first training --

23 A. First year --

1 Q. -- I guess is what I mean.

2 A. -- was 2017, so the first training, I
3 think, took place in maybe -- this is just
4 an estimate; I could be wrong -- I think it
5 was in April, maybe, of 2017. It could
6 have been as far back as July 2017. The
7 first year of that contract was 2017.

8 Q. So is it possible that the first -- the
9 first of those training sessions would not
10 have covered HB 282 if it hadn't been
11 enacted yet?

12 A. Yeah. But, see, that's going to get back
13 to when it took place, because we were
14 already training on the -- that act in July
15 at the association training, which they
16 pretty much all attend anyway. So I would
17 say that when it first hit, they were all
18 aware and were notified and received
19 training, whether it was that one or the
20 association.

21 Q. I'm going to hand you what will be marked
22 as Helms Exhibit No. 12.

23 (Helms Exhibit 12 was marked for

1 identification.)

2 Q. And I am at the same time going to hand you
3 what will be marked as Helms Exhibit
4 No. 13.

5 (Helms Exhibit 13 was marked for
6 identification.)

7 Q. Exhibit 12 is -- the top e-mail of the
8 chain, or, actually, it's one e-mail; it's
9 an attachment -- is dated April 5, 2018
10 from you to Mitchell Brown and Mary Day
11 with the subject Auburn materials. Do you
12 recognize this e-mail?

13 A. Yeah. I remember it vaguely or generally.

14 Q. And then Exhibit 13 is titled BOR Training
15 2018 Material Revisions. It appears to be
16 a chart that responds to the specific edits
17 that you made. Is that a fair
18 characterization?

19 A. Yes.

20 Q. Do you recall receiving this chart,
21 Exhibit 13?

22 A. No, but --

23 Q. Do you have any reason to believe you

1 didn't receive it?

2 MS. MESSICK: Are you saying that

3 13 is the attachment in 12?

4 MR. GABER: It isn't.

5 MS. MESSICK: It isn't?

6 MR. GABER: No.

7 MS. MESSICK: Okay. So we don't

8 have the attachment for 12?

9 MR. GABER: I do not with me.

10 MS. MESSICK: Because 13 looks like
11 a document created by somebody else.

12 MR. GABER: Yeah. I think it
13 was -- I believe it was created by either
14 Mitchell Brown or Mary Day in response
15 to -- because all the edits match up on the
16 chart and then they respond to them.
17 Unfortunately, I don't have the agreement.

18 A. Yeah. So 12 looks like my words on these,
19 and this -- 13 looks like something they
20 created from that, so this would be their
21 words.

22 Q. Okay. Who are Mitchell Brown and Mary Day?

23 A. Mitchell Brown is a professor at Auburn

1 University. At the time, she was a -- she
2 may still be -- director of the master's
3 program for Auburn University. And Mary
4 Day was one of her -- well, Mary Day is
5 basically the person we paid for her -- as
6 her assistant, according to the contract.

7 Q. Did Mitchell Brown conduct the -- or does
8 she conduct the Auburn trainings?

9 A. Yes. She's one of -- one of the conductors
10 of the meetings.

11 Q. Who else is involved in putting those
12 trainings on?

13 A. Kathleen Hale. I'm sorry. Let me correct
14 myself. Mitchell Brown was the director of
15 the doctorate program at Auburn University.
16 Kathleen Hale was the director of the
17 master's program, I believe, at Auburn
18 University. She was another professor that
19 worked on this. There are two, maybe three
20 other professors under them that were
21 trainers as well. I can't recall their
22 names.

23 Q. If you look at the list that you created

1 attached to your e-mail in Exhibit No. 12,
2 under Slide 13, you ask, What do you plan
3 to discuss on citizens currently
4 incarcerated. Do you recall what was the
5 basis for your comment there?

6 A. Well, I think that was the point of the
7 question, is I had concerns about what they
8 planned, because they prepared the
9 curriculum and had these terms that I was
10 concerned about, what are you -- what's
11 your idea for this. And that's when I had
12 them remove things that apply to pardons
13 and paroles but don't apply to something
14 that we would advise or give guidance on.
15 So I think -- if my recollection is
16 correct, I believe they probably removed
17 that out.

18 Q. Yeah. And if you look at Exhibit 13, it
19 reflects that that was removed. It's the
20 last -- last row on the first page of
21 Exhibit 13. And the third column says, I
22 have dropped though I expect it to come up
23 in discussion.

1 A. Okay.

2 Q. Did you have any conversation with

3 Ms. Brown about this particular comment?

4 A. Yeah.

5 Q. What did you discuss?

6 A. Well, I would say, firstly, they're
7 professors in academia, so they're covering
8 a range of topics on political science, and
9 I believe they thought this was something
10 that our office may be over -- fines,
11 restitution, all that stuff, which we're
12 not. And so she was slinging this extra
13 thing into it and I had to say that this is
14 not something we cover and it's not
15 something we advise on, and if we did, you
16 know, who's to know that it would be
17 accurate and it's just outside of our scope
18 so you need to remove it. And I think what
19 she meant about it, she expects it to come
20 up. It's just generally if Joe Bob has
21 this question about his fines that he owes,
22 et cetera, how do we answer that, and the
23 answer is that is not an answer you would

1 give. You would pass that to the correct
2 agency that would answer it.

3 Q. But there's two here. One is the issue of
4 the fines and fees and the other was about
5 citizens who are currently incarcerated.
6 Did you have a conversation with her about
7 the latter, about what the topic regarding
8 citizens currently incarcerated was and
9 what she intended that to be in the
10 curriculum?

11 A. My understanding on that is that -- I asked
12 that question, and they never replied with
13 a good response about, oh, this is where we
14 were headed with that. I think they just
15 knocked it off because they -- from my
16 question, they just backed off of it and
17 said, Okay, that's not us.

18 MS. MESSICK: Do you have a copy of
19 the slides?

20 MR. GABER: I think we have a copy.
21 I haven't seen it myself.

22 MS. MESSICK: Okay. I haven't seen
23 it, so I was having the same confusion you

1 were.

2 MR. GABER: I ran out of time.

3 MS. MESSICK: Oh, I understand.

4 Q. (By Mr. Gaber) Do you know in the actual --
5 do you attend the Auburn-sponsored
6 trainings?

7 A. Yes.

8 Q. Has this issue of eligible voters who are
9 incarcerated come up as a topic of
10 questions among the trainees?

11 A. Rarely, but yes.

12 Q. What are the types of questions that have
13 gotten asked?

14 A. At this past training, which was Mobile,
15 the question was asked voters who are
16 incarcerated or in jail, you know, can they
17 vote. So that came up.

18 Q. What was the answer?

19 A. Well, the answer I provided to them on that
20 is were they convicted of a crime of moral
21 turpitude. Is it on your list? Yes or no.
22 It's the same way to handle it regardless
23 of where they are.

1 Q. Has your office provided any guidance for
2 people who are arrested after the absentee
3 ballot deadline but before election day in
4 terms of how they can go about voting?

5 MS. MESSICK: Object to the form.

6 A. Not that I'm aware of.

7 Q. Such a person having not been convicted
8 would still be eligible to vote; right?

9 A. Technically, yes.

10 Q. Are there any systems in place to ensure
11 that eligible voters who are imprisoned
12 have access to a ballot?

13 A. Did you say are there any systems in place?
14 Well, partly that would depend on the
15 actual prison system themselves, where they
16 are located and who's overseeing that
17 within the prison.

18 Q. Does your office have any sort of
19 agreements or -- whether formal or
20 informal -- with the department of
21 corrections to provide either voter
22 registration forms or absentee ballot
23 applications to folks who are incarcerated

1 that are eligible to vote?

2 A. Agreements? Not that I'm aware of. I
3 would say we provide applications to
4 anybody upon request and in large
5 quantities, in some instances. So if
6 somebody's requesting them, we get them out
7 pretty much same day. So there's no
8 hindrance from our standpoint.

9 Q. Do you know whether any of the Alabama
10 Department of Corrections facilities have
11 requested the voter registration forms from
12 your office?

13 A. No. I would say I've seen registration
14 applications come in with a mailing address
15 being jails and prisons in which people are
16 registering to vote, so I would say it's
17 happening. I haven't personally received
18 any requests in a large scale from the
19 prison system.

20 Q. The prisons could also receive the absentee
21 ballot applications from your office?

22 A. Sure.

23 Q. Do you know if in Alabama people who are

1 incarcerated have the choice of using their
2 home address or their prison address when
3 they register to vote?

4 A. Ask me that again, please.

5 Q. Do you know if in Alabama an incarcerated
6 person has the option to choose to use
7 their prison address or their home address
8 from where they were prior to being
9 incarcerated when they register to vote?

10 MS. MESSICK: Object to the form.

11 A. Well, it's still physical domicile, so do
12 they have any -- is their home address
13 still their address that they plan to
14 return to or is their prison address their
15 only address and that's their new home? It
16 would depend on case-by-case basis.

17 Q. Generally speaking, have you had any
18 discussions with either correctional
19 facilities or the department of corrections
20 about the making it -- efforts to make it
21 possible for incarcerated persons who are
22 eligible to either register or submit
23 absentee ballot applications?

1 A. No, not specifically.

2 Q. Do you know if a prison ID can be used to
3 obtain a free voter ID in Alabama?

4 MS. MESSICK: Object to the form.

5 A. What type of prison ID? What do you mean
6 by --

7 Q. A photo ID that identified you as provided
8 by the --

9 A. I would say so, yes.

10 Q. I'm going to hand you what will be marked
11 as Helms Exhibit 14.

12 (Helms Exhibit 14 was marked for
13 identification.)

14 Q. And this is an e-mail chain that the top
15 e-mail is dated October 10, 2017 from you
16 to Mr. Beal and Mr. Brewer and Mr. Bennett
17 with the subject felon notices. Do you
18 recognize this e-mail?

19 A. No.

20 Q. It's a forward of an e-mail you received
21 from Harry Butler. Who is Mr. Butler?

22 MS. MESSICK: Object to the form.

23 Q. Do you know who Mr. Butler is?

1 A. Yes. Harry Butler is a registrar in Etowah
2 County.

3 Q. Did I already ask you this? What is the
4 county seat of Etowah County? Is this the
5 county I asked about?

6 A. Yeah. Gadsden.

7 Q. I recall it from election results. I'll
8 give you a chance to read.

9 (Witness reviews document.)

10 A. Okay.

11 Q. Mr. Butler seems to take issue with the
12 suggestion made in the media by the
13 secretary of state that there had been a
14 number of training sessions in multiple
15 places across the state. Is that a fair
16 characterization of his comment?

17 MS. MESSICK: Object to the form.

18 A. Yeah.

19 Q. Now, you forwarded this to your colleagues.
20 Was there a discussion about this e-mail
21 from Mr. Butler that wasn't over e-mail?

22 A. Not that I'm aware of.

23 Q. When you receive complaints or comments

1 like this from registrars, do you normally
2 forward them on to these colleagues?

3 A. I would say something like this, yeah,
4 especially where the complaint is about the
5 secretary of state and comments he's made,
6 then I think the executive division should
7 be aware.

8 Q. Did you discuss this with Secretary of
9 State Merrill?

10 A. Not that I recall.

11 Q. Have you discussed e-mails from Mr. Butler
12 and other e-mails from Mr. Butler with the
13 secretary of state?

14 A. Probably, possibly, at some point in time.

15 Q. He seems to be among the more frequent of
16 the e-mailers, is why I ask.

17 A. Yeah.

18 Q. Did you receive similar complaints from
19 other registrars about the secretary of
20 state's representation in the media about
21 the quantity and quality of the training of
22 registrars with respect to HB 282?

23 MS. MESSICK: Object to the form.

1 A. No, not that I'm aware of.

2 Q. Turning to the -- your e-mail to the
3 registrars that precipitated Mr. Butler's
4 comment, that's dated October 3, 2017; is
5 that right?

6 A. Yes, I believe so. Unless he changed it.

7 Q. Let's hope not. So you say in that e-mail
8 that the registrars can resume or should
9 resume processing voters who are felons of
10 moral turpitude. What do you mean by that
11 statement? What's "processing" mean?

12 A. Well, the guidance I provide to registrars
13 is that they should cease processing felon
14 notices 45 days prior to an election, and
15 that's because, you know, people being
16 disqualified of moral turpitude are allowed
17 a 30-day appeal period. And if you
18 disqualify somebody for moral turpitude
19 within a certain amount of days, then
20 you're not allowing them that appeal period
21 afforded to them by law. So I send out
22 these reminders just to remind -- just to
23 help them remember, hey, you need to pause

1 now and then, hey, you can get back
2 started.

3 Q. Okay. So is it the case that registrars
4 conduct sort of a systematic removal of
5 people on the voter registration lists that
6 haven't identified as having a
7 disqualifying conviction?

8 MS. MESSICK: Object to the form.

9 A. What do you mean by "systematic removal"?

10 Q. What is the process that registrars follow
11 once they learn from the AOC, what does
12 that process look like?

13 A. Sure. So you get the notice, you would
14 review it as a board. Once you determine
15 that it was moral turpitude, you would send
16 the voter a notice that they would be
17 removed 30 days later and they could
18 appeal. And then after 30 days, you would
19 send them another notice that they have
20 been removed. The initial notice has to be
21 certified mail by law; second one does not.
22 If they appeal during that time, then you
23 would leave them in the current status and

1 allow the appeal to take place. But during
2 that appeal period, registrars have been
3 advised or I've explained to them not to
4 change the status of the voter until you
5 could change the reason of the status to
6 pending felony review. But the status of
7 the voter is not changed and they're
8 allowed their appeal period. And if it
9 went through an election, they would be a
10 voter still.

11 Q. And so this goes on throughout the year
12 whenever registrars obtain the information
13 from the AOC system?

14 A. Sure.

15 Q. And they follow the process of sending
16 these notices?

17 A. Yes.

18 Q. And then removing the person from the list
19 if they're due to be removed. Is that --

20 A. Yes.

21 Q. And this is an ongoing process throughout
22 the year other than the 45-day period prior
23 to the election; is that correct?

1 A. Yes.

2 Q. And so if it's 75 days before the election,
3 the registrars would still be undergoing
4 that process of removing voters from the
5 list who are deemed to have a disqualifying
6 conviction; is that right?

7 A. Yes.

8 Q. And the same would be true at 90 days prior
9 to the election?

10 A. Yes.

11 Q. Do you recall following a news article
12 about confusion among certain registrars
13 about HB 282 that your office requested the
14 resignation of certain registrars who were
15 quoted in the news article?

16 A. I would like to add something on a
17 previous -- the previous topic. You
18 mentioned specifically systematic removal.
19 I don't think that it falls within the NVRA
20 in 90 days -- within 90 days of an election
21 you must cease. I don't think that it
22 falls within that.

23 Q. Why not?

1 A. It's not the systematic removal that it's
2 envisioning. I don't agree with that.

3 Q. How do you define "systematic removal"?

4 MS. MESSICK: Object to the form.

5 A. Well, how do you define it?

6 Q. Well, you --

7 MS. MESSICK: He raised it, but
8 you're asking him for a legal conclusion,
9 and that's the basis of the objection.
10 You're asking him to interpret federal law.

11 Q. So I'm just asking what is your -- what is
12 your view of -- you have to comply with the
13 NVRA; right?

14 A. Yeah.

15 Q. Okay. And that's part of your job
16 responsibilities?

17 A. Right.

18 Q. And so what is your understanding of why
19 that --

20 A. Well, if that was your point by asking it
21 specifically using the term "systematic
22 removal," I mean, I'd have to look at the
23 NVRA, but it talks about specific programs

1 or -- like a mailer, a large mailer, that
2 you then use to remove voters that you
3 specifically did during that amount of time
4 on purpose to be able to remove those
5 voters is different than a regular ongoing
6 removal of people based on felon notices.
7 There's a difference there.

8 Q. Is the process of using the information
9 transmitted by the AOC to the registrars
10 not a systematic process?

11 MS. MESSICK: Object to the form.

12 A. Well, depends on how you define
13 "systematic." Only reason I was bringing
14 that up because I thought -- you know, I
15 wanted to just make it clear in my
16 testimony that I did not -- I didn't know
17 basically your questions and my answers if
18 that's the way you were leading it, but I
19 wanted to be clear that that's not the way
20 I intended for it to be led, if that makes
21 sense.

22 Q. And that's because you think that the
23 transmittal of the information from the AOC

1 to the registrars is not a systematic
2 removal of voters; is that --

3 MS. MESSICK: Object to the form.

4 A. No, that's not what I'm saying. I'm saying
5 it doesn't fall into that specific part
6 where you have to refrain within 90 days of
7 the election.

8 Q. Have you considered prior to today whether
9 that was the case?

10 A. Yeah. I would say that the office would
11 have stopped within 90 days if the office
12 considered that that was a part of that.
13 We wouldn't blatantly be breaching.

14 Q. Has anyone raised this concern before with
15 your office?

16 A. No.

17 Q. I don't think that you answered the
18 question about the registrars who were
19 asked to resign. The question was, do you
20 recall that there was a news article that
21 quoted certain registrars and then -- about
22 their misconceptions about HB 282 and that
23 those folks were asked to resign following

1 that article?

2 A. I don't recall that. Was your question

3 whether I recalled it?

4 Q. Yeah. You didn't -- were you responsible

5 for asking anyone to resign?

6 A. Not that I recall, no. I don't think.

7 MS. MESSICK: Mark, you were asking

8 earlier about documents. We've gotten

9 confirmation from the secretary of state's

10 IT that they pulled not only his e-mails

11 but his files, and they've done that twice

12 now.

13 MR. GABER: Okay. And those were

14 reviewed or --

15 MS. MESSICK: The ones that they

16 pulled in April that were responsive to the

17 search terms were reviewed. We've reviewed

18 more than 7,000 documents in this case from

19 the secretary of state and turned over more

20 than 2,000. The ones that have just been

21 pulled we haven't reviewed yet.

22 MR. GABER: Sorry. The ones that

23 were just pulled, which are those?

1 MS. MESSICK: We've asked the
2 secretary of state to update their search
3 to look at things that have been created
4 since the pull was made in April.

5 MR. GABER: Okay.

6 MS. MESSICK: So there are new
7 documents that they're gathering for us
8 now.

9 MR. GABER: And so the ESI that
10 they pulled included --

11 MS. MESSICK: It included --

12 MR. GABER: -- documents from the
13 share drive?

14 MS. MESSICK: I'm told that they
15 searched his files and the e-mails. You
16 haven't raised a share drive. I don't know
17 if such a thing exists. I haven't checked
18 on that.

19 Q. (By Mr. Gaber) Is there such a thing as a
20 share drive that documents are stored on?

21 A. Yes.

22 MR. GABER: Will you check?

23 MS. MESSICK: Okay.

1 Q. But I understand it to be that the Word
2 documents that we were --

3 MS. MESSICK: You were asking about
4 Word documents on his computer, and we're
5 saying that if they would have been -- if
6 they were responsive to the search terms,
7 they should have been pulled and produced
8 to us and reviewed.

9 THE WITNESS: What were you saying
10 about share drive?

11 MS. MESSICK: You were -- he's now
12 asking if the share drive was also -- share
13 drive was also searched.

14 THE WITNESS: Oh, okay.

15 Q. (By Mr. Gaber) What sorts of folders are on
16 the share drive or -- are they broken down
17 into specific topics or what is sort of the
18 format of the share drive?

19 A. Well, I don't understand when we're talking
20 about share drive. That could mean a few
21 different things. I was thinking in terms
22 of the elections drive which is shared by
23 just election team members or we can go --

1 say, like, you have a certification from
2 2016 and send the 2016 election folder and
3 you can go and access it. I don't have to
4 ask you to e-mail it to me because you
5 saved it only on your drive. So that's to
6 the extent of it. Just things that
7 probably most likely are public on the
8 website already but we can go -- say you
9 wanted to use a form that was prepared
10 previously to then, say a statutory change,
11 and you need to tweak that form. So John
12 Doe quit three years ago and now don't have
13 that form. It's useful to have the share
14 drive.

15 Q. And is it -- in some systems I've used
16 it's, like, the J drive or the S drive that
17 is where the organization stores documents
18 that are accessible to everyone in the
19 office and not just on your own computer.
20 Is that --

21 A. Correct.

22 Q. Something like that exists?

23 A. Yes. For elections, at least.

1 Q. Do you have, like, a folder specific for
2 you on that shared drive where you can
3 store personal or -- not personal but
4 documents that you are working on?

5 A. No. I save everything on my drives, which
6 I assume have been searched. I don't use
7 that except for things that need to be
8 shared.

9 Q. Are you aware that the secretary of state
10 has interpreted HB 282 to apply
11 retroactively to people with convictions
12 that predated the date of enactment of
13 HB 282?

14 MS. MESSICK: Object to the form.

15 A. Ask me that again, please. That's sort
16 of . . .

17 Q. Are you aware that the secretary of state
18 has interpreted HB 282 to mean that people
19 who have convictions that are listed as
20 disqualifying but who were -- who committed
21 the crime prior to the date that the law
22 was enacted are nonetheless disqualified on
23 the basis of HB 282?

1 A. That if they were disqualified
2 previously --

3 Q. No. I'll give you an example. So if I was
4 convicted of murder in 1995, the secretary
5 of state takes the position or -- is it
6 your understanding that the secretary of
7 state takes the position that because of
8 HB 282 I would still be ineligible to vote
9 today despite the fact that my crime was
10 committed before the law was enacted?

11 A. Yes. So your question isn't in terms of
12 you used to be on the list and now you're
13 not in terms of the list of crimes; right?
14 Murder is a crime which was considered
15 moral turpitude previously and it is still
16 now.

17 Q. More generally than that. So do you agree
18 that now there is for the first time a
19 binding list of convictions that are
20 disqualifying in Alabama?

21 A. Yes.

22 Q. And that's HB 282?

23 A. Yes.

1 Q. Okay. So if someone committed an
2 enumerated crime before HB 282 was enacted,
3 that person under the secretary of state's
4 interpretation is still -- is now
5 ineligible to vote even though their crime
6 happened before HB 282 was passed?

7 A. Yes.

8 Q. And that is your understanding of the
9 secretary of state's position of what the
10 law means?

11 A. If I'm understanding the question
12 correctly, yes.

13 Q. Is there something in the question that you
14 don't understand? I want to make sure
15 we're clear about it.

16 MS. MESSICK: We can stipulate that
17 the statute applies to crimes that were
18 committed before the --

19 MR. GABER: Well, I'm not going to
20 stipulate to that. We can stipulate that
21 that is --

22 MS. MESSICK: That is what --

23 MR. GABER: -- the secretary of

1 state's position.

2 MS. MESSICK: That is the State of
3 Alabama's position --

4 MR. GABER: Okay.

5 MS. MESSICK: -- about our statute.
6 That is what the statute means.

7 MR. GABER: Well, I guess I'm not
8 going to stipulate to --

9 MS. MESSICK: I know. You don't
10 think it can. And we object to the
11 retroactivity argument. But, yes, that is
12 what the statute means as a matter of
13 Alabama law. That is what the secretary of
14 state understands the law to mean.

15 MR. GABER: The latter part of that
16 is what I'm looking for. I don't want to
17 stipulate -- just so the record is clear, I
18 am not stipulating that that's what the law
19 means. What I'm asking for is if that is
20 the position of the secretary of state.

21 MS. MESSICK: And I can tell you
22 that it is.

23 MR. GABER: Okay.

1 Q. (By Mr. Gaber) Mr. Helms, were you involved
2 in coming to the position that HB 282
3 applied retroactively to crimes that were
4 committed prior to the date of its
5 enactment?

6 MS. MESSICK: Object to the form.

7 A. No.

8 Q. Other than conversations that were
9 privileged with attorneys, were you
10 involved in any discussions in which the
11 issue of whether the law applied to crimes
12 committed prior to its enactment was
13 discussed?

14 A. No, not that I'm aware of.

15 Q. Did you see any e-mails about that issue?

16 A. No, not that I'm aware of.

17 Q. How did you come to know that the secretary
18 of state's office took the position that
19 HB 282 applied to all persons with
20 convictions regardless of the date of their
21 conviction?

22 A. I don't recall.

23 Q. What is the meaning of moral turpitude?

1 MS. MESSICK: Object to the form.

2 A. Morally unacceptable in society.

3 Q. Is that your understanding of what the
4 phrase means?

5 A. Yes.

6 Q. Before HB 282 was enacted, how did you
7 determine whether a conviction was one of
8 moral turpitude?

9 MS. MESSICK: Object to the form.
10 He's told you repeatedly he did not make
11 that determination.

12 Q. One of your statutory obligations is to
13 provide guidance and assistance to board of
14 registrars as to whether a conviction is
15 disqualifying. Is that fair?

16 MS. MESSICK: Object to the form.

17 A. Can I look at my statute?

18 Q. Yeah. Of course.

19 (Witness reviews document.)

20 A. I don't think the statute basically says I
21 have to tell them should John Doe be
22 removed or not. I think it does say that
23 we provide guidance to them to allow them

1 to perform their duty according to law.

2 And we did do that by providing them the
3 list and the election handbook and all of
4 that.

5 Q. And we established earlier the list, when
6 you refer to that, you're talking about the
7 AOC list?

8 A. Yes. Correct.

9 Q. In your experience prior to HB 282 being
10 enacted, was there confusion among
11 registrars about the meaning in which
12 convictions were disqualifying under the
13 law?

14 MS. MESSICK: Object to the form.

15 A. Some. Way more than now.

16 Q. What sorts of -- what is the basis for that
17 statement?

18 A. Well, it was just less clear.

19 Q. Did you have conversations with registrars
20 that's illustrated to you that there was a
21 level of confusion as to whether certain
22 kinds were disqualifying?

23 A. Well, I would base it off the number of

1 questions we received that we talked about
2 earlier where Judge Brown would receive
3 those. Those have basically ceased, so the
4 difference in prior and post speaks for
5 itself in those terms.

6 Q. I'm going to show you a document that we
7 marked as Helms Exhibit 15.

8 (Helms Exhibit 15 was marked for
9 identification.)

10 Q. So this is a May 14, 2015 e-mail from
11 Celeste Ragan to you with the subject
12 "felons." Now, this was over three years
13 ago, but I'm going to ask you, do you
14 recognize this document?

15 A. No, not specifically.

16 Q. Do you know who Ms. Ragan is?

17 A. I could be wrong, but I believe Celeste
18 Ragan is a registrar in DeKalb County. I'm
19 not certain of that.

20 Q. Do you recognize her e-mail address, the
21 domain name vote.alabama.gov? I haven't
22 seen that from other registrars. Do you
23 know what that is?

1 A. Yeah. We provide the registrars with an
2 e-mail address if they need that. Some
3 counties have their own IT staff and they
4 say @baldwincounty.al.gov, so you may see
5 that. If they don't have that, we provide
6 them with an e-mail address and it is
7 @vote.alabama.gov.

8 Q. Do you recall discussing this e-mail with
9 Ms. Ragan?

10 A. No.

11 Q. Now, she says that she may be processing
12 some of my felons wrong. Please advise.
13 When I get a new application in and he or
14 she is a felon, I have been putting them in
15 as not eligible; reason, criminal
16 conviction.

17 Is it your view that she is correct
18 that she was processing those applications
19 incorrectly?

20 MS. MESSICK: Object to the form.

21 A. No, not necessarily.

22 Q. Do you understand her to be saying that
23 whenever she receives an application in

1 which the person has a felony conviction
2 they are necessarily placed in the not-
3 eligible category?

4 A. I wouldn't say that. I would say that --
5 again, I don't remember this conversation
6 specifically, but I would tell you this.
7 When registrars generally are referring to
8 felons, they're saying felons of moral
9 turpitude, because they can't do anything
10 with other felons so the conversation
11 wouldn't come up. So I would assume this
12 lady, when you see felon, you're seeing
13 felon of moral turpitude because she would
14 never have treated a regular felon
15 differently than anyone else and put their
16 status differently. Now, I could be wrong
17 and, if so, yes, she's wrong.

18 Q. Are you aware of any counties in which this
19 was the practice that all felonies were
20 deemed to be ones of moral turpitude?

21 A. No, not that I'm aware of.

22 Q. Do you have a sense of how frequently you
23 would receive questions from registrars

1 while they're in conversations or by phone
2 or by e-mail about confusion as to which
3 convictions the pre HB 282 system applied
4 to?

5 MS. MESSICK: Object to the form.

6 A. Did you say frequency?

7 Q. Yeah.

8 A. No.

9 Q. Was it --

10 A. One a week, maybe. Something like that.

11 Q. In terms of the categories of questions you
12 receive, was this one of the top ones from
13 registrars?

14 MS. MESSICK: Object to the form.

15 A. "This" being moral turpitude related?

16 Q. What was moral turpitude, right.

17 A. No. There's other questions, regular
18 questions, so -- other areas, general
19 questions, deadlines, things like that.

20 Q. Prior to HB 282, you said that you would
21 send out the AOC list. Were there any
22 other lists that your office relied upon?

23 MS. MESSICK: Object to the form.

1 A. No, not that I'm aware of other than the AG
2 opinions that later I may have sent out
3 sometime.

4 Q. Well, we'll get to -- in a moment I'll show
5 you the voter guide, but there is a list of
6 example moral turpitude convictions in the
7 registrars handbook as well. Is that --
8 does that -- am I giving you news about
9 that or do you recall that?

10 A. Well, which handbook would that have been,
11 2014?

12 Q. 2015 is the one that I'm -- we'll get to it
13 in a minute.

14 A. Okay.

15 Q. I don't want to get us off track. Were
16 there any steps taken by your office to
17 ensure that there wasn't a lack of
18 uniformity between the counties in terms of
19 what convictions they deemed to be of moral
20 turpitude other than sending out the AOC
21 list?

22 MS. MESSICK: Object to the form.

23 A. Not that I'm aware of, no.

1 Q. I'm going to show you what's marked as
2 Helms Exhibit 16.

3 (Helms Exhibit 16 was marked for
4 identification.)

5 (Witness reviews document.)

6 Q. And this is a March 24, 2015 -- it's an
7 e-mail chain, but the top e-mail is
8 March 24, 2015 from you to Beatrice
9 Reichert, and the subject is regarding
10 moral turpitude crime. Do you recall
11 this --

12 A. No.

13 Q. -- e-mail chain? Do you know who Beatrice
14 Reichert is? Or she goes by Pinky, I
15 guess, in her e-mail.

16 A. She's a registrar, but I do not recall the
17 county.

18 Q. So in her original e-mail to you, she asks,
19 When we get a new moral turpitude code, how
20 do you want us to share it with the other
21 registrars? And she's referring in
22 particular to advice that she got from
23 Judge Jean Brown confirming that child

1 abuse was a crime of moral turpitude. Was
2 it the position of your office that
3 registrars shouldn't share with other
4 registrars their views on whether
5 convictions outside the AOC list were in
6 fact crimes of moral turpitude?

7 MS. MESSICK: Object to the form.

8 A. No, I don't think that's -- it says she's
9 welcome to share her findings with others.

10 Q. Is there a reason why you took the position
11 that your office wouldn't send out mass
12 e-mails to all registrars to advise on how
13 to label different crime codes?

14 MS. MESSICK: Object to the form.

15 A. The only thing I can say on that is I
16 wouldn't have been making that
17 determination, so it would have been the
18 determiner to send that out. And I would
19 think I would have asked and the answer
20 would have been don't blast that out, I'm
21 assuming.

22 Q. Who is the determiner in your answer?

23 A. Well, it says -- Reichter says Judge Brown

1 told her it was moral turpitude, so that's
2 all I can think of.

3 Q. So Judge Brown -- it's up to Judge Brown
4 whether or not that information should be
5 shared more broadly to other registrars?

6 MS. MESSICK: Object to the form.

7 A. I don't know. I don't think -- I'm not
8 saying that's the case. I'm just saying
9 that that's -- it sounds like that's . . .

10 Q. Let me ask this, I guess. Does this
11 accurately reflect the process that your
12 office followed, which was not to send out
13 mass e-mails to all registrars to advise on
14 new conviction codes that were outside the
15 AOC list but that had been told to
16 individual registrars were in fact crimes
17 of moral turpitude?

18 A. I don't know that to be true. You know,
19 the extent of my part in this, which was
20 fairly new as the supervisor of voter
21 registration, was the list that I provided,
22 the AOC listing. Anything that fell
23 outside of that or the AG opinions would go

1 to Judge Brown to answer and to share or
2 not share or tell me to share or not share.
3 So that's the extent of what my role was,
4 which was more limited at this time than
5 now.

6 Q. Did Judge Brown ever come to you and ask
7 you to share a new piece of advice that had
8 been given to one registrar and to share it
9 more broadly to other registrars with
10 respect to a conviction that was of moral
11 turpitude or deemed to be of moral
12 turpitude but not included on the AOC list?

13 A. No.

14 Q. Are you aware of whether she sent out any
15 such mass e-mails to that effect?

16 A. I'm not aware.

17 Q. Does your statement prior to that, that
18 registrars are able to go along with the
19 findings of this office or registrars may
20 decide differently, does that accurately
21 reflect the position of your office at the
22 time?

23 MS. MESSICK: Object to the form.

1 A. Well, I would say speaking on behalf of the
2 office is not really something that I would
3 do, so . . .

4 Q. Well, is it your understanding of what the
5 policy of your office was at the time?

6 A. That registrars at the time prior to 282
7 could receive advice and then go against
8 that --

9 Q. Right.

10 A. -- as the board? Yes.

11 MS. MESSICK: And I was trying to
12 register an objection to the form. That
13 was asked and answered. We talked about
14 that hours ago.

15 Q. Did you ever discuss with Secretary Merrill
16 whether uniform guidance should be provided
17 to registrars about convictions that were
18 deemed disqualifying by your office but
19 that were not included on the AOC list?

20 A. No.

21 Q. Did you have any discussions with Secretary
22 Merrill about moral turpitude prior to
23 HB 282 and the meaning of it?

1 A. I don't recall.

2 Q. How frequently do you interact with

3 Secretary Merrill during your job?

4 A. Fairly frequently.

5 Q. Like, every day?

6 A. Probably not every day, but most days.

7 Q. How many people are between you and him in

8 terms of your supervisors?

9 A. The chief of staff. Well, there's a deputy
10 chief of staff, so two, I guess.

11 Q. And what are their names?

12 A. David Brewer and John Bennett.

13 Q. David Brewer is the chief of staff?

14 A. Yes.

15 Q. How regularly do you have meetings in which

16 Secretary Merrill participates?

17 A. That differs by week. Maybe once that
18 week, maybe three times that week, four
19 times -- I don't know -- zero. It just
20 depends.

21 Q. When you would get a request from a county
22 board of registrar about the -- whether a
23 particular crime was disqualifying prior to

1 HB 282's enactment, were there times when
2 you would discuss the correct answer to
3 that question with the secretary of state?

4 A. No, not that I recall.

5 Q. And was it the position of your office or
6 did you understand it to be the position of
7 your office at the time that the law did
8 not permit you to ensure that the
9 definition of moral turpitude was defined
10 uniformly among the counties in Alabama?

11 MS. MESSICK: Object to the form.

12 A. Ask me that again, please.

13 Q. Was it your understanding of the law in
14 Alabama that your office was not able to
15 ensure that the definition of moral
16 turpitude was applied uniformly with
17 respect to a given conviction across the
18 counties in Alabama?

19 MS. MESSICK: Object to the form.

20 A. So your question is that we were unable to
21 do it or that we had intent to not do it?

22 Q. Is it your understanding that you lacked
23 the authority to ensure that the law was

1 applied uniformly?

2 A. I would say the authority lied with the
3 board of registrars that -- yes. So
4 possibly, yes, lacked the authority, needed
5 a law to set it out specifically. Yeah.

6 Q. We were just talking about Mr. Reichert's
7 e-mail. Were there other registrars who
8 similarly asked you whether they should
9 share their views more broadly with other
10 registrars in terms of convictions that
11 were not listed on the AOC list but they
12 had deemed nonetheless to be convictions
13 involving moral turpitude?

14 A. I don't recall any. The only hesitation
15 there, though, is before a listing, which
16 is satisfied now, what if Joe Bob is
17 sending out incorrect information to all
18 the counties and you have that to worry
19 about. So it goes both ways.

20 Q. Are you aware of any particular convictions
21 that were treated differently among the
22 county registrars prior to HB 282's
23 enactment?

1 A. No, not specifically.

2 Q. Are you aware of it happening that a
3 particular conviction was treated
4 differently among the counties?

5 A. I'm sure I have at some point, yes.

6 Q. I'm going to show you what we'll mark as
7 Helms Exhibit 17.

8 (Helms Exhibit 17 was marked for
9 identification.)

10 Q. And this is an e-mail chain, the top e-mail
11 of which is dated February 23, 2017 from
12 you to Mr. Beal, Mr. Brewer, Mr. Bennett,
13 Mr. Packard, and Judge Brown. And you can
14 take a look and then let me know if you
15 recognize the document.

16 (Witness reviews document.)

17 A. Okay.

18 Q. Do you recall this e-mail?

19 A. No.

20 Q. So we have Mr. Butler again. And he
21 references in the third paragraph that a
22 few years ago a Tuscaloosa registrar had
23 obtained a list of moral turpitude offenses

1 from Judge Brown and had passed them around
2 and that -- he says as far as is known,
3 nobody in the SOS office gave credence to
4 the list and did not endorse such. And
5 then he asks the gentlemen whether you
6 agreed with that.

7 Did Mr. Butler's reference to a list by
8 Judge Brown, do you recall such a list?

9 A. No. And I don't know if that's the AOC
10 list or if it's that list with extras on
11 it. I mean, I don't know what they're
12 talking about really.

13 Q. If it's the AOC list, you would disagree
14 with -- I mean, am I right that you would
15 disagree with Mr. Butler's assessment that
16 nobody in your office gave credence to it?

17 A. Yeah. I don't know what he's talking about
18 there. I mean, I think if Judge Brown
19 would have given a list the office would
20 have known and approved of the attorney
21 sending a list out, so I don't think he's
22 accurate in his claim.

23 Q. Judge Brown was respected and charged with

1 making legal assessments about giving
2 advice about moral turpitude crimes; is
3 that fair?

4 A. Yes.

5 Q. He asked specifically about a comment that
6 he says Secretary Merrill made that bribery
7 is a crime of moral turpitude and says that
8 nowhere in the election handbook is it
9 listed. Do you know -- was it your view at
10 the time that bribery was not a crime of
11 moral turpitude?

12 MS. MESSICK: Object to the form.
13 He's repeatedly told you he didn't take
14 positions on that.

15 A. Yeah. I don't know. I'd have to look at
16 the listing and see.

17 Q. Do you think bribery should be deemed a
18 crime of moral turpitude?

19 A. I don't think I have a position on that. I
20 just want a clear list to be able to give
21 clear guidance. That's it.

22 Q. We'll hand you what will be marked as Helms
23 Exhibit 18.

1 (Helms Exhibit 18 was marked for
2 identification.)

3 Q. And this is, again, an e-mail chain, the
4 top of which is a July 28, 2015 e-mail from
5 you to Mr. Packard with the subject line
6 voting rights. The original e-mail in the
7 chain appears to be to a voter with the
8 e-mail address detrafondren@gmail.com. As
9 you take a look at this, let me know if you
10 recall this interaction.

11 (Witness reviews document.)

12 A. No, I don't recall it. Was it in response
13 to anything or it's just --

14 Q. Well, it looks to me --

15 A. -- an e-mail from me?

16 Q. It looks to me like maybe you spoke with
17 Adam Thompson who had received an e-mail.

18 A. Okay.

19 Q. Who is Adam Thompson?

20 A. Adam Thompson was at the time the deputy
21 chief of staff. Well, maybe I can find
22 him. 15? I don't know. I don't know what
23 his position was. He was deputy chief of

1 staff for Beth Chapman, so David being cc'd
2 on this e-mail tells me Secretary Merrill
3 was there, so I don't know what his
4 position was then.

5 Q. Okay. But he worked in the office?

6 A. Yes.

7 Q. So I think it was mentioned earlier that
8 around this time you -- maybe earlier --
9 you would have contact with actual voters
10 about whether or not they met the
11 eligibility requirements -- is that
12 true? -- like this?

13 A. Well, I would say e-mails like this were
14 fairly rare. I mean, I don't remember
15 sending this out or anything really like
16 this often.

17 Q. We don't have the actual question that was
18 posed, but it appears as though you give
19 Mr. -- whoever this is. I don't even know
20 the name. But this voter is told that in
21 his situation there are two scenarios, that
22 either his felony drug charge was not on,
23 quote, a list, end quote, in which you lose

1 your voting rights or it is and then in
2 which case he would need to have it
3 restored.

4 A. Yeah.

5 Q. If you were the voter who received this
6 e-mail, would you find it particularly
7 helpful to determine whether or not your
8 conviction was disqualifying?

9 MS. MESSICK: Object to the form.

10 (Witness reviews document.)

11 A. So hit me with the question again, please.

12 Q. If you were the voter who received this
13 e-mail and had asked a question about
14 whether your conviction was disqualifying,
15 would you find it particularly helpful in
16 reaching the conclusion?

17 MS. MESSICK: Object to the form.

18 A. Well, I think this is a very helpful
19 e-mail. And the first paragraph says, I'm
20 happy to help you through the process of
21 restoring your voting rights. So you don't
22 know that I didn't just put that first
23 paragraph in there talking about maybe it

1 wasn't, but here's all the information
2 because it was. So I don't have enough
3 information to say that the person actually
4 needed me to tell him whether his felony
5 was moral turpitude or not.

6 Q. So you're saying you might have included
7 the first paragraph which may not have
8 applied to him?

9 A. Yeah. If you're wrong, here's this first
10 part, here's the two scenarios.

11 Q. When you refer in this e-mail to that list
12 and a list --

13 MS. MESSICK: Object to the form.

14 MR. GABER: I haven't finished the
15 question, Misty.

16 MS. MESSICK: You looked at him
17 like you were waiting for the answer.
18 That's why I objected, because the question
19 was not --

20 MR. GABER: Let me finish the
21 question.

22 Q. (By Mr. Gaber) When you refer to that list
23 and a list, am I right to assume that

1 that's the AOC list in your view?

2 A. Yeah. That's the only list I would have
3 referred to.

4 Q. But you didn't refer him -- that is, the
5 voter -- to the AOC list?

6 A. No. Unless I'm missing something.

7 Q. Are you aware of any studies or analysis
8 that was ever conducted by your office as
9 to whether there was any racial disparity
10 in how the moral turpitude standard was
11 administered prior to HB 282's enactment?

12 A. No.

13 Q. Did you ever consider whether such a study
14 should be done?

15 A. No.

16 Q. Were there ever any discussions about
17 whether such a study should be done?

18 A. Not that I was a part of.

19 Q. Were you aware of any concerns among the
20 public or registrars that there might be a
21 racial disparity in terms of how the moral
22 turpitude standard was administered prior
23 to HB 282's enactment?

1 A. No, nothing that I was a part of.

2 Q. So you never encountered any discussions,
3 any concerns, or the topic of racial bias
4 in terms of disparities and defining what
5 is a crime of moral turpitude?

6 A. No. I mean, I'm sure there was some
7 concern out there and there may have been
8 meetings or things like that going on, but
9 I wasn't a part of anything, so.

10 Q. We've talked quite a bit about the AOC
11 list. Are you aware of a memorandum that
12 accompanied the list discussing the issue
13 of moral turpitude?

14 MS. MESSICK: Object to the form.

15 A. This is the 282 once it was passed?

16 Q. No. Prior to 282, the AOC list.

17 A. A memorandum what, of understanding between
18 offices?

19 Q. No. A legal memorandum outlining the issue
20 of moral turpitude, the potential legal
21 problems with the standard and attaching
22 the list of --

23 A. From AOC.

1 Q. Right.

2 A. No.

3 Q. Okay. Did you ever notice any differences
4 in the administration of the moral
5 turpitude standard based upon the race of
6 the individual registrar?

7 A. No.

8 Q. And did you ever notice any differences in
9 how the moral turpitude standard was
10 administered based upon whether it was a
11 local or national election?

12 A. No.

13 Q. Did you ever hear anyone express a view
14 that there was a difference in how that
15 standard was administered based on whether
16 it was a local or national election?

17 A. No.

18 Q. Did Secretary Merrill ever give you any
19 comments or advice about the meaning of the
20 moral turpitude standard?

21 A. No.

22 MS. MESSICK: Object to the form.

23 Q. I'm going to show you what will be marked

1 as Helms Exhibit 19.

2 (Helms Exhibit 19 was marked for
3 identification.)

4 Q. And this is an e-mail chain. The top
5 e-mail is dated January 6, 2018, from
6 Secretary Merrill to you and Mr. Brewer
7 with the subject forward Birmingham forum.
8 And it forwards an e-mail from Mr. Butler.
9 Do you recall this e-mail exchange?

10 A. No.

11 Q. So in the bottom e-mail, Mr. Butler is
12 asking the secretary about a registration
13 of voting rights forum in Northeast
14 Birmingham YMCA. Do you recall what that
15 forum was?

16 A. No.

17 Q. Were there forums put on by your office
18 about the restoration of voting rights?

19 A. Not that I'm aware of. I would say we have
20 attended events in which that was -- like,
21 for instance, Secretary Merrill and I have
22 gone to Birmingham to -- I forgot the
23 location, but part of the questions that

1 come up are registration of voting rights,
2 voter registration, things like that, so
3 you cover the topics. But I don't remember
4 ever going to a forum specifically intended
5 for that.

6 Q. Mr. Butler seems to indicate that there is
7 much being said about this subject that is
8 not clear and not fully explained to some
9 of us who are a bit slow in understanding.
10 Do you know what he's referring to there?

11 MS. MESSICK: Object to the form.

12 A. No.

13 Q. Did you receive similar complaints from
14 registrars about confusion related to the
15 topic of voting rights restoration?

16 MS. MESSICK: Object to the form.

17 A. No.

18 Q. So Secretary Merrill forwards it to you and
19 tells you to please ask him about it on
20 Monday. This is in January of 2018. Do
21 you recall having a conversation with
22 Secretary Merrill?

23 A. No.

1 Q. If the secretary had asked you to have a
2 conversation with him, is that something
3 you probably would have done?

4 A. Oh, yeah.

5 Q. And he says it's also related to the parole
6 application. Does that trigger any
7 recollection of what the topic of this
8 conversation was?

9 A. Parole application would have been
10 referring to the voter -- I would believe
11 the voter disqualification form. And, you
12 know, very simply, I think Harry was one
13 that requested more information be provided
14 on that form to match the person being
15 counseled to the voter in the system, and
16 so I worked with improving the parole
17 application -- or voter disqualification
18 form is what it actually is called. So I
19 don't know how that ties into this, but I
20 remember that part and that was just, Hey,
21 can we improve this form. And then I
22 sought to improve it with pardons and
23 paroles and we eventually got it improved

1 to add certain identifying information.

2 Q. And so the form was changed to -- do you

3 know what was added to --

4 A. Yeah.

5 Q. -- help on the identification?

6 A. I think last four of SSN and date of birth,

7 or date of birth might have already been on

8 there. But one or both of those to help

9 them match it to a voter. So that's --

10 Q. And that was Mr. Butler's request?

11 A. If I remember correctly, he was one of the

12 people that asked for that; he wasn't the

13 only one. But I don't know about any other

14 part of this e-mail.

15 Q. Do you know whether the secretary spoke

16 with Mr. Butler about this e-mail?

17 A. No.

18 Q. So -- we can go off the record a second.

19 (Off-the-record discussion.)

20 MS. MESSICK: Back on the record

21 but before you get started again, I have

22 been informed that the secretary of state's

23 office IT has confirmed that they did

1 search the share drive in April. So any
2 responsive documents should have been
3 pulled and reviewed.

4 MR. GABER: Okay. I believe that
5 leaves whatever handwritten notes that
6 might exist.

7 MS. MESSICK: And I believe he said
8 that he didn't expect that any of those
9 would be responsive.

10 MR. GABER: Well, we can check the
11 transcript. It doesn't sound like the
12 universe is large, so if that's something
13 that can be --

14 MR. SINCLAIR: Well, we can
15 certainly make them available to you in the
16 ordinary course of business if that's your
17 pleasure.

18 MR. GABER: Are you asking me to
19 make a public records request?

20 MS. MESSICK: No. We're saying
21 that they could be produced --

22 MR. GABER: Oh, okay.

23 MS. MESSICK: -- in discovery in

1 the ordinary course of business. Somebody
2 is going to have to go rifling through his
3 office.

4 MS. LANG: You would like us to go
5 to Mr. Helms' office?

6 MR. SINCLAIR: We're just going to
7 look and see what works best for us, but
8 that is an option.

9 MR. GABER: I would suspect you
10 would not want that. We'll leave that to
11 you.

12 Q. (By Mr. Gaber) Are you familiar with an
13 exploratory committee that was formed to
14 study the issue of felony
15 disenfranchisement prior to HB 282 being
16 enacted?

17 A. No. I'm aware of something going on, but I
18 wasn't a part of any of that.

19 Q. You didn't attend any meetings of that
20 committee?

21 A. No.

22 Q. Do you know who was -- from your office was
23 involved in that?

1 A. No.

2 Q. Did you ever discuss the issue of the
3 exploratory committee with the secretary of
4 state?

5 A. No.

6 Q. Well, you just saved yourself some time. I
7 am going to hand you what will be marked as
8 Helms Exhibit No. 20.

9 (Helms Exhibit 20 was marked for
10 identification.)

11 Q. And this is Board of Registrars Handbook
12 dated May 14, 2015. And I can just tell
13 you this is one of the exhibits to your
14 declaration. That's the court stamp up in
15 the top. Take a look and let me know if
16 you're familiar with the document.

17 (Witness reviews document.)

18 A. Okay.

19 Q. Are you familiar with this document?

20 A. Yes.

21 Q. Can you describe what the document is?

22 A. It's a registrars handbook that was created
23 for guidance for them.

1 Q. Do you know who was involved in creating
2 this particular handbook?

3 A. Secretary of state staff along with
4 registrars that were listed down here, for
5 the most part.

6 Q. Were you involved in creating this?

7 A. Not from what I recall. Not much.

8 Q. Is that because of the date of this
9 particular iteration?

10 A. Yeah, I would say so.

11 Q. So later versions of the handbook have you
12 played a role in developing?

13 A. Yes, definitely.

14 Q. Is this something that now falls generally
15 under your purview?

16 A. I would say the elections division still,
17 but mostly, yeah.

18 Q. You were the -- I think you were the
19 supervisor of voter registration at the
20 time; right?

21 A. Right.

22 Q. Was that just early in your tenure in that
23 position?

1 MS. MESSICK: Object to the form.

2 Q. I guess I'm just trying to get at why were
3 you not involved in this more?

4 A. Yeah. I would say early on. Plus, there
5 was a changeover in who was secretary of
6 state, so that -- it takes a while to --
7 you know, a lot of different ideas about
8 what they want to do and they have to learn
9 who you are and allow you to be a part of
10 it.

11 Q. This is, I assume, a typo that says John
12 Merrill, secretary of staff?

13 A. Yeah.

14 Q. Might want to make sure that later
15 iterations don't say that.

16 A. Yeah. I think we've fixed that nowadays.
17 Might not go well for us.

18 Q. How is this -- is this document distributed
19 to all of the registrars in the state?

20 A. No. This document is replaced, you know,
21 with our current handbook, which I think
22 y'all have a copy of, so this is -- I don't
23 think this is --

1 Q. I guess I meant -- that was not a precise
2 question.

3 A. At the time?

4 Q. Yeah.

5 A. Yeah.

6 Q. And that's the case now? Do you know --
7 well, in your experience, what role has
8 Secretary Merrill played in either drafting
9 or approving the drafts of the handbook?

10 A. Well, I can't speak to too much on this
11 one.

12 Q. But just in general.

13 A. I would say he does -- he definitely --
14 well, he would review it at the end and
15 make it -- if he wanted to add certain
16 things like you need to add this or you
17 need to go into more depth on this and then
18 sign off on it.

19 Q. Okay.

20 A. So not in the building of it but in the
21 review and the commentary period, yeah,
22 sure.

23 Q. Do you find that he's generally pretty

1 active in managing the activities of the
2 secretary of state's office?

3 A. Yes.

4 Q. So he's involved in decision-making and
5 deciding how to convey information to the
6 registrars?

7 A. Well, in terms of conveying information to
8 the registrars, maybe not always, but in --
9 you know, I would say preparation of a big
10 document is more important than general
11 asking of questions in an e-mail on a
12 Tuesday morning. He's not going to -- I'm
13 not going to run to him and say is this --
14 but in larger things, sure.

15 Q. And this handbook is an example of
16 something that would be considered a larger
17 item that he would want to be personally
18 involved in?

19 A. I would think so.

20 Q. And I notice, you know, we have some
21 e-mails that had gone through where
22 registrars appear comfortable to just
23 e-mail him directly with their questions.

1 Is that your sense of his openness and
2 availability to the registrars to reach out
3 to him directly?

4 MS. MESSICK: Object to the form.

5 A. Yeah. To every -- to most people in
6 general, to be honest.

7 Q. If you could take a look at the fifth page
8 which -- with the court stamp in the upper
9 right; it's 44 of 124. And the fourth
10 question from the bottom here in this FAQ
11 is what is the legal interpretation of
12 moral turpitude, and there's a quote there.
13 Do you know where that quote came from?

14 A. Not off the top of my head, no.

15 Q. You don't know why that's in quotation
16 marks?

17 A. No.

18 Q. It's different than everything else. So it
19 says, Conduct that is considered contrary
20 to the community standards of justice,
21 honesty, or good morals. Is that your
22 understanding of the definition that your
23 office viewed as to what moral turpitude

1 was?

2 A. I don't have anything that says it wasn't,
3 so I would assume.

4 Q. Do you know what is meant by "community" in
5 that definition?

6 A. I think just general in society. I mean,
7 nothing stands out to me what community
8 refers to specifically in that sentence.

9 Q. And do you know what is meant by "good
10 morals"?

11 A. No.

12 Q. If you could -- that same answer refers
13 to -- it says a list of some qualifying
14 felonies can be found on pages 6 and 7 of
15 this document. If you could turn to those.
16 It's a couple pages later, the final two
17 pages.

18 A. So quick question. Did I reference this in
19 my declaration?

20 Q. Yes.

21 A. Okay. Do we know where that was?

22 Q. I can find that for you.

23 A. Okay. Never mind. It's on 9.

1 Q. Yeah. So this is Exhibit 4.

2 A. Okay. Never mind. That's fine.

3 Q. Do you know who developed the lists of
4 crimes involving moral turpitude and crimes
5 not involving moral turpitude that are
6 listed on pages 6 and 7 of the handbook?

7 A. No. Well, I'm assuming by that statement
8 it's different than the AOC listing.

9 Q. Yes.

10 A. Then no.

11 Q. This handbook was distributed, though, to
12 the registrars; right?

13 A. Well, I can only answer that by saying I do
14 not remember mass-sending this out to the
15 registrars. I would assume so.

16 Q. It's the --

17 A. Yeah. I mean --

18 Q. -- Alabama Board of Registrars?

19 A. -- the reason it was created.

20 Q. So it's the case, then, that they, from
21 your office, received both the AOC list and
22 at least this list in the handbook; right?

23 A. Yes, I would assume so.

1 Q. And you don't know -- just forgive me if
2 I've already asked you. You don't know who
3 developed this list in the handbook?

4 A. No.

5 MS. MESSICK: Object to the form.
6 Also, for the record, I'm looking at
7 Exhibit 4, and there were more documents in
8 that exhibit.

9 MR. GABER: What else?

10 MS. MESSICK: And more pages.

11 MR. GABER: So this is cut off at
12 the --

13 MS. MESSICK: It looks like
14 Exhibit 4 goes through page 55.

15 MS. LANG: Yes. I believe that
16 this is a portion of Exhibit 4 for the
17 relevant documents for us to discuss.

18 MR. GABER: We wanted to save
19 printing.

20 MS. MESSICK: I just wanted to make
21 the record clear, because I thought that
22 you were representing this was all of
23 Exhibit 4.

1 MR. GABER: No. Thank you.

2 Q. (By Mr. Gaber) Do you know if the county
3 registrars were advised to follow this
4 list?

5 A. I don't know. I don't recall telling them
6 to follow this list.

7 Q. Okay. If you look at the -- page 6 is
8 broken down by fraud and then evil intent
9 and there's kind of a break and then
10 there's a couple more bullets down at the
11 bottom including bribery; counterfeiting;
12 fraud against revenue or other government
13 functions; mail fraud; perjury; harboring a
14 fugitive from justice, with guilty
15 knowledge; tax evasion, willful.

16 Do you know whether prior to HB 282
17 that these convictions were generally
18 treated as ones involving moral turpitude?

19 A. I don't know.

20 Q. Looking at the list on pages 6 and 7 of the
21 crimes that are listed as involving moral
22 turpitude, do you see any crimes that
23 involve drug possession or the sale of

1 drugs or drugs at all?

2 A. No.

3 Q. So a registrar who is relying on this list
4 in the registrar's handbook would not be of
5 the view that the secretary of state's
6 office thought drug crimes involved moral
7 turpitude.

8 MS. MESSICK: Object to the form.

9 Q. Is that a fair characterization?

10 MS. MESSICK: Object to the form.

11 A. Well, let me ask you a question. Does this
12 listing -- I mean, I don't know that it
13 wasn't considered in addition to the AOC
14 listing, in which you're saying that's not
15 the case, probably.

16 Q. I don't know. I guess that would be
17 something that --

18 A. My answer to that question would be based
19 on is this a supplement to the AOC listing
20 and since it was included there, it's not
21 included here or was it left off entirely
22 and --

23 Q. Well, I believe that among these lists are

1 crimes that are included on the AOC list.

2 So, I mean, that seems obvious.

3 A. I'm just saying that that would affect my
4 answer as to whether you could --

5 Q. But I guess my question is, if a registrar
6 was looking at this list in the handbook --

7 A. Solely.

8 Q. -- that's pretty important -- right.

9 A. Yeah.

10 Q. -- that they would not have any reason to
11 know that it was the position of your
12 office that drug crimes were considered
13 crimes of moral turpitude?

14 MS. MESSICK: Object to the form.

15 A. Well, I would say they would not know.

16 Yeah, wouldn't know either way, because it
17 also lists crimes not involving moral
18 turpitude, so.

19 Q. Prior to HB 282, did you receive questions
20 from registrars about whether drug crimes
21 involved moral turpitude?

22 A. Yeah. I'm sure I did.

23 Q. And did you -- I think we've gone over

1 this. It's your -- it's the case that you
2 didn't provide advice about whether any
3 particular conviction was disqualifying?

4 A. Well, the elections handbook, I know, had
5 the AOC listing, and I thought -- I'm 99
6 percent certain that it had -- well, I
7 shouldn't have said -- I'm fairly certain
8 that it had stipulations about different
9 drug crimes. This section is -- falls
10 under this and it's moral turpitude; this
11 is not. So the fact that it's not here
12 doesn't mean they're running around with
13 their heads cut off and don't know. I
14 don't have an answer why it's not included.
15 But I would say if you look at the
16 elections handbook, you will see much more
17 guidance on that topic.

18 Q. If I look at the elections handbook?

19 A. Yes.

20 Q. That's different than this Board of
21 Registrars Handbook?

22 A. Yeah. Elections handbook was prepared by
23 election officials -- local, state, and the

1 Alabama Law Institute and it's, like, that
2 thick (indicating).

3 Q. Okay. And who -- that's not prepared by
4 the secretary of state's office?

5 A. Yeah.

6 Q. Oh, it is?

7 A. Partly. Not solely, though.

8 Q. And does that get distributed to the board
9 of registrars?

10 A. Yes.

11 Q. Okay.

12 A. Electronically and via hard copy. Well,
13 mostly hard copy.

14 Q. Do you know whether there were -- setting
15 aside the fact that drug crimes aren't
16 listed here in the Board of Registrars
17 Handbook, it sounds like it was your
18 understanding that they were on other
19 lists; is that right?

20 A. Yes.

21 Q. Okay. Was possession of drugs among the
22 drug crimes considered to be of --
23 involving moral turpitude?

1 MS. MESSICK: Object to the form.

2 A. I don't know. I don't have the -- again, I
3 think the handbook specifies the severity
4 of the drug crime and whether it fell into
5 that moral turpitude crime on the list or
6 whether it didn't, and I think it answers
7 that question.

8 Q. Does your office -- was your office
9 involved in working on drafts of HB 282?

10 A. I wasn't, so I can't really answer that.

11 Q. Are you aware of whether or not your office
12 was involved in the drafting process?

13 A. No. I wasn't involved enough to even know
14 about that stuff, to be honest.

15 Q. Before the law was enacted, did Secretary
16 Merrill, in discussions that you were
17 present for, did he discuss draft
18 legislation of HB 282?

19 A. No.

20 Q. Was the topic of the potential new law
21 discussed at staff meetings or meetings
22 that you were involved in?

23 MS. MESSICK: Object to the form.

1 A. Only to the extent that, you know, it
2 needed to pass because it was -- the
3 previous way of doing things was not the
4 way it should be done. So a bill needed to
5 be passed and then a law enacted to allow
6 guidance to be given. So I was definitely
7 of the understanding that this was
8 something that needed to happen or they
9 wanted to happen.

10 Q. Did you ever speak with any legislatures
11 about the drafting process or the content
12 or what should be considered a crime of
13 moral turpitude?

14 A. No.

15 Q. What do you believe to be the purpose of
16 felony disqualification?

17 A. What do you mean by that?

18 Q. What is the reason for disqualifying people
19 who have been convicted of certain
20 felonies?

21 MS. MESSICK: Object to the form.

22 A. I don't think I have a good answer for
23 that.

1 Q. Do you think it's advisable for folks who
2 have been convicted of certain crimes to
3 lose their right to vote?

4 A. What do you mean by "advisable"?

5 Q. If you could decide whether or not it would
6 be the case that people with certain
7 convictions would be disqualified, would
8 you do that?

9 A. I don't have a good answer to that. I'm
10 not a legislator or lobbyist, so --

11 Q. So I am electing you legislator.

12 A. Beware.

13 Q. Would you support or oppose a law that
14 disqualified people with certain
15 convictions from having the right to vote?

16 A. I think the law that's there now is
17 clearcut and, you know, I'm okay with.

18 Q. Do you think that it serves a purpose of
19 punishing folks for the crime that they've
20 committed?

21 MS. MESSICK: Object to the form.

22 A. No.

23 Q. Why not?

1 A. Not specifically. I just don't think of it
2 in terms of punishment.

3 Q. How do you think of it?

4 A. I really don't. I mean, I just make sure
5 we abide by the law, and that's what the
6 law is right now. Like I said, I'm not --
7 I don't decide the law. I just have to do
8 my best to make sure we adhere to it and
9 don't go beyond or short.

10 Q. Would you have any reason to disagree with
11 Secretary Merrill if he viewed the law as
12 punishing people for their crime?

13 MS. MESSICK: Object to the form.

14 A. I don't know how to answer that. I just
15 don't see it that way. So if somebody else
16 does or doesn't, that's on them.

17 Q. We'd have to ask Secretary Merrill?

18 A. Right.

19 MS. MESSICK: Object to the form.

20 Q. Prior to HB 282, would a person considering
21 committing a crime have had notice of
22 whether a conviction for that crime would
23 lead to disqualification for voting?

1 MS. MESSICK: Object to the form.

2 A. So prior to committing it would they have
3 known if I commit this I'll lose my voting
4 rights?

5 Q. Correct.

6 A. Probably not. I don't know.

7 Q. And say that crime was committed in 2005.

8 Would that person have any way to know that
9 the legislature in 2017 might decide that
10 their -- that that crime was one involving
11 moral turpitude?

12 MS. MESSICK: Object to the form.

13 A. Nope.

14 Q. That was no?

15 A. No. I'm sorry.

16 Q. Have you experienced or heard from
17 registrars that have had any difficulty
18 complying with HB 282?

19 A. No, not that I recall.

20 Q. Do you think it was -- was there any period
21 of time in the beginning when it was
22 enacted that there was confusion?

23 A. Not really. I mean, with any new process,

1 you have newness. The only part that was
2 really different was the pardons and
3 paroles part where they counsel the voter
4 and then send a brand-new form that had
5 never been used before to the registrars.

6 So there was some questions about that.

7 But I would say it flowed fairly well.

8 Q. And did you hear any complaints from or
9 about voters who were wrongly denied
10 registration following HB 282?

11 A. No.

12 Q. I am going to show you what will be marked
13 as Helms Exhibit 21.

14 (Helms Exhibit 21 was marked for
15 identification.)

16 Q. And this is an e-mail chain dated -- the
17 top e-mail is dated September 13, 2017 from
18 you to Kelli Moore, Carol Hill, and
19 Mr. Packard. And if you can take a look
20 and then let me know if you recall this
21 e-mail.

22 (Witness reviews document.)

23 A. Okay.

1 Q. Do you recall this?

2 A. No.

3 Q. Do you know who Carol Hill is?

4 A. Yes. Carol Hill is registrar in Shelby
5 County, Alabama.

6 Q. And what about Kelli Moore?

7 A. I don't know her personally. I would
8 assume from the e-mail she's a clerk.

9 Q. So in Ms. Moore's e-mail, she announced
10 that she's a registrar clerk and that she's
11 been put in charge of felons. And she
12 announced that she's called a couple
13 counties and received conflicting answers
14 about whether someone whose conviction is
15 not on the moral turpitude list needs to
16 have his voting rights restored. Does that
17 fairly characterize the e-mail?

18 A. That's what she's claiming.

19 Q. So you in response to Ms. Moore asked or
20 noted that you had asked Denine Richey in
21 your office to talk to her and provide her
22 more information. Who is Ms. Richey?

23 A. Denine Richey was an elections analyst in

1 our office at the time.

2 Q. Is she still in that position?

3 A. No.

4 Q. Do you know where she works now?

5 A. She works at the Coffee County Board of
6 Registrars office.

7 Q. And do you know when she made that
8 transition?

9 A. No.

10 Q. Did you follow up with Ms. Richey about
11 her -- checking to make sure she spoke with
12 Ms. Moore about her question?

13 MS. MESSICK: Object to the form.

14 A. Yeah. What -- Denine was a staff member of
15 mine at the time, so the way that I would
16 handle that is assign them to do something
17 and they would come back and let me know
18 that it's done. And I would keep it on my
19 floor or desk until I was able to throw it
20 away. So I would say I would feel certain
21 yes, it was handled.

22 Q. Okay. Do you recall asking Ms. Richey to
23 get more information as to which counties

1 Ms. Moore had called and received
2 conflicting answers from about her
3 question?

4 MS. MESSICK: Object to the form.

5 A. I don't recall having -- asking her to find
6 that out, but I would say in reading this
7 e-mail -- I mean, I was the same person
8 back then. That would be a question I
9 would have, yes.

10 Q. You would want to get to the bottom of
11 whatever confusion there might have been?

12 A. Yes.

13 Q. Are you aware of any confusion among
14 registrars about whether or not folks whose
15 convictions aren't enumerated in HB 282
16 have to nonetheless get their voting rights
17 restored?

18 A. No. I mean, I think it's very clearcut
19 that somebody in this situation would be
20 able to just simply fill out an application
21 and become registered.

22 Q. I am going to show you what will be marked
23 as Helms Exhibit No. 22.

1 (Helms Exhibit 22 was marked for
2 identification.)

3 Q. And this is the 2018 Alabama Voter Guide
4 published by your office.

5 MS. MESSICK: This is an excerpt?

6 MR. GABER: Do you know, Danielle?

7 Mr. Helms may be the best person to --

8 MS. LANG: I believe that's
9 accurate. There were a number of versions
10 of the voter guide that were produced.

11 This is one of them. But it may not have
12 been a complete one.

13 THE WITNESS: Oh, yeah. It's a lot
14 bigger than this.

15 MS. LANG: Yeah.

16 MS. MESSICK: So you had this
17 document just this way. You didn't take
18 excerpts of something that you know to be
19 the final?

20 MS. LANG: My assistant did it so I
21 can't be certain. I don't want to
22 represent to you whether or not it was
23 produced this way or not because I would

1 be --

2 MS. MESSICK: I understand. I
3 just -- I mean, I saw it and I immediately
4 wondered if it was the final version.

5 MR. GABER: Yeah. It does seem
6 kind of --

7 MS. MESSICK: And then it very
8 clearly, based the table of contents, seems
9 to be an excerpt, so I just -- I don't know
10 what we have.

11 MR. GABER: No. And that wasn't
12 intentional.

13 MR. GABER: We can talk about this
14 without, perhaps, the actual voter guide in
15 front of us.

16 MS. LANG: I do believe that the
17 current voter guide that's in front of us
18 goes through the section on voter
19 registration, and the remainder is about
20 the polling place voter assistance,
21 absentee voting, et cetera.

22 MR. GABER: That's helpful.

23 MS. LANG: So I believe the portion

1 of the voter guide that we'd like to
2 discuss is included in full.

3 Q. (By Mr. Gaber) Were you involved in
4 creating the 2018 voter guide?

5 A. Yes.

6 Q. What role did you play?

7 A. I don't think I was -- I think another one
8 of our election staff members took a jab at
9 updating it from the previous year, so I
10 would have been one that would have
11 reviewed the document entirely plus their
12 changes to make sure that their changes
13 were accurate as well as no other new
14 changes needed to be added. And then just
15 cosmetics and just adjusting year to year.

16 Q. Who was that staff member?

17 A. I really don't recall. Possibly Daniel
18 Dean who's a former elections analyst in
19 our office.

20 Q. He's no longer there?

21 A. No.

22 Q. Where is he now?

23 A. I don't know the name of the place he

1 works. He does campaign finance stuff
2 privately.

3 Q. Is he a lawyer?

4 A. No.

5 Q. Was there any discussion between -- where
6 you were involved about including in the
7 2018 voter guide the list of convictions
8 that are disqualifying under HB 282?

9 A. Not that I recall.

10 Q. Do you know why that list wouldn't be
11 included in the 2018 update?

12 A. No. The only thing I can think of would be
13 timing, maybe.

14 Q. When was the 2018 update --

15 A. I don't know.

16 Q. -- created?

17 A. I don't know the answer to that.

18 Q. Do you recall when it was distributed
19 first? Or it has been distributed, I
20 gather?

21 A. No. Say for a document like this, though,
22 we make, you know, a large order. It's a
23 long process. You know, state agency you

1 have to go through the bid process and you
2 get bids and you get quotes and all that
3 stuff. So the publication date or the date
4 we actually started distributing would have
5 been much further down the road than the
6 actual preparation.

7 Q. So do you think -- I mean, is it possible
8 this was created before July of 2017?

9 A. No.

10 Q. Do you think that --

11 A. I will say it's possible that when we added
12 this -- the listing to the website, though,
13 because it was already created.

14 Q. But both of those things would have been
15 after HB 282 was enacted?

16 A. Yes.

17 Q. Do you think that the list of disqualifying
18 convictions is something that probably
19 should be in the voter guide?

20 A. Yeah, I think it would be a good idea.

21 Q. Is that something that you can make happen
22 for the next iteration?

23 A. Oh, yeah. Sure.

1 Q. And that's something that you will make
2 happen?

3 A. Yes.

4 MS. MESSICK: Object to the form.

5 A. Well, let me take that back. I don't make
6 the final -- you know, somebody could
7 overstep me, but I would agree with putting
8 that in there.

9 Q. Okay. So can you turn back to what was
10 Exhibit 7, which is the BPP poster? I can
11 tell you that we're almost done. Do you
12 have it?

13 A. Yes.

14 Q. And I -- it's been a while so forgive me
15 for asking you again. It says that it was
16 prepared in conjunction with your office.
17 Were you involved in preparing this?

18 A. Yeah. I remember -- remember being
19 involved.

20 Q. Do you know who actually came up with the
21 draft of this? Was this something that the
22 board of pardons and paroles did or did
23 you-all in your office come up with the

1 initial draft of this?

2 MS. MESSICK: I'm going to object
3 to the form. This is a revision of a
4 document that existed before the law passed
5 and that makes your question a little bit
6 confusing.

7 MR. GABER: Can you say that again,
8 Misty?

9 MS. MESSICK: There was a --
10 pardons and paroles had a document before
11 the 2017 act.

12 MR. GABER: Okay.

13 MS. MESSICK: So before there was a
14 concrete list. And so this is a revision
15 of that document. So when you ask who
16 originally created it, I think you really
17 care about after the 2017 law who took the
18 first revision. But your question
19 technically asked who created it. Might
20 have been back in 2003.

21 MR. GABER: Okay.

22 Q. (By Mr. Gaber) I'm talking about who
23 created this iteration initially with

1 the -- after the law was changed.

2 A. I don't know the answer to that. I

3 think -- my understanding is pardons and

4 paroles was in charge of actually preparing

5 it and we sent them -- or they sent us

6 drafts and we responded to those and made

7 edits.

8 Q. Do you still have a copy of any of the

9 edits that would have been sent back to

10 them?

11 A. No. I would say no. I don't -- I know for

12 a fact I wasn't the point person on this

13 and so -- well, I don't know.

14 Q. Who was?

15 A. I think Ed Packard and myself and then

16 probably the people downstairs, David and

17 Brent Beal and John Bennett would have been

18 involved in reviewing it and making

19 changes.

20 Q. So in the left column under you may qualify

21 for a certificate of eligibility to

22 register to vote if, the first bullet is:

23 You have one or more felony convictions

1 from any state or federal court. Is that
2 what it says?

3 A. Yes.

4 Q. Do you think it would be clearer if it
5 provided notice that, you know, only a
6 subset of felony convictions actually would
7 require a CERV in order to regain voting
8 rights?

9 A. So you're saying in some cases it doesn't
10 apply to them at all because their felony
11 doesn't fall on the list?

12 Q. Right. And that this might -- might lead
13 folks down the wrong path to thinking that,
14 you know, any felony conviction might
15 trigger the need to get a CERV in order to
16 get the right to vote?

17 MS. MESSICK: Object to the form.

18 A. Yeah. I think it's helpful as it is. But,
19 I mean, if somebody requested to change
20 that part to add something, if it was
21 helpful to a voter, I wouldn't have a
22 problem.

23 Q. There is -- I mean, there is a list on the

1 right here. Obviously that was added after
2 HB 282, I assume. Is that your
3 understanding?

4 A. Yes, that's my understanding.

5 Q. But do you see anywhere else -- I guess do
6 you see anywhere where that list is
7 tethered to the felonies that actually
8 trigger the need to get a CERV?

9 A. So you're saying basically just in parens
10 put "see far right corner"? I mean, that's
11 basically what you're trying to tie, here
12 to here; right?

13 Q. Yeah. I mean, because there isn't -- you
14 know, there's nothing on -- this just seems
15 sort of like a here's a list of moral
16 turpitude crimes and then there's no
17 other -- you know, there's nothing saying,
18 you know, the relevance of this list.

19 A. Yeah.

20 Q. So that's -- a change like that to make it
21 clearer that these are the folks who have
22 to get a CERV and other convictions don't
23 even require this and are eligible to vote

1 notwithstanding their conviction, that's
2 something that you'd be willing to suggest
3 as a change to this poster?

4 A. Yeah, I would. I'm going to get a copy of
5 these suggestions I'm agreeing to, right,
6 so I don't forget?

7 Q. We'll definitely pass that along. Are you
8 familiar with an Alabama code provision in
9 17-3-54 that requires registrars to notify
10 people within ten days if their
11 registration application is being refused?

12 A. Yes.

13 Q. Is it your understanding that -- are you
14 aware whether or not that provision is
15 generally being met by the counties?

16 A. Yeah, I think it's generally being met. I
17 mean, there -- they should definitely be
18 aware of it and should be adhering to it.

19 Q. Is that provision part of the guidance or
20 the election guide and the like that is
21 provided to registrars?

22 A. It should be. I mean, I don't have all the
23 publications in front of me, but it's a

1 statute that we're aware of and I have
2 communicated many times.

3 Q. Okay. To the extent it's not clear to
4 folks, that's something that you'd be
5 willing to highlight?

6 A. Yes.

7 MS. MESSICK: Object to the form.
8 This is not a negotiation. It's a
9 deposition. I mean, you've asked him --

10 MR. GABER: It's a question.

11 MS. MESSICK: Yeah, but you're
12 asking -- you're not asking him about facts
13 he knows. You're asking him repeatedly to
14 take suggestions back to the office, and I
15 just really don't think it's appropriate.

16 MR. GABER: It seems helpful.
17 Let's take a break and we'll discuss
18 whether there's anything else, but I think
19 we're basically done.

20 (Short recess.)

21 MR. GABER: So I have no further
22 questions unless I have any in response to
23 any that Ms. Messick may have.

1 EXAMINATION

2 BY MS. MESSICK:

3 Q. Yes. And unfortunately I do have some
4 questions. I appreciate you bearing with
5 me. Mr. Gaber asked you earlier if you had
6 collected any documents in regards to this
7 litigation. Did you very recently send
8 some e-mails to Ed Packard with documents
9 that I had requested?

10 A. Yes.

11 Q. Do you remember specifically what those
12 documents were?

13 A. To my knowledge, it was the registrar
14 training material, the Auburn material.

15 Q. Prior to Act 2017-378, isn't it true that
16 the board of registrars was charged with
17 making an additional determination about
18 whether a crime was disenfranchising and
19 that in doing that they could decide that a
20 crime that was not on the new list was in
21 fact disenfranchising?

22 MR. GABER: Object to the form.

23 A. Yes.

1 Q. Isn't it also true that at that time a
2 registrar could decide to let somebody vote
3 even if they were on the list?

4 MR. GABER: Object to the form.

5 Q. If their crime was on the list?

6 A. Yes.

7 Q. If you learned that a registrar was
8 routinely disregarding the -- a list that
9 said that a crime involved moral turpitude,
10 would you have taken any action?

11 A. Yes. I would recommend they be removed for
12 cause most likely.

13 Q. Isn't it true that if a voter was, prior to
14 the 2017 act, denied registration on the
15 basis that their felony conviction is for a
16 crime involving moral turpitude, that they
17 had a right to appeal to the courts?

18 A. Yes.

19 Q. And wasn't the ultimate determination about
20 whether a felony involved moral turpitude
21 left to the courts?

22 A. If appealed, yes.

23 Q. Okay. So the registrars made the initial

1 determination. And if there was an appeal,
2 the final determination was made by the
3 courts?

4 A. Yes.

5 Q. You spoke with Mr. Gaber about the Auburn
6 training for which you indicated there's a
7 three-year contract for 2017, '18, and '19.
8 Was there training for the registrars
9 before 2017?

10 A. Yes.

11 Q. Mr. Gaber asked you if there was any
12 guidance specific to out-of-state felony
13 convictions. I understood you to say that
14 there was not, that there was general
15 guidance. Does not some of the Auburn
16 training involve a simulation focused on
17 out-of-state and/or federal felonies?

18 MR. GABER: Object to the form.

19 A. Yes.

20 Q. Can you tell us more about that?

21 A. Well, the Auburn training has the -- you
22 know, it talks about the law, the changes,
23 it talks about the list that we prepared of

1 moral turpitude offenses which includes the
2 charge codes and all of that. And so
3 charge codes, you understand, is -- AOC
4 sends over the crime. It has a four-digit
5 code so the registrar knows what crime that
6 is. In addition to the training material,
7 the slides, so to speak, there's exercises
8 that are built around that training
9 material to help people interact and sort
10 of -- just sort of an adult learning tool.
11 So one of those exercises was registrars
12 matching certain crimes with their list and
13 determining if it was moral turpitude or
14 not, and some of those were out-of-state
15 crimes and I think federal crimes.

16 Q. And when you're talking about the charge
17 codes, Mr. Gaber asked you earlier if the
18 list in the 2017 act wasn't less friendly
19 than some of the materials you've created.
20 The materials you created for the
21 registrars, that included the name of the
22 statute -- the name of the felony, the
23 Alabama code, and also that AOC charge

1 code; correct?

2 MR. GABER: Object to the form.

3 A. Yes.

4 Q. And that AOC charge code is what they get
5 from AOC about a specific voter?

6 A. Correct.

7 Q. Have you ever attempted to match the data
8 in the AOC database to the data in the
9 voter registration database on more than
10 one voter level to see if that could be
11 done or how -- what difficulties you might
12 encounter?

13 A. No.

14 Q. Does the voter registration database
15 always, for every person who has been
16 denied -- either denied registration or
17 removed from the roles for disqualifying
18 felony, does it always say what the felony
19 is?

20 MR. GABER: Object to the form.

21 A. No.

22 Q. So you mentioned earlier that the felony
23 might be included in a note or the scanned

1 document; correct?

2 A. Yes.

3 Q. But for some people who have been denied an
4 application or removed, this specific
5 felony might not be in the database at all;
6 correct?

7 A. That's possible, yes.

8 Q. Do you know how long this database has
9 existed, the voter registration database?

10 A. I could be wrong, but I believe it was in
11 2007.

12 Q. That's when the current system was created?

13 A. I think so.

14 Q. Were you there when it was created?

15 A. No.

16 Q. Do you know to what extent it includes data
17 from before its creation?

18 A. No. I know it includes some data from
19 before.

20 Q. I'm going to ask you to look back at the
21 Mississippi voter registration form that
22 Mr. Gaber gave you. That's Exhibit 11.
23 And I'm also going to give you a new

1 exhibit which will be No. 23.

2 (Helms Exhibit 23 was marked for
3 identification.)

4 Q. I'll represent to you that I asked my
5 assistant to print this off of the
6 secretary of state's website. Does this
7 look like -- does Exhibit 23 look like the
8 voter registration form on the secretary of
9 state's website?

10 A. Yes.

11 Q. And so this cover page about mailing or
12 hand-delivering the form, that's not part
13 of the form; right?

14 A. Right.

15 Q. And so when you talked about a two-page
16 form or front and back, you're talking
17 about the second and third pages here?

18 A. Yes.

19 Q. And the last page is like the back of the
20 Mississippi form where it's got contact
21 information for the local election
22 officials and a way to address it; correct?

23 A. Correct.

1 Q. And the part of the form that the voter
2 actually fills out to apply, that's one
3 page; right?

4 A. Yes.

5 Q. And did I -- you were talking about a map
6 earlier. Where is that on the Alabama
7 form?

8 A. It's on Item 12 in the lower middle part of
9 the form.

10 Q. Do you see that the Mississippi form
11 includes a question like Box 13 concerning
12 assistance?

13 (Witness reviews document.)

14 A. Well, there's something down at the bottom
15 that talks about assistance with name and
16 address or a place for signature and
17 address.

18 Q. You're talking down at the bottom of the
19 Mississippi form if the applicant's unable
20 to sign, the person who assisted?

21 A. Yes.

22 Q. Okay. Do you see gender on the Mississippi
23 form?

1 A. No.

2 Q. Do you see race on the Mississippi form?

3 A. No.

4 Q. The box on the Alabama form that says
5 "registrars use only," do you know what
6 that's for?

7 A. Yeah. So in Alabama, to register somebody
8 to vote requires a quorum decision of the
9 board, which means more than one registrar,
10 and they use that box to review and sign
11 off on the application. It's just an
12 internal procedure for processing and
13 verifying the form.

14 Q. Do you see that Alabama asks for place of
15 birth in Box 11?

16 A. Yes.

17 Q. Do you see that Mississippi asks for that
18 information?

19 A. No.

20 Q. Can you count for me how many crimes
21 Mississippi lists?

22 A. On Bullet 4?

23 Q. Yes.

1 (Witness reviews document.)

2 A. Counting 22.

3 Q. Does Alabama's Act 2017-378 contain more
4 than 22 crimes?

5 A. I don't know the exact number, but I would
6 say so, yes. Probably significantly more.

7 Q. Does Mississippi's form explain what to do
8 if you don't have a Mississippi driver's
9 license or Social Security number?

10 A. Well, it discusses it on Bullet 2. You
11 must send with this application a copy of a
12 current -- if you're registering for the
13 first time.

14 Q. Okay. Thank you. Is it fair to say that
15 their form is fairly different from
16 Alabama's?

17 A. Yes.

18 Q. Mr. Gaber asked you a couple -- well,
19 several times today about uniformity in
20 terms of the decisions being made by the
21 boards of registrars. Prior to this 2017
22 law listing crimes -- felonies of moral
23 turpitude, isn't it true that you provided

1 registrars with the list that the AOC had
2 created that's in the Alabama Election Law
3 Handbook?

4 A. Yes.

5 Q. And isn't it true that the secretary of
6 state's office also provided training on
7 what felonies involved moral turpitude?

8 A. Yes, I believe so.

9 Q. And isn't it true that the secretary of
10 state's office also offered uniform
11 guidance on how to make the moral turpitude
12 determination?

13 A. Yeah, through the handbook and the AOC
14 listing.

15 Q. Before there was a definitive list in the
16 2017 law, do you believe that registrars in
17 different counties sometimes reached
18 different decisions about which felonies
19 involved moral turpitude?

20 A. Prior to the 2017 law; right?

21 Q. Yes.

22 A. Probably in some cases.

23 Q. Do you have any reason to believe that

1 those decisions -- the differences in those
2 decisions were ever because of the race of
3 the voter?

4 A. No.

5 Q. Mr. Gaber asked you a question earlier
6 about whether you had ever heard about any
7 concerns about racial bias. I believe you
8 responded along the lines of you weren't
9 sure -- you hadn't been part of that, but
10 you were sure it's out there. Do you
11 recall that?

12 MR. GABER: Object to the form. I
13 think it mischaracterizes the testimony.

14 A. No, I don't -- that doesn't sound like the
15 right answer.

16 Q. Are you aware of any concern from election
17 officials or the secretary of state's
18 office that decisions about which felonies
19 involving moral turpitude ever had a racial
20 component?

21 A. No.

22 Q. If it was reported to you that a registrar
23 was making disenfranchisement decisions

1 based on the race of the voter, what would
2 you do?

3 A. Recommend they be removed for cause.

4 Q. I assume you follow up and if it -- if the
5 allegation was true, you would recommend --

6 A. Well, yeah, assuming everything is accurate
7 and it's not just an allegation.

8 Q. Mr. Gaber asked you earlier if you knew if
9 the state prison ID could be used to get a
10 photo ID to vote in Alabama. Do you know
11 if a state prison ID might ever be a valid
12 photo ID for voting purposes in Alabama?

13 A. I would have to check to determine if
14 that's acceptable.

15 Q. Okay. You're not aware of -- if it was a
16 government ID that contained the name of
17 the voter and the picture of the voter,
18 would that make it -- would it be
19 sufficient?

20 A. Yeah. I mean, I don't see any reason why
21 it would fall outside of the other
22 acceptable IDs.

23 Q. Okay.

1 MS. MESSICK: No further questions.

2 EXAMINATION

3 BY MR. GABER:

4 Q. I have a couple more. Ms. Messick asked
5 what you would do if you became aware that
6 a registrar, prior to the 2017 law, if the
7 registrar was disregarding the lists, the
8 AOC lists or the registrars handbook list
9 of crimes of moral turpitude, and I think
10 you testified that you would remove the
11 registrar for cause; is that correct?

12 MS. MESSICK: Object to the form.

13 A. Well, I don't have the ability to remove a
14 registrar. I don't have the authority to
15 remove a registrar.

16 Q. So what did you mean when you spoke of
17 removing the registrar for cause?

18 A. My point there is that if somebody is
19 blatantly disregard- -- and this doesn't
20 apply in terms of the board came up with
21 this decision and it -- I'm talking about
22 blatant disregarding what is available to
23 you. Then, yeah, I would recommend they be

1 removed for cause to the secretary of
2 state.

3 Q. What would be the cause for removing that
4 registrar? What violation of their legal
5 duties would they have committed?

6 A. Well, see, say every person that comes in
7 with a crime you're removing, every person
8 that comes in with a crime you're not
9 removing. You're blatantly disregarding
10 the law and guidance, and I think that
11 would be reason for removal.

12 Q. Wasn't it your testimony earlier that the
13 decision as to whether or not a given
14 conviction involved moral turpitude was
15 exclusively within the domain of the
16 registrars?

17 MS. MESSICK: Object to the form.

18 Q. Do I have that right?

19 A. About a particular crime?

20 Q. Right.

21 A. Yes.

22 Q. And so a registrar deciding to -- a board
23 of registrars deciding to disregard the

1 guidance or the AOC list or any other list,
2 they -- if I'm understanding your testimony
3 correctly, they wouldn't be violating any
4 duty imposed on them by law in Alabama,
5 would they?

6 MS. MESSICK: Object to the form.

7 A. Well, your scenario is different than mine.
8 I brought up mass cases in which they're
9 disregarding the law entirely and you're
10 bringing up specific cases in which they
11 think this crime is not moral turpitude.
12 So those two scenarios are different.

13 Q. So if a board of registrars was of the view
14 that no crimes involved -- no felonies
15 involved moral turpitude, would they be
16 violating the law as it stood prior to
17 HB 282 --

18 MS. MESSICK: Object to the form.

19 Q. -- in your view?

20 A. Well, by doing that, they're not -- they're
21 assuming there is no law to do that,
22 because you're just saying that they assume
23 every crime -- no crimes are moral

1 turpitude.

2 Q. Right.

3 A. Every crime is not moral turpitude.

4 Q. Every felony.

5 A. Ask me the question again. Sorry. It's
6 been a long day.

7 Q. Do the board of registrars have any
8 obligation to follow the guidance that your
9 office gave with respect to whether a crime
10 was one involving moral turpitude?

11 A. Well, first of all, it's not just guidance
12 our office is giving. It's from other
13 agencies as well. Not that that answers
14 your question. But I'm -- this is my
15 point. The different -- there's a
16 difference in our scenario. Yours is in
17 which they think this is moral turpitude
18 and this not, and mine is which they
19 have -- they do have to remove people for
20 moral turpitude crimes. Now, they have
21 some say in the determination of that
22 listing of crimes prior to House Bill 282
23 or whatever the bill was, 2017-378. I

1 think there's a difference in that and not
2 doing it at all and not performing the job
3 at all, which would be --

4 Q. Okay. I'm sorry.

5 A. Go ahead.

6 Q. So when you were talking with Ms. Messick
7 about that a registrar could be removed for
8 cause, is it the case, then, that you were
9 referring to situations in which the
10 registrars were completely disregarding
11 their obligation to deny folks who had
12 committed crimes of moral turpitude?

13 A. Yes.

14 Q. Okay. So is it the case, then, that it
15 would not -- you would not be able to
16 remove a registrar for cause prior to the
17 enactment of HB 282 if they simply
18 disagreed with the inclusion of a crime on
19 the AOC's list?

20 A. Well, again, I don't remove for cause so I
21 wouldn't make that determination.

22 Q. Right. But I guess I'm asking this because
23 you said that you would recommend that that

1 person be removed for cause.

2 A. Right. So in that instance prior to that
3 bill passing, if in your scenario the board
4 decided that one crime did not fall -- did
5 not fall on that list, no.

6 Q. No, there would not be cause to remove the
7 registrar?

8 A. I don't think that would be cause for me to
9 recommend them to be removed, no.

10 Q. And so is your testimony, then, limited to
11 situations in which the board of registrars
12 is completely disregarding their obligation
13 to disqualify voters who had committed a
14 crime of moral turpitude and not any
15 particular designation of which crime is
16 one of moral turpitude?

17 A. Well, in this case, we're going back to
18 something that is no longer so. I would
19 agree with that. But that's not to answer
20 a question now. So I'm answering the
21 question for something that no longer
22 exists.

23 Q. Right.

1 A. I don't get that, but . . .

2 Q. Well, it was the law for many years and is

3 the --

4 A. Yeah.

5 Q. -- subject of --

6 A. I'm just saying it's hard to answer a

7 hypothetical for something that's no longer

8 in play.

9 Q. So I just want to make sure it's clear,

10 then, that when you say that a registrar

11 could be removed for cause, it's not your

12 testimony that their exercise of their

13 authority to determine what was a crime of

14 moral turpitude, that they were not going

15 outside their authority in doing so if they

16 chose a different set of convictions than

17 those that were listed in AOC or other

18 lists.

19 A. I'm not the decider of what's removable for

20 cause.

21 Q. But you wouldn't -- you would not recommend

22 that --

23 A. No.

1 Q. -- simply because of a difference -- and is
2 that because the board of registrars at the
3 time had the final determination as to what
4 constituted such a crime?

5 MS. MESSICK: Object to the form.

6 A. Outside of what we discussed earlier with
7 the appeal process which then would go to
8 the Court to decide.

9 Q. And so there wouldn't be any cause in your
10 view to remove them for that reason?

11 A. That's not for me to decide.

12 Q. Well, you -- sounds like you make
13 recommendations about when cause exists and
14 when cause does not exist.

15 A. Well --

16 Q. Is that true?

17 A. I could, yeah.

18 Q. Have you ever recommended that a registrar
19 be removed for cause?

20 A. I've brought problems or brought issues up
21 to the secretary or to the chief of staff.

22 Q. What sorts of problems?

23 A. Things like not working, not showing up,

1 causing problems in the office amongst the
2 other staff, things like that. Just HR
3 stuff, basically.

4 Q. Have you ever recommended that a registrar
5 be removed for cause because of his or her
6 administration of the moral turpitude
7 provision?

8 A. No.

9 Q. Are you aware of any registrar who's ever
10 been removed for cause on that basis?

11 A. No. But that's not to say it hasn't
12 happened. I just -- I don't know.

13 Q. You mentioned in your question and answer
14 of Ms. Messick about the Auburn training
15 and that it contains a module where there
16 was an interactive comparison of out-of-
17 state and federal convictions to the
18 enumerated HB 282 list. Is that fair?

19 A. Yes.

20 Q. What information was provided about the
21 out-of-state and federal convictions when
22 that comparison was undertaken in the
23 training?

1 A. I don't know.

2 Q. Do you know whether the actual text of the
3 statute was provided?

4 A. No. It is in the material, though, so I
5 think y'all have that material definitely,
6 so you'll be able to see the exercise and
7 how it flowed. But there's no way I could
8 recall that at this point.

9 Q. Okay. You also talked about the appeals
10 process once a registrar denies -- a board
11 of registrar denies an application. Can
12 you describe more for me how that appeal
13 process works in the court?

14 A. I really don't know that much about that.
15 I just know it's available to them.

16 Q. What is the deadline to register before an
17 election in Alabama?

18 A. Fifteen days prior to the deadline.

19 Q. Fifteen days?

20 A. Or prior to the election. Excuse me.

21 Q. And I think we discussed earlier that a
22 denied application, under Alabama law, it
23 has to be communicated to the voter within

1 ten days of the application being
2 submitted; is that correct?

3 A. Yeah.

4 Q. Do you know how many court cases have been
5 filed appealing a determination denying a
6 voter registration application in Alabama?

7 A. So you're having a different process
8 between appeal for denial and an appeal for
9 removal; correct?

10 Q. Right.

11 A. We're talking about specifically denial
12 right now.

13 Q. Is that what you were testifying about with
14 Ms. Messick earlier?

15 A. I'd have to go back and look. I'm just
16 making clear that there's two separate
17 appeal processes, so I don't want us to get
18 all twisted up into there's one.

19 Q. Okay.

20 A. So you're talking about denial. I'm not
21 aware of, no, an appeal on that.

22 Q. Are you aware of any appeals of denials of
23 voter registration -- of voter registration

1 applications on the basis of felony
2 disqualification that have occurred at any
3 time in your tenure at the secretary of
4 state's office?

5 A. Yes. I would say that I'm aware of appeals
6 through Jefferson County. And I'm not sure
7 which -- it was a denial or removal, but
8 those I have seen and it does exist.

9 Q. And if a voter submitted a registration
10 application on the 15th day prior to an
11 election and if the registrar complied with
12 the law to provide notice ten days later,
13 am I correct that that would leave five
14 days to file a lawsuit and appeal the
15 determination of the board of registrars?

16 MS. MESSICK: Object to the form.

17 A. So your registrant waits until the deadline
18 to register and then is denied, what,
19 within ten days and then they want to file
20 a lawsuit --

21 Q. Right.

22 A. -- about the registration. I think that's
23 how the days -- the numbers add up, yeah.

1 I would love to know of a better way to
2 handle that and go backwards in time to
3 allow more time.

4 Q. And so do you agree that there are very
5 few -- or is it the case that there are --
6 in your experience, there are very few
7 actual appeals filed in court by voters
8 whose registrations have been denied?

9 A. I don't have a good answer for that because
10 I'm not -- they don't file them with me, so
11 I have not seen many. But that doesn't
12 mean that they don't take place. I have
13 not heard of many. I would assume, though.

14 Q. And prior to HB 282, then, is it your
15 understanding that as a matter of fact the
16 final determination for the vast majority
17 of denials on the basis of felony
18 disqualification were made by the board of
19 registrars?

20 MS. MESSICK: Object to the form.

21 A. You said prior to --

22 Q. Right.

23 A. -- the bill? Well, ask me that again.

1 Q. I guess my -- what I'm getting at is the
2 actual quantum of court cases that were
3 filed is exceedingly low. Is that your
4 understanding?

5 MS. MESSICK: Object to the form.

6 A. I don't know, but --

7 Q. Is that what you would suspect?

8 MS. MESSICK: Object to the form.

9 A. Probably shouldn't suspect.

10 Q. Would it be onerous for a voter who
11 believed that their registration
12 application was wrongly denied because they
13 believe their crime was not one of moral
14 turpitude to file a lawsuit to have to get
15 that remedied?

16 MS. MESSICK: Object to the form.

17 A. What do you mean by "onerous"?

18 Q. Would it be costly, perhaps?

19 MS. MESSICK: Object to the form.

20 A. I don't know. I've not filed any lawsuits.

21 Q. Have you hired an attorney before?

22 A. No, but I know they're expensive.

23 Q. Have you ever seen a lawsuit complete in

1 five days?

2 MS. MESSICK: Object to the form.

3 A. I'm not a good example of -- you know, a
4 good knowledge base on that. I really
5 don't know how long it would take.

6 Q. Is there any requirement under the Alabama
7 code that the voter registration form
8 include the registrars'-use-only box on the
9 form?

10 A. Not that I'm aware of.

11 Q. Could that information be located
12 elsewhere?

13 MS. MESSICK: Object to the form.

14 A. Where?

15 Q. Does it have to be on the form? There's no
16 requirement; right?

17 A. Well, there's --

18 MS. MESSICK: Object to the form.

19 A. -- a requirement that two registrars at
20 least approve of the application, so by
21 removing it, you're actually allowing that
22 requirement by law to be negated or
23 avoided.

1 Q. Is there any requirement that it be notated
2 on the registration application that it has
3 been approved or by whom it has been
4 approved?

5 MS. MESSICK: Object to the form.

6 A. That's what it's there for. Requirement by
7 law that they use this box, no.

8 Q. So the space that is currently used by that
9 box could be used by providing other
10 information without violating the Alabama
11 code?

12 MS. MESSICK: Object to the form.

13 A. I would say that would cause some internal
14 problems in their offices if you remove the
15 one box that they use to process the
16 applications.

17 Q. But that wasn't my question. That space
18 could be used for other information without
19 causing any violation of requirements under
20 Alabama law; is that right?

21 MS. MESSICK: Object to the form.

22 A. Yes. But beyond that, you know, that would
23 not -- I would not agree with doing that at

1 all. So your space question is yes, but
2 would it create much more problems, many,
3 many more problems, yes.

4 Q. Do you think that that box could be made
5 smaller or shortened or reformatted so that
6 it did not take up 25 percent of the form?

7 MS. MESSICK: Object to the form.

8 A. I wouldn't say it's 25 percent.

9 Q. Or the space that it does take up?

10 A. Yeah. Possibly. Yeah.

11 MS. MESSICK: Object to the form.

12 Q. We talked earlier and you talked with
13 Ms. Messick a little bit about the
14 Mississippi form and its list of the 22 or
15 23 convictions that are disqualifying. And
16 do you recall we talked about the NVRA's
17 requirement that the eligibility
18 requirements be specified on the form? Do
19 you recall that testimony?

20 A. Yes.

21 Q. And so it's your understanding that the
22 NVRA requires the eligibility requirements
23 to be specified on the form?

1 MS. MESSICK: Object to the form.

2 A. Did the NVRA say -- specify specifically
3 that word?

4 Q. Yes.

5 A. Then yes.

6 Q. And is it your belief that your office's
7 obligation to comply with the NVRA
8 disappears if there are more eligibility
9 requirements in Alabama than there are in
10 other states?

11 MS. MESSICK: Object to the form.

12 A. You have to ask me that again.

13 Q. Does your obligation to comply with the
14 NVRA rise or fall on the number of
15 eligibility requirements Alabama law has
16 chosen to require?

17 A. I don't get what you mean by that.

18 Q. Can you ignore the federal NVRA's
19 requirement to specify eligibility
20 requirements because Alabama has a lot of
21 eligibility requirements?

22 MS. MESSICK: Object to the form.

23 A. So in your scenario, you're saying it

1 doesn't currently specify; right?

2 Q. My question is simply is it your
3 understanding that the NVRA limits the
4 obligation to specify eligibility
5 requirements to situations in which there
6 are fewer than in other states?

7 MS. MESSICK: Object to the form.

8 A. No. To answer your question, the NVRA I
9 don't think would change based on the
10 amount that you have.

11 Q. You talked with Ms. Messick about training
12 that the secretary of state provided to
13 registrars about moral turpitude prior to
14 HB 282. What training were you referring
15 to?

16 A. Prior to that bill, we would have attended,
17 as I mentioned, the biannual association
18 meetings, and we would have had really a
19 much larger part in that conference then
20 because that was the main training venue
21 for us. Then we started working with
22 Auburn and we sort of pulled back from the
23 association meetings and had our own

1 training. So trainings would have been
2 held during that time in person, if that
3 was what you're asking.

4 Q. And with respect to the definition of moral
5 turpitude, what did you train registrars to
6 do?

7 A. I don't recall. I think I went further in
8 that answer and talked about the AOC
9 listing and the elections handbook and
10 those things.

11 Q. Okay.

12 A. So part of that would be referring to that.

13 Q. And Ms. Messick also asked you about
14 whether you had provided uniform guidance
15 prior to HB 282's enactment, and you
16 testified that the provision of the AOC
17 list and the handbook, the registrars
18 handbook, would constitute providing
19 uniform guidance. Do I have that right?

20 MS. MESSICK: Object to the form.

21 A. Well, by handbook I meant election handbook
22 in that scenario, not registrars handbook.

23 Q. Okay. So if the registrar had the

1 registrars handbook and the AOC list, which
2 I believe is in -- you testified is in the
3 elections handbook?

4 A. Yes.

5 Q. To the extent those are different lists,
6 would that guidance be uniform?

7 MS. MESSICK: Object to the form of
8 the question.

9 A. Well, I can't answer much to this list, but
10 I would say that uniform was provided in
11 the AOC list and the election handbook,
12 yeah.

13 Q. So when you said "this list," you were
14 pointing at the registrars handbook list?

15 A. Yes.

16 Q. So providing that, together with the AOC
17 list, to the extent the lists are
18 different, the guidance would not be
19 uniform; is that correct?

20 MS. MESSICK: Object to the form of
21 the question.

22 A. Assuming you're providing all three of
23 these things to the registrars at the same

1 time or within the same time frame, I can
2 see it being contradictory, yes.

3 Q. And you spoke of it with Ms. Messick about
4 what you would do if you were made aware of
5 a registrar who was making moral turpitude
6 determinations based upon the race of an
7 applicant, and I think you testified that
8 you would recommend that that person be
9 removed; is that correct?

10 A. Yes.

11 Q. How would it be that you would come to know
12 whether a registrar was having some bias,
13 some racial bias, in how they made that
14 determination?

15 MS. MESSICK: Object to the form.

16 A. Hypothetically, you would get a complaint
17 from maybe the voter or a complaint from
18 fellow registrars saying, Hey, John Doe is
19 racist and he is doing these things, or
20 she, Jane Doe. It would have to come from
21 the county level, I would assume.

22 Q. Do you think it's possible that registrars,
23 without being racist, may unknowingly have

1 a racial bias in making decisions?

2 MS. MESSICK: Object to the form.

3 A. No.

4 Q. You don't think it's possible for a
5 different decision to be made not knowingly
6 or intentionally but nonetheless be
7 different with respect to the race of the
8 voter?

9 MS. MESSICK: Object to the form.

10 A. No. I mean, I don't know how people
11 unknowingly make decisions and what
12 psychologically drives that, so I'm not an
13 expert in that field. But my answer, based
14 on what I know, would be no.

15 Q. And what do you know that causes you to be
16 able to give that answer?

17 A. Absolutely nothing. I don't know about
18 subconsciously or unconsciously answering
19 or handling business that you wouldn't
20 normally handle or that you wouldn't
21 normally do correctly. But I see no
22 examples of that and I don't believe that
23 it's happening.

1 MR. GABER: I don't have any
2 further questions.

3 EXAMINATION

4 BY MS. MESSICK:

5 Q. Unfortunately, I do. And I am sorry
6 because I know it's after seven and you've
7 been yawning.

8 Do you know where the AOC list came
9 from?

10 A. Other than administrative office of courts,
11 coming from them, no.

12 Q. Do you know what it's based on or whose
13 judgment it reflects?

14 A. No.

15 Q. If a registrar decided whether -- if
16 pre 2017 a registrar decided whether a
17 felony involved moral turpitude by flipping
18 a coin, would that be acceptable?

19 A. Wouldn't think so, no.

20 Q. Do you believe that registrars were
21 required to make a good-faith attempt to
22 determine whether a felony involved moral
23 turpitude?

1 A. Yes.

2 Q. And do you believe that they should have
3 used the AOC list and -- as they tried to
4 do that?

5 A. Yeah.

6 MR. GABER: Object to the form.

7 A. Yes.

8 Q. Are you familiar with a 2005 attorney
9 general's opinion to William Segrest about
10 which felonies involved moral turpitude?

11 A. Vaguely, yes.

12 Q. Do you believe it would have been
13 appropriate for registrars to consult that
14 opinion in making a good-faith
15 determination about what felonies involved
16 moral turpitude?

17 A. Yes.

18 MS. MESSICK: No further questions.

19 MR. GABER: I don't have anything
20 further.

21 (The deposition of Clay Helms
22 concluded at 7:11 p.m., on
23 September 18, 2018.)

1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA)
3)
4 ELMORE COUNTY)

5
6 I do hereby certify that the above and
7 foregoing transcript was taken down by me
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9 thereto were transcribed by means of
10 computer-aided transcription, and that the
11 foregoing represents a true and correct
12 transcript of the testimony given by said
13 witness.

14 I further certify that I am neither of
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18 I further certify that I am duly
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CLAY HELMS 9/18/2018

Page 1

A			
a.m	accurate	248:13 276:6	63:4 99:18 100:2
1:23	148:13 149:2,3 182:17	additional	101:8 193:3 247:3
abide	223:22 261:9 263:13	83:3 114:23 116:3	advising
255:5	285:6	273:17	40:22
ability	accurately	address	advisory
10:14 40:20 92:17	77:6,9,15 216:11	31:19 33:9 36:9 71:8	5:9,11 39:15 40:13
108:5 140:10 286:13	217:20	71:21 186:14 187:2,2	41:7 45:4 72:13,22
able	acronym	187:7,7,12,13,14,15	affect
9:7 63:9 90:21 146:15	48:7	209:20 210:2,6 225:8	10:13 78:17 249:3
162:12 165:2 172:13	act	279:22 280:16,17	affirmed
172:20 173:14 196:4	5:19 48:9,12 73:23	addressed	7:7
217:18 220:14	109:12 120:21 121:4	167:9	afforded
224:20 259:19	146:19 157:23	addresses	191:21
260:20 290:15 295:6	158:11 177:14	165:20	AG
308:16	267:11 273:15	adequately	59:4 213:1 216:23
absent	274:14 276:18 282:3	136:12 137:6	age
8:19	action	adhere	123:12 133:19 134:3,8
absentee	1:8 17:2,13 18:3	255:8	134:14,20 135:2,6
8:5,20 17:10 20:8	274:10 311:12	adhering	136:1,3 167:20
185:2,22 186:20	active	271:18	agencies
187:23 262:21	242:1	adjusting	131:16 151:18 168:12
Absolutely	242:1	263:15	168:17 289:13
68:6 308:17	actual	administered	agency
abuse	13:3 26:21 68:20 77:2	229:11,22 231:10,15	183:2 264:23
215:1	112:13 157:21,23	administration	agency-based
academia	184:4 185:15 226:9	26:21 231:4 294:6	125:16
182:7	226:17 262:14 265:6	administrative	agenda
accept	295:2 298:7 299:2	47:6 58:21 117:2,9,14	44:7,14
123:5	Adair	309:10	ago
acceptable	105:16,18 106:12,15	adult	57:19 124:3 143:15
285:14,22 309:18	107:5 109:14 114:16	276:10	160:23 201:12
access	Adair's	advantage	209:13 218:14
32:10 185:12 201:3	106:18 109:22	92:17	222:22
accessible	Adam	advice	agree
201:18	225:17,19,20	40:17 102:12 145:21	48:18 106:22 135:16
accompanied	add	146:1 214:22 217:7	150:20 159:17 195:2
230:12	9:23 155:2,3 168:2	218:7 224:2 231:19	203:17 266:7 291:19
accomplish	172:7 194:16 235:1	250:2	298:4 301:23
25:19	241:15,16 269:20	advisable	agreed
account	297:23	254:1,4	3:2,18 9:19 223:6
31:20	added	advise	agreeing
ACCR	18:21,23 19:1 118:9	62:22 101:2 109:21	271:5
311:16,21	235:3 263:14 265:11	181:14 182:15	agreement
accuracy	270:1	210:12 215:12	48:23 53:19 179:17
79:11,14	addition	216:13	agreements
		advised	56:5 185:19 186:2

agriculture 39:23	298:3	244:12 245:13	290:19
ahead 161:17 290:5	allowed 64:15 191:16 193:8	248:18 249:4 250:14	apparently 172:6
al 1:5,11	allowing 191:20 300:21	252:10 253:22 254:9	appeal 92:14 191:17,20
Alabama 1:2,19,22 2:11,12,16	altered 122:15	255:14 264:17 268:2	192:18,22 193:1,2,8
2:18 3:9 5:10,17	ambiguity 53:3	284:15 291:19 292:6	274:17 275:1 293:7
6:14,17,19 25:3 37:8	amend 9:22	294:13 298:9 304:8	295:12 296:8,8,17,21
38:11 39:9 48:6	amount 103:15 191:19 196:3	305:8 306:9 308:13	297:14
53:15 54:13,21 56:1	304:10	308:16	appealed 274:22
68:12 72:12 84:10,10	analogous 88:19	answered 63:23 82:12,13 106:20	appealing 296:5
84:16 85:3 88:14	analysis 103:9,18 229:7	197:17 218:13	appeals 295:9 296:22 297:5
89:15 93:10,17 98:23	analyst 14:11,14 18:15,20	answering 15:1 19:2 58:15 64:8	298:7
101:6 105:1 108:16	258:23 263:18	87:13 291:20 308:18	appear 106:20 242:22
109:3,10 122:23	and/or 275:17	answers 9:8 196:17 252:6	APPEARANCES 2:1
123:10,19,20 124:9	announced 258:9,12	258:13 260:2 289:13	appears 106:19 108:17 178:15
133:19 136:21,22	annually 24:20 39:18 174:5	311:7	225:7 226:18
146:13 147:7,12	answer 9:12,22 10:7,14,18	anybody 34:1 119:15 186:4	applicant 67:23 68:22 77:15
163:3 167:17 171:12	14:2,13 16:3,13 19:5	anyway 177:16	79:19 80:7 133:6
171:19 175:13	40:15 64:3,16 65:17	anywise 311:12	307:7
176:13 186:9,23	65:19,22 66:11 69:10	AOC 47:14,19 50:1,6,19,23	applicant's 79:11 280:19
187:5 188:3 203:20	69:18 73:10 80:3	52:3,14 57:8,13	applicants 74:21 104:22 139:14
205:13 220:10,14,18	81:22 83:16,18 85:6	58:22 62:10,15,21,22	152:9
245:18 251:1 258:5	88:4,23 89:4,8 95:9	63:10,17 64:10 65:3	application 5:23 119:21 130:18
261:3 271:8 276:23	95:17,23 97:20,21	65:23 66:5,13,20	131:7 136:16 169:21
280:6 281:4,7,14	98:2,10,12 106:8	67:14,20 68:12 70:14	172:1,8 210:13,23
283:2 285:10,12	107:10 114:22	149:20 158:9 159:10	234:6,9,17 260:20
288:4 295:17,22	115:18 123:2 124:4	163:1 192:11 193:13	271:11 278:4 281:11
296:6 300:6 301:10	126:13 127:5 128:13	196:9,23 208:7	282:11 295:11,22
301:20 303:9,15,20	134:15 136:18	212:21 213:20 215:5	296:1,6 297:10
311:2,15,21	137:16 139:5 157:20	216:15,22 217:12	299:12 300:20 301:2
Alabama's 43:8 91:20 104:8	161:9,18 168:7	218:19 221:11 223:9	applications 20:7 74:22 172:2
121:3 134:19 170:13	182:22,23,23 183:2	223:13 229:1,5	185:23 186:3,14,21
205:3 282:3,16	184:18,19 215:19,22	230:10,16,23 245:8	187:23 210:18 297:1
allegation 285:5,7	217:1 220:2 228:17	245:21 248:13,19	301:16
allegations 8:7		249:1 250:5 276:3,23	
alleviate 165:16		277:4,5,8 283:1,13	
allow 42:4 46:8 193:1		286:8 288:1 292:17	
207:23 240:9 253:5		305:8,16 306:1,11,16	
		309:8 310:3	
		AOC's	

applied 164:20 206:3,11,19 212:3 220:16 221:1 228:8	article 194:11,15 197:20 198:1	223:15	attaching 230:21
applies 204:17	ascertain 80:5	assessments 224:1	attachment 131:14 146:15 156:7 156:16 162:20 178:9 179:3,8
apply 84:2 125:15 153:19 181:12,13 202:10 269:10 280:2 286:20	aside 64:21 98:10 251:15	assign 259:16	attachments 145:12
appointed 39:16	asked 34:2 64:4 68:9 75:14 102:4 111:4 114:16 120:4 145:16,22 167:18 183:11 184:13,15 189:5 197:19,23 199:1 215:19 218:13 221:8 224:5 227:13 234:1 235:12 246:2 258:19 258:20 267:19 272:9 273:5 275:11 276:17 279:4 282:18 284:5 285:8 286:4 305:13	assist 26:11 59:6 87:1 101:3	attempt 139:1 309:21
appoints 39:21	asking 17:12 26:2 36:7 37:19 37:21 44:12 48:18,19 48:20 58:7 62:11 68:16,19 94:4 111:6 111:20 119:12 135:7 138:17,20 144:1 146:1 148:21,23 149:1,2,4 161:9,12 195:8,10,11,20 198:5 198:7 200:3,12 205:19 232:12 236:18 242:11 259:22 260:5 266:15 272:12,12,13 290:22 305:3	assistance 61:16 72:3 142:4,9 207:13 262:20 280:12,15	attempted 128:8 277:7
appreciate 273:4		assistant 11:9,14,17 12:4,13,17 78:7 180:6 261:20 279:5	attempting 41:16 152:14
appreciated 111:12		assisted 280:20	attend 43:21 72:21 174:23 177:16 184:5 237:19
appropriate 33:1 272:15 310:13		assisting 17:2,3 18:2	attended 44:1 73:2 232:20 304:16
approval 140:19		association 44:10,11 173:21 177:15,20 304:17,23	attending 43:18 175:21
approve 300:20		association-led 173:22	attends 176:1
approved 223:20 301:3,4		Assumably 163:5	attention 73:12
approving 241:9		assume 9:18 23:12 43:11 55:20 73:11 81:23 109:12 128:8 171:6 202:6 211:11 228:23 240:11 244:3 245:15 245:23 258:8 270:2 285:4 288:22 298:13 307:21	attorney 1:18 2:10 7:14 47:10 58:17,18 63:7 64:2 69:9,12 70:20,22 72:2 101:3,9 223:20 299:21 310:8
approximately 150:19			attorney's 53:15 54:18 64:8
April 144:20 146:11 177:5 178:9 198:16 199:4 236:1			attorneys 53:23 63:7 101:13 121:11 124:6 206:9
archives 42:12			Auburn 6:3 10:23 82:20 174:2 174:8 176:19,21 178:11 179:23 180:3 180:8,15,17 273:14 275:5,15,21 294:14 304:22
area 60:15 176:8	asks 106:19 109:14,15 110:18,19 214:18 223:5 281:14,17	assumes 107:5	Auburn-sponsored 184:5
areas 15:7 176:11 212:18	aspect 27:7 154:10	assuming 170:10 215:21 245:7 285:6 288:21 306:22	
argument 205:11	assess 76:2	attach 131:10,18	
arrangement 53:14	assessment	attached 181:1	
arrested 185:2			

CLAY HELMS 9/18/2018

Page 4

auditor 40:1	237:17 252:11	124:20 125:17 162:9	143:16,18,22 144:14
August 70:6 150:1	260:13 271:14,18	196:6 231:5,10,15	145:2 148:11 150:16
authoritative 58:11 62:23 66:5	272:1 284:16 285:15	248:18 262:8 285:1	151:3 155:9,17
authorities 79:18 82:5	286:5 294:9 296:21	304:9 307:6 308:13	159:15 163:22 164:6
authority 16:18 40:11 65:1	296:22 297:5 300:10	309:12	173:3 178:23 179:13
81:12 84:23 85:13	307:4	basically 13:21 20:2 25:17 29:9	180:17 181:16 182:9
86:8 94:5,8,11 95:19	B	47:12 63:5 88:4	191:6 209:17 234:10
220:23 221:2,4	B	116:13 151:12	236:4,7 246:15
286:14 292:13,15	47:9,13	170:21 173:19 174:2	248:23 253:15 261:8
authorized 65:4 67:19 79:23 80:4	bachelor's 10:23	180:5 196:17 207:20	262:16,23 278:10
98:14 105:8	back 23:14 42:13 46:5	209:3 270:9,11	283:8,16,23 284:7
automated 49:21 50:5	49:10 61:11,12 102:1	272:19 294:3	299:13 306:2 308:22
automatically 70:11	108:9 116:7,21	basis 57:20,21 58:6 63:21	309:20 310:2,12
availability 243:2	124:15 126:3 131:23	122:9 161:5,22 163:8	believed 299:11
available 42:7 236:15 286:22	146:5 154:7 161:19	164:2,9 181:5 187:16	benefit 81:3
295:15	164:17 170:21 171:1	195:9 202:23 208:16	benefits 154:20
avenue 1:19 2:11,17 101:12	177:6,12 192:1	274:15 294:10 297:1	Bennett 32:19 126:17 188:16
173:6	235:20 259:17 260:8	298:17	219:12 222:12
avoided 300:23	266:5,9 267:20 268:9	batches 47:7 49:18	268:17
await 111:9	272:14 278:20	beach 16:2	best 9:10,17 65:12 126:13
aware 45:15 56:8 81:10	279:16,19 291:17	Beal 2:15 126:16 145:15,19	128:13 237:7 255:8
103:4 104:1 106:17	296:15 304:22	188:16 222:12	261:7
118:23 139:5 140:16	backed 183:16	268:17	Beth 226:1
140:20 141:4,18	background 10:22	bearing 273:4	better 97:23 298:1
142:18 168:16 176:5	backwards 298:2	Beatrice 214:8,13	Beware 254:12
177:18 185:6 186:2	baldwincounty.al.gov 210:4	Bedford 78:7	beyond 63:6 115:1 255:9
189:22 190:7 191:1	ballot 185:3,12,22 186:21	beginning 21:8 22:16 256:21	301:22
202:9,17 206:14,16	187:23	behalf 1:17 218:1	biannual 173:21 304:17
211:18,21 213:1,23	Ballpark 176:2	belief 90:20 303:6	bias 230:3 284:7 307:12,13
217:14,16 221:20	bank 110:21 111:17 112:1	believe 9:4 13:23 16:20 34:5	308:1
222:2 229:7,19	barrier 81:13	44:1 53:20 59:4	bid 265:1
230:11 232:19	base 208:23 300:4	104:21 109:6 116:21	bids 265:2
	based 56:19 80:13 90:15,21	119:4 128:18 132:2	big
		133:3 137:17 140:3	

242:9 bigger 52:10 261:14 bill 253:4 289:22,23 291:3 298:23 304:16 binding 102:13,15,18 203:19 Birmingham 6:13 175:15 176:9,14 232:7,14,22 birth 114:20 116:1 235:6,7 281:15 bit 11:23 17:1 61:14 230:10 233:9 267:5 302:13 blast 215:20 blatant 286:22 blatantly 197:13 286:19 287:9 board 5:9,11,17 6:14,15 26:13,15 38:5,12 39:15,17,21 40:11,13 41:7,21 42:19,21 43:7,13,19 44:9 45:4 45:8 46:1 61:17 63:19 65:14 69:21 72:13,22,22 73:14,15 74:3 77:1 79:22 83:14 84:22 85:13 86:9 87:1 89:23 90:3 90:9,16 91:4,8,11 92:7,10 93:23 94:13 94:21,23 95:15 96:2 99:7,18 102:13 108:17 110:14 113:13 192:14 207:13 218:10 219:22 221:3 238:11 245:18 250:20 251:8 251:16 259:5 266:22	273:16 281:9 286:20 287:22 288:13 289:7 291:3,11 293:2 295:10 297:15 298:18 311:15 board's 44:5 boards 46:7,14 96:12 282:21 Bob 182:20 221:16 booths 44:13 BOR 6:4 178:14 born 23:16 boss 140:10 bottom 109:1 111:8 232:11 243:10 247:11 260:10 280:14,18 box 31:7,9 118:8,8,11 280:11 281:4,10,15 300:8 301:7,9,15 302:4 BPP 266:10 brand-new 29:13 257:4 breaching 197:13 break 10:5,9 47:15 114:10 116:15 125:6 126:1 168:22 247:9 272:17 Brent 2:15 126:16 145:15,19 268:17 brent.beal@sos.ala... 2:18 Brewer 22:21 126:17 145:16 188:16 219:12,13	222:12 232:6 bribery 6:10 224:6,10,17 247:11 Bridgette 1:20 3:7 311:19 briefs 125:20 bringing 89:9 91:21 196:13 288:10 broad 37:16 broader 51:1,3,5,19 52:7 149:9 broadly 17:6 216:5 217:9 221:9 broken 158:17 200:16 247:8 brought 122:13 288:8 293:20 293:20 Brown 59:11 64:2 69:12,22 70:12,23 101:18,22 102:12 178:10 179:14,22,23 180:7 180:14 182:3 209:2 214:23 215:23 216:3 216:3 217:1,6 222:13 223:1,8,18,23 build 95:5 building 241:20 built 276:8 bullet 169:23 170:2 268:22 281:22 282:10 bullets 247:10 business 73:11,14 236:16 237:1 308:19	bust 164:23 Butler 96:22 97:2,4,5,11 98:11 188:21,21,23 189:1,11,21 190:11 190:12 222:20 232:8 232:11 233:6 235:16 Butler's 191:3 223:7,15 235:10 buttons 49:20 C call 48:3,4 78:21 79:3 called 68:21 234:18 258:12 260:1 calling 47:22 58:12 calls 17:8,11 59:16 campaign 2:4 17:12,18,23 18:5 26:8 264:1 cancelations 46:17 candidates 17:2,12 18:3 26:7 capable 170:23 capacity 1:11 Capitol 2:16 care 267:17 Carol 257:18 258:3,4 carried 46:3 carry 117:4,17 case 3:20,21 7:15 8:6,20

9:2 50:19 53:23 54:12 55:1 74:7 82:1 84:13,21 85:11 93:15 140:20 148:5 150:4 151:4 192:3 197:9 198:18 216:8 227:2 241:6 245:20 248:15 250:1 254:6 290:8,14 291:17 298:5 case-by-case 87:14 187:16 cases 7:21 8:1 269:9 283:22 288:8,10 296:4 299:2 categories 51:6 212:11 category 110:10,12,15 211:3 cause 110:8 150:22 151:5 153:6,13 154:14 155:7 156:4,12 159:19 163:23 164:6 274:12 285:3 286:11 286:17 287:1,3 290:8 290:16,20 291:1,6,8 292:11,20 293:9,13 293:14,19 294:5,10 301:13 311:12 caused 107:17 162:17 causes 308:15 causing 294:1 301:19 cc'd 226:1 cease 191:13 194:21 ceased 209:3 Celeste 209:11,17 CENTER 2:4 central	176:13 centralized 87:7 certain 28:12 40:4 42:13 171:22 191:19 194:12,14 197:21 208:21 209:19 235:1 241:15 250:6,7 253:19 254:2,6,14 259:20 261:21 276:12 certainly 236:15 certificate 108:19 268:21 311:1 certification 26:7 201:1 certified 192:21 311:15,20 certify 311:6,11,14 CERV 165:11 269:7,15 270:8 270:22 cetera 131:17 175:3 182:22 262:21 chain 105:15 178:8 188:14 214:7,13 222:10 225:3,7 232:4 257:16 chair 42:18 chance 10:2 76:15 105:23 189:8 change 18:19 43:8 54:7 118:5 118:6,14 119:1,19 120:14 129:9,13 130:14 138:4,18 139:19 140:1,14,18 141:1,2,15 142:21 143:17 193:4,5 201:10 269:19	270:20 271:3 304:9 changed 48:13 118:3 139:10 146:13 147:7,15 148:22 149:5,15 150:18 166:7 191:6 193:7 235:2 268:1 changeover 240:5 changes 23:13 46:23 118:16,21 119:4,9 120:18 122:17 128:21 129:5 129:18 140:16,21 141:5 146:9 147:11 150:21 158:12 166:5 166:6 263:12,12,14 268:19 275:22 changing 127:9 130:12 Chapman 226:1 characterization 77:17 178:18 189:16 248:9 characterize 78:11 258:17 characterized 77:9 charge 107:16 226:22 258:11 268:4 276:2,3,16,23 277:4 charged 223:23 273:16 chart 178:16,20 179:16 check 72:6 90:2 118:11 199:22 236:10 285:13 checkbox 118:9 checked 122:4 199:17 checking	259:11 Cheryl 76:9,22,23 chief 22:19 26:5,19 121:11 143:1,9 219:9,10,13 225:21,23 293:21 child 214:23 choice 187:1 choose 187:6 chose 140:11 292:16 chosen 303:16 circle 124:15 circumstances 153:12 cited 125:20 citizens 181:3 183:5,8 Civil 1:8 3:5,17 4:1 claim 95:6 223:22 claiming 258:18 claims 98:19 clarification 70:19 clarify 9:17 50:18 149:20 clarifying 49:5 classification 16:1 Clay 1:15 3:4 5:20 7:6 105:17 310:21 clear 95:18 127:21 196:15

196:19 204:15 205:17 208:18 224:20,21 233:8 246:21 272:3 292:9 296:16 clearcut 115:15 153:17 254:17 260:18 clearer 269:4 270:21 clearly 64:20 89:7 262:8 clerical 14:23 clerk 76:23 258:8,10 clicked 169:4,7 close 70:8 cluttered 154:17 code 39:9 68:13 84:10,11 84:16 88:14 93:10,17 99:19,22 109:10 112:14 113:15 214:19 271:8 276:5 276:23 277:1,4 300:7 301:11 codes 149:21 150:5 215:13 216:14 276:2,3,17 codified 84:9 Coffee 259:5 coin 309:18 colleagues 141:10 189:19 190:2 collected 273:6 collecting 30:16,20 collective	20:21 140:3 college 36:19 column 109:7 162:21 181:21 268:20 come 44:14 45:23 47:4 55:11 56:21 69:8 81:16 82:11 92:11 94:21 96:2 108:9 138:13 152:5 155:17 161:19 181:22 182:19 184:9 186:14 206:17 211:11 217:6 233:1 259:17 266:23 307:11,20 comes 65:10 105:1 107:15 118:15 164:13 287:6 287:8 comfortable 242:22 coming 47:5 56:4 91:8 92:8 167:1 206:2 309:11 commencing 1:23 comment 181:5 182:3 189:16 191:4 224:5 commentary 241:21 comments 189:23 190:5 231:19 commission 3:10 44:11 142:4,9 311:22 commissioner 39:22 311:20 commissioners 144:22 commit 110:20 111:17,23 256:3 commits	55:21 committed 202:20 203:10 204:1 204:18 206:4,12 254:20 256:7 287:5 290:12 291:13 committee 22:6 42:19 237:13,20 238:3 committees 17:3,14 18:3 committing 255:21 256:2 communicate 143:10 communicated 272:2 295:23 communication 59:21 124:5 communications 31:21 119:13 120:2 community 243:20 244:4,7 comparable 170:20 compared 99:2 117:12 171:11 comparing 110:22 172:2 comparison 294:16,22 complaint 95:4 190:4 307:16,17 complaints 189:23 190:18 233:13 257:8 complete 10:1,7 109:10 261:12 299:23 completed 150:1 completely 130:12 290:10 291:12 compliance 122:10 complied	121:8,18 297:11 comply 21:6 121:3 125:11 195:12 303:7,13 complying 121:14 256:18 component 284:20 computer 32:5,7,10 200:4 201:19 computer-aided 311:8 concern 197:14 230:7 284:16 concerned 34:5 181:10 concerning 280:11 concerns 43:14 181:7 229:19 230:3 284:7 concluded 310:22 conclusion 91:9 92:8 94:22 96:11 195:8 227:16 conclusions 96:3 concrete 267:14 conduct 112:8,15,19 180:7,8 192:4 243:19 conducted 82:19 173:15 176:20 229:8 conductors 180:9 conference 304:19 confirm 80:14 81:11 confirmation 198:9 confirmed

235:23 confirming 214:23 conflicting 258:13 260:2 confuse 152:12,15 155:5,6 156:9,10,18,19,20 157:1 159:10 confused 155:15 156:22,23 159:5,6,9 confusing 16:9 151:10,16 154:3 154:18,22 155:2 157:22 158:2,21,22 158:23 165:4 267:6 confusion 150:22 151:5 153:6,13 153:22 154:9,14 156:5,12 159:19 163:23 164:6,13 165:16 183:23 194:12 208:10,21 212:2 233:14 256:22 260:11,13 conjunction 109:2 158:9 266:16 consider 41:7 170:11 171:15,17 172:15,19 229:13 considerably 171:8 considered 12:15 123:21 127:23 129:9 130:16 167:2 171:18 197:8,12 203:14 242:16 243:19 248:13 249:12 251:22 253:12 considering 255:20 consist 83:2 consistent	81:18 conspiracy 110:20 111:17,23 constitute 85:8 305:18 constituted 113:12 293:4 constitutes 87:4 94:6 97:12 100:1 consult 101:2 310:13 contact 79:17 82:4 115:21 226:9 279:20 contain 62:21 282:3 contained 84:6 285:16 contains 294:15 content 33:10 143:12 145:11 165:7,14 253:11 contents 262:8 continue 111:10 continued 6:1 46:4 continuing 122:19 148:18 contract 174:2,3,5,8 176:20,21 177:7 180:6 275:7 contradictory 307:2 contrary 243:19 controlled 77:8 conversation 73:17 74:13 100:8,18 100:22 127:18 137:21 138:3 145:18 145:22 182:2 183:6 211:5,10 233:21	234:2,8 conversations 100:9,12 106:15 124:6 206:8 208:19 212:1 convey 242:5 conveying 242:7 convicted 38:13 79:21 123:13 132:16 150:10 184:20 185:7 203:4 253:19 254:2 conviction 39:3 52:13,23 54:13 54:21 55:12,13,18 58:16 64:10 65:3 66:13,18 67:10 68:18 68:23 70:11 75:5 76:3 77:7,16 79:13 80:8,16 81:12 82:6 84:9,17 85:2,8,15,16 86:16 87:3,3,10,19 88:19,19 89:2,16 90:4,13,15 91:10 92:9 93:16 94:15 96:10,13 97:12 99:21 101:5 103:7 105:2 107:7,14,20,22 109:20,21 110:21 111:18 112:3,19 114:1 115:2,12 116:3 150:12 153:8 154:5 154:15 155:8,19 156:3,14 157:4,9,12 158:18 161:5,23 162:16 163:7 164:2 164:10 192:7 194:6 206:21 207:7,14 210:16 211:1 216:14 217:10 220:17 222:3 227:8,14 250:3 255:22 258:14 269:14 271:1 274:15 287:14 convictions	37:7 48:14 50:3,8,12 50:18,21 51:7,22 53:8,17 54:2,3 57:13 58:3,5 59:10 61:14 61:19 62:2,23 63:10 63:16,21 67:14,19,21 68:10,11 71:9,15 74:15,23 75:16,20,22 80:22 84:1 87:20 92:21 93:10 102:22 103:12,21 104:10 108:11 109:8,15 110:23 111:4 113:9 123:22 124:9 126:8 128:11,17 129:22 130:9 133:12,13,14 137:13 149:22 150:5 151:4 153:9 154:3,13 155:11 156:6,15 157:6,13 159:23 162:9 163:2 165:10 165:12 170:3 202:11 202:19 203:19 206:20 208:12 212:3 213:6,19 215:5 218:17 221:10,12,20 247:17 254:7,15 260:15 264:7 265:18 268:23 269:6 270:22 275:13 292:16 294:17,21 302:15 Cookie 105:16 106:12 cooperation 26:22 copied 21:19 22:2 76:11 copy 27:18 47:5 62:7 183:18,20 240:22 251:12,13 268:8 271:4 282:11 corner 109:1 270:10 corollary 85:8 93:16

CLAY HELMS 9/18/2018

Page 9

correct 39:4 68:5 69:14 73:7 77:3 88:16 89:3 91:13 93:8 115:12 126:21 133:17,22 137:16 139:9 142:11 144:12 150:9,14 180:13 181:16 183:1 193:23 201:21 208:8 210:17 220:2 256:5 277:1,6 278:1,6 279:22,23 286:11 296:2,9 297:13 306:19 307:9 311:8	174:18 175:20,22 176:3,6,10 210:3 211:18 213:18 220:10,18 221:18 222:4 258:13 259:23 271:15 283:17	309:10	252:4,5 253:12 254:19 255:12,21,22 256:7,10 273:18,20 274:5,9,16 276:4,5 287:7,8,19 288:11,23 289:3,9 290:18 291:4 291:14,15 292:13 293:4 299:13
correctional 187:18	Counting 282:2	cover 15:6,7 182:14 233:3 279:11	crimes 38:20 52:4 62:16 63:11,18 84:14 91:20 95:19,21 99:1 150:6 164:17 170:8 171:11 203:13 204:17 206:3 206:11 215:6 216:16 224:2 245:4,4 247:21 247:22 248:6 249:1 249:12,13,17,20 250:9 251:15,22 254:2 270:16 276:12 276:15,15 281:20 282:4,22 286:9 288:14,23 289:20,22 290:12
corrections 185:21 186:10 187:19	county 6:16 17:4 26:6,12,15 26:20 38:5,7 43:6 44:10 46:7,14,21 56:10 57:11 60:3,8 61:17 77:1 79:10 84:21 85:14 86:9 87:1 90:3,13,15,16 91:4,8,10 92:7,10,22 94:13,21,22 95:15 96:1,11 97:6,7,7 99:7 99:18 101:9 102:1 105:7 106:13 110:14 131:2 175:19 189:2,4 189:4,5 209:18 214:17 219:21 221:22 247:2 258:5 259:5 297:6 307:21 311:3	covered 36:18 82:8 83:18 174:18 175:23 177:10	criminal 123:14 210:15
correctly 79:20 80:7,15 137:11 204:12 235:11 288:3 308:21	couple 9:6 108:1 173:19 244:16 247:10 258:12 282:18 286:4	create 20:13 26:23 29:12 30:6 302:2	crossed 104:18
correlate 84:17	course 27:1,23 35:17 82:18 207:18 236:16 237:1	created 24:3,10 25:4 32:22 44:4 45:7 74:5 128:1 128:14 158:3 179:11 179:13,20 180:23 199:3 238:22 245:19 264:16 265:8,13 267:16,19,23 276:19 276:20 278:12,14 283:2	current 38:10 42:15 85:3 92:20 95:14 132:3,10 134:1 192:23 240:21 262:17 278:12 282:12
correlates 85:1	court 1:1 7:1 9:7 49:10 67:4 98:16 99:16 111:5 114:18 115:20,21 123:13 126:3 146:5 238:14 243:8 269:1 293:8 295:13 296:4 298:7 299:2 311:15 311:15,20	creation 20:22 21:8 22:22 24:21 278:17	currently 11:6 42:20 130:4 132:3,9 136:16,20 162:6 174:6 181:3 183:5,8 301:8 304:1
cosmetic 141:1	courts 47:6 58:22 107:2 274:17,21 275:3	credence 223:3,16	curriculum 82:18 181:9 183:10
cosmetics 263:15		crime 6:9 55:21 64:12 65:5 69:1 83:11,21 85:1 87:4 91:16,19 94:6 97:12 100:1 107:6,8 112:3,23 113:2,12 115:8 116:10 184:20 202:21 203:9,14 204:2,5 214:10 215:1 215:13 219:23 224:7 224:10,18 230:5	cut 246:11 250:13
costly 299:18			D
counsel 3:3,19 74:2 88:1 120:2 120:11 127:3,14 145:20 166:20 257:3 311:11			daily
counseled 234:15			
count 281:20			
counterfeiting 247:11			
counties 18:8 50:6,9,22 92:1 93:21 104:9 130:14			

57:20,23 Daniel 263:17 Danielle 2:4 161:1 261:6 data 161:21 162:8,8,17,20 163:2,6,7 277:7,8 278:16,18 database 52:14 115:7 277:8,9 277:14 278:5,8,9 date 114:19 116:1 138:22 146:14,20 202:12,21 206:4,20 235:6,7 239:8 265:3,3 dated 76:11 96:21 105:16,18 148:5 178:9 188:15 191:4 222:11 232:5 238:12 257:16,17 dates 13:16 14:1 David 22:21 126:16 145:15 219:12,13 226:1 268:16 day 69:23 147:1 158:11,11 178:10 179:14,22 180:4,4 185:3 186:7 219:5,6 289:6 297:10 days 155:15 191:14,19 192:17,18 194:2,8,20 194:20 197:6,11 219:6 271:10 295:18 295:19 296:1 297:12 297:14,19,23 300:1 DC 2:6 dead 123:15 deadline 138:7,16,19 139:3	143:20 185:3 295:16 295:18 297:17 deadlines 17:10,15 35:2 212:19 deal 165:23 dealing 168:17 Dean 263:18 death 46:16 December 76:12 decide 64:13 110:15 172:22 217:20 254:5 255:7 256:9 273:19 274:2 293:8,11 decided 44:9 64:19 291:4 309:15,16 decider 292:19 deciding 242:5 287:22,23 decision 90:21 91:3,23 92:14 93:5 94:5 129:4 138:6 140:4 281:8 286:21 287:13 308:5 decision-making 242:4 decisions 282:20 283:18 284:1,2 284:18,23 308:1,11 declaration 5:20,21 136:21 148:4 148:10,12,17 152:22 159:13 160:22 163:14 238:14 244:19 declared 123:12 deem 67:19	deemed 95:22 167:6 194:5 211:20 213:19 217:11 218:18 221:12 224:17 deeming 67:13 deeper 64:8 65:13 83:18 Defendants 1:12 2:9 define 21:4 58:13 129:3 195:3,5 196:12 defined 220:9 defines 39:10 defining 230:4 definitely 14:12 60:12 80:11 239:13 241:13 253:6 271:7,17 295:5 definition 220:9,15 243:22 244:5 305:4 definitive 283:15 degree 10:23 degrees 11:4 DeKalb 43:5 209:18 delete 31:17 deleted 31:15 denial 296:8,11,20 297:7 denials 162:8 296:22 298:17 denied 161:4,22 163:8 164:8 257:9 274:14 277:16	277:16 278:3 295:22 297:18 298:8 299:12 denies 295:10,11 Denine 258:20,23 259:14 deny 67:22 80:13 290:11 denying 296:5 department 185:20 186:10 187:19 depend 79:1 112:23 113:1 134:22 143:8 155:22 156:1 185:14 187:16 depending 19:3 33:10 156:21 175:11 depends 153:14 175:17 196:12 219:20 deposed 7:17 deposition 1:15 3:4,6,14,20 7:16 8:23 9:3,22 10:6 33:2,7,10,15,19 36:11 48:19 272:9 310:21 depositions 9:5 depth 241:17 deputy 219:9 225:20,23 describe 10:21 11:22 12:2 17:6 28:21 39:14 55:8 238:21 295:12 description 5:7 design 173:15 designation 291:15

designed 165:8,15	develop 149:21	64:7 65:13	206:10 218:21
desk 140:22 259:19	developed 245:3 246:3	direct 73:12	229:16 230:2 252:16
despite 203:9	developing 239:12	directing 154:13	disenfranchisement 35:8,12,15,21 36:23
destruction 110:8	device 110:7	directly 101:11,13 102:3 169:5	37:1,4,20 237:15
destructive 110:7	Dexter 2:17	242:23 243:3	284:23
determination 52:16 54:15 65:2	difference 91:23 196:7 209:4	director 11:9,14,17 12:5,14,17	disenfranchising 37:22 273:18,21
66:17 69:3 83:10,20	231:14 289:16 290:1	180:2,14,16	disparities 230:4
83:23 86:14 90:16	293:1	disagree 33:20 223:13,15	disparity 229:9,21
92:19 93:18 94:14,17	differences 231:3,8 284:1	255:10	disqualification 37:18 38:4,10 41:8,12
95:12 98:21 99:9,23	different 12:6,9,13 24:8 26:9	disagreed 290:18	96:4 132:21 141:8
101:4 102:14 112:11	37:21 54:9 60:20	disagreement 33:21	162:17 167:3,10,22
112:18 113:23 116:5	65:7 73:16 74:10,15	disappears 303:8	234:11,17 253:16
138:11,13 139:2	77:21 82:22 85:19	discovery 236:23	255:23 297:2 298:18
140:1,7,11 207:11	86:4 91:9 92:8,21	discuss 33:2 39:18 43:13	disqualified 41:16 52:17 95:22
215:17 273:17	94:12 95:6 96:1,2,10	145:11 181:3 182:5	159:17 160:8,10,14
274:19 275:1,2	96:11 126:13 127:23	190:8 218:15 220:2	161:7 162:14 164:1,3
283:12 289:21	128:5 136:5 149:12	238:2 246:17 252:17	164:11 170:4 191:16
290:21 293:3 296:5	149:16 172:9 173:20	263:2 272:17	202:22 203:1 254:7
297:15 298:16	196:5 200:21 215:13	discussed 41:13 73:14 74:11	254:14
307:14 310:15	240:7 243:18 245:8	120:16 190:11	disqualifies 54:15 105:3
determinations 63:9 69:17 307:6	250:8,20 257:2	206:13 252:21 293:6	disqualify 38:8,15,20 51:4 63:20
determine 46:9 51:4,16 65:4	282:15 283:17,18	295:21	71:10 88:7 91:2
78:16 79:19 84:23	288:7,12 289:15	discusses 282:10	111:1 191:18 291:13
85:14 95:19 103:6	292:16 296:7 306:5	discussing 210:8 230:12	disqualifying 38:1 61:19 62:3 76:3
112:7 113:11,15	306:18 308:5,7	discussion 78:22 124:14 126:1	85:2 86:17 88:20
114:20 115:2,9	differently 75:10 90:14 127:6	142:15 181:23	89:2 90:6 94:7,15
121:18 158:7 192:14	211:15,16 217:20	189:20 235:19 264:5	95:13,20 96:14 100:1
207:7 227:7 285:13	221:21 222:4	discussions 22:7 43:7 45:11,15	101:5 103:7,23
292:13 309:22	differs 29:5,14 219:17	124:21 126:10	104:12 113:16 115:3
determined 103:22	difficult 130:23 131:4	128:20 129:2 141:14	123:14 124:1,9 126:8
determiner 215:18,22	difficulties 277:11	142:2,7 187:18	128:3,16 130:20
determining 61:17 85:7 87:2 88:11	difficulty 256:17		132:5,11,16 133:13
276:13	dig		133:14 136:1,11
detrafondren@gma... 225:8			137:4 139:15 141:16
			141:22 152:13,16,17
			153:7,9 154:2 155:8
			155:11,18 156:3,6,13

156:14 157:4,5,11 160:1 163:9 165:10 192:7 194:5 202:20 203:20 207:15 208:12,22 218:18 219:23 227:8,14 250:3 253:18 264:8 265:17 277:17 302:15 disregard 287:23 disregard- 286:19 disregarding 67:9 274:8 286:7,22 287:9 288:9 290:10 291:12 disrupt 137:23 disrupted 130:6 distributed 24:3,7,10 74:20 81:9 82:16 240:18 245:11 251:8 264:18,19 distributing 265:4 distribution 110:6 DISTRICT 1:1,2 division 1:3 21:10 29:1 190:6 239:16 dlang@campaignle... 2:7 DMV 168:13 DMV-based 125:16 DOB 115:6 116:11 doctorate 180:15 document 22:16 23:21 28:15,19	28:22 29:3,11,13,15 29:20 34:1 35:19 72:12 73:18 76:13,16 76:20 106:5 108:16 109:5 110:2 114:14 144:23 145:1,2 148:7 148:14 163:18,21 170:16 179:11 189:9 207:19 209:6,14 214:5 222:15,16 225:11 227:10 238:16,17,19,21 240:18,20 242:10 244:15 257:22 261:17 263:11 264:21 267:4,10,15 278:1 280:13 282:1 documentation 113:5 114:5 documents 17:1 20:6,9,14,23 21:3 21:13,21 22:3,8 28:9 30:4,13,17,21 31:11 31:14 32:22 34:3,13 34:21,23 35:5 44:16 107:1 198:8,18 199:7 199:12,20 200:2,4 201:17 202:4 236:2 246:7,17 273:6,8,12 Doe 60:22 115:8 131:19 162:11,11,13,14 201:12 207:21 307:18,20 doing 7:13 9:9 131:20 167:2 172:15 173:13 253:3 273:19 288:20 290:2 292:15 301:23 307:19 domain 209:21 287:15 domicile 123:20 187:11 double-sided 131:8	doubt 81:3 downstairs 268:16 draft 23:2 25:9 128:1,10,14 137:12 252:17 266:21 267:1 drafting 21:5,16 22:7 23:6 241:8 252:12 253:11 drafts 21:20 22:3 124:7 241:9 252:9 268:6 drag 138:14 dragged 67:2 drive 199:13,16,20 200:10 200:12,13,16,18,20 200:22 201:5,14,16 201:16 202:2 236:1 driver's 118:7 282:8 drives 131:17 202:5 308:12 drop 153:16 dropped 181:22 drug 67:3 226:22 247:23 248:6 249:12,20 250:9 251:15,22 252:4 drugs 248:1,1 251:21 due 17:13,16,16 37:18 193:19 duly 7:6 311:14 duties 14:22 18:5 19:23 25:18,19 35:21 61:12	116:22 117:4,17 287:5 duty 46:15 117:7 208:1 288:4 E e-mail 5:12,14,15 6:3,6,7,8 6:10,11,13,16 31:3,7 31:9,19 32:22 76:9 77:4,13,17 78:1,20 79:2,6 96:21 97:2,20 102:9 105:15,15,21 106:6,10,18 110:19 111:3 178:7,8,12 181:1 188:14,15,18 188:20 189:20,21 191:2,7 201:4 209:10 209:20 210:2,6,8 212:2 214:7,7,13,15 214:18 221:7 222:10 222:10,18 225:3,4,6 225:8,15,17 226:2 227:6,13,19 228:11 232:4,5,8,9,11 235:14,16 242:11,23 257:16,17,21 258:8,9 258:17 260:7 e-mailed 143:23 145:2 e-mailers 190:16 e-mails 22:2 31:11,15 59:17 144:3 190:11,12 198:10 199:15 206:15 215:12 216:13 217:15 226:13 242:21 273:8 EAC 142:11,13,21 143:4,11 144:10,21 146:8 147:11,15 149:14 EAC-produced 124:22

earlier 46:23 101:15 102:4 117:23 120:17 149:19 164:14 198:8 208:5 209:2 226:7,8 273:5 276:17 277:22 280:6 284:5 285:8 287:12 293:6 295:21 296:14 302:12	226:22 241:8 249:16 277:16	185:11 186:1 187:22 210:15 211:3 270:23	entertained 173:7
early 239:22 240:4	electing 254:11	ELMORE 311:3	entire 15:15 19:19 93:11
easier 48:15 79:3	election 13:15 14:5 15:3 16:21 17:3,15,21 26:5,10 26:19,21 62:6 121:10 133:21 139:4 142:3 144:8 185:3 189:7 191:14 193:9,23 194:2,9,20 197:7 200:23 201:2 208:3 224:8 231:11,16 250:23 263:8 271:20 279:21 283:2 284:16 295:17,20 297:11 305:21 306:11	employed 8:15 11:6 24:4 employee 13:3 15:14,23 16:14 enacted 49:13,22 53:22 60:5,7 70:3 71:14 103:17 177:11 202:22 203:10 204:2 207:6 208:10 237:16 252:15 253:5 256:22 265:15 enactment 56:22 61:23 85:12 166:2 202:12 206:5 206:12 220:1 221:23 229:11,23 290:17 305:15 encounter 277:12 encountered 230:2 endorse 223:4 ends 122:18 130:15 enormous 155:3 ensure 25:19 47:18 49:23 89:14 90:7 104:7,22 121:2,7,12 185:10 213:17 220:8,15,23 ensuring 25:18 38:18 47:8,12 49:16 entail 25:16 entailed 45:9 entered 52:14	entirely 127:12 130:15 248:21 263:11 288:9 entitled 108:16 109:8 entrance 13:21 enumerated 204:2 260:15 294:18 envisioning 195:2 equal 175:18 errands 15:1 error 144:10 ESI 199:9 especially 190:4 Esquire 2:3,4,9,10,15 established 34:10 88:13 208:5 estimate 14:19 18:1 175:5 177:4 et 1:5,11 131:17 175:3 182:22 262:21 Etowah 97:5,7 189:1,4 evaluating 20:2 25:13 evaluation 25:20,21 evasion 247:15 event 120:2 166:12 events
editing 21:5,16	elections 11:9,18 12:5,14 15:8 21:10 139:20 142:8 169:4,7 200:22 201:23 239:16 250:4 250:16,18,22 258:23 263:18 305:9 306:3		
editions 24:12	elections/ 11:14		
edits 72:19 178:16 179:15 268:7,9	electronic 28:13 32:2 44:13		
education 166:1,5,15	electronically 47:4,5 62:8 166:8,13 167:15 251:12		
educational 10:21	eleven 147:6		
Edward 5:21	eligibility 37:6 108:20 122:22 123:5,9 125:2 130:19 132:4,7,20 134:10,19 135:6,11 136:2,13 137:6 139:12 142:22 166:23 226:11 268:21 302:17,22 303:8,15,19,21 304:4		
effect 87:23 217:15	eligible 71:10 134:8,14 159:23 164:18 184:8 185:8		
effective 146:17,23			
efforts 187:20			
eight 40:8,9,10			
either 3:22 59:5 85:15 88:18 99:19 118:10 179:13 185:21 187:18,22			

166:17 232:20 eventually 234:23 everybody 42:4 evidence 3:15 evidenced 311:16 evil 247:8 exact 134:22 282:5 exactly 17:5 40:14 116:8 EXAMINATION 5:3 7:10 273:1 286:2 309:3 examine 99:19 example 22:23 35:19 89:16 90:5 117:18 136:10 170:11 203:3 213:6 242:15 300:3 examples 55:16 308:22 exceedingly 299:3 excerpt 261:5 262:9 excerpts 6:18 261:18 exchange 21:19 22:3 106:6 232:9 exclusive 62:16 exclusively 287:15 Excuse 295:20 executive 190:6 exercise 292:12 295:6	exercises 83:6 276:7,11 exhibit 5:6,8,10,12,13,15,16 5:18,20,21,22 6:2,2,4 6:5,7,8,9,11,12,14,15 6:17,18 39:5,6,8 44:17,18,19 46:5 61:11 72:9,10 76:6,7 96:18,19 105:12,13 108:9,13 116:21 144:17,18 148:1,2 149:14 163:15,16 166:20 169:16,17 171:9 177:22,23 178:3,5,7,14,21 181:1,18,21 188:11 188:12 209:7,8 214:2 214:3 222:7,8 224:23 225:1 232:1,2 238:8 238:9 245:1 246:7,8 246:14,16,23 257:13 257:14 260:23 261:1 266:10 278:22 279:1 279:2,7 exhibits 5:6 148:19 149:11 238:13 exist 33:17 161:21 236:6 293:14 297:8 existed 267:4 278:9 exists 121:12 151:21 162:18 163:9 168:2 199:17 201:22 291:22 293:13 expanded 151:11 expect 181:22 236:8 expected 149:23 expects 182:19	expensive 299:22 experience 22:2 60:10 102:19 103:3 208:9 241:7 298:6 experienced 256:16 expert 308:13 Expires 311:21,22 explain 38:9 282:7 explained 193:3 233:8 explicitly 88:14 exploratory 237:13 238:3 express 231:13 extend 27:12 extent 19:7 35:5 41:15 57:9 90:10 100:14 119:12 120:8 124:5 159:4 201:6 216:19 217:3 253:1 272:3 278:16 306:5,17 extra 155:3 166:9 182:12 extras 223:10 extremely 137:22 eyes 54:6 F facilities 186:10 187:19 fact 66:12 67:9 155:18 161:13 203:9 215:6	216:16 250:11 251:15 268:12 273:21 298:15 factor 151:16 155:2 164:13 165:23 facts 272:12 fainter 111:9 fair 77:16 127:4 133:8 178:17 189:15 207:15 224:3 248:9 282:14 294:18 Fairbanks 2:9 fairly 159:12 216:20 219:4 226:14 250:7 257:7 258:17 282:15 fall 11:3 63:10 110:10,11 110:15 124:2 139:4 139:20 157:18 197:5 269:11 285:21 291:4 291:5 303:14 fall's 138:19 falls 58:16 143:5 194:19,22 239:14 250:9 familiar 9:5 59:9 120:20 122:20 237:12 238:16,19 271:8 310:8 FAQ 167:2,5,9,13 169:5 243:10 far 27:14 57:7 84:3 95:3 100:13 141:18 174:11 177:6 223:2 270:10 feasible

162:2 February 72:14 222:11 federal 3:5,17,23 53:17 54:1,2 54:12,20 83:10,20 84:14 85:1,16 87:3 87:18 88:18 89:1,16 90:4,13,14 91:10 92:9,20 93:16 94:15 94:20 95:11 96:5 97:11 99:19,21 101:4 103:20 104:10 105:2 107:2,22 109:15,20 111:5 112:1,8,14,18 112:21 113:9,9,14 114:1,18 115:20 124:22 125:10,17 142:3,8 147:13,19 150:17 195:10 269:1 275:17 276:15 294:17,21 303:18 feel 259:20 feelings 102:21 fees 183:4 fell 64:3 69:11 216:22 252:4 fellow 307:18 felon 5:15 6:6,16 46:16 47:2 47:4 53:1 107:4,17 107:19 108:4 109:15 111:21 188:17 191:13 196:6 210:14 211:12,13,14 felonies 38:14 51:7,15 52:9 53:6,12 63:17 84:15 85:8 107:11 128:3 130:20 132:5,11 139:16 141:16,22	150:19 152:13,17 153:17 211:19 244:14 253:20 270:7 275:17 282:22 283:7 283:18 284:18 288:14 310:10,15 felons 6:7 62:9 73:15 74:2 159:17 160:7 191:9 209:12 210:12 211:8 211:8,10 258:11 felony 35:8,11,14,20 36:22 37:1,4,7 38:10 41:8 50:2 52:17 53:17 54:2,3,12,20 55:12 55:17 57:13 59:10 74:15,23 75:4 80:22 83:11,21 86:15,16 87:10 95:11 102:22 103:6,12,21 105:2 107:21 113:17 115:2 123:21 132:17,21 133:7,11,12,14 141:8 152:16 153:8,9 154:3 154:4,15 155:8,11,18 156:3,6,13,15 157:4 157:5,11 161:5,23 162:9,15 163:2,9 164:2,9 167:3,9 193:6 211:1 226:22 228:4 237:14 253:16 268:23 269:6,10,14 274:15,20 275:12 276:22 277:18,18,22 278:5 289:4 297:1 298:17 309:17,22 felt 92:16 fewer 171:10,14 304:6 field 162:22 166:16 308:13 Fifteen 295:18,19 fifth	243:7 file 75:5 297:14,19 298:10 299:14 filed 8:12,20 296:5 298:7 299:3,20 files 32:2,2,11 198:11 199:15 filing 15:1 16:23 fill 117:14 133:5 154:19 260:20 filled 155:1 fills 280:2 final 24:9 138:11 139:2 140:1,7,11 176:17 244:16 261:19 262:4 266:6 275:2 293:3 298:16 finalization 21:20 finalize 72:20 finance 17:13,18,23 18:5 26:8 264:1 find 31:4 98:18 157:21 225:21 227:6,15 241:23 244:22 260:5 finding 167:22 findings 215:9 217:19 fine 61:7 114:15 145:23 245:2 finer 182:10,21 183:4 finish	35:3,4 114:12 228:20 finished 109:18 228:14 firearm 107:4 108:4 109:16 110:10 111:21 first 7:6 12:23 13:5 68:9 70:12 98:15 115:18 121:17 146:18 147:1 148:17 153:15,20 164:19 176:22,23 177:2,7,8,9,17 181:20 203:18 227:19,22 228:7,9 264:19 267:18 268:22 282:13 289:11 firstly 182:6 fit 58:7 69:10 87:16 88:5 88:12 89:5,7,7 90:22 90:22 113:8 130:2 172:13,20 fits 72:6 87:19 95:21 fitting 173:1 five 8:17,19 174:12,15,18 297:13 300:1 fixed 240:16 flip 151:13 flipping 309:17 floor 259:19 Florence 175:12,16 176:10,17 flow 22:16 164:16 flowed 257:7 295:7

focus 150:23 151:1	246:1 266:14	135:13 136:4,10,15	281:2,4,13 282:7,15
focused 275:16	forgot 232:22	137:3,10,14,23 138:5	284:12 286:12
focusing 61:22 154:9	form 3:12 6:19 11:12 12:1	139:10,14,17 140:2,8	287:17 288:6,18
fold 151:14	18:14 21:9,22 22:9	140:15,19 141:15,17	293:5 297:16 298:20
folded 130:4	22:18 23:8 25:3,10	141:23 143:7,12	299:5,8,16,19 300:2
folder 201:2 202:1	26:14 27:2 28:1,7	144:13 145:9 147:9	300:7,9,13,15,18
folders 200:15	30:8 34:16,22 35:13	147:13,19,20,21	301:5,12,21 302:6,7
folding 152:6	40:20 41:5,9 42:23	149:14 150:8 151:5	302:11,14,18,23
folks 40:4 76:11 163:7	43:16 45:13 48:1	151:10,21,21 152:10	303:1,11,22 304:7
185:23 197:23 254:1	50:10 51:11 52:1,20	152:14,18,21 153:4,8	305:20 306:7,20
254:19 260:14	54:4,22 56:15 57:3	153:11,14 154:1,6,11	307:15 308:2,9 310:6
269:13 270:21 272:4	59:12,16,18 62:4,18	154:18,21 155:10,12	form's 141:21
290:11	63:3,14 65:21 66:7	155:20,23 156:7,16	formal 25:20 185:19
follow 65:20,23 66:4,12,16	66:22 67:16 68:1,15	156:17,20 157:5,13	formality 3:10
87:8 192:10 193:15	69:4 70:14,15 71:6	159:2,7 160:2 162:19	format 200:18
247:3,6 259:10 285:4	73:20,22 74:5,5,18	163:4,10 164:4,12	formed 237:13
289:8	75:21 77:10,18 81:14	166:4 168:1,6,15	former 149:5 263:18
follow-up 36:6 106:14	83:4,13 84:19 85:4	170:6,13,15 171:19	forms 12:9 20:12 21:17
followed 90:2 216:12	85:18 86:11,18 87:5	171:20 172:16	117:3,16 121:19
following 147:2,13 166:2 194:11	87:12 88:3,12 90:19	173:11,15 174:20	122:22 125:16,16,17
197:23 257:10	91:12,14 92:12,23	185:5 187:10 188:4	125:17,19 141:7,11
311:16	93:2,13,20 95:1,16	188:22 189:17	150:18 151:11,17
follows 7:9	96:6,15 97:14,22	190:23 192:8 195:4	152:2 154:16,19
followup 36:11	98:8 99:11 101:7	196:11 197:3 201:9	185:22 186:11
font 111:9	102:2 103:1 104:13	201:11,13 202:14	forth 117:4
foregoing 311:6,8	104:17 105:4 106:21	206:6 207:1,9,16	forum 6:13 232:7,13,15
forget 16:12 271:6	107:9,23 108:15,23	208:14 210:20 212:5	233:4
forgive	109:17 110:1,16	212:14,23 213:22	forums 232:17
	111:2,19 112:22	215:7,14 216:6	forward 54:13 88:1 101:22
	113:3,18 114:3 115:4	217:23 218:12	102:5 115:9 188:20
	115:14 116:6 117:19	220:11,19 224:12	190:2 232:7
	117:20 118:2,7,18,20	227:9,17 228:13	forwarded 101:18 150:6 189:19
	118:22 119:6,10,19	230:14 231:22	forwards 232:8 233:18
	120:15 121:9,15	233:11,16 234:11,14	
	122:11 123:23	234:18,21 235:2	
	124:10,23 125:1,11	240:1 243:4 246:5	
	125:15 126:5,9 127:9	248:8,10 249:14	
	128:2,10,14,21 129:6	252:1,23 253:21	
	129:19 130:2,3,3,10	254:21 255:13,19	
	130:12,13,17,22	256:1,12 257:4	
	131:15,18,21 132:2,3	259:13 260:4 266:4	
	132:6,9,10,22 133:6	267:3 269:17 272:7	
	133:10,11,16,23	273:22 274:4 275:18	
	134:5,6,11,12,21	277:2,20 278:21	
		279:8,12,13,16,20	
		280:1,7,9,10,19,23	

found 244:14	functionally 94:12,13 117:11 129:23	282:18 284:5,12 285:8 286:3 309:1 310:6,19	give 9:11 10:2 14:2 75:19 88:23 101:23 102:12 128:13 181:14 183:1 189:8 203:3 224:20 226:18 231:18 278:23 308:16
four 41:3 121:23 219:18 235:6	functions 99:6 247:13	Gadsden 97:8 189:6	
four-digit 276:4	furnish 46:20	gain 19:2	
fourth 169:23 243:9	further 3:18 36:10 70:19 79:23 91:18 108:6 115:16,17 116:11 129:1 265:5 272:21 286:1 305:7 309:2 310:18,20 311:11,14	gap 117:10,12	given 90:12 94:11,19 96:9 98:10 113:2 217:8 220:17 223:19 253:6 287:13 311:9
frame 307:1		gather 55:1 79:4 80:23 264:20	giving 40:17 58:9 213:8 224:1 289:12
fraud 247:8,12,13		gathering 199:7	
free 188:3		gender 280:22	go 9:6 23:14 29:9 61:23 67:1 69:2 70:20 116:7,16 117:11 124:12 161:17 169:13 175:15 185:4 200:23 201:3,8 216:23 217:18 218:7 235:18 237:2,4 240:17 241:17 255:9 265:1 290:5 293:7 296:15 298:2
frequency 212:6	G	general 1:18 2:10 8:18 14:21 16:22 17:8,11 18:11 19:23 28:2 29:1 37:10 57:5 58:14 75:1,6,18,22 152:8 160:3,9 212:18 241:12 242:10 243:6 244:6 275:14	
frequent 59:22 190:15	Gaber 2:3 5:3,4 7:3,11,14 15:21 16:4,7,11,12 23:11,17,22 24:17 32:16 33:4,16,21 34:8,12 36:5,18 48:2 48:22 49:1,4,8 53:4,7 53:8,13 61:3,7,10 78:3,6,9 95:7 106:4 109:18 114:11 116:14,18,20 119:17 119:20 124:12,15 125:22 126:22 127:10,13,16,19,22 148:20 149:4,8,13 169:15 179:4,6,9,12 183:20 184:2,4 198:13,22 199:5,9,12 199:19,22 200:15 204:19,23 205:4,7,15 205:23 206:1 228:14 228:20,22 236:4,10 236:18,22 237:9,12 246:9,11,18 247:1,2 261:6 262:5,11,13,22 263:3 267:7,12,21,22 272:10,16,21 273:5 273:22 274:4 275:5 275:11,18 276:17 277:2,20 278:22	general's 310:9	
frequently 28:17 57:15,17,17 97:9 167:18 211:22 219:2,4		generally 18:4 20:6 28:21 34:17 34:18 35:6,16,20 36:21 37:5,15 38:9 38:18 40:16 41:23 58:1 78:20,23 117:8 120:6 132:14 138:23 143:3 176:6 178:13 182:20 187:17 203:17 211:7 239:14 241:23 247:17 271:15,16	
frequently-asked 166:21		genre 60:20	goal 138:10
friendly 276:18		gentlemen 223:5	goes 23:2 81:3,4 90:11 100:14 166:15 193:11 214:14 221:19 246:14 262:18
front 82:10 107:20 131:23 170:20 171:1 262:15 262:17 271:23 279:16		getting 47:9 49:19 86:2 135:22 299:1	going 13:22 23:7 34:15 39:5 42:2 46:5 61:1 65:12 68:4 72:8 76:5 77:23 78:17 81:16 94:2 95:2 96:17 105:11 107:10 108:8 112:10 116:20 118:18 123:2 131:10 141:2 144:16 147:23 156:21 158:10 159:8 161:8
fugitive 247:14			
fulfill 46:14			
full 137:19 263:2			
full-on 141:3			
fully 79:1 233:8			
function 99:5 105:8			
functional 129:14 131:13 173:1			

161:16 165:21 168:20 169:15 177:12,21 178:2 188:10 204:19 205:8 209:6,13 214:1 222:6 230:8 231:23 233:4 237:2,6,17 238:7 242:12,13 257:12 260:22 267:2 271:4 278:20,23 291:17 292:14 good 7:12 9:9 30:1 61:2 136:7 162:2,6 164:14 164:16,22 165:20 175:4 183:13 243:21 244:9 253:22 254:9 265:20 298:9 300:3,4 good-faith 309:21 310:14 gotten 34:2 95:3 184:13 198:8 government 31:20 247:12 285:16 governor 39:22 146:21 147:3 graduate 11:2 great 61:5 113:19,21 131:20 group 39:16 64:18 168:8 guess 12:2,8,11,14 26:22 27:9 36:5 44:12 47:15 55:15 57:6,16 68:19 73:13 74:13 78:9 86:1 92:3 97:23 107:14 112:23 129:15 131:14 138:20 143:16 153:5 157:19 159:3 160:5 160:16 164:20 165:13,18 177:1 205:7 214:15 216:10	219:10 240:2 241:1 248:16 249:5 270:5 290:22 299:1 guessing 170:18 guidance 38:7 46:22 56:9,18 57:1,4,5 58:9,13,14 59:15 62:1,5 65:8,10 65:12,20,23 66:4,16 69:3,16 72:5 74:19 74:19 75:1,2,6,15,18 75:23 76:1 80:20 81:5,9,18 86:13,23 87:9,13,15,17 90:8 90:17 99:7,12 102:1 102:17 105:10 181:14 185:1 191:12 207:13,23 218:16 224:21 238:23 250:17 253:6 271:19 275:12,15 283:11 287:10 288:1 289:8 289:11 305:14,19 306:6,18 guide 6:17 20:11 23:3 167:5 167:15 213:5 261:3 261:10 262:14,17 263:1,4 264:7 265:19 271:20 guides 20:11,14 21:16 22:23 23:6 24:2,9 guilty 247:14 H H 1:10 Hale 180:13,16 half 8:17,19 18:1 168:21 hand 72:8 76:5 96:17	105:11 108:8 144:16 169:15 173:10 177:21 178:2 188:10 224:22 238:7 hand-delivering 279:12 handbook 6:15 62:6,20 82:15 90:9 208:3 213:7,10 224:8 238:11,22 239:2,11 240:21 241:9 242:15 245:6 245:11,22 246:3 248:4 249:6 250:4,16 250:18,21,22 251:17 252:3 283:3,13 286:8 305:9,17,18,21,21,22 306:1,3,11,14 handed 31:7,9 handle 26:8 70:17 74:21 75:7 75:20 102:6 141:7 184:22 259:16 298:2 308:20 handled 38:5 259:21 handling 308:19 handwriting 30:4 handwritten 27:5,10,18,22 30:13 236:5 happen 94:1 150:2 253:8,9 265:21 266:2 happened 45:11 65:16 80:18 137:21 204:6 294:12 happening 78:5 138:8 172:23 186:17 222:2 308:23 happy 227:20 harboring	247:13 hard 47:5 62:7 104:14 113:7 151:12 174:21 251:12,13 292:6 Hard-copy 47:9 Harry 96:22 97:4,5 188:21 189:1 234:12 HB 37:13 43:9 47:16,23 48:8,11 49:12,22 50:16 53:22 55:2,2 56:22 57:11 58:9,19 60:5,7 61:23 62:17 65:19 68:21 70:3 71:14 84:7,18 85:9 85:12 87:20 88:13 93:8,9 101:16 103:12 103:17 109:11 110:22 112:4 123:22 142:5,10 149:22 150:6,11,20 157:21 160:1,13 161:6 164:3 164:10 165:9 166:2 167:4 168:11 173:16 177:10 190:22 194:13 197:22 202:10,13,18,23 203:8,22 204:2,6 206:2,19 207:6 208:9 212:3,20 218:23 220:1 221:22 229:11 229:23 237:15 247:16 249:19 252:9 252:18 255:20 256:18 257:10 260:15 264:8 265:15 270:2 288:17 290:17 294:18 298:14 304:14 305:15 head 9:12 18:18 243:14 headed 183:14

header 29:10	3:23	36:16	illustrations 55:16
heads 250:13	hesitation 221:14	hypothetical 64:17 81:17 99:3	immediately 262:3
health 168:14	hey 75:3 165:2 191:23	292:7	implemented 41:2 95:8
hear 25:13 58:22 67:5	192:1 234:20 307:18	hypothetically 65:14 67:1,7 93:3,4,6	implementing 35:23
126:22 231:13 257:8	highlight 272:5	172:10 307:16	important 9:11 78:2 139:21
heard 138:21 256:16 284:6	Hill 257:18 258:3,4	I	242:10 249:8
298:13	hindrance 186:8	ID 8:2 9:2 20:11 143:20	imposed 288:4
held 14:7 15:16 19:15	hired 13:22 299:21	144:5 166:10 188:2,3	impractical 150:22 151:9 159:19
36:19 305:2	hit 177:17 227:11	188:5,7 285:9,10,11	161:3,13
Helms 1:15 3:4 5:20 7:6,12	hold 12:7 13:11,23 81:20	285:12,16	impracticality 154:8
32:20 34:12 39:6,8	151:14 166:17	idea 33:23 103:16 113:19	imprisoned 185:11
44:18,19 48:11 61:10	holding 166:12	113:21 181:11	improper 80:12
72:8,10 76:6,7 96:18	home 32:13 187:2,7,12,15	265:20	improve 234:21,22
96:19 105:12,13	honest 60:13 82:7 104:19	ideas 240:7	improved 234:23
108:9,13 116:20	113:20 175:5 243:6	identification 39:7 44:20 72:11 76:8	improving 234:16
144:17,18 147:23	252:14	96:20 105:14 108:14	inability 77:5,14 80:14 81:11
148:2 163:15,16	honestly 10:15 45:18	144:19 148:3 163:17	82:3
169:15,16,17 177:22	honesty 243:21	169:18 178:1,6	inadvertently 120:8
177:23 178:3,5	hope 191:7	188:13 209:9 214:4	incarcerated 181:4 183:5,8 184:9
188:11,12 206:1	hour 10:12 168:21	222:9 225:2 232:3	184:16 185:23 187:1
209:7,8 214:2,3	hours 218:14	235:5 238:10 257:15	187:5,9,21
222:7,8 224:22 225:1	House 289:22	261:2 279:3	include 67:13 76:1 112:13
232:1,2 238:8,9	HR 294:2	identified 48:13 80:7,15 123:22	130:8 139:11 147:16
257:13,14 260:23	huge 54:8	157:13 165:17 188:7	166:10 167:21 300:8
261:1,7 279:2 310:21	human 34:6 36:16	192:6	included 28:23 51:8 63:17
Helms' 237:5	humans	identify 31:10 36:8 56:12	66:13,19 83:6 147:19
help 26:2 30:6 157:3,7,8,19		128:15 161:21	147:20 166:9 199:10
191:23 227:20 235:5		identifying 112:14 163:6,7 235:1	199:11 217:12
235:8 276:9		identity 115:13	
helpful 23:8 108:12 129:20		IDs 285:22	
130:7 134:17 135:9		ignore 303:18	
139:18,22 157:12		illustrated 208:20	
158:10,13 167:6,8,23			
227:7,15,18 262:22			
269:18,21 272:16			
hereto			

218:19 228:6 248:20 248:21 249:1 250:14 263:2 264:11 276:21 277:23 includes 67:9 276:1 278:16,18 280:11 including 167:20 247:11 264:6 inclusion 290:18 incompetent 123:13 incorrect 143:19 221:17 incorrectly 210:19 independently 82:4 INDEX 5:1 6:1 indicate 233:6 indicated 275:6 indicating 251:2 indicator 132:23 individual 93:19,21 95:14 110:14 216:16 231:6 individualized 159:16 individuals 58:2,4 163:3 industries 39:23 ineligible 203:8 204:5 inform 166:11 informal 185:20 information 5:18 31:5 33:18 46:8	46:13,21 49:23 50:20 52:15 55:22 56:7,12 62:9 70:18 76:1 78:13,16,16 79:2 80:1,1 81:1,7,19,22 90:22 91:16,19,22 92:2,5 98:15,17,20 99:2,15 101:23 108:2 108:18,19 114:17 115:1,22,23 116:4,10 130:18 137:14 139:11 143:4,19 144:12 150:12 155:4 159:5 162:4 165:9 167:22 193:12 196:8 196:23 216:4 221:17 228:1,3 234:13 235:1 242:5,7 258:22 259:23 279:21 281:18 294:20 300:11 301:10,18 informed 235:22 informing 25:17 initial 92:19 192:20 267:1 274:23 initially 72:18 267:23 injury 110:8 inquires 77:4,13 instance 64:18,22 75:8,11 81:1 81:4 101:10 117:9 121:19 158:5 171:9 232:21 291:2 instances 89:10 113:7 186:5 Institute 251:1 instruct 119:23 instructions	143:17,18 144:11 147:12,16 149:16 166:7 168:10 intended 110:7 183:9 196:20 233:4 intent 220:21 247:8 intentional 262:12 intentionally 308:6 interact 18:7 26:12,15 56:11 219:2 276:9 interaction 25:23 225:10 interactions 18:10 interactive 294:16 interchangeable 53:1 interested 78:10 311:12 interfere 77:19 internal 138:9,9 281:12 301:13 internally 12:21 interned 13:2 internship 13:9 interpret 111:15 195:10 interpretation 204:4 243:11 interpreted 202:10,18 introduced 3:21 invest 79:17 involve	117:17 247:23 275:16 involved 21:15 22:6,22 23:1,5 24:21 25:12 30:20 70:21 100:23 102:4 103:14 109:4 112:8 114:1 126:15 141:13 142:2,7,15 180:11 206:1,10 237:23 239:1,6 240:3 242:4 242:18 248:6 249:21 252:9,12,13,22 263:3 264:6 266:17,19 268:18 274:9,20 283:7,19 287:14 288:14,15 309:17,22 310:10,15 involves 112:19 involving 67:21 109:8,21 112:3 112:9,19 166:16 221:13 245:4,5 247:18,21 249:17 251:23 256:10 274:16 284:19 289:10 issue 104:16 113:15 129:8 141:8 143:3,12,14 167:9 183:3 184:8 189:11 206:11,15 230:12,19 237:14 238:2 issued 69:9 98:16 issues 36:22 41:8,14 43:13 125:12 293:20 issuing 131:19 item 35:3,4 64:5 242:17 280:8 items 28:15 29:1

CLAY HELMS 9/18/2018

Page 21

iteration 239:9 265:22 267:23	John 1:10 5:19 32:19 60:22 115:8 126:17 131:19 162:10,13 201:11 207:21 219:12 240:11 268:17 307:18	36:3 kind 32:21 37:15 68:8 111:9 122:7 247:9 262:6	209:16,23 214:13 216:7,18,18 219:19 222:14 223:9,11,17 224:9,15 225:9,22,22 226:3,19 227:22 233:10 234:12,19 235:3,13,15 237:22 238:15 239:1 240:7 240:20 241:6 242:9 242:20 243:13,15 244:4,9,21 245:3 246:1,2 247:2,5,16 247:19 248:12,16 249:11,15,16 250:4 250:13 251:14 252:2 252:13 253:1 254:17 255:14 256:6,8 257:20 258:3,7 259:4 259:7,17 261:6,18 262:9 263:23 264:10 264:15,17,22,23 266:6,20 268:2,11,13 269:5,14 270:14,17 270:18 275:22 278:8 278:16,18 281:5 282:5 285:10 294:12 295:1,2,14,15 296:4 298:1 299:6,20,22 300:3,5 301:22 307:11 308:10,14,15 308:17 309:6,8,12
Ivey 147:4	joint 40:2	kinds 130:5 208:22	
J	jot 27:13	knew 45:6 285:8	
J 2:10 201:16	journal 27:8,9	knocked 183:15	
jab 263:8	judge 26:5,19 59:11 69:12 69:22 70:12,23 92:15 101:18 102:12 209:2 214:23 215:23 216:3 216:3 217:1,6 222:13 223:1,8,18,23	know 7:22 8:12 9:16 10:1,6 10:11 14:1,7,12 19:15 23:9,15 25:2,7 26:8 28:3,8 30:23 31:13 32:17 36:10,16 37:8 38:20 40:2 42:12,14 45:9,10 47:10 50:8 51:1 53:22 54:11 56:1,17 60:20 63:23 66:19 68:4 69:22 70:2 71:16 73:19 74:6,10 77:22 78:4 80:2,18 81:19 82:1,10 86:7 88:9 94:1,2 98:22 99:14 100:7,18,21,21 102:8 106:14 107:18 110:5 114:20 116:8,8 118:17 120:9,11 121:20 130:1 131:8 132:9 133:1 134:15 136:17 138:5,17,23 140:22 145:6,8,10 146:10 147:11 149:15 151:13 152:2 157:10 162:12,13 164:19,22 165:5,18 168:9,10 171:10 172:10 174:19,21 176:5 182:16,16 184:4,16 186:9,23 187:5 188:2,23 191:15 196:14,16 199:16 205:9 206:17	
jail 184:16	judges 20:7 26:1 44:10		
jails 186:15	judgment 309:13		
jammed 154:22	July 70:6 148:5 177:6,14 225:4 265:8		
Jane 162:11,14 307:20	justice 243:20 247:14		
Janice 15:11	K		
January 13:3 96:21 232:5 233:20	K 2:5		
Jarrett 72:18,21	Kathleen 180:13,16		
Jean 59:11 64:2 69:12 101:18 214:23	keep 27:4,5,17 28:4,14 30:11 34:13 41:22 42:5 259:18		
Jefferson 297:6	keeping 29:20		
Jo 42:20	keeps 42:12		
job 5:7,8 9:9 14:22,23 16:22 18:19 19:23 26:4,17 30:7 32:23 36:21 39:10 43:1 84:4 114:5 116:22 117:7 120:23 140:22 195:15 219:3 290:2	Kelli 257:18 258:6		
jobs 36:19	kept		
Joe 182:20 221:16			
		known 223:2,20 256:3	
		knows	

272:13 276:5	203:10 204:10	268:20 274:21	151:2
L	205:13,14,18 206:11	legal	limited
label	208:1,13 220:7,13,23	2:4 88:1 125:12	217:4 291:10
215:13	221:5 251:1 252:15	145:20 146:1 195:8	limits
lack	252:20 253:5 254:13	224:1 230:19,20	304:3
81:19 213:17	254:16 255:5,6,7,11	243:11 287:4	line
lacked	267:4,17 268:1	legislation	35:3,4 114:9 225:5
220:22 221:4	275:22 282:22 283:2	47:23 48:9 252:18	lines
lady	283:16,20 286:6	legislator	109:12 284:8
211:12	287:10 288:4,9,16,21	254:10,11	link
landed	292:2 295:22 297:12	legislature	128:15 129:20 137:15
172:9	300:22 301:7,20	40:23 256:9	137:18 139:13,18
lands	303:15	legislatures	147:16,18 150:6
158:7	laws	253:10	157:14 166:9
Lang	41:18 43:9 46:11	length	list
2:4 16:10 123:7	lawsuit	173:2	28:2 29:1 30:3 38:19
125:12 136:19 169:3	8:7,12 150:16 159:15	let's	46:6 48:13 51:1,3,5,6
169:10 237:4 246:15	297:14,20 299:14,23	31:2 47:15 71:8 73:6	51:8,20,21 52:10
261:8,15,20 262:16	lawsuits	84:5 114:11 116:16	54:1 57:13 58:14,16
262:23	299:20	127:7 153:5 157:15	58:19,20,21 59:9
language	lawyer	157:15 166:9 191:7	61:12 62:10,15,16,21
23:2 132:10 134:22	264:3	272:17	62:22,23 63:4,5,11
136:7 157:23 159:12	lawyers	letter	63:18,22 64:1,4,6,7
lapse	119:23 126:20	5:19 33:3 36:6 44:9,15	64:10,20 65:3,8,16
138:1	lead	143:23 144:2,20	66:1,5,13,20 67:14
laptops	255:23 269:12	145:4,11 146:10	67:20 68:12,17 69:5
175:1,3	lead-up	147:6,14 164:7	70:14 84:4,6,8,18
large	43:10	letting	87:16 88:5,13 90:8
1:22 3:9 165:1 186:4	leading	161:10	99:13 107:11 108:10
186:18 196:1 236:12	65:6 196:18	level	109:10 110:6,22
264:22 311:21	learn	38:5,7 85:14 91:4	116:23 128:2,16
larger	192:11 240:8	105:7 149:9 208:21	130:8 135:17 137:13
67:3 242:14,16 304:19	learned	277:10 307:21	137:15,19 139:15
late	33:16 274:7	Levins	150:18 153:8,17
11:18	learning	76:9,19,22,23 77:4,13	154:2 155:3,10 156:5
law	14:23 276:10	liaison	156:14 157:16,18,21
46:23 56:18,20 84:1,6	leave	20:3	158:8,8,20 159:3,10
85:3,9,22 87:15 90:6	173:4 192:23 237:10	license	162:11 164:15,17
90:8 92:20 94:8	297:13	118:7 121:21 282:9	165:12 171:8,9,10
95:14 99:1,12,13	leaves	licensed	173:2 180:23 184:21
101:6 115:3 117:12	236:5	311:15	193:18 194:5 203:12
146:13 147:7 166:3	led	lied	203:13,19 208:3,5,7
170:3,9 171:10	196:20	221:2	212:21 213:5,21
191:21 192:21	left	life	215:5 216:15,21
195:10 202:21	69:22 70:1,2 93:19	29:7	217:12 218:19
	109:1 117:12 248:21	likely-to-cause-conf...	221:11 222:23 223:4

223:7,8,10,10,13,19 223:21 224:20 226:23 228:11,12,22 228:23 229:1,2,5 230:11,12,16,22 244:13 245:21,22 246:3 247:4,6,20 248:3 249:1,6 252:5 258:15 264:7,10 265:17 267:14 269:11,23 270:6,15 270:18 273:20 274:3 274:5,8 275:23 276:12,18 283:1,15 286:8 288:1,1 290:19 291:5 294:18 302:14 305:17 306:1,9,11,13 306:14,17 309:8 310:3	111:18 146:19 170:2 192:5 212:22 245:3 248:23 249:17 251:19 281:21 286:7 286:8 292:18 306:5 306:17 litigation 30:18 273:7 little 11:23 17:1 18:21 23:13 61:13 108:10 174:22 267:5 302:13 live 136:22 lobbyist 254:10 local 91:4 231:11,16 250:23 279:21 locally 26:8 located 185:16 300:11 location 175:11 232:23 long 8:14,14 11:11 13:11 13:19 14:7 19:15 29:15 57:18 116:15 143:15 161:17 264:23 278:8 289:6 300:5 longer 19:7 46:20 154:23 161:6 164:3,11 263:20 291:18,21 292:7 look 36:7 40:15 44:21 76:15 91:15,16 98:22 105:23 107:10,21 108:5 112:7,11 113:5 115:16,17 116:21 123:1 132:13 146:14 146:15 158:5 161:10 169:2 180:23 181:18	192:12 195:22 199:3 207:17 222:14 224:15 225:9 237:7 238:15 243:7 247:7 250:15,18 257:19 278:20 279:7,7 296:15 looked 100:15 114:7 124:16 128:6 171:4 228:16 looking 61:10 84:4 90:17 106:18 112:20 114:4 115:18 158:6,10 169:11 205:16 246:6 247:20 249:6 looks 125:10 153:14 161:1 171:8,14 179:10,18 179:19 225:14,16 246:13 lose 102:23 226:23 254:3 256:3 loss 63:2,12 lost 8:9 lot 93:6 166:15 240:7 261:13 303:20 love 298:1 low 299:3 lower 280:8 lunch 114:10 116:15,19	118:19 119:20 125:17 131:7 169:20 mailed 130:5,13 151:13 163:23 mailer 165:1,7,8,14 196:1,1 mailing 152:6 186:14 279:11 mailings 159:18 mails 27:12,19,21 main 26:17 304:20 majority 83:5 107:3,14 298:16 making 21:5 42:3 49:14 69:2 69:16,17 83:9 94:17 99:22 101:3 102:14 119:19 127:20 130:2 139:19,23 170:12 187:20 215:16 224:1 268:18 273:17 284:23 296:16 307:5 308:1 310:14 managers 20:8 manages 21:7 22:15 26:20 managing 242:1 manner 3:22 154:13 156:19 158:21 map 171:23 280:5 March 105:17,18 214:6,8 mark 2:3 7:14 44:17 52:22 122:2 163:15 198:7 222:6 marked 39:5,6 44:19 72:10

76:5,7 96:19 105:11 105:13 108:8,13 144:16,18 148:2 163:16 169:17 177:21,23 178:3,5 188:10,12 209:7,8 214:1,3 222:8 224:22 225:1 231:23 232:2 238:7,9 257:12,14 260:22 261:1 279:2	materials 6:3 30:6 83:3 158:2 178:11 276:19,20 matter 94:4 161:13 205:12 298:15 matters 15:4 39:19 McDonald 15:11,12 mean 16:1 20:9,17 24:11 27:3 29:14 30:9 35:14,17 37:12,23 45:1 47:2 50:11 51:9 51:14,23 52:2 53:6 55:9 57:4 58:5,23 65:16 67:12,18 71:17 75:6 78:9 79:14,16 85:23 86:3 89:21 90:11 91:18 93:4 94:1,10 104:15 105:6 112:10 114:23 115:23 116:1,9,11 119:1 123:17 127:3 127:13 128:4 131:12 134:23 135:15 140:21 145:21 151:9 153:21 155:21 156:9 158:4,15,17 159:8,11 160:9,15 168:7 170:8 171:11 172:17 173:5 175:7,22 176:7 177:1 188:5 191:10,11 192:9 195:22 200:20 202:18 205:14 223:11,14,18 226:14 230:6 244:6 245:17 248:12 249:2 250:12 253:17 254:4 255:4 256:23 260:7,18 262:3 265:7 269:19 269:23 270:10,13 271:17,22 272:9 285:20 286:16 298:12 299:17	303:17 308:10 meaning 206:23 208:11 218:23 231:19 means 16:2 104:7 204:10 205:6,12,19 207:4 281:9 311:7 meant 22:13 60:18,23 182:19 241:1 244:4,9 305:21 media 189:12 190:20 medical 154:20 medications 10:13 medium 59:21 meet 39:18 42:5 133:3,3 134:9 135:4 meeting 5:11 27:6,15,16 30:2 35:1 42:16 44:8,8 73:5,7 138:10,15 139:8 141:3,19 meetings 22:6 28:14 29:23 41:22 43:18 45:23 72:21,23 122:8 180:10 219:15 230:8 237:19 252:21,21 304:18,23 meets 41:3 134:16 member 42:1 259:14 263:16 members 18:11 39:21 40:6 200:23 263:8 memo 82:2,13 memorandum 230:11,17,19 memory	137:23 mentally 123:12 mention 55:4 mentioned 25:12 101:15 115:22 120:17 121:20 124:3 194:18 226:7 277:22 294:13 304:17 mentions 114:16 merit 15:23 Merrill 1:10 5:19 76:10 140:6 140:9,13 141:13,20 144:1 145:8,12 190:9 218:15,22 219:3,16 224:6 226:2 231:18 232:6,21 233:18,22 240:12 241:8 252:16 255:11,17 Messick 2:9 5:4,5 7:4 11:12 12:1 15:19,22 16:5,8 18:14 21:9,22 22:9 22:18 23:7,12,19,23 24:11,14 26:14 27:2 28:1,7 30:8 33:1,12 33:20,23 34:9,15,22 35:13 36:14 41:5,9 42:23 43:16 45:13 47:21 48:4,17,23 49:6 50:10,14 51:11 52:1,20,22 53:5 54:4 54:22 56:15 57:3 59:12,18 61:1,5,8 62:4,18 63:3,14 65:21 66:7,22 67:16 68:1,15 69:4 70:15 71:6 74:18 75:21 77:10,18 78:4,8 81:14 83:4,13 84:19 85:4,18 86:11,18 87:5,12 88:3 90:19

91:12,14 92:12,23 93:2,13,20 95:1,16 96:6,15 97:14,22 98:8 99:11 101:7 102:2 103:1 104:13 104:17 105:4 106:1,3 106:21 107:9,23 108:15,23 109:17 110:1,16 111:2,19 112:22 113:3,18 114:3,8,15 115:4,14 116:6,16 117:20 119:11,18,22 121:9 121:15 122:11 124:4 125:8,21 126:5 130:10 132:6,22 133:10,16 134:5,11 134:21 135:13 136:4 136:15 137:9 139:17 140:8,15 141:17,23 143:7 144:13 145:9 145:19 146:20 147:9 147:21 148:15,21 149:7 150:8 152:10 152:18,21 153:11 154:6,11 155:12,20 156:17 159:2,7 160:2 160:21 161:8 162:19 163:4,10 164:4,12 166:4,18 168:1,6,15 168:23 169:9,12 170:6,15 171:20 172:16 173:11 174:20 179:2,5,7,10 183:18,22 184:3 185:5 187:10 188:4 188:22 189:17 190:23 192:8 195:4,7 196:11 197:3 198:7 198:15 199:1,6,11,14 199:23 200:3,11 202:14 204:16,22 205:2,5,9,21 206:6 207:1,9,16 208:14 210:20 212:5,14,23 213:22 215:7,14	216:6 217:23 218:11 220:11,19 224:12 227:9,17 228:13,16 230:14 231:22 233:11,16 235:20 236:7,20,23 240:1 243:4 246:5,10,13,20 248:8,10 249:14 252:1,23 253:21 254:21 255:13,19 256:1,12 259:13 260:4 261:5,16 262:2 262:7 266:4 267:2,9 267:13 269:17 272:7 272:11,23 273:2 286:1,4,12 287:17 288:6,18 290:6 293:5 294:14 296:14 297:16 298:20 299:5 299:8,16,19 300:2,13 300:18 301:5,12,21 302:7,11,13 303:1,11 303:22 304:7,11 305:13,20 306:7,20 307:3,15 308:2,9 309:4 310:18 met 226:10 271:15,16 method 87:8 mgaber@campaign... 2:7 middle 1:2 280:8 mind 104:18 118:15 125:22 139:7 167:1 244:23 245:2 mine 106:11 259:15 288:7 289:18 minute 84:5 106:3 124:3 213:13 minutes 5:11 30:11 41:22 42:5	42:7 44:3,7,14 72:13 72:16 73:3 miracles 173:14 miraculous 173:13 mischaracterizes 284:13 misconceptions 197:22 misdemeanor 53:8 misdemeanors 53:2 missed 51:22 119:14 missing 229:6 Mississippi 5:22 170:3 171:13 278:21 279:20 280:10,19,22 281:2 281:17,21 282:8 302:14 Mississippi's 169:20 282:7 Misty 2:9 16:11 32:16 36:5 53:13 228:15 267:8 Mitchell 1:20 3:7 178:10 179:14,22,23 180:7 180:14 311:19 mmessick@ago.stat... 2:13 mobile 76:23 166:10 184:14 module 294:15 moment 157:15 213:4 Monday 233:20 Montgomery 1:19 2:12,18 month	128:22 147:1 months 147:7 Moore 257:18 258:6,19 259:12 260:1 Moore's 258:9 moral 6:8,10 37:18 38:14,19 43:14 48:14 59:9 62:16 63:1,11,18 64:5,12 65:5 66:18 67:15,21 69:1 83:11 83:21 85:16 87:4 94:6 97:12 99:1 107:6,8,11 108:11 109:8,22 110:3 112:3 112:9,19 113:8,12 114:2 115:10 162:15 184:20 191:10,16,18 192:15 203:15 206:23 207:8 211:8 211:13,20 212:15,16 213:6,19 214:10,19 215:1,6 216:1,17 217:10,11 218:22 220:9,15 221:13 222:23 224:2,7,11,18 228:5 229:10,21 230:5,13,20 231:4,9 231:20 243:12,23 245:4,5 247:18,21 248:6 249:13,17,21 250:10 251:23 252:5 253:13 256:11 258:15 270:15 274:9 274:16,20 276:1,13 282:22 283:7,11,19 284:19 286:9 287:14 288:11,15,23 289:3 289:10,17,20 290:12 291:14,16 292:14 294:6 299:13 304:13 305:4 307:5 309:17 309:22 310:10,16

Morally 207:2	130:17 133:4 134:2	noneligibility 37:6	297:12
morals 243:21 244:10	146:9 153:21 182:18	nongovernment-ow... 32:5	noticed 144:10,14 165:14
morning 7:12 49:20 118:1	191:23 201:11 202:7	nonhuman 36:12	notices 6:6 38:18,22 46:16,17
242:12	210:2 227:2 241:16	Nope 256:13	47:2,4,9,14,19 53:16
moved 46:18	241:17 269:15 270:8	normally 165:20 190:1 308:20	53:21 54:19 55:5,19
multiple 189:14	needed 75:9 79:2 221:4 228:4	308:21	159:16 163:23
murder 113:7 203:4,14	253:2,4,8 263:14	Northeast 232:13	188:17 191:14
	needing 27:13	northern 1:3 175:13 176:8	193:16 196:6
	needs 36:10 258:15	Northwest 176:13	notification 38:13
	negated 300:22	northwestern 176:8	notified 38:16 144:15 177:18
	negotiation 272:8	not- 211:2	notifies 133:6
N	neither 118:10 122:3 311:11	Notary 1:21 3:8	notify 74:3 122:2 153:18
name 7:14 40:17 48:5 72:17	never 64:17 65:16 183:12	notated 301:1	271:9
84:9 115:12 116:2	211:14 230:2 244:23	note 33:5,13 277:23	notwithstanding 65:2 271:1
120:17 140:23	245:2 257:5	noted 258:20	nowadays 240:16
209:21 226:20	new 73:11,13 84:6 90:6	notepad 27:4,5	number 24:8 40:4 48:9 114:19
263:23 276:21,22	95:5 120:18 122:12	notepads 27:11 30:3 34:13 36:3	116:2 118:7,8 121:22
280:15 285:16	166:3 187:15 199:6	notes 27:6,10,12,15,18,22	135:7 148:23 175:2,3
311:16	210:13 214:19	28:13 30:11,13 32:18	189:14 208:23 261:9
names 7:22 46:9 56:13 57:2	216:14,20 217:7	32:20 34:21 35:10,18	282:5,9 303:14
61:18 158:18 180:22	252:20 256:23	36:17 107:1,5,13	311:16
219:11	263:13 273:20	162:21 236:5	numbers 149:5 297:23
national 120:20 121:4 125:15	278:23	notice 1:16 34:6 39:2,2 55:13	NVR 168:12
231:11,16	newly 159:23	55:18 77:20 132:19	NVRA 121:8,14,18,21 122:10
nature 8:6 77:6 78:12 79:12	newness 257:1	159:21 160:7 161:3	122:15,21 123:3
80:8 81:12 82:5	news 194:11,15 197:20	165:15 192:13,16,19	124:17 125:19 173:5
145:18	213:8	192:20 231:3,8	194:19 195:13,23
necessarily 34:11 84:13,16 94:10	nod 9:13	242:20 255:21 269:5	302:22 303:2,7,14
96:1 135:14 210:21	nods 18:18		304:3,8
211:2	nominate 40:4		NVRA's 134:9 302:16 303:18
necessary 79:10 81:8 113:13,22	non 32:21		NW 2:5
115:1 116:4 117:3,16			
need 3:12 10:5 27:19 33:8,9			
58:13 70:19 98:20			
112:6 114:6,12			
115:11,16,17 122:16			

O			
o'clock	172:16 173:11	222:23	186:12,21 194:13
114:9	174:20 185:5 187:10	obtaining	197:10,11,15 201:19
object	188:4,22 189:17	165:11	206:18 212:22
11:12 12:1 18:14 21:9	190:23 192:8 195:4	obvious	213:16 215:2,11
21:22 22:9,18 23:7	196:11 197:3 202:14	86:7 249:2	216:12 217:19,21
26:14 27:2 28:1,7	205:10 206:6 207:1,9	obviously	218:2,5,18 220:5,7
30:8 34:15,22 35:13	207:16 208:14	82:10 149:17 270:1	220:14 223:3,16,19
41:5,9 42:23 43:16	210:20 212:5,14,23	occur	226:5 229:8 232:17
45:13 50:10 51:11	213:22 215:7,14	64:22 140:2	235:23 237:3,5,22
52:1,20 54:4,22	216:6 217:23 220:11	occurred	242:2 243:23 245:21
56:15 57:3 59:12,18	220:19 224:12 227:9	297:2	248:6 249:12 251:4
62:4,18 63:3,14	227:17 228:13	October	252:8,8,11 258:21
65:21 66:7,22 67:16	230:14 231:22	176:18 188:15 191:4	259:1,6 261:4 263:19
68:1,15 69:4 70:15	233:11,16 240:1	of-state	266:16,23 272:14
71:6 74:18 75:21	243:4 246:5 248:8,10	68:23 75:16 83:11	283:6,10 284:18
77:10,18 81:14 83:4	249:14 252:1,23	Off-the-record	289:9,12 294:1 297:4
83:13 84:19 85:4,18	253:21 254:21	124:14 235:19	309:10
86:11,18 87:5,12	255:13,19 256:1,12	Offender	office's
88:3 90:19 91:12,14	259:13 260:4 266:4	5:13	303:6
92:12,23 93:2,13,20	267:2 269:17 272:7	offense	offices
95:1,2,16 96:6,15	273:22 274:4 275:18	5:14 94:20 95:12 96:5	47:10 52:6 53:15
97:14,22 98:8 99:11	277:2,20 284:12	107:3 112:1,8 123:14	54:19 230:18 301:14
101:7 102:2 103:1	286:12 287:17 288:6	164:19	official
104:13,17 105:4	288:18 293:5 297:16	offenses	1:10 26:6,20
106:21 107:9,23	298:20 299:5,8,16,19	113:10 222:23 276:1	officials
108:15,23 109:17	300:2,13,18 301:5,12	offer	17:3,15 39:16 250:23
110:1,16 111:2,19	301:21 302:7,11	170:10	279:22 284:17
112:22 113:3,18	303:1,11,22 304:7	offered	oh
114:3 115:4,14 116:6	305:20 306:7,20	3:15 283:10	24:17 43:4 54:9
117:20 119:11 121:9	307:15 308:2,9 310:6	office	183:13 184:3 200:14
121:15 122:11 126:5	objected	1:17 2:10,16 8:16 11:7	234:4 236:22 251:6
130:10 132:6,22	228:18	13:1,6 15:13 16:15	261:13 265:23
133:10,16 134:5,11	objection	17:17 19:20 20:20	okay
134:21 135:13 136:4	47:22,23 125:9 195:9	24:3,23 25:5 29:18	9:2,13,20 10:3,4,10
136:15 137:9 139:17	218:12	31:13,23 32:4 35:22	16:4 31:10 33:4 34:8
140:8,15 141:17,23	objections	40:18,23 43:23 45:16	37:17 49:22 50:17
143:7 144:13 145:9	3:10,11	47:6 53:16 56:5	61:6,10 65:7 71:4,13
147:9,21 150:8	obligation	58:21 60:17 62:15	71:20 78:3 83:1
152:10,18,21 153:11	79:16 289:8 290:11	72:3 77:1 78:7 88:2	94:19 106:12 116:14
154:6,11 155:12,20	291:12 303:7,13	89:22 98:9 103:9	119:22 120:5 125:21
156:17 159:2,7 160:2	304:4	104:3,6,16,21 109:2	135:20 136:23 146:3
161:9 162:19 163:4	obligations	118:4 119:9,16,23	149:7,13 150:4
163:10 164:4,12	86:13 207:12	120:13 121:6 126:7	158:20 160:18
166:4 168:1,6,15	obtain	139:1 140:4,5 142:19	167:19 168:9 169:12
170:6,15 171:20	115:21 188:3 193:12	145:14 166:3 168:12	171:3 174:17 175:21
	obtained	182:10 185:1,18	176:16 179:7,22

182:1 183:17,22 189:10 192:3 195:15 198:13 199:5,23 200:14 204:1 205:4 205:23 213:14 222:17 225:18 226:5 231:3 236:4,22 238:18 241:19 244:21,23 245:2 247:7 251:3,11,21 254:17 257:23 259:22 266:9 267:12 267:21 272:3 274:23 280:22 282:14 285:15,23 290:4,14 295:9 296:19 305:11 305:23	opposed 42:18 opposing 166:20 option 187:6 237:8 options 169:7 order 111:10 113:11 116:4 264:22 269:7,15 ordinary 236:16 237:1 organization 201:17 original 107:16 214:18 225:6 originally 267:16 out- 68:22 75:15 83:10 out-of- 294:16 out-of-state 55:5,12,17 61:14 62:2 68:10,18 69:7 70:10 71:9,14 74:22 75:4 75:20 76:2 79:13 80:8,15 81:11 82:5 83:21 85:7,15 86:15 86:16 87:2,10,19 88:18 89:1 96:9,13 101:5 103:21 104:10 275:12,17 276:14 294:21 outlined 155:23 outlines 27:6 outlining 230:19 outside 15:7 31:11 42:21 63:23 64:3 67:1,8 69:11 80:6 113:8 120:16 124:6 182:17	215:5 216:14,23 285:21 292:15 293:6 overlap 41:14 overly 56:16 60:2 overseas 8:5,9,20 overseeing 185:16 overstep 266:7 owes 182:21 oyster 129:17	170:19,19 171:5,6 244:14,16,17 245:6 246:10 247:20 279:17 paid 180:5 paragraph 61:13,15 115:19 149:1 149:18 150:15 159:13,20 160:6 163:19 222:21 227:19,23 228:7 Pardon 108:17 pardons 5:17 73:15,20 74:1 164:21 181:12 234:22 257:2 266:22 267:10 268:3 parens 270:9 parole 73:21 164:21 234:5,9 234:16 paroles 5:17 73:15 74:1 108:17 181:13 234:23 257:3 266:22 267:10 268:4 part 24:20 35:6 40:5 84:15 106:2 109:11 114:5 119:1,14 120:23 121:5 130:16 131:15 151:8,9,16 164:13 195:15 197:5,12 205:15 216:19 228:10 229:18 230:1 230:9 232:23 234:20 235:14 237:18 239:5 240:9 257:1,3 269:20 271:19 279:12 280:1 280:8 284:9 304:19 305:12 partake 173:23
older 133:20 once 29:22 56:17 70:18 91:15 192:11,14 219:17 230:15 295:10 onerous 299:10,17 ones 67:15 84:2 176:7 198:15,20,22 211:20 212:12 247:18 ongoing 29:6 49:15 122:9 129:2,3 138:3 193:21 196:5 online 171:4 open 117:13 openness 243:1 opinion 110:11 310:9,14 opinions 59:4 213:2 216:23 oppose 254:13		P P 2:3 p.m 310:22 Packard 5:21 19:14,15 59:5 76:10 96:23 126:16 140:6 150:21 159:18 161:12 168:19 222:13 225:5 257:19 268:15 273:8 Packard's 160:22 163:14 packet 83:7,8 page 5:3,6 6:2 24:1 29:11 115:18 128:16 146:18,22 147:3 149:1 153:19,20,20 154:2,14 155:10 169:10 172:9,14,21 173:1 181:20 243:7 246:14 247:7 279:11 279:19 280:3 pages 130:3 131:1,21 148:17 153:16 155:2 156:1	

Partially 105:5	PDF 151:21 171:4,5	perjury 247:13	214:14
participates 219:16	pending 49:11 193:6	permit 56:12 67:22 99:8 220:8	place 28:12 30:12 61:2 92:6 100:19 177:3,13 185:10,13 193:1 262:20 263:23 280:16 281:14 298:12
participation 174:13	people 23:5 38:13 50:20	person 21:2 52:18 62:12,12 72:17 92:16 108:2 114:21 115:6,13 116:10 143:1 168:16 170:4 180:5 185:7 187:6 193:18 204:3 211:1 228:3 234:14 255:20 256:8 260:7 261:7 268:12 277:15 280:20 287:6,7 291:1 305:2 307:8	placed 211:2
particular 22:15 31:10 52:18 54:1,16 55:15 58:1,2 58:4,4 60:3,8,15 61:18 64:22 66:12 68:22 75:16 79:5 85:1 87:9,18 89:16 97:17 99:21 100:9 103:4,6,11,20 104:9 107:19 109:14 111:11,16 114:1,12 161:19 167:3 182:3 214:22 219:23 221:20 222:3 239:2,9 250:3 287:19 291:15	51:21 74:22 102:22 152:14,15 153:3,7 154:4,14 155:4,5,13 155:14,14,17 156:2 156:13 157:2,3,8,19 159:22 161:3 164:1 164:19 165:1,4,5 166:11,14 167:23 175:3,14,14 185:2 186:15,23 191:15 192:5 196:6 202:11 202:18 219:7 235:12 243:5 253:18 254:6 254:14 255:12 268:16 271:10 276:9 278:3 289:19 308:10	personal 32:7,10 46:19 202:3,3	plaintiffs 1:6,17 2:3 7:15 150:16 159:14
particularly 227:6,15	percent 110:5 174:14 250:6 302:6,8	personally 126:6 186:17 242:17 258:7	plaintiffs' 159:21
parties 3:3,20 311:11	percentage 152:2	personnel 12:12	plan 138:5,18 181:2 187:13
partly 185:14 251:7	perforations 131:9	persons 37:6 51:22 61:18 187:21 206:19	planned 181:8
parts 125:14	perform 31:6 32:9 98:14 99:4 105:8 208:1	pertain 34:14 35:11,20	play 121:17 263:6 292:8
party 3:22	performed 31:3	phone 17:7 59:16 78:21 102:9 212:1	played 239:12 241:8
pass 147:23 183:1 253:2 271:7	performing 84:3 290:2	phones 15:2 16:23 17:5	playing 95:20
passage 142:4,9 147:2	performs 162:6	photo 8:2 9:2 20:11 166:10 188:7 285:10,12	please 9:16 10:1,21 21:23 45:14 54:17 55:14 62:19 63:15 67:17 77:12 86:19 116:17 120:8 137:1 142:6 145:20 146:2 164:5 187:4 202:15 210:12 220:12 227:11 233:19
passed 45:7,12,17 102:6 149:10 204:6 223:1 230:15 253:5 267:4	period 14:1 18:8,16 29:8 31:14 50:14 61:22 69:15,18 81:20 191:17,20 193:2,8,22 241:21 256:20	phrase 207:4	pleasure 236:17
passing 291:3	periods 47:16	physical 187:11	plus 240:4 263:11
path 269:13		picture 128:12 285:17	point 10:5 11:17 21:2 42:13 69:22 101:22 102:5 115:9 116:7 122:6 129:4 137:20 142:23
pause 78:15 191:23		piece 217:7	
		Pinky	

154:16 168:16 174:13 181:6 190:14 195:20 222:5 268:12 286:18 289:15 295:8 pointing 306:14 policies 41:17 policy 218:5 political 11:1 17:2,13 18:3 182:8 poll 26:9 44:13 polling 262:20 popular 152:9 portion 131:1 173:23 246:16 262:23 posed 10:8 65:18 226:18 position 11:11,13 12:17 13:5 13:11,13,21 14:4,8 14:15,21 19:16 31:22 32:3 35:18 40:3 42:6 42:22 45:21 62:14 63:8,16,22 64:12 139:13 143:6 203:5,7 204:9 205:1,3,20 206:2,18 215:2,10 217:21 220:5,6 224:19 225:23 226:4 239:23 249:11 259:2 positions 11:22 224:14 possession 77:8 107:4 108:4 109:16 110:6,9 111:21 247:23 251:21 possibilities 126:13 127:23 128:5	128:19 129:15 153:22 possibility 96:7,16 124:8 171:16 possible 35:10,17 90:12 99:16 110:13 112:17 130:8 130:11 152:19 165:18 171:18 177:8 187:21 265:7,11 278:7 307:22 308:4 possibly 117:22 129:1 138:20 143:10 153:10 154:7 155:9,21,21 163:11 167:11 190:14 221:4 263:17 302:10 post 11:4 36:19 42:5 47:16 52:3 55:2 209:4 poster 166:11,19 266:10 271:3 potential 55:18 128:20 165:16 230:20 252:20 PowerPoint 83:2,5 practicability 151:1 practice 28:4 29:16 54:11,18 70:9 97:21 98:6 211:19 practices 121:3,13 pre 13:8 50:16 55:1 56:22 58:9,12 68:2,2 101:16 212:3 309:16 precipitated 191:3 precise 241:1 predated 202:12	predicament 74:3 preparation 17:1 20:18 109:4 242:9 265:6 prepare 72:16 117:3,16 prepared 56:19 59:1,11 73:3 109:1,13 137:12 158:8,20 159:10 181:8 201:9 250:22 251:3 266:16 275:23 prepares 72:18 preparing 117:18 266:17 268:4 preprinted 152:5 presence 65:3 present 2:15 43:8 73:5 252:17 presented 80:2 presidents 44:11 pressing 49:20 pretty 122:18 177:16 186:7 241:23 249:8 previous 7:20 103:16 114:22 194:17,17 253:3 263:9 previously 54:10 56:1 85:20,22 108:3 161:22 164:1,8 201:10 203:2,15 primary 142:19 print 108:12 279:5 printed 24:15 151:17 152:3	printer 170:22 printing 246:19 prior 13:2 19:12,20 33:18 37:7,13 43:12,14,21 49:22 57:10 58:19 60:5 61:22 62:17 65:18 68:21 85:11 103:12 128:23 138:18,21 139:3,19 144:7 160:10,11 187:8 191:14 193:22 194:8 197:8 202:21 206:4,12 208:9 209:4 212:20 217:17 218:6 218:22 219:23 221:22 229:11,22 230:16 237:15 247:16 249:19 255:20 256:2 273:15 274:13 282:21 283:20 286:6 288:16 289:22 290:16 291:2 295:18,20 297:10 298:14,21 304:13,16 305:15 prison 185:15,17 186:19 187:2,7,14 188:2,5 285:9,11 prisons 186:15,20 privately 264:2 privileged 119:13 120:1,7 124:5 206:9 probably 36:4 48:7 58:13 59:15 59:20 60:1 79:5 98:15 170:18 174:13 181:16 190:14 201:7 219:6 234:3 248:15 256:6 265:18 268:16

282:6 283:22 299:9 probate 20:7 25:23 26:5,19 44:10 92:15 problem 67:3 162:1,23 167:7 171:21 269:22 problems 230:21 293:20,22 294:1 301:14 302:2,3 procedurally 60:21 procedure 3:6,17 4:1 117:15 122:13 281:12 procedures 41:1 117:1,10 121:3 121:13 proceed 80:9 123:6 process 25:21 28:11 30:16,23 37:23 38:17 40:3 49:21,23 50:4,5 54:5 68:20 71:22 75:7,9 78:18 86:1 88:11 92:15 101:17,21 111:11 113:4 121:12 130:15 149:21,23 164:23 165:6,11 192:10,12 193:15,21 194:4 196:8,10 216:11 227:20 252:12 253:11 256:23 264:23 265:1 293:7 295:10,13 296:7 301:15 processed 130:13 processes 90:2 296:17 processing 191:9,11,13 210:11,18 281:12 produce 30:17	produced 200:7 236:21 261:10 261:23 product 32:8,9 44:4,6 products 26:23 27:3 professional 13:7,14,20 14:20 15:16 professor 179:23 180:18 professors 180:20 182:7 program 180:3,15,17 programs 195:23 prohibits 91:7 promoting 44:11,12 promotions 12:21 prompts 80:2 properly 117:4,16 proposed 124:7 126:6,7 135:16 provide 38:7 46:6,13 56:11,17 56:23 86:13,23 87:8 87:15,15,17 99:6 101:23 121:21,23 132:19 137:14 144:11 156:5 175:1 185:21 186:3 191:12 207:13,23 210:1,5 250:2 258:21 297:12 provided 3:16,23 22:11 57:8 62:10 65:7 75:15 90:18 99:2 139:14 151:18 155:10 156:15 159:22 165:9	184:19 185:1 188:7 216:21 218:16 234:13 269:5 271:21 282:23 283:6 294:20 295:3 304:12 305:14 306:10 provides 61:15 130:18 providing 57:7 58:14 61:16 62:1 62:5 69:3,16 108:18 143:4 208:2 301:9 305:18 306:16,22 provision 39:10 73:23 84:11 112:14 113:15 271:8 271:14,19 294:7 305:16 provisions 68:13 88:14 93:18 99:20,22 100:16 109:11 psychologically 308:12 public 1:21 3:8 17:9 18:12 24:7 168:13 201:7 229:20 236:19 publication 265:3 publications 26:9 271:23 publicly 42:7 published 261:4 pull 123:8 162:3 164:15 199:4 pulled 169:21 198:10,16,21 198:23 199:10 200:7 236:3 304:22 punishing 254:19 255:12 punishment	255:2 purpose 3:16 196:4 253:15 254:18 purposes 37:9 48:18 285:12 pursuant 1:16 3:5 purview 143:5 239:15 push 19:4 put 121:17 123:7 151:14 164:17 211:15 227:22 232:17 258:11 270:10 putting 97:23 122:5 180:11 210:14 266:7 Q qualifies 48:14 113:16 qualify 268:20 qualifying 103:22 244:13 quality 190:21 quantities 186:5 quantity 190:21 quantum 299:2 quarterly 39:18 41:3 queries 31:4 question 5:16 6:16 9:15,19 10:8 16:12 19:5 23:14 24:5,16 28:10 40:15 49:6,9,11 57:16 58:6 62:11 65:17,18 66:14

68:7,23 69:8,10 70:9 76:19 77:20 78:2 79:5 83:18,19 87:10 87:22 89:6,18 92:3,4 94:12 95:9,23 97:17 97:21 98:1,2,7,12 99:20 104:4 106:7 109:19,23 111:6 117:21 119:14,15 120:3,12 123:2 125:5 125:9,23 126:4,18 127:4,18 134:15 136:5 137:2 139:6 146:4,6 156:11 161:20 163:13 168:7 171:14 181:7 182:21 183:12,16 184:15 197:18,19 198:2 203:11 204:11,13 220:3,20 226:17 227:11,13 228:15,18 228:21 241:2 243:10 244:18 248:11,18 249:5 252:7 259:12 260:3,8 267:5,18 272:10 280:11 284:5 289:5,14 291:20,21 294:13 301:17 302:1 304:2,8 306:8,21	273:4 286:1 309:2 310:18 311:7 quick 111:12 244:18 quit 201:12 quite 126:22 230:10 quorum 281:8 quotation 243:15 quote 107:3,5,15,18 226:23 226:23 243:12,13 quoted 194:15 197:21 quotes 265:2	re-review 122:16 reach 165:22 243:2 reached 96:11 174:11 283:17 reaching 227:16 read 7:5 189:8 reading 76:18 106:6 125:22 260:6 reads 49:10 126:3 146:5 really 19:7 20:20 28:6 29:13 29:22 32:11 49:14 52:2 56:3 57:8 60:12 69:23 71:5 72:4 74:10,17 86:5 90:10 90:11 92:3 94:2 102:5 104:18 117:10 139:5 143:16 144:1 146:7 175:16 218:2 223:12 226:15 252:10 255:4 256:23 257:2 263:17 267:16 272:15 295:14 300:4 304:18 reason 10:17 46:19 122:15 147:18 172:11,17,18 178:23 193:5 196:13 210:15 215:10 245:19 249:10 253:18 255:10 283:23 285:20 287:11 293:10 Rebecca 78:6 recall 8:11,22 13:12,16,19 27:15 35:9 40:7 43:11,17 45:20 57:18 58:23 59:8,23 60:4	69:23 73:17 74:12 75:13 97:2,16 100:9 100:11 118:5,6 124:11 128:6 130:21 137:18,21 141:9,12 142:1 144:2 145:7 178:20 180:21 181:4 189:7 190:10 194:11 197:20 198:2,6 206:22 210:8 213:9 214:10,16 219:1 220:4 221:14 222:18 223:8 225:10,12 232:9,14 233:21 239:7 247:5 256:19 257:20 258:1 259:22 260:5 263:17 264:9 264:18 284:11 295:8 302:16,19 305:7 recalled 198:3 recalling 73:6 137:11 receipt 147:13 receive 33:18 55:10,12,19 57:12 75:3 87:11 107:1 115:20 179:1 186:20 189:23 190:18 209:2 211:23 212:12 218:7 233:13 249:19 received 31:16 32:17,20,21 33:6,14 71:13 78:17 78:19 88:17 97:10,19 98:6 146:21 177:18 186:17 188:20 209:1 225:17 227:5,12 245:21 258:13 260:1 receives 38:12 114:18 210:23 receiving 108:3 146:1 178:20 recess
questioning 114:9 questions 3:11,12 9:8 10:14,18 17:9,14 19:3 56:20 57:10,11 58:15 60:4 60:9,11,13,16,19 63:6,23 64:3 71:13 75:19 78:19 87:14 88:17 97:10 101:17 106:20 108:1 114:13 120:7 165:13 166:21 167:18 184:10,12 196:17 209:1 211:23 212:11,17,18,19 232:23 242:11,23 249:19 257:6 272:22	R race 231:5 281:2 284:2 285:1 307:6 308:7 Rachel 72:17 racial 229:9,21 230:3 284:7 284:19 307:13 308:1 racist 307:19,23 Ragan 209:11,16,18 210:9 raised 75:19 195:7 197:14 199:16 ran 184:2 range 182:8 rare 55:20 97:15 226:14 rarely 47:10 55:5,22 184:11 re-read 49:8		

61:9 116:19 169:14 272:20 recipient 164:8 recipients 164:7 recitation 132:19 recognize 39:9 44:22 72:14 76:12 105:21 108:21 144:22 148:6 178:12 188:18 209:14,20 222:15 recollection 43:13 76:18,21 106:7 106:9 132:14 181:15 234:7 recommend 117:1,14 274:11 285:3 285:5 286:23 290:23 291:9 292:21 307:8 recommendation 129:12 recommendations 170:12 293:13 recommended 118:16,21 119:9 120:14 126:11 127:9 293:18 294:4 record 9:7,12 33:5,12 116:17 124:13,16 148:16 166:18 169:13 205:17 235:18,20 246:6,21 recorded 74:14 records 80:6 236:19 refer 48:11 59:3 70:11 72:2 77:23 208:6 228:11 228:22 229:4 reference 126:19 223:7 244:18	referenced 22:4 119:2 references 112:2 222:21 referencing 162:5 referred 70:21 166:19 229:3 referring 37:2 58:20 73:22 86:5 159:20 160:6,23 163:13 211:7 214:21 233:10 234:10 290:9 304:14 305:12 refers 244:8,12 reflect 216:11 217:21 reflected 82:15 reflects 181:19 309:13 reformatted 302:5 refrain 197:6 refresh 76:18 106:6 refused 271:11 regain 269:7 regarding 74:20 75:19 130:19 135:6 136:17 168:11 183:7 214:9 regardless 69:5 78:9 92:5 113:6 184:22 206:20 regards 273:6 region 175:14 regional 174:4,15,19 register	38:8 41:17 64:15 80:9 80:11 81:6 88:7,10 89:8 91:1,17 92:2 108:7,20 125:9 133:18 187:3,9,22 218:12 268:22 281:7 295:16 297:18 registered 46:20 55:23 123:11 135:3 165:3 260:21 registering 67:11 71:11 73:16 74:9,16 81:13 144:7 166:8 186:16 282:12 registrant 78:14 297:17 registrants 132:20 registrar 6:16 43:5 60:16 64:11 64:18 68:20 70:10 77:2 79:10,17 82:9 82:14 97:5 98:3,13 99:4 106:13 107:19 122:3 150:11 189:1 209:18 214:16 217:8 219:22 222:22 231:6 248:3 249:5 258:4,10 273:13 274:2,7 276:5 281:9 284:22 286:6,7 286:11,14,15,17 287:4,22 290:7,16 291:7 292:10 293:18 294:4,9 295:10,11 297:11 305:23 307:5 307:12 309:15,16 registrar's 63:19 248:4 registrars 6:14,15 18:7 20:2,4 25:13 26:13,16,17 38:6,12,23 39:1,2 46:7,14 47:20 50:1 51:4,16 52:16 53:9 53:18 54:14,19 56:10 56:11 57:1,5,12 59:3	59:3 60:3,8 61:17 62:22 63:8 64:19,23 65:8,14,22 66:15 67:7,18 74:4,20 75:14 77:1 79:22 81:10 82:16 83:14 84:3,22 85:13 86:9 86:14 87:1 90:1,3,7,9 90:17 91:4,8,11,15 92:7,10 93:5,19,23 94:14,21,23 95:15 96:2,12 99:8,18 100:6,15,22 101:2,8 102:1,13,20 103:4 110:14 113:14 150:7 158:6 173:16,19 174:10,22 175:8,9,19 190:1,19,22 191:3,8 191:12 192:3,10 193:2,12 194:3,12,14 196:9 197:1,18,21 207:14 208:11,19 209:22 210:1 211:7 211:23 212:13 213:7 214:21 215:3,4,12 216:5,13,16 217:9,18 217:19 218:6,17 221:3,7,10,22 229:20 233:14 238:11,22 239:4 240:19 242:6,8 242:22 243:2 245:12 245:15,18 247:3 249:20 250:21 251:9 251:16 256:17 257:5 259:6 260:14 271:9 271:21 273:16 274:23 275:8 276:11 276:21 281:5 282:21 283:1,16 286:8 287:16,23 288:13 289:7 290:10 291:11 293:2 297:15 298:19 300:19 304:13 305:5 305:17,22 306:1,14 306:23 307:18,22 309:20 310:13

registrars' 52:6	regulations 17:18 21:7	299:15	207:10 224:13 272:13
registrars'-use-only 300:8	Reichert 214:9,14	remember 9:21 48:16,16 79:4,6,8	replaced 240:20
registration 5:8,9,10,23 6:19 11:10	Reichert's 221:6	100:13,14 101:1	replied 183:12
11:15,16 12:6,11	Reichter 215:23	106:9,10,11 119:3	reported 77:6,15 284:22
14:16 17:10 19:10,13	reinstatement 164:21	178:13 191:23 211:5	reporter 1:20 3:8 7:1 9:7 49:10
19:18 20:1,6,12	reject 173:10	226:14 233:3 234:20	67:4 126:3 146:5
21:17 25:3,10 26:18	relate 31:21	235:11 245:14	311:15,20
34:14 35:6 38:4	related 18:10 32:3 36:22 41:8	266:18,18 273:11	REPORTER'S 311:1
39:12,14,19,20 40:12	41:18 101:11 133:7	remembering 138:2	Reporting 311:15
40:19 41:11 45:4,6	143:12 212:15	remind 191:22	reports 17:13
47:7 49:17 67:22	233:14 234:5	reminders 191:22	represent 101:14 123:3 125:13
69:21 72:13 74:21	relates 35:22	removable 5:14 292:19	167:12 169:19
75:3,7 78:18 80:13	relation 311:11	195:3,22 196:6 197:2	261:22 279:4
81:20 86:21,23	relative 12:15 14:2	287:11 296:9 297:7	representation 123:6 190:20
104:23 115:7 117:19	Relatively 16:23	removal 192:4,9 194:18 195:1	representing 3:3,19 246:22
118:2,18,20,22 119:6	relevance 95:3 270:18	195:3,22 196:6 197:2	represents 311:8
119:10,21 120:15,21	relevant 33:7,11 47:19 50:1,22	287:11 296:9 297:7	request 78:12 143:21 159:21
121:1,4 122:22	114:4 115:21 116:9	remove 51:17 60:22 64:19	186:4 219:21 235:10
123:23 124:10,23	133:21 246:17	68:17 81:7 181:12	236:19
125:1,15 126:9 128:2	reliable 19:6	182:18 196:2,4	requested 126:4 186:11 194:13
129:19 131:6 133:23	relied 212:22	286:10,13,15 289:19	234:13 269:19 273:9
134:6 138:19 139:3	relying 131:15 248:3	290:16,20 291:6	requesting 31:5 166:12 186:6
140:19 141:7,11,15	remain 176:3	293:10 301:14	requests 186:18
141:21 143:20	remainder 262:19	removed 46:19 62:12,13 92:17	require 117:7 269:7 270:23
150:17 161:4,22	remaining 176:9	181:16,19 192:17,20	303:16
163:8 164:9 166:23	remedied	193:19 207:22	required 39:17 64:11 66:4,15
167:14 169:20		274:11 277:17 278:4	121:21,23 122:1
185:22 186:11,13		285:3 287:1 290:7	125:1 135:2 171:23
192:5 216:21 232:12		291:1,9 292:11	172:3 173:3 309:21
233:1,2 239:19		293:19 294:5,10	
257:10 262:19		307:9	
271:11 274:14 277:9		removing 62:9 193:18 194:4	
277:14,16 278:9,21		286:17 287:3,7,9	
279:8 296:6,23,23		300:21	
297:9,22 299:11		reopen 33:9	
300:7 301:2		reopening 36:11	
registrations 298:8		repeatedly	
regular 122:7 196:5 211:14			
212:17			
regularly 219:15			

requirement 122:20 123:16 125:18 133:2,7 134:1,9,16 134:19 135:5,6 136:2 136:10 137:7 144:7 300:6,16,19,22 301:1 301:6 302:17 303:19	92:9,20 93:15 94:19 95:11 96:4,9 103:11 103:20 104:9,11 113:1 132:4,11 134:20 136:3,9,14 141:16 142:20 144:4 156:2 190:22 217:10 220:17 289:9 305:4 308:7	restitution 182:11 restoration 232:18 233:15 restored 227:3 258:16 260:17 restoring 227:21 result 63:1 311:12 resulted 63:12 results 96:4 189:7 resume 191:8,9 retaining 28:11 retired 15:14,22 16:2 retract 122:6 retroactively 202:11 206:3 retroactivity 205:11 return 187:14 returned 27:13,19 130:17 131:1 reveal 119:13 120:1 145:20 146:2 reveals 124:5 revenue 247:12 review 22:14 72:19 124:20 126:15 146:8 192:14 193:6 241:14,21 281:10 reviewed 121:17 122:14 124:8 141:6 198:14,17,17 198:21 200:8 236:3	263:11 reviewing 34:4 126:12 147:17 148:15 268:18 reviews 73:18 76:16,20 106:5 110:2 122:7 145:1 148:7,14 163:18,21 170:16 189:9 207:19 214:5 222:16 225:11 227:10 238:17 257:22 280:13 282:1 revision 267:3,14,18 Revisions 6:5 178:15 Richey 258:20,22,23 259:10 259:22 rifling 237:2 right 9:14 14:5,18 23:11,19 24:17 25:14 37:11 38:3 41:15 43:2 48:22,22 53:7 55:6 61:20 62:5 68:3,11 75:22 88:15 89:19 90:18,21 91:5,18,23 93:1,12,22 94:16,23 95:15 96:5,8,23 100:3 101:19 102:16 102:23 109:7 112:15 115:13 118:19 119:17 124:18 125:23 127:10,16 131:7,21 132:17 133:9,15,20 142:12 142:14,17 147:8 148:20 151:19,23 158:1 162:9,18 167:1 170:5 171:2,6 185:8 191:5 194:6 195:13 195:17 203:13 212:16 218:9 223:14 228:23 231:1 239:20
requirements 122:23 123:5,9 125:2 130:19 132:4,8,21 134:10 135:11,12,18 136:13 142:22 143:21 144:5 167:4 171:22 226:11 301:19 302:18,22 303:9,15,20,21 304:5	respected 223:23 respond 78:20 98:1,6 102:3 179:16 responded 79:6,9 102:8,9 268:6 284:8 responding 79:8 106:9 responds 178:16 response 70:13 102:7 106:16 109:22 111:10,12 179:14 183:13 225:12 258:19 272:22 responsibilities 12:16 16:22 18:19 39:11 61:16 120:23 195:16 responsibility 12:10 18:22 20:13,19 86:12,20,22 89:13,17 89:20 104:22 121:2,7 142:20 responsible 19:6 69:15 83:9 105:9 139:23 198:4 responsive 34:11 36:8 120:3 198:16 200:6 236:2,9 rest 8:9 rested 86:8		
requires 53:21 123:4 271:9 281:8 302:22 requiring 94:20 reserved 3:13 reside 136:20 resided 50:22 residency 123:16,18 136:9,14,17 137:4,7 167:20 resident 136:12 resign 197:19,23 198:5 resignation 194:14 resolution 5:9 44:15,22 45:2,7,11 45:17,23 resolutions 40:21 respect 14:3 15:3 18:4 36:2 41:20 43:9 47:14 50:2 62:1 75:15 79:12 85:6 87:9 91:9			

239:21 243:9 245:12 245:22 249:8 251:19 254:3,15 255:6,18 269:12,16 270:1,10 270:12 271:5 274:17 279:13,14 280:3 283:20 284:15 287:18,20 289:2 290:22 291:2,23 296:10,12 297:21 298:22 300:16 301:20 304:1 305:19	rules 3:5,17,23 9:6 21:6 117:2,9 ruling 3:14 run 242:13 running 29:3,14 250:12 S S 201:16 S-105 2:17 sale 247:23 sample 54:8 sat 144:14 satisfied 122:10 221:16 satisfy 173:4 save 29:4 202:5 246:18 saved 201:5 238:6 saving 32:12 saw 173:6 262:3 saying 36:14,15,16 37:17 50:15 51:18 55:19 74:12 88:22 100:15 135:19 165:2 179:2 197:4,4 200:5,9 210:22 211:8 216:8,8 228:6 236:20 245:13 248:14 249:3 269:9 270:9,17 288:22 292:6 303:23 307:18 says 35:3 41:21 55:23	73:14 77:22 107:13 107:15 109:1 111:8 117:1 125:10 136:20 136:21 146:23 162:22 164:20 181:21 207:20 210:11 215:8,23,23 223:2 224:6,7 227:19 234:5 240:11 243:19 244:2,13 266:15 269:2 281:4 scale 186:18 scanned 277:23 scanning 15:1 scenario 65:9 82:7,8 89:9 91:20 129:16 133:1 134:13 288:7 289:16 291:3 303:23 305:22 scenarios 226:21 228:10 288:12 science 11:1 182:8 scope 182:17 seal 131:9 151:14 search 198:17 199:2 200:6 236:1 searched 199:15 200:13 202:6 searches 31:3,7 seat 97:7 189:4 second 8:4,6,8 14:3 15:20 115:19 124:13 153:19 192:21 235:18 279:17 secondary 164:16	secretary 1:11 2:16 8:15 11:7 12:23 13:6 15:12 16:15 19:20 20:3 21:14,15 22:1 24:22 29:17 31:22 32:4 34:3 35:22 40:18 41:23 42:6 43:22 45:3,16 53:16 62:14 76:10 88:2 89:21 109:3 117:2 118:3 119:8,16 120:12,18 140:6,9,13 141:13,20 143:9,23 144:21 145:8,12 151:22 152:4 159:15 166:3 166:22 168:12 169:22 189:13 190:5 190:8,13,19 198:9,19 199:2 202:9,17 203:4 203:6 204:3,9,23 205:13,20 206:17 218:15,21 219:3,16 220:3 224:6 226:2 231:18 232:6,12,21 233:18,22 234:1 235:15,22 238:3 239:3 240:5,12 241:8 242:2 248:5 251:4 252:15 255:11,17 279:6,8 283:5,9 284:17 287:1 293:21 297:3 304:12 secretary's 167:13 169:4 section 5:7 110:20 111:16 112:5 158:16 166:22 250:9 262:18 Security 114:19 116:2 118:8 282:9 see 41:1,21 46:11 64:5 72:6 73:6 77:11 78:6 95:21 98:18 100:16

107:21 111:8,13 114:13 128:8,10 130:6,11 131:12,13 131:20 139:15 141:7 146:8 147:3 154:2 166:9 167:6 169:22 172:23 173:5,8 177:12 206:15 210:4 211:12 224:16 237:7 247:22 250:16 255:15 270:5,6,10 277:10 280:10,22 281:2,14,17 285:20 287:6 295:6 307:2 308:21	sends 276:4 sense 8:18 37:16 130:1 152:8 160:20 196:21 211:22 243:1 sent 31:15 32:18 50:23 52:5,10,12,15 53:9 54:1,13 59:5 62:7,20 73:21 76:9 82:3 106:16 143:16,21 146:10 147:6 165:15 168:11 213:2 217:14 268:5,5,9 sentence 73:13 74:13,14 244:8 separate 11:20 12:11 82:17,18 125:14 167:16,17 174:21 296:16 separated 75:9 September 1:22 257:17 310:23 serve 39:17 serves 254:18 services 168:13 serving 20:3 41:23 session 175:9 sessions 177:9 189:14 set 52:5 117:4 138:10 221:5 292:16 setting 64:21 98:10 169:6 251:14 seven 174:4 309:6 severity	252:3 share 166:14 199:13,16,20 200:10,12,12,16,18 200:20 201:13 214:20 215:3,9 217:1 217:2,2,2,7,8 221:9 236:1 shared 141:10 200:22 202:2,8 216:5 she'll 107:1 sheet 5:18 108:18 Shelby 6:16 258:4 short 14:9,12 18:16 61:9 103:15 169:14 255:9 272:20 shortened 302:5 Shorthand 1:20 3:7 show 78:14 158:14 209:6 213:4 214:1 222:6 231:23 257:12 260:22 showed 166:19 showing 293:23 shrink 165:21 shrunk 52:11 60:12 side 18:5 60:1 sign 7:5 22:12,14 140:14 141:3 241:18 280:20 281:10 sign-off 21:12	signature 148:18 153:21 280:16 signed 77:21 147:4 149:3 significantly 282:6 signing 32:15 similar 97:10 170:14 172:7 190:18 233:13 similarly 221:8 simply 145:22 234:12 260:20 290:17 293:1 304:2 simulation 275:16 Sinclair 2:10 126:18 127:1,8 127:11,15,17,20 236:14 237:6 single 96:13 sit 65:15 141:2 site 159:9,11 sitting 98:11 situation 226:21 260:19 situations 81:17 290:9 291:11 304:5 six 148:17 size 54:8 sizes 171:12 Slide 181:2 slides 83:2,5 183:19 276:7 sling

154:17 slinging 182:12 slow 233:9 small 108:11 141:1 155:16 173:23 smaller 54:1 171:8 302:5 social 114:19 116:1 118:8 168:13 282:9 society 207:2 244:6 sole 20:18 solely 20:16 21:1 23:4 79:23 89:23 121:5 153:2 249:7 251:7 somebody 19:5 64:4 75:4 77:21 143:1 158:7 179:11 191:18 237:1 255:15 260:19 266:6 269:19 274:2 281:7 286:18 somebody's 186:6 soon 61:2 138:13 144:10,14 sorry 43:4 49:9 67:4 86:16 105:17,19 126:23 137:9 139:12 162:16 180:13 198:22 256:15 289:5 290:4 309:5 sort 26:23 27:9 28:19 37:10 56:7 58:10 64:16 65:6 98:20 185:18 192:4 200:17 202:15 270:15 276:9 276:10 304:22 sorts	173:18 200:15 208:16 293:22 SOS 223:3 sought 234:22 sound 132:17 236:11 284:14 sounds 11:19 95:4 216:9 251:17 293:12 source 66:6 space 172:5,6 175:4 301:8 301:17 302:1,9 speak 7:7 17:7 241:10 253:10 276:7 speaking 35:16 36:21 37:5,15 38:9 143:3 187:17 218:1 speaks 209:4 specialist 13:15 14:5,11 16:21 17:22 18:17,20 specific 23:20 29:7 37:12 51:7 52:4 72:4 73:23 75:2 82:2 87:14,22 88:23 89:1 95:23 106:19 126:8 129:21 130:9 132:20 136:7 142:23 150:19 151:4 152:12 162:16 163:6,12 170:2 178:16 195:23 197:5 200:17 202:1 275:12 277:5 278:4 288:10 specifically 7:23 37:2 38:6 46:2 55:8 56:19 60:6 71:21 97:3 98:22 100:2 101:10 105:22	114:16,17 116:23 118:23 119:7 126:12 132:13 188:1 194:18 195:21 196:3 209:15 211:6 221:5 222:1 224:5 233:4 244:8 255:1 273:11 296:11 303:2 specification 125:18 specificity 162:10 specified 93:9,17 134:7 137:3 302:18,23 specifies 132:3,7 252:3 specify 30:9 37:14 122:22 123:4,23 125:2 133:11 134:1,18 135:10 136:2,13 137:6 303:2,19 304:1 304:4 specifying 134:9 spent 17:21,22 spoke 145:15 160:7 225:16 235:15 259:11 275:5 286:16 307:3 spoken 102:21 141:20 143:11 SSN 115:5 116:11 121:23 235:6 stacking 28:12 staff 22:19 29:22,23 30:2 35:1 72:17 121:10,11 143:1,9 210:3 219:9 219:10,13 225:21 226:1 239:3 240:12 252:21 259:14 263:8	263:16 293:21 294:2 stamp 146:18 151:14 238:14 243:8 standard 31:13 43:15 229:10,22 230:21 231:5,9,15,20 standards 243:20 standing 47:22 standpoint 105:10 129:14 186:8 stands 244:7 stapling 131:11 start 12:23 29:20 31:2 34:18 139:12 176:21 started 13:2 23:17 24:22 29:17,22,23 68:8 192:2 235:21 265:4 304:21 starting 14:20 47:16 state 1:11,21 2:11,16,16 3:9 5:17 6:19 15:14,22 20:4 21:14,15 22:1 34:3 46:11,18 47:11 50:21 55:22 69:6,6 71:16 79:18,21 84:2 86:6 89:15 93:11 99:1 108:16 109:3 117:3 120:19 123:4 123:20 125:11 128:1 128:10,14,21 129:5 129:18 134:1 135:3 136:22 137:13 138:4 140:2 143:17 144:21 147:12,20 150:17 151:18 163:3 171:12 171:12 189:13,15 190:5,9,13 198:19

199:2 202:9,17 203:5 203:7 205:2,14,20 220:3 238:4 239:3 240:6,19 250:23 264:23 269:1 285:9 285:11 287:2 294:17 304:12 311:2,20	46:5 48:6 52:5,11 53:20 72:5 86:6 98:23 112:21 116:22 125:10 204:17 205:5 205:6,12 207:17,20 272:1 276:22 295:3	stores 201:17 strange 16:6 95:6 streamlined 158:15 159:12 Street 2:5 stricken 46:9 56:13 strike 172:11,17 striking 57:1 strong 102:21 strongly 95:2 structure 130:22 student 13:7,14,20 14:20 15:16 studies 103:10,18 229:7 study 104:3,4,6,14,16 229:13,17 237:14 stuff 28:2 154:21,21 166:16 182:11 252:14 264:1 265:3 294:3 subconsciously 308:18 subject 35:7 178:11 188:17 209:11 214:9 225:5 232:7 233:7 292:5 submit 40:21 133:5 187:22 submitted 148:4 152:3 155:1 296:2 297:9 subset 153:2,5 155:16 162:4 269:6	subsets 156:9 157:2 substance 8:22 78:10 substances 77:8 substantive 15:7 77:20 87:17 118:5 141:5 sufficed 116:3 sufficient 285:19 suggest 271:2 suggested 161:12 173:9 suggestion 189:12 suggestions 172:20 271:5 272:14 suggests 40:17 48:8 Suite 2:5,17 supervise 20:22 supervising 29:22 supervisor 5:7 11:10,15,16 12:5 12:10 14:16 15:10,15 19:9,10,13,18 20:1 39:11 45:5,21 46:1 69:20 86:20,22 121:1 216:20 239:19 supervisors 219:8 supervisory 16:17 supplement 248:19 supply 46:16 support 254:13
state's 8:15 11:7 13:1,6 15:13 16:15 19:20 24:23 29:17 31:22 32:4 35:22 40:18 43:22 45:16 53:16 62:15 88:2 89:21 99:22 117:18 118:4 119:8 119:16 120:13 122:21 141:6 151:22 152:4 166:3,22 168:12 169:22 190:20 198:9 204:3,9 205:1 206:18 235:22 242:2 248:5 251:4 279:6,9 283:6,10 284:17 297:4 state-produced 124:23 stated 139:7 statement 79:12,15 138:21 151:2 160:3 191:11 208:17 217:17 245:7 statements 148:11 states 1:1 56:6 73:16 74:10 74:16 132:15 303:10 304:6 states' 84:15 141:11 status 133:8 136:12 137:5 192:23 193:4,5,6 211:16 statute 12:12 40:13,22 41:21	statutory 12:16 48:5 61:11 86:13 117:6 124:17 201:10 207:12 stay 30:1 70:21 stenotype 311:7 steps 213:16 stick 157:15 sticks 139:7 Stiefel 42:20 stipulate 204:16,20,20 205:8,17 stipulated 3:2,18 stipulating 205:18 stipulation 1:16 stipulations 3:1 7:2 250:8 stood 288:16 stop 15:19 61:4 92:7 stopped 197:11 stopping 61:2 stops 92:5 store 32:2 202:3 stored 199:20		

suppose 129:8	systems 185:10,13 201:15	223:17 227:23 267:22 276:16 279:16 280:5,18 286:21 290:6 296:11 296:20	7:9 286:10 305:16 306:2 307:7
supposed 74:1	T	talks 40:22 195:23 275:22 275:23 280:15	testifying 296:13
sure 15:21 17:8 21:5 23:22 26:5 28:10,22 38:2 38:12 39:16 41:19,19 42:3 47:17 49:3,3,14 49:15,20 52:3 53:4 59:23 61:3 66:21 71:23 73:6 88:21 89:23 106:4 116:18 120:10 121:16 122:4 122:9 127:20 128:12 133:4 136:19 137:2 137:19 157:7,18 168:2,23 186:22 192:13 193:14 204:14 222:5 230:6 240:14 241:22 242:14 249:22 255:4 255:8 259:11 263:12 265:23 284:9,10 292:9 297:6	table 49:7 262:8 tag 44:2 tailored 60:19 take 10:9 27:10,22 36:7,17 44:21 64:11 76:15 92:17 105:23 114:10 127:7 161:16 168:20 168:22 189:11 193:1 222:14 224:13 225:9 238:15 243:7 257:19 261:17 266:5 272:14 272:17 298:12 300:5 302:6,9 taken 1:15 3:4,7 9:3 34:20 35:10,18 213:16 274:10 311:6 takes 154:23 203:5,7 240:6 talk 42:3 49:1 53:6 56:9 61:13 84:5 118:19 149:20 153:5 258:21 262:13 talked 18:2 46:22 117:23 119:18 144:15 150:23 209:1 218:13 230:10 279:15 295:9 302:12,12,16 304:11 305:8 talking 9:9 19:4 24:6 30:5 35:1 38:22 51:6 59:14 88:9 100:14 101:16 115:5 142:11 161:11,15 200:19 208:6 221:6 223:12	Talladega 106:13 target's 165:21 tax 247:15 team 200:23 technically 185:9 267:19 tell 9:17 37:21 62:11 134:2 169:1 205:21 207:21 211:6 217:2 228:4 238:12 266:11 275:20 telling 42:2 247:5 tells 40:13 226:2 233:19 template 171:16,17 ten 175:22 271:10 296:1 297:12,19 tenure 239:22 297:3 term 37:10 195:21 terms 80:21 90:5 172:23 181:9 185:4 198:17 200:6,21 203:11,13 209:5 212:11 213:18 219:8 221:10 229:21 230:4 242:7 255:2 282:20 286:20 testified	testimony 8:23 118:1 196:16 284:13 287:12 288:2 291:10 292:12 302:19 311:9 tethered 270:7 Texas 5:12 77:7,16 text 110:19 112:20 113:14 124:17 295:2 Thank 16:10 49:4 53:13 61:8 136:23 169:12 247:1 282:14 Thanks 16:11 theft 98:19 theirs 171:1 172:1 thereto 311:7 they'd 41:1 thick 251:2 thing 19:1 20:21 136:8 139:21 161:15 165:19 182:13 199:17,19 215:15 264:12 things 17:11 27:13 31:3 33:14 39:20 47:1 60:21 81:17 93:7 122:4 130:5 172:3 173:3,4 181:12 199:3 200:21 201:6 202:7 212:19 230:8 233:2

241:16 242:14 253:3 265:14 293:23 294:2 305:10 306:23 307:19 think 7:20 8:2 14:4 18:15 23:8,17 32:16,19,19 32:21 33:6,6,13 34:10 40:7,21,23 41:10 44:8 45:18 46:3 48:17,19 49:12 51:2 52:9,12 53:2,5 54:5,6 55:4 59:15 66:9 67:2 68:8 70:6 70:8 71:18 72:5 73:8 74:7,8 78:2 81:22 82:7 83:17,19 88:12 88:22 89:17,20 94:8 94:9 95:3 97:19 101:15,16 102:4 104:2,6,14,15 105:7 108:5,6 110:13 113:6 113:10,19,22 114:4,6 114:21,23 115:16 116:9,14 117:23 120:11 121:20 124:2 125:5 127:2 129:17 129:20,23 132:7,23 133:18 134:8,18,23 135:1,4,8,10 136:1,6 137:5 138:12 139:18 139:19,22 140:20 141:4 144:2,6 146:9 146:16 149:18 152:20 153:1,2,6 154:12,16 155:5,7,16 156:4,8,11,18 157:1 157:3,8,17 158:23 159:11 161:2,14 162:1,5 163:19 164:13 165:4 167:8 172:3,4,10 173:5 176:18 177:3,4 179:12 181:6,15 182:18 183:14,20 190:6 194:19,21	196:22 197:17 198:6 205:10 207:20,22 215:8,19 216:2,7 223:18,21 224:17,19 226:7 227:18 234:12 235:6 239:18 240:16 240:21,23 242:19 244:6 249:23 252:3,6 253:22 254:1,16,18 255:1,3 256:20 260:18 263:7,7 264:12 265:7,10,17 265:20 267:16 268:3 268:15 269:4,18 271:16 272:15,18 276:15 278:13 284:13 286:9 287:10 288:11 289:17 290:1 291:8 295:5,21 297:22 302:4 304:9 305:7 307:7,22 308:4 309:19 thinking 55:15 116:13 200:21 269:13 third 73:13 109:7 147:1 153:20 154:14 155:10 181:21 222:21 279:17 Thompson 1:5 225:17,19,20 thought 152:22 171:23 182:9 196:14 246:21 248:6 250:5 thousands 24:14 three 73:1 130:3 151:11 153:16 174:6,7 175:19 180:19 201:12 209:12 219:18 306:22 three-year 275:7	throw 259:19 throws 111:5 tie 81:3 270:11 ties 151:8 234:19 time 3:13,14 10:8 12:8 14:9 14:10,12 15:10,15 17:20 18:8,16 19:19 23:13 25:4 29:8 31:14 42:13 47:15 50:14 52:13 54:20 57:19 61:22 64:2 69:15,18,20,23 71:3 75:13 81:21 103:13 103:15 107:3 118:3 122:6,12,14 133:20 137:20 143:15 144:6 149:10 161:17 178:2 180:1 184:2 190:14 192:22 196:3 203:18 217:4,22 218:5,6 220:7 224:10 225:20 226:8 238:6 239:20 241:3 256:21 259:1 259:15 274:1 282:13 293:3 297:3 298:2,3 305:2 307:1,1 times 7:19 41:4 55:16 219:18,19 220:1 272:2 282:19 timing 264:13 tip 175:13 title 11:8 12:15,20 16:6,20 titled 72:12 178:14 titles 12:6 to-	28:4 to-do 28:2,13 29:1 30:3,11 35:10 to-do's 35:2 today 7:16 10:19 49:2 98:11 148:13 149:2 197:8 203:9 282:19 told 33:14 79:20 135:5 143:2 199:14 207:10 216:1,15 224:13 226:20 tool 276:10 top 105:15 169:23 178:7 188:14 212:12 214:7 222:10 225:4 232:4 238:15 243:14 257:17 topic 8:1 35:16 58:11 82:3 101:1 183:7 184:9 194:17 230:3 233:15 234:7 250:17 252:20 topics 28:23 34:20 182:8 200:17 233:3 touch 36:21 touched 149:19 track 30:1 68:9 213:15 train 305:5 trained 176:4 trainee 13:7,14,20 14:21 15:17 trainees 184:10

trainers 180:21	trial 3:21	109:9,22 110:4 112:4 112:9,20 113:8,12	300:19
training 6:4 20:2 82:9,14,18,19 83:2,6 90:10 173:20 173:21 174:10,23 175:2,12,15,16 176:14,15,17,22 177:2,9,14,15,19 178:14 184:14 189:14 190:21 273:14 275:6,8,16,21 276:6,8 283:6 294:14 294:23 304:11,14,20 305:1	tried 310:3	114:2 115:10 162:15 184:21 191:10,16,18 192:15 203:15 206:23 207:8 211:9 211:13,20 212:15,16 213:6,20 214:10,19 215:1,6 216:1,17 217:11,12 218:22 220:9,16 221:13 222:23 224:2,7,11,18 228:5 229:10,22 230:5,13,20 231:5,9 231:20 243:12,23 245:4,5 247:18,22 248:7 249:13,18,21 250:10 251:23 252:5 253:13 256:11 258:15 270:16 274:9 274:16,20 276:1,13 282:23 283:7,11,19 284:19 286:9 287:14 288:11,15 289:1,3,10 289:17,20 290:12 291:14,16 292:14 294:6 299:14 304:13 305:5 307:5 309:17 309:23 310:10,16	two-page 279:15
trainings 81:16 173:16,18 174:1 174:5,15,19 176:9,19 180:8,12 184:6 305:1	trigger 234:6 269:15 270:8	two-year 13:23	two-sided 130:4
transcribed 311:7	triggered 125:6 126:1	type 58:9 77:7 82:7 166:16 188:5	types 27:22 46:13 58:2 101:17 173:20 184:12
transcript 236:11 311:6,9	true 36:2 96:8 113:11 194:8 216:18 226:12 273:15 274:1,13 282:23 283:5,9 285:5 293:16 311:8	typically 102:8	typo 240:11
transcription 311:8	trust 19:2	U	U.S.C
transferring 56:6	truth 7:7,8,8	Uh-huh 147:5	ultimate 21:12 84:22 95:12 274:19
transition 259:8	truthful 9:23	ultimately 22:11 83:9,19 105:9	unable 80:5 220:20 280:19
transmittal 196:23	truthfully 10:14,18	unacceptable 207:2	uncertain 157:17
transmitted 50:9,20 196:9	try 10:11 31:4 37:14	uncertainty 89:11	unconsciously 308:18
treat 75:5	trying 25:18 36:12 51:20 52:22 71:22 95:5,7 120:6 153:3 160:5,19 218:11 240:2 270:11	undergo 175:2	undergoing 194:3
treated 75:9 90:14 93:11 104:11 105:1 211:14 221:21 222:3 247:18	Tuesday 242:12	undergrad 11:4	underlying
treating 90:4	turn 244:15 266:9		
treatment 89:14 103:11,19 104:8 141:21	turned 198:19		
TREVA 1:5	Turning 191:2		
	turpitude 6:9,10 37:19 38:14,19 43:14 48:14 59:10 62:16 63:1,11,19 64:5,13 65:5 66:18 67:15,21 69:2 83:12 83:22 85:17 87:4 94:7 97:13 99:1 107:6,8,11 108:11	two 7:20 11:19 41:14 47:15 71:19 73:1 109:14 131:1 170:19 170:19 171:5,6 174:7 175:20 176:9 180:19 183:3 219:10 226:21 228:10 244:16 288:12 296:16	

107:21 understand 9:16 48:12 51:20 65:11 89:9 95:8 109:9 114:22 117:6 150:15 159:14 160:17 170:7 184:3 200:1,19 204:14 210:22 220:6 262:2 276:3 understanding 37:9 50:23 51:13 52:8 52:19,21 58:8 64:9 64:23 66:3,10,14,23 67:6 68:14 71:11 84:7,8 102:11 107:7 111:20 124:21 127:4 163:1 183:11 195:18 203:6 204:8,11 207:3 218:4 220:13,22 230:17 233:9 243:22 251:18 253:7 268:3 270:3,4 271:13 288:2 298:15 299:4 302:21 304:3 understands 205:14 understood 9:18 48:20 79:1 126:20 127:2,17 275:13 undertaken 294:22 unfolded 30:23 unfortunately 179:17 273:3 309:5 uniform 8:5,9,19 87:7 89:14 104:8 218:16 283:10 305:14,19 306:6,10 306:19 uniformity 103:19 213:18 282:19 uniformly 90:4 93:10 104:23	220:10,16 221:1 unique 24:18 UNITED 1:1 units 166:10 universe 236:12 University 11:1 82:20 180:1,3,15 180:18 unknowingly 307:23 308:11 unlawful 112:15 UOCAVA 8:2 update 142:3,8,16 143:22 144:4 199:2 264:11 264:14 updating 142:20 263:9 upper 243:8 use 29:10 32:7 37:10 44:12 48:5,7 52:23 65:11 66:5 68:17 69:7 131:19 151:15 152:14 153:3 157:14 187:6 196:2 201:9 202:6 281:5,10 301:7 301:15 useful 201:13 user-friendly 99:14 Usual 7:1 V vaguely 178:13 310:11 valid	285:11 variation 175:23 variations 103:10 various 20:14 vast 298:16 vendor 174:4 venue 304:20 verbal 9:12 verify 77:5,14 79:11 82:4 verifying 281:13 version 25:9 262:4 versions 239:11 261:9 versus 17:22 152:5 view 58:10 63:19 64:14 89:13 110:9,23 111:23 113:14 130:23 136:8 139:9 153:13 195:12 210:17 224:9 229:1 231:13 248:5 288:13 288:19 293:10 viewed 243:23 255:11 views 215:4 221:9 violating 288:3,16 301:10 violation 287:4 301:19 visit 173:22 voice 27:12,18,21	vote 37:7 71:11 102:23 108:20 123:9,11,18 133:18 165:3 184:17 185:8 186:1,16 187:3 187:9 203:8 204:5 254:3,15 268:22 269:16 270:23 274:2 281:8 285:10 vote.alabama.gov 209:21 210:7 voter 5:7,9,10,22 6:17,19 11:10,15,16 12:6,10 14:16 17:9 19:10,13 19:18 20:1,6,11,11 21:16,17 22:23 23:6 24:2,9 25:3,10 26:18 34:14 35:5 38:4 39:11,14,18,19 40:12 40:18 45:3,6 46:10 46:18 47:7 49:17 54:16 55:18 56:13 63:20 64:15 67:11 72:12 77:6 80:9,11 80:14 81:3,4,6,7,13 86:21,22 88:7,8,10 89:8 91:1,2,17 92:2 104:23 108:7 111:1 111:11 115:7 117:18 118:2,18,19,21 119:5 119:10,20 120:14,20 121:1,4 122:21 123:4 123:23 124:10,22 125:1,15 126:9 128:1 129:18 131:17 133:23 134:6,7,20 136:21 140:18 141:15,21 142:21 143:19 159:1 166:1,5 167:5,14,15 169:20 185:21 186:11 188:3 192:5,16 193:4,7,10 213:5 216:20 225:7 226:20 227:5,12 229:5 233:2 234:10

234:11,15,17 235:9 239:19 257:3 261:3 261:10 262:14,17,18 262:20 263:1,4 264:7 265:19 269:21 274:13 277:5,9,10,14 278:9,21 279:8 280:1 284:3 285:1,17,17 295:23 296:6,23,23 297:9 299:10 300:7 307:17 308:8	61:3,13 64:7 65:13 73:12 77:19,23 95:17 116:15 124:15 125:8 149:19 150:23 151:1 168:20,21 204:14 205:16 213:15 214:20 224:20 237:10 240:8,14 242:17 260:10 261:21 292:9 296:17 297:19	213:4,12 222:6 224:22 237:10 271:7 272:17 we're 23:23 47:8,9 122:4 126:12 127:21 142:11 147:16 161:15 163:20 172:2 173:3 174:6 182:11 200:4,19 204:15 236:20 237:6 266:11 272:1,19 291:17 296:11 we've 30:5 32:17,19,21 33:6 59:14 88:13 95:3 126:10 149:18 153:15 158:2 168:20 174:12,12 198:8,17 199:1 230:10 240:16 249:23 weapon 110:7 website 32:11,15 42:11,12 128:15 151:22 152:4 166:5,6,22 167:10,13 169:2,4,22 201:8 265:12 279:6,9 week 29:10,12 57:22 176:15 212:10 219:17,18,18 weekly 28:18 29:23 57:21 59:15 welcome 215:9 went 14:11 49:14 124:16 169:3,5 193:9 305:7 weren't 36:15 284:8 willful 247:15 William 310:9	willing 56:2 168:4 170:11 171:17 172:19 271:2 272:5 Winfield 2:10 wished 46:18 witness 18:18 24:13,16 73:18 76:16,20 106:5 110:2 120:5 126:19 127:2 136:23 145:1 146:3 148:7,14 163:18,21 170:16 189:9 200:9 200:14 207:19 214:5 222:16 225:11 227:10 238:17 257:22 261:13 280:13 282:1 311:9 witnessed 89:12 wonder 107:16 wondered 262:4 word 28:15,20,22 29:20 30:4,12 32:22 34:13 34:21,23 35:5,19 52:23 57:6 200:1,4 303:3 words 35:15 138:7 172:8,12 179:18,21 work 27:1,7,23 32:8,9 37:17 44:5 49:14,16 101:8 worked 19:19 25:9 49:15 52:3 102:20 128:4 151:12 180:19 226:5 234:16 workers 26:9 working 13:3 20:7 25:4 26:6
voters 37:18,20,22 38:8,15 38:23 39:1 41:12,12 50:2 134:2 161:21 184:8,15 185:11 191:9 194:4 196:2,5 197:2 226:9 257:9 291:13 298:7	wanted 143:9 196:15,19 201:9 241:15 246:18,20 253:9 wanting 12:2 Washington 1:18 2:6,11 wasn't 36:14,15 85:22 189:21 213:17 228:1 230:9 235:12 237:18 244:2 248:13 252:10,13 262:11 268:12 274:19 276:18 287:12 301:17 way 10:12 18:20 30:1 31:21 32:3 54:9 70:16 74:4 75:5 82:12 84:2 97:23 110:5 117:11 130:12 131:20 136:5 154:19 155:22 162:2,3,6,12 164:15,16,22 173:13 184:22 196:18,19 208:15 249:16 253:3 253:4 255:15 256:8 259:15 261:17,23 279:22 295:7 298:1 ways 221:19 we'll 9:18 10:2,6,9,11 34:18 71:19 161:19 163:15		
Votes 167:17 voting 5:17 6:11 8:5,5,20 17:10,17,22 18:10 42:1 63:2,12 122:23 125:3 170:4 185:4 225:6 227:1,21 232:13,18 233:1,15 255:23 256:3 258:16 260:16 262:21 269:7 285:12			
VR 174:3 vs 1:8			
W			
wait 161:16 waiting 228:17 waits 297:17 want 9:22 16:8 23:14 33:3,4 44:17 46:20 47:21			

32:13 202:4 252:9 293:23 304:21 works 16:14 38:11 131:12 237:7 259:4,5 264:1 295:13 world 129:17 worry 221:18 wouldn't 14:1 19:4 49:18 142:23 167:6 172:11 172:17,22 173:9,12 197:13 211:4,11 215:11,16 249:16 264:10 269:21 288:3 290:21 292:21 293:9 302:8 308:19,20 309:19 wrap 26:10 114:8 wrapped 26:18 write 34:1 44:9 118:12 145:4 written 25:21 26:23 27:3 30:6 36:3 44:4,6 53:18 56:23 74:19 83:3 wrong 93:5 139:10 149:9 162:3 177:4 209:17 210:12 211:16,17 228:9 269:13 278:10 wrongly 92:16 257:9 299:12 wrote 160:16 wsinclair@ago.state... 2:13 X Y	y'all 144:3 240:22 295:5 yawning 309:7 yeah 16:7 24:13,17,17,18 26:3 32:15 34:19 39:1 41:6 50:11 53:20 54:23 59:20 61:7 63:15 66:23 67:6,12 68:2,7,16 70:16 71:1,7 73:9 76:17 78:6,8,13 79:8 80:3 86:10 89:20 93:6 95:17 98:4,9 100:13 109:12 113:19 115:15 117:22 124:2 127:19 131:3 132:1 145:15 146:16 153:1 158:19 159:8 160:12 163:11 165:3 167:11 170:8 170:22 175:11 177:12 178:13 179:12,18 181:18 182:4 189:6,18 190:3 190:17 195:14 197:10 198:4 207:18 210:1 212:7 221:5 223:17 224:15 227:4 228:9 229:2 234:4 235:4 239:10,17 240:4,13,16 241:4,5 241:21 243:5 245:1 245:17 249:9,16,22 250:22 251:5 259:14 261:13,15 262:5 265:20,23 266:18 269:18 270:13,19 271:4,16 272:11 281:7 283:13 285:6 285:20 286:23 292:4 293:17 296:3 297:23 302:10,10 306:12 310:5 year	24:19 41:4 48:8 58:23 160:23 174:6 176:23 177:7 193:11,22 263:9,15,15 years 8:17,19 23:9,10,10 123:12 133:19 134:2 138:14 174:6 201:12 209:12 222:22 292:2 yesterday 32:18 YMCA 232:14 you-all 266:23 Z zero 219:19 0 1 1 5:6 39:6,8 46:5 61:11 116:21 150:1 1/11/18 5:14 1/6/18 6:13 10 5:21 163:15,16,19 188:15 10/10/17 6:6 10:10 1:23 105 5:15 108 5:16 11 5:22 96:21 144:20 146:11 149:18 163:19 169:16,17 278:22 281:15	12 6:2 177:22,23 178:7 179:3,8,18 181:1 280:8 12/15/21 311:22 12/19/16 5:12 124 243:9 13 6:4 72:14 146:23 178:4,5,14,21 179:3 179:10,19 181:2,18 181:21 257:17 280:11 14 6:5 146:22 147:3 150:15 188:11,12 209:10 238:12 1400 2:5 1411 2:5 144 5:18 148 5:20 15 6:7 159:13 160:6 176:2 209:7,8 225:22 15th 297:10 16 6:8 214:2,3 163 5:21 169 5:22 17 6:9 222:7,8 17-3-54 271:9 17-4-35 5:7 177

6:2 178 6:4 18 1:22 6:11 110:19 111:16 123:11 133:19 134:2 135:1 135:21 146:19 224:23 225:1 275:7 310:23 188 6:5 19 6:12 76:12 232:1,2 275:7 1995 203:4 2 2 5:8 44:18,19 64:6 282:10 2,000 34:2 198:20 2/13/18 5:11 2/23/17 6:10 2:16-cv-783ECM-S... 1:8 20 6:14 148:5 176:2 238:8,9 20005 2:6 2003 267:20 2005 256:7 310:8 2007 278:11 2011 11:3 2012 13:2,4,8 23:18 2014	11:17 14:17 43:19 45:20 213:11 2015 11:18 209:10 213:12 214:6,8 225:4 238:12 2016 9:4 76:12 201:2,2 2017 43:9 70:7 146:14,19 147:4 148:5 150:1 177:2,5,6,7 188:15 191:4 222:11 256:9 257:17 265:8 267:11 267:17 274:14 275:7 275:9 276:18 282:21 283:16,20 286:6 309:16 2017-378 5:19 48:10,12 73:23 146:19 273:15 282:3 289:23 2018 1:22 6:4,17 72:14 96:22 105:17,18 139:4,20 144:20 146:11 178:9,15 232:5 233:20 261:3 263:4 264:7,11,14 310:23 202.736.2200 2:6 209 6:7 21 6:15 257:13,14 214 6:8 22 6:17 260:23 261:1 282:2,4 302:14 222 6:9 225 6:11 23 6:18 222:11 279:1,2,7	302:15 231 311:21 232 6:12 238 6:14 24 147:4 214:6,8 25 302:6,8 257 6:15 261 6:17 273 5:4 279 6:18 28 225:4 282 37:13 43:9 47:16,23 48:8,11 49:12,22 50:16 53:22 55:2,2 57:11 58:9,12,19 60:5,7 61:23 62:17 65:19 68:21 70:3 71:14 84:7,18 85:9 85:12 87:20 88:13 93:8,9 101:16 103:12 103:17 109:11 110:22 112:4 123:22 142:5,10 149:22 150:6,11,20 157:21 160:1,13 161:6 164:3 164:10 165:9 166:2 168:11 173:16 177:10 190:22 194:13 197:22 202:10,13,18,23 203:8,22 204:2,6 206:2,19 207:6 208:9 212:3,20 218:6,23 230:15,16 237:15 247:16 249:19 252:9	252:18 255:20 256:18 257:10 260:15 264:8 265:15 270:2 288:17 289:22 290:17 294:18 298:14 304:14 282's 56:22 167:4 220:1 221:22 229:11,23 305:15 286 5:4 2nd 176:18 3 3 5:10 46:6 72:9,10 149:1 154:2 191:4 3/24/15 6:8 3/7/18 5:15 30 174:22 175:8,8,21 192:17,18 30-day 191:17 309 5:5 334.353.9110 2:12 36130 2:12,18 371 110:20 111:16 378 52:3 39 5:6 4 4 5:12 61:13,15 76:6,7 245:1 246:7,14,16,23 281:22

CLAY HELMS 9/18/2018

Page 47

4/11/18	194:2		
5:19	76		
4/5/18	5:12		
6:3			
44	8		
5:8 243:9	8		
45	5:18 116:23 144:17,18		
191:14	80s		
45-day	23:15		
193:22			
	9		
5	9		
5	5:20 148:1,2 163:19		
5:13 96:18,19 178:9	244:23		
5/14/15	9/13/17		
6:7	6:16		
501	9/30/18		
1:18 2:11	311:21		
55	90		
246:14	194:8,20,20 197:6,11		
	96		
6	5:13		
6	98		
5:15 105:12,13 232:5	174:14		
244:14 245:6 247:7	99		
247:20	250:5		
60			
110:5 150:19			
600			
2:17			
7			
7			
5:3,16 105:17,18			
108:9,13 166:20			
171:9 244:14 245:6			
247:20 266:10			
7,000			
198:18			
7/28/15			
6:11			
7:11			
310:22			
72			
5:10			
75			

EXHIBIT 5

EDWARD PACKARD 9/19/2018

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TREVA THOMPSON, et al.,
Plaintiffs,

vs. Civil Action No. 2:16-cv-783ECM-SRW

JOHN H. MERRILL, in his official
capacity as Secretary of State, et al.,
Defendants.

* * * * *

DEPOSITION OF EDWARD PACKARD, taken
pursuant to notice and stipulation on
behalf of the Plaintiffs, at the Office of
the Attorney General, 501 Washington
Avenue, Montgomery, Alabama, before
Bridgette Mitchell, Shorthand Reporter and
Notary Public in and for the State of
Alabama at Large, on September 19, 2018,
commencing at 10:07 a.m.

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2

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1 STIPULATIONS

2 It is hereby stipulated and agreed
3 by and between counsel representing parties
4 that the deposition of ED PACKARD is taken
5 pursuant to the Federal Rules of Civil
6 Procedure and that said deposition may be
7 taken before Bridgette Mitchell, Shorthand
8 Reporter and Notary Public in and for the
9 State of Alabama at Large, without the
10 formality of a commission; that objections
11 to questions, other than objections as to
12 the form of the questions, need not be made
13 at this time, but may be reserved for a
14 ruling at such time as the deposition may
15 be offered in evidence or used for any
16 other purpose as provided for by the
17 Federal Rules of Civil Procedure.

18 It is further stipulated and agreed
19 by and between counsel representing the
20 parties in this case that said deposition
21 may be introduced at the trial of this case
22 or used in any other manner by either party
23 hereto provided for by the Federal Rules of

1 Civil Procedure.

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1

INDEX

2

3	EXAMINATION	Page
	By Ms. Lang.....	10
4	By Ms. Messick.....	302
	By Ms. Lang.....	310
5	By Ms. Messick.....	311

6	EXHIBITS	Page
	Exhibit 1.....	20

7 Guide to Conducting A Successful
Voter Registration Drive

8	Exhibit 2.....	23
	Westlaw 974 So.2d 972	

9 Chapman v. Gooden

10	Exhibit 3.....	28
	5/14/07 Voter Registration Advisory Board Meeting minutes	

11	Exhibit 4.....	44
	11/8/07 letter re: U.S. vs.	

12 State of Alabama and Beth
Chapman

13	Exhibit 5.....	53
	8/22/08 e-mail re: Felony	

14 Conviction Corrections File
from 1/7/08, Please Delete/

15 Destroy all copies

16	Exhibit 6.....	57
	9/18/08 e-mail re: Voter	

disenfranchisement

17	Exhibit 7.....	60
	9/24/08 memo re: Misuse of AOC	

18 data by ES&S to wrongfully
disqualify Alabama voters

19	Exhibit 8.....	75
	9/30/08 memo re: Use of AOC	

20 data to erroneously disqualify
voters and voter applicants

21	Exhibit 9.....	77
	9/25/08 e-mail re: ES&S	

22 dissemination of felony
conviction information to the
23 boards of registrars

EDWARD PACKARD 9/19/2018

Page 6

1 INDEX (continued)

2	EXHIBIT	Page
3	Exhibit 10.....	84
4	10/14/08 e-mail re: Important	
5	message from Sec. Chapman	
6	Exhibit 11.....	100
7	10/17/08 e-mail re: Register to	
8	vote	
9	Exhibit 12.....	104
10	2/19/14 e-mail re: Disqualifying	
11	Felony Conviction	
12	Exhibit 13.....	111
13	4/19/11 e-mail re: Etowah BOR	
14	has 3 questions	
15	Exhibit 14.....	112
16	2/10/17 e-mail re: Moral	
17	turpitude	
18	Exhibit 15.....	114
19	Alabama Board of Registrars	
20	Board of Registrars Handbook	
21	Exhibit 16.....	120
22	8/12/14 e-mail re: Moral Turp	
23	Additions List	
24	Exhibit 17.....	121
25	7/13/16 e-mail re: Moral	
26	turpitude crimes	
27	Exhibit 18.....	125
28	9/19/16 e-mail re: Unlawful	
29	possession of a controlled	
30	substance	
31	Exhibit 19.....	127
32	4/21/17 e-mail re: Voting Rights	
33	Exhibit 20.....	131
34	10/7/16 e-mail re: Alabama	
35	voters list omits qualified	
36	felons	
37	Exhibit 21.....	131
38	10/12/16 e-mail re: Alabama	
39	voters list omits qualified	
40	felons	
41	Exhibit 22.....	135
42	10/21/16 e-mail re: False	
43	voting information	

EDWARD PACKARD 9/19/2018

Page 7

1	INDEX (continued)	
2	EXHIBIT	Page
3	Exhibit 23.....	140
4	5/9/16 e-mail re: ALEA	
5	electronic registrations	
6	Exhibit 24.....	145
7	11/12/14 e-mail re: Board of	
8	Registrars: Moral turpitude	
9	changes	
10	Exhibit 25.....	148
11	11/12/14 e-mail re: Board of	
12	Registrars: Moral turpitude	
13	changes	
14	Exhibit 26.....	150
15	2/26/15 e-mail re: Draft bill	
16	Exhibit 27.....	155
17	3/6/15 e-mail re: Revised draft	
18	of Moral Turpitude Bill	
19	Exhibit 28.....	158
20	3/9/15 e-mail re: Draft Moral	
21	Turpitude Bill	
22	Exhibit 29.....	160
23	The Voter Disenfranchisement	
24	And Restoration of Voting Rights	
25	Exploratory Committee 11/18/15,	
26	12/21/15, 1/20/16	
27	Exhibit 30.....	172
28	12/9/15 memo re: Felony	
29	Disenfranchisement & Automatic	
30	Voter Rights Restoration in	
31	the South	
32	Exhibit 31.....	173
33	12/18/15 memo re: Recommend-	
34	ations for clarifying and	
35	improving felony disenfranchise-	
36	ment in Alabama	
37	Exhibit 32.....	175
38	12/18/15 e-mail re: Fourth	
39	Round of Information for the	
40	Disenfranchisement/restoration	
41	of rights committee	
42	Exhibit 33.....	177
43	12/18/15 e-mail re: Fourth round	
44	of Information for the	

1	INDEX (continued)	
2	EXHIBITS	Page
3	Exhibit 34.....	180
4	12/18/15 e-mail re: Fourth round	
5	of Information for the	
6	disenfranchisement/restoration	
7	Exhibit 35.....	183
8	The Voter Disenfranchisement	
9	and Restoration of Voting Rights	
10	Exploratory Committee 12/21/15	
11	Exhibit 36.....	211
12	1/5/16 e-mail re: Subcommittee	
13	on moral turpitude crimes	
14	Exhibit 37.....	212
15	SOS Merrill's Bill - Sponsored	
16	by Re Mike Jones 1 2015	
17	Legislative Session,	
18	Classification of Crimes Listed	
19	in said Bill	
20	Exhibit 38.....	214
21	1/13/16 letter re: Voting	
22	rights of formerly incarcerated	
23	person, defining the phrase	
24	"Felony involving moral	
25	turpitude"	
26	Exhibit 39.....	215
27	1/13/16 memo re: Proposed	
28	statutory language for immediate	
29	restoration based on consensus	
30	of committee	
31	Exhibit 40.....	224
32	1/19/16 e-mail re:	
33	Disenfranchisement/Restoration	
34	of Voting Rights Committee	
35	Exhibit 41.....	227
36	Voter Disenfranchisement and	
37	Restoration of Rights Exploratory	
38	Committee & The Definition of	
39	"Felony Involving Moral Turpitude"	
40	By Marissa McCall Dodson	
41	Exhibit 42.....	251
42	Draft Moral Turpitude Felonies	
43	Bill	

EDWARD PACKARD 9/19/2018

Page 9

1 INDEX (continued)

2	EXHIBITS	Page
	Exhibit 43.....	252
3	Declaration of Edward Packard	
	Exhibit 44.....	261
4	Second Declaration of Edward Packard	
5	Exhibit 45.....	270
	7/17/17 e-mail re: Felon/moral turpitude	
6	Exhibit 46.....	273
7	Template resignation letter	
	Exhibit 47.....	274
8	6/22/17 e-mail re: Cherokee Co BOR Voter Status Notice	
9	Exhibit 48.....	275
	1/7/08 e-mail re: Felony Conviction Records Corrections received from the Administrative Office of Courts	
10		
11	Exhibit 49.....	278
12	8/17/18 e-mail re: NVRA instructions	
13	Exhibit 50.....	280
	List: To register in Alabama you must	
14	Exhibit 51.....	280
15	List: To register in Alabama you must	
16	Exhibit 52.....	280
	List: To register in Alabama you must	
17	Exhibit 53.....	286
18	Draft State of Alabama Mail-In Voter Registration Form	
19	Exhibit 54.....	291
	3/27/18 e-mail re: Question (NVRA)	
20	Exhibit 55.....	294
21	State of Alabama Board of Pardons and Paroles Voting Information Sheet	
22		
23		

1 COURT REPORTER: Usual

2 stipulations?

3 MS. LANG: Yes.

4 MS. MESSICK: Except that we would
5 like to read and sign.

6 EDWARD PACKARD, having first been
7 duly sworn or affirmed to speak the truth,
8 the whole truth, and nothing but the truth,
9 testified as follows:

10 EXAMINATION

11 BY MS. LANG:

12 Q. Good morning, Mr. Packard. My name is
13 Danielle Lang, and I'm an attorney for the
14 plaintiffs in this case. Have you been
15 deposed before?

16 A. Yes, I have.

17 Q. How many times have you been deposed?

18 A. Just once.

19 Q. Just the once. And what was that for?

20 A. It was in the photo voter ID lawsuit.

21 Q. So you've likely gone over some of these
22 instructions before, but I'll just refresh
23 your recollection. During the deposition,

1 I'll be asking you some questions, and the
2 court reporter must be able to record my
3 questions and your answers, so it's
4 important that we not speak over each
5 other. So I'll do my best not to interrupt
6 you and if you could do your best not to
7 interrupt me. It is also important that
8 you give a verbal answer. The court
9 reporter can't take down a nod or an uh-huh
10 or uh-hmm. So, you know, yes-or-no answers
11 and the like will be easier to take down on
12 the record.

13 If I ask a question that you don't
14 understand, please let me know and I'll do
15 my best to correct the question or clarify.
16 But if you don't tell me otherwise, I'll
17 assume you understood the question. Is
18 that okay?

19 A. Yes.

20 Q. Are you taking any medications today that
21 would affect your ability to answer my
22 questions truthfully and completely?

23 A. No.

1 Q. Is there any other reason you cannot answer
2 my questions truthfully today?

3 A. No.

4 Q. All right. If you think of something after
5 a question has been answered that you'd
6 like to add or amend your answer to make it
7 more complete or more truthful, just let me
8 know and we can go back and add to the
9 record additional responses to a prior
10 question.

11 If you need a break, let me know.
12 We'll try to take, you know, some regular
13 breaks every hour or so. But if you need a
14 break, just let me know. The only rule is
15 that I'll ask that you answer whatever
16 question I've already posed. And then once
17 you've finished answering that question, we
18 can go ahead and take a break. Good
19 enough?

20 A. That's good.

21 Q. All right. Can you tell me a little bit
22 about your educational background?

23 A. Yes. I have a master's in public

1 administration from Auburn University as
2 well as a bachelor of public administration
3 from Auburn University.

4 Q. And what year did you graduate from your
5 master's program?

6 A. 1994.

7 Q. And you currently work for the secretary of
8 state's office; is that correct?

9 A. Yes.

10 Q. How long have you worked for the secretary
11 of state's office?

12 A. Approximately 21 years.

13 Q. What's your current position with the
14 secretary of state's office?

15 A. Administrator of elections.

16 Q. And what are your job duties as
17 administrator of elections?

18 A. I oversee compliance with the National
19 Voter Registration Act. Also oversee
20 compliance with the Uniformed and Overseas
21 Citizens and Absentee Voting Act. And I
22 work with our campaign finance law, the
23 Fair Campaign Practices Act. Plus any

1 other assigned duties that may be assigned
2 by the chief of staff.

3 Q. And who's the chief of staff?

4 A. David Brewer.

5 Q. Can you tell me kind of what other
6 positions you've held in the secretary of
7 state's office, however is easiest; it may
8 be by chronological order. And I'd like to
9 have a sense of at least generally what
10 years you held each position.

11 A. Okay. I was director of elections
12 immediately preceding the position I'm in
13 now, and that was approximately from 2013
14 to early 2017. Prior to that, I was the
15 supervisor of voter registration. And I
16 don't recall right offhand when I took over
17 that position. And then prior to that, I
18 was in the administrator of elections
19 position, and that was -- that began in
20 1997.

21 Q. So you started as administrator of
22 elections?

23 A. Right.

1 Q. Which is your current position now?

2 A. Right.

3 Q. Okay. What are the duties of the
4 supervisor of voter registration position?

5 A. The supervisor of voter registration
6 oversees the voter registration programs
7 that are assigned to the secretary of
8 state's office under state law. Supervisor
9 of voter registration also oversees the
10 boards of registrars, generally speaking.
11 He's not like a normal line supervisor of
12 registrars but he does oversee their work
13 and provides training and support to them,
14 or that position provides training and
15 support to the boards of registrars,
16 handles different administrative tasks
17 related to voter registration such as
18 selling voter lists to the public and,
19 again, coordinating with the boards of
20 registrars.

21 Q. And can you tell me your best estimate of
22 how many years you served in that position?
23 I know you can't recall the exact years and

1 that makes sense to me, but approximately
2 how long you served in that position until
3 2013?

4 A. It was approximately six or seven years.

5 Q. Okay. And what's the job responsibilities
6 of the director of elections?

7 A. The director of elections oversees the
8 entire elections division in the secretary
9 of state's office and coordinates all the
10 elections functions that are assigned to
11 the secretary of state's office under state
12 law and federal law. Director of elections
13 manages the staff of the elections
14 division.

15 Q. And who's in that position now?

16 A. That position is vacant right now.

17 Q. How long has it been vacant?

18 A. Since February of 2017.

19 Q. Who is manning those responsibilities in
20 the absence of a director of elections?

21 A. Well, Clay Helms is the assistant director
22 of elections, and so he performs a lot of
23 the duties that would normally go to the

1 director of elections. But also David
2 Brewer, the chief of staff, has a very
3 hands-on role with the elections division.

4 Q. Okay. And why did you leave that position?

5 A. I was demoted.

6 Q. Are you familiar with the topic of this
7 litigation?

8 A. Yes, ma'am.

9 Q. How does your job currently and how did
10 your job as director of elections and
11 supervisor of voter registration touch on
12 issues related to felony
13 disenfranchisement?

14 MS. MESSICK: Object to the form.

15 A. Generally my job now has very little to do
16 with felony disenfranchisement. As
17 director of elections and as supervisor of
18 voter registration, I would generally field
19 questions related to felony
20 disenfranchisement, or I would receive
21 questions, anyway, and then -- but even
22 then determinations on what was a moral
23 turpitude crime we would refer to our legal

1 counsel in the office and they would handle
2 addressing those questions.

3 Q. Okay. I don't want to dwell on this
4 subject for too long, but can you tell me
5 why your position was changed and you were
6 demoted?

7 A. Yes. There was a ballot measure that was
8 to be on the ballot in 2016 and there were
9 some oversights in the elections division.
10 The -- part of the ballot measure was
11 omitted from the ballot. And when the
12 situation came to light, we addressed the
13 situation and had to have ballots reprinted
14 statewide and ultimately they demoted me.
15 They held me accountable for that and
16 demoted me.

17 Q. Okay. So I've organized my plan for the
18 deposition today somewhat chronologically
19 since I thought that might be a good
20 organizational structure since you've been
21 here for quite some time. We have to kind
22 of go over how felony disenfranchisement
23 scheme has changed over time.

1 When you began working for the
2 secretary of state in 1997, what was your
3 understanding of the felony
4 disenfranchisement law then?

5 A. My understanding of the law then was that
6 all felonies led to disenfranchisement. I
7 was unaware that while I was working at my
8 prior job that the State of Alabama had
9 passed a constitutional amendment that
10 changed the language to include the moral
11 turpitude language. So at the time, I
12 thought -- I thought that all felonies led
13 to disenfranchisement.

14 Q. And what was your prior position before you
15 joined the secretary of state's office?

16 A. I was with the North Carolina State Board
17 of Elections as an education and training
18 specialist.

19 Q. Okay. So there was no list of moral
20 turpitude crimes at the time that you
21 joined the secretary of state's office?

22 A. Right. That is correct, yes.

23 Q. And so would I be correct in saying that at

1 that time, the administrative office of
2 courts was sending all felony convictions
3 to the registrars for removal?

4 A. That's my understanding. In my -- my job
5 role at that time, I was not directly
6 involved with training registrars on felony
7 disenfranchisement or any of those issues.
8 There was a supervisor of voter
9 registration -- or, actually, it was
10 director of voter registration -- that
11 handled the registrar duties, so I wasn't
12 directly involved in that, but that is my
13 understanding.

14 Q. Do you recall who was in that position at
15 that time?

16 A. Yes. Her name was Anita Tatum.

17 Q. So I'm going to hand you a document that
18 I'll mark as Packard Exhibit 1. I think it
19 will largely confirm what we've just
20 discussed.

21 (Packard Exhibit 1 was marked for
22 identification.)

23 Q. So I've tabbed the relevant page, so if you

1 could take a look at where I've tabbed,
2 it -- this is a guide to conducting a
3 successful voter registration drive, and
4 it's issued by the office of Secretary of
5 State Nancy Worley. Now, I don't know
6 exactly what year this guide was issued,
7 but my understanding is that Nancy Worley
8 was secretary of state in the early 2000s;
9 is that correct?

10 A. That is correct.

11 Q. And if you look at the tabbed page, what
12 does it say about the eligibility
13 requirements related to felonies?

14 A. States: Must not have been convicted of a
15 felony, unless his or her voting rights
16 have been restored.

17 Q. So at this time when this guide was issued,
18 the guidance from the secretary of state's
19 office was that all felonies were
20 disqualifying?

21 MS. MESSICK: Object to the form.

22 A. That's what it appears from this document.

23 Q. Okay. Thank you. So I'd like to talk a

1 little bit about how that guidance
2 ultimately changed from all felonies to
3 felonies involving moral turpitude. Do you
4 recall a lawsuit being filed in 2005 by the
5 NAACP LDF, or rather those were the
6 attorneys on the lawsuit, and it was
7 originally Gooden v. Worley and then later
8 captioned Chapman v. Gooden?

9 A. I'm generally familiar with that lawsuit.

10 Q. And can you share as you remember it the
11 changes that occurred in the administration
12 of the felony disenfranchisement law in
13 late 2005 when this lawsuit was filed?

14 A. Can you restate the question?

15 MS. MESSICK: Object to the form.

16 Q. Yes. The Gooden v. Worley lawsuit was
17 filed in late 2005, and it alleged that the
18 secretary of state was incorrectly
19 disenfranchising all felonies -- people --
20 all people with felony convictions when the
21 law as stated should have only been
22 felonies involving moral turpitude. My
23 understanding is that the secretary of

1 state's practice changed after the filing
2 of this lawsuit. I'm wondering what you
3 can share with me about those changes.

4 A. The only thing I can recollect that changed
5 was the Administrative Office of Courts and
6 the attorney general's office came up with
7 a list of moral turpitude crimes that were
8 then made available to the boards of
9 registrars for them to be able to
10 administer the law.

11 Q. Okay. So the AOC and the office of the
12 attorney general came up with a new list to
13 use in lieu of all felony convictions?

14 A. Yes, that's correct.

15 Q. Okay. And I want to give you what I will
16 mark as Packard Exhibit 2. And this is the
17 supreme court decision in that case. I'm
18 mostly interested in looking at it because
19 it makes some factual allegations about
20 what happened during that time, and I want
21 to know if they accord with your
22 recollection.

23 (Packard Exhibit 2 was marked for

1 identification.)

2 Q. So on page 9, in the second column, the
3 third paragraph down starts, In November
4 2005. Do you see that paragraph?

5 A. Yes.

6 Q. Can you read that paragraph and tell me if
7 that is an accurate description of what
8 happened in November 2005?

9 A. In November 2005, this secretary of state
10 conducted a series of meetings with
11 registrars throughout the state under the
12 topic of ex-felon registration. She
13 advised registrars at those meetings to
14 continue longstanding practice until
15 receipt of a response by the attorney to
16 her May 2005 inquiry.

17 Q. And that's all you need to read. And is
18 that your recollection of what happened
19 first in response to this litigation?

20 A. I don't have a recollection of this.

21 Q. One way or another?

22 A. One way or another.

23 Q. Fair enough. And on the next page, the

1 last paragraph on the first column says
2 that on January 10, 2006, a copy of the
3 attorney general's March 18, 2005 opinion
4 was sent to every board of registrars in
5 the state and the registrars were invited
6 to seek the advice of the attorney general,
7 if necessary, in determining whether a
8 particular felony involved moral turpitude.
9 By May 8, 2006, the secretary of state had
10 promulgated revised voter registration
11 forms for statewide use.

12 Is that an accurate reflection of what
13 happened in 2006, to the best of your
14 recollection?

15 A. That is accurate to the best of my
16 recollection.

17 Q. Okay. So beginning in 2006, registrars
18 were told that they should only
19 disenfranchise people with convictions
20 involving moral turpitude.

21 MS. MESSICK: Object to the form.

22 Q. Is that correct?

23 MS. MESSICK: Object to the form.

1 A. That's my recollection.

2 Q. Okay. At that time, what guidance were
3 registrars given in making a decision about
4 whether a crime involved moral turpitude or
5 not?

6 A. I'm not aware of any guidance that was --
7 that may have been given to the registrars
8 related to that.

9 Q. What was your understanding of how
10 registrars should make that decision?

11 MS. MESSICK: Object to the form.

12 A. I'm not sure I understand your question.

13 Q. In 2006, you were working at the secretary
14 of state's office. What was your
15 understanding of how registrars should
16 decide if a crime involved moral turpitude
17 or not?

18 MS. MESSICK: Object to the form.

19 A. You're asking how they should use their
20 judgment to determine?

21 Q. If a registrar were to come to you in 2006
22 and say, I see this guidance that says I
23 should not -- I should only disenfranchise

1 people who have been convicted of moral
2 turpitude crimes, how do I make that
3 determination, what would you tell them?

4 MS. MESSICK: Object to the form.

5 A. What I would have told them in that
6 situation, because it wasn't part of my job
7 to make determinations about moral
8 turpitude crimes, is I would have referred
9 them to our legal counsel so that the legal
10 counsel could assist them in making their
11 decision or giving them guidance on how to
12 make that decision.

13 Q. When you took over as supervisor of voter
14 registration, how would you have guided
15 registrars generally in making that
16 determination?

17 A. Generally, we would have referred them --

18 THE WITNESS: I'm sorry.

19 MS. MESSICK: Object to the form.

20 A. Generally we would refer them to the
21 attorney general's opinion at that point as
22 well as to the Alabama Election Handbook to
23 the list of moral turpitude crimes there.

1 And if they needed further assistance, then
2 I would have guided them to the legal
3 counsel.

4 Q. Thank you. After this change was made in
5 2006, was anything done in the secretary of
6 state's office to rectify the people whose
7 voter registration applications had been
8 rejected but -- for felony convictions but
9 whose felony convictions were not
10 disqualifying?

11 MS. MESSICK: Object to the form.

12 A. Not to my knowledge.

13 Q. I'm going to hand you what I'm going to
14 mark as Packard Exhibit 3. And these are
15 Voter Registration Advisory Board meeting
16 minutes from 2007.

17 (Packard Exhibit 3 was marked for
18 identification.)

19 Q. Do you recognize this document?

20 A. I don't have any recollection of this
21 document.

22 Q. Okay.

23 MS. MESSICK: Give me a chance to

1 look at it, please.

2 MS. LANG: Sure.

3 (Ms. Messick and witness review
4 document.)

5 MS. LANG: If it's helpful, it's
6 Section IV that I'm going to ask about.

7 (Brief pause.)

8 A. Okay.

9 Q. Just waiting for your counsel.

10 MS. LANG: You ready?

11 Q. So Section IV, subheader (a), says that
12 there was a discussion at this meeting of
13 the case pending on moral turpitude
14 definition before the Alabama Supreme
15 Court. So this is, I believe, the same
16 case that we've been discussing that
17 challenged the failure to apply the moral
18 turpitude law prior to its filing. Do you
19 recall what guidance was given to the
20 secretary of state's staff and to board of
21 registrars about how to handle this issue
22 while this litigation was pending?

23 (No immediate response given.)

1 Q. And I don't want you to reveal any
2 conversations -- and this is a general
3 rule. I'm going to ask you a number of
4 questions about conversations. I only want
5 you to reveal conversations that you had
6 not with counsel or the -- you know, or
7 when -- not with any counsel that was
8 representing you or anyone in the room, not
9 providing legal advice.

10 A. I don't -- I don't have any recollection of
11 what the specific guidance was at that
12 time.

13 Q. Do you remember what the period of time was
14 when -- strike that.

15 The Section IV (a)(i) says that
16 registrars were encouraged to call either
17 Judge Brown or Misty Fairbanks in the
18 attorney general's office to ask about
19 crimes that might fall into this category.
20 Do you recall during what period of time
21 registrars were encouraged to contact
22 Ms. Fairbanks about crimes of moral
23 turpitude?

1 A. Well, Judge Brown was our legal counsel --

2 Q. Right.

3 A. -- at the time, so in terms of Ms. Chapman
4 who was presiding at this meeting, was
5 secretary of state at the time, this would
6 have -- this particular advice would have
7 started with her -- with her term of
8 office --

9 Q. And would it --

10 A. -- and when Judge Brown -- I'm sorry.

11 Q. I apologize.

12 A. -- and when Judge Brown came on as legal
13 counsel.

14 Q. And with respect to advice from the
15 attorney general's office about moral
16 turpitude crimes, when did that continue
17 until?

18 A. I don't recollect when that continued
19 until.

20 Q. Do you recollect there being a period of
21 time in which registrars were told to
22 consult with the attorney general's office
23 about which crimes were moral turpitude and

1 which were not?

2 A. I do recollect that they were -- there was
3 a period of time when they were advised,
4 the registrars were advised, to seek
5 guidance from the attorney general's
6 office. I just don't recollect what time
7 period that was.

8 Q. And was it your understanding that that
9 guidance would be binding on the
10 registrars?

11 A. No. My -- my understanding was not that it
12 would be binding. It would be guidance to
13 the registrars for them to -- to assist
14 them in making their decision as to what is
15 moral turpitude or not.

16 Q. Would it have been appropriate for a board
17 of registrar to disagree with the guidance
18 from the attorney general's office and make
19 a different determination?

20 MS. MESSICK: Object to the form.

21 A. Well, the statutory duty fell to the
22 registrars to make their decision as to
23 what was moral turpitude crime. They were

1 judicial officer -- they are judicial
2 officers who can make those decisions. So
3 whatever guidance they may have gotten from
4 the attorney general's office or from our
5 legal counsel was -- my understanding was
6 it was guidance and advice, but they didn't
7 necessarily have to agree with it.

8 Q. And if they did not agree with it, would
9 that have been a reason to dismiss them for
10 cause?

11 MS. MESSICK: Object to the form.

12 A. I don't know the answer to that question.

13 Q. Do you think that you were supervisor of
14 voter registration by 2007?

15 MS. MESSICK: Object to the form.

16 A. Somewhere around that time I became
17 supervisor of voter registration, but the
18 power to dismiss registrars for cause
19 rested with the secretary of state.

20 Q. Would you have recommended removal for
21 cause if a registrar was routinely ignoring
22 the -- or disagreeing with the advice of
23 the attorney general's office with respect

1 to what crimes involved moral turpitude?

2 MS. MESSICK: Object to the form.

3 A. I think if there was a registrar who was
4 consistently ignoring the advice of the
5 attorney general or our legal counsel it
6 might be grounds to investigate and see,
7 you know, what the circumstances are, but I
8 don't know that it would automatically be
9 grounds for removal.

10 Q. And if you investigated that matter and the
11 registrar just had a difference of opinion
12 with the attorney general's office, would
13 that have been grounds for removal for
14 cause?

15 MS. MESSICK: Object to the form.

16 A. Well, I can't speak for who was secretary
17 of state at that time, but my personal
18 opinion would be if an investigation showed
19 that a registrar was being arbitrary and
20 capricious in the way they were removing
21 people for moral -- for what they
22 considered moral turpitude crimes, then
23 that could be grounds for removal.

1 Q. I don't mean to harp on this question, but
2 I am going to ask a couple more. If they
3 weren't being arbitrary and capricious, if
4 they had a list and it was a list they
5 believed in but it was a list that differed
6 from the advice of the attorney general,
7 would that have been removable for cause?

8 MS. MESSICK: Object to the form.

9 A. I'm not aware of there being any other such
10 list, so I'm not sure how to answer that
11 question.

12 Q. Are you not aware of registrars sometimes
13 keeping their own list or at least
14 augmenting other lists with their own
15 determinations for crimes of moral
16 turpitude?

17 MS. MESSICK: Object to the form.

18 A. I was -- I had heard that registrars would
19 take the advice given from the AG or from
20 our legal counsel if there was a crime that
21 was determined to be moral turpitude that
22 wasn't on one of the published lists either
23 through the attorney general's opinion or

1 from the administrative office of courts
2 and they might add that to that list, but I
3 wasn't aware of registrars having some --
4 some list, other kind of list, that they
5 would consider authoritative.

6 Q. Okay. Thank you. Can you tell me about
7 the time period when Governor Riley became
8 responsible for the voter registration
9 system and the implementation of HAVA?

10 A. I'm not sure what exactly you're asking on
11 that question.

12 Q. Do you remember when that occurred?

13 A. Yes.

14 Q. Do you know when exactly that occurred, the
15 year, not the date?

16 A. Would have been somewhere around 2006.

17 Q. And how did your role or duties change
18 because of that change in who was in
19 control of the voter registration system?

20 A. At that -- at that point in time, that was
21 the latter part of the Worley
22 administration and my duties with regard to
23 boards of registrars had been restricted,

1 and so my job really didn't change due
2 to -- due to that.

3 Q. And in what way had your role with the
4 board of registrars been restricted?

5 A. Basically, the secretary of state had
6 assigned those tasks to other people and
7 had told me that it was no longer part of
8 my job to work with boards of registrars.

9 Q. Do you know why that is?

10 A. Quite frankly, it was because of
11 personality differences between me and the
12 secretary.

13 Q. Were there any particular incidents in
14 which you had personality differences?

15 A. Well, I say it's personality differences.
16 But basically the situation was, as a
17 professional administrator, I always felt
18 that my job was to provide the elected
19 official with information so that he or she
20 could make the best decisions that they
21 could make in their job, and she didn't
22 necessarily agree with that -- that view of
23 public administration. And so sometimes

1 we -- I or other staff would give her
2 information that she didn't necessarily
3 want to hear and then she became hostile to
4 that.

5 Q. Can you provide an example of information
6 you provided that she didn't want to hear?

7 (Brief pause.)

8 MS. MESSICK: We're discussing
9 whether to object because it's irrelevant,
10 wildly irrelevant. But go ahead and answer
11 to the best of your recollection.

12 A. Yes. There was a situation early in
13 Ms. Worley's term of office when she had
14 advised registrars -- well, she had advised
15 the chair of each board of registrars to
16 fill out travel claims for themselves and
17 for any other registrars that came to a
18 secretary of state sponsored function. And
19 so instead of -- instead of each registrar
20 who traveled filling out their own travel
21 claim form and turning that in to -- to
22 claim their per diem and travel expenses,
23 the chair was supposed to claim all of that

1 reimbursement themselves and then
2 distribute the money to each member of the
3 board of registrars instead and -- which
4 was a direct violation of state personnel
5 or state comptroller regulations. And when
6 I advised her of that, she didn't take too
7 kindly to that because she felt it was --
8 there was more accountability in the way
9 she wanted to do it.

10 Q. Do you recall any times when you had a
11 difference of opinion or some sort of
12 conflict with Secretary Worley that related
13 to felony disenfranchisement issues?

14 A. No.

15 Q. Okay. After the governor took control of
16 the voter registration system, do you
17 recall the governor taking any actions
18 related to felony disenfranchisement?

19 MS. MESSICK: Object to the form.

20 A. My understanding was at some point when he
21 was special master, his office had come up
22 with a list of disqualifying felony crimes
23 that would then be utilized within the

1 voter registration system to inform
2 registrars of persons who had been
3 convicted of disqualifying crimes.

4 Q. Yeah. And do you recall how many crimes
5 were on the governor's list?

6 A. I do not recall how many were on the list.

7 Q. Do you recall the relative size of the
8 governor's list as compared to the AOC
9 list?

10 A. I do not.

11 MS. MESSICK: Object to the form.

12 Q. Okay. Do you know if the governor's list
13 was implemented at some point?

14 A. I don't -- I don't know whether it was
15 implemented or not.

16 Q. I'm going to ask you some questions you
17 probably don't know the answer to given
18 that response. Do you know if the
19 governor's list included any crimes that
20 the attorney general opinion said did not
21 involve moral turpitude?

22 A. Actually, let me go back and amend my
23 answer to that question. To my knowledge,

1 at that -- back at that time, no list was
2 actually implemented, that all felony
3 convictions were transmitted over from
4 Administrative Office of Courts to our
5 office. That's my understanding of what
6 happened at the time and, therefore, the
7 governor -- by logic, the governor's list
8 was not implemented.

9 Q. Was the governor's list given to boards of
10 registrars?

11 A. I'm not aware of it ever being distributed.
12 It may have been, but I'm not aware of it.

13 Q. Okay. Do you know if the governor's
14 list -- so I don't think I got an answer
15 from my prior question because you amended
16 the prior answer, so I'll ask again.

17 Do you know if the governor's list
18 included any crimes that the attorney
19 general's opinion said did not involve
20 moral turpitude?

21 A. No, because I never actually saw the
22 governor's list.

23 Q. Okay. Do you recall what the secretary of

1 state's office's reaction was to the
2 existence of this list created by Governor
3 Riley?

4 MS. MESSICK: Object to the form.

5 A. The only recollection I have is a vague
6 recollection that -- or vague understanding
7 that our office didn't believe it was
8 within the governor's purview to issue a
9 list of moral turpitude crimes because it
10 fell to the registrars to determine what
11 was a moral turpitude crime.

12 Q. In a September 24th memo, Griffin Sikes
13 wrote about this issue. Do you recall
14 talking to Griffin Sikes about felony
15 disenfranchisement during this time period?

16 A. I don't recall talking to him.

17 Q. Do you know who Griffin Sikes is?

18 A. If memory serves, he used to be with the
19 Administrative Office of Courts.

20 Q. That's correct. And he represented that in
21 2008 the secretary of state insisted that
22 the AOC and not the governor's office make
23 the determination of what felonies involved

1 moral turpitude. Does that accord with
2 your recollection?

3 A. I don't -- I don't recollect that.

4 Q. Do you believe that was untrue?

5 MS. MESSICK: Object to the form.

6 A. I just don't have a recollection of it.

7 Q. You don't remember one way or another?

8 A. One way or the other, right.

9 Q. Do you remember anything about the --
10 strike that.

11 I will represent to you that the
12 governor's list was approximately 480
13 crimes long and much longer than the
14 subsequent AOC list. Do you recall
15 anything about the rationale behind the
16 governor's list?

17 MS. MESSICK: I'm going to object
18 to the form. I need you to explain your
19 representation better because --

20 MS. LANG: We have documents, so we
21 can use the documents.

22 MS. MESSICK: Okay. That would be
23 helpful, because, like, you can say murder

1 or you can say 13 ways to commit murder, so
2 I don't -- we all understand 480 is bigger
3 than whatever the other number you gave
4 was, but I'm not sure how they're all
5 counting and if it's apples to apples.

6 MS. LANG: Yeah.

7 Q. (By Ms. Lang) I think what would be most
8 helpful now is to mark as Packard Exhibit 4
9 a November 2007 memo written by Griffin
10 Sikes.

11 (Packard Exhibit 4 was marked for
12 identification.)

13 Q. And as you recall, Griffin Sikes worked for
14 the Administrative Office of Courts, and
15 this letter was written to the governor's
16 office. And it's a lengthy document, but
17 he -- he opens the document by saying that
18 he'd been asked to come up with a list of
19 felonies involving moral turpitude. And at
20 the end of this document, he provides the
21 Administrative Office of Courts' list that
22 I believe was regularly used thereafter; is
23 that correct? And you can find the list on

1 the last two pages.

2 A. What's your specific question on this one?

3 I think you had a compound question there.

4 Q. I think I probably did.

5 A. Okay.

6 Q. If you look at the last two pages of this

7 document, is this the Alabama Office of

8 Courts' list that was included in

9 election -- in the Alabama Election

10 Handbook thereafter?

11 (Witness reviews document.)

12 A. It appears to be. I would have to see a

13 copy of the actual handbook to see if it's

14 an exact list.

15 Q. Okay. Do you recall seeing this memo at

16 any point in time from Mr. Sikes?

17 A. I don't have a recollection of seeing it.

18 Q. Okay. On page 2, could you read to

19 yourself Footnote 1, and then I'd like to

20 discuss it.

21 (Witness reviews document.)

22 A. Okay.

23 Q. In this footnote, Mr. Sikes expresses

1 concern about the use of the moral
2 turpitude standard because it was rooted in
3 racial discrimination; is that correct?

4 A. Right. He has a concern about its use
5 given what the supreme court had ruled in
6 this particular case about this Court's
7 conclusion that it was motivated by a
8 desire to discriminate.

9 MS. MESSICK: I want to make clear
10 for the record -- you asked what Griffin
11 Sikes said, and he told you what Griffin
12 Sikes said. Griffin Sikes is giving a
13 legal opinion, and it is an incorrect
14 interpretation of the law. So I want you
15 to be careful not to be asking him for
16 legal interpretations or getting into any
17 of that. He can tell you what this says.

18 MS. LANG: I'm not going to.

19 MS. MESSICK: But we're not -- by
20 saying he said that, we're not saying it's
21 right.

22 MS. LANG: I don't -- agreed.

23 MS. MESSICK: I'm just saying.

1 Okay.

2 Q. (By Ms. Lang) Were you aware that Mr. Sikes
3 had raised concerns about the moral
4 turpitude standard and its roots in racial
5 discrimination?

6 MS. MESSICK: Object to the form.

7 A. I don't -- I don't recollect being aware of
8 that. I may have been, but I don't
9 recollect it.

10 Q. Do you recall anyone ever talking about
11 concerns regarding racial discrimination
12 and the moral turpitude standard?

13 A. Not back at the time this was written.

14 Q. When do you recall --

15 MS. MESSICK: And I would remind
16 you of her earlier advice on our behalf not
17 to reveal privileged communications since
18 that's obviously the subject of this
19 lawsuit.

20 Q. Yes.

21 A. Right. The -- the subcommittee that
22 Secretary Merrill put together to look at
23 drafting legislation to define what the

1 moral turpitude crimes were or are during
2 meetings of that committee, there were
3 individual members of that committee that
4 brought up the argument -- brought up this
5 argument that it was racially
6 discriminatory to use that standard of
7 moral turpitude.

8 Q. And can you recall any concerns being
9 raised about racial discrimination and the
10 moral turpitude standard before the
11 subcommittee was formed in 2015?

12 A. I don't recall anything before then.

13 Q. Okay. Do you know if after this list was
14 created in 2007 if it was circulated to the
15 board of registrars?

16 MS. MESSICK: "This list" is the
17 AOC list?

18 Q. The AOC list in the 2007 memo.

19 A. Yes. It became part of the Alabama
20 Election Handbook and so it would have been
21 distributed to the registrars through
22 that -- that medium if not some other
23 medium.

1 Q. And in this memorandum, Mr. Sikes quite
2 strongly recommends that this list be used
3 exclusively to disenfranchise people with
4 past convictions and he makes the legal
5 argument that only these crimes should be
6 used and no others to disenfranchise people
7 with convictions. Are you aware of that
8 communication being made to the board of
9 registrars?

10 MS. MESSICK: Let me have an
11 opportunity to read the memo and make sure
12 that it is consistent with your
13 representation.

14 (Ms. Messick reviews document.)

15 MS. MESSICK: Actually, Court
16 Reporter, Bridgette, would you read back
17 the end of the first long sentence that was
18 just in that question?

19 (Court reporter reads back the last
20 question.)

21 Q. I would direct you to the last paragraph of
22 page 5.

23 MS. MESSICK: Okay. If the last

1 paragraph of page 5 is the basis for your
2 question, I object to the form.

3 MS. LANG: And the beginning of
4 page 6.

5 MS. MESSICK: I still think these
6 say what AOC is willing to do and not what
7 other people should do, so I still object
8 to the form.

9 MS. LANG: Okay.

10 Q. (By Ms. Lang) It was the AOC's belief that
11 this should be the exclusive list of
12 disenfranchising crimes. Was that view
13 ever transmitted to the board of
14 registrars?

15 A. I'm having a problem answering that
16 question because they leave the door open
17 for attorney generals' opinions being a
18 source of defining a moral turpitude crime
19 and so that would make this particular list
20 nonexclusive prospectively in the future.
21 But to -- you know, given that concern
22 about your question, I'm not -- I'm not
23 aware of that information being passed on

1 to the board of registrars.

2 Q. You're not aware of any time in which the
3 registrars were told that if a crime is not
4 in an Alabama attorney general opinion as a
5 crime of moral turpitude or has been
6 identified by the courts as a crime of
7 moral turpitude, then it should not be
8 disqualifying?

9 A. Or in an attorney general's opinion.

10 MS. MESSICK: Object to the form.

11 Q. I'll ask again. Are you aware of a time in
12 which registrars were told the following:
13 Do not disenfranchise anyone with a
14 conviction unless that conviction appears
15 specifically in either an attorney general
16 opinion or an Alabama court opinion as a
17 crime of moral turpitude?

18 A. I'm not aware of them being told that.

19 Q. Do you know -- strike that. We're going to
20 discuss a few of Mr. Sikes' memos. Are you
21 aware of any of those memos ever being
22 transmitted to the board of registrars?

23 MS. MESSICK: Object to the form.

1 I don't think that's a fair question until
2 you identify the memos.

3 Q. We'll ask it with respect to each memo --

4 MS. MESSICK: Thank you.

5 Q. -- but are you aware of any memos from
6 Mr. Sikes being sent to the board of
7 registrars, to the best of your
8 recollection?

9 A. I don't have a recollection of memos being
10 sent one way or the other.

11 Q. Okay. During this period of time, what
12 information was available to people with
13 convictions about which crimes were
14 disqualifying and which crimes were not
15 disqualifying?

16 MS. MESSICK: Object to the form.

17 A. I don't recall there being any information
18 available. We would field questions in the
19 office when they called, when people
20 called, and we would direct them to legal
21 counsel, but I'm not familiar with any
22 documentary information that was provided.

23 Q. So unless a member of the public called,

1 there was no information available to them
2 from the secretary of state's office about
3 what crimes were disqualifying?

4 A. I don't recall there being any.

5 MS. MESSICK: You're using the word
6 "crimes" a lot. Do you mean felonies? Can
7 we agree that that's what you mean or do
8 you think you --

9 MS. LANG: We can agree that that
10 is what I mean.

11 MS. MESSICK: Okay.

12 MS. LANG: If I mean misdemeanors,
13 I will say so specifically.

14 MS. MESSICK: Okay.

15 Q. (By Ms. Lang) Can we agree on that?

16 A. Okay.

17 Q. Okay. Thank you.

18 MS. LANG: I appreciate that
19 clarification.

20 Q. Okay. I'm going to mark as exhibit --
21 Packard Exhibit 5 an e-mail chain.

22 (Packard Exhibit 5 was marked for
23 identification.)

1 Q. It involved you from 2008 -- from this time
2 period. I'd like to give you a moment,
3 everyone a moment, to review the e-mail
4 that you sent to Secretary Chapman in 2008.

5 (Witness reviews document.)

6 Q. Most importantly, on the second page,
7 towards the bottom, there is a paragraph
8 that starts, During this conversation, and
9 discusses a conversation you had with
10 Griffin Sikes.

11 (Witness reviews document.)

12 A. Okay. I'm ready.

13 Q. Do you recall having this conversation that
14 is recounted in this e-mail with Griffin
15 Sikes?

16 A. I do not recall it.

17 Q. Do you recall ever talking to Griffin Sikes
18 about who was being flagged as having a
19 crime of moral turpitude and who was being
20 flagged as not having a crime of moral
21 turpitude?

22 A. No, I don't recall that.

23 Q. And in this e-mail, you say that Griffin

1 pointed out that at the time the system was
2 utilizing a much broader list of
3 disqualifying felons, parens, approximately
4 470 crimes compiled by the governor's
5 office, end parens, compared to a shorter
6 list implemented in October or November,
7 parens, a hundred crimes compiled by AOC.

8 Does this e-mail refresh your
9 recollection that there was a shift from a
10 broader list to a smaller list of felonies
11 involving moral turpitude?

12 MS. MESSICK: Object to the form.

13 A. Well, he certainly seems to be making that
14 claim.

15 Q. In the e-mail, do you refute that claim or
16 suggest it's incorrect?

17 A. No.

18 Q. Do you have any reason to believe that
19 that's not an accurate description of what
20 occurred at that time?

21 MS. MESSICK: Object to the form.

22 A. I don't have any reason to doubt that this
23 is an authentic representation of what was

1 occurring at the time.

2 Q. Okay.

3 A. Even though it contradicts what I said
4 earlier about not knowing whether the match
5 list had been implemented or not.

6 Q. Okay. And according to this e-mail, he
7 asked you if any steps had been taken to
8 restore anyone who had been removed using
9 the broader list. Do you recall if any
10 steps were taken to restore anyone who had
11 been removed using the broader list?

12 A. I don't have a recollection of that.

13 Q. Do you remember any time there was kind of
14 a restoration process for people who had
15 been incorrectly removed under the moral
16 turpitude provision?

17 MS. MESSICK: Object to the form.

18 A. At any point in time?

19 Q. Yes.

20 A. I'm not aware of any systematic program to
21 do that, but there have been cases where
22 registrars had inadvertently removed
23 people; and when they became aware of their

1 mistake, they went back and corrected the
2 records.

3 Q. Okay. So if I'm hearing you correctly,
4 individual registrars have made individual
5 corrections, but there has never been a
6 systemic effort to fix prior flaws in the
7 administration of the moral turpitude law?

8 A. Not that I can recall.

9 Q. In -- I apologize. I have another question
10 about that exhibit. In the following
11 paragraph after the paragraph we were just
12 discussing, you discuss a potential meeting
13 with Mr. Sikes that you were going to
14 arrange. Do you recall if that meeting
15 occurred?

16 MS. MESSICK: Object to the form.

17 A. I don't recall whether that meeting
18 occurred.

19 Q. Okay. I'll hand you what we're going to
20 mark as Packard Exhibit 6.

21 (Packard Exhibit 6 was marked for
22 identification.)

23 Q. And this is an e-mail from Griffin Sikes on

1 September 18, 2008, so a few weeks after
2 the last e-mail we discussed. And it is to
3 the governor's office, Ken Wallis, who was
4 the chief legal counsel for the office of
5 the governor at the time. But you are
6 copied on the e-mail as well; is that
7 correct?

8 A. Yes. It appears from this that I was
9 copied on the e-mail.

10 Q. And in this e-mail, Mr. Sikes expresses his
11 concern that the smaller AOC list has not
12 been utilized and that people were
13 continuing to be disenfranchised on the
14 basis of the governor's list of moral
15 turpitude felonies. Is that an accurate
16 description of the first paragraph?

17 A. Yes.

18 Q. Okay. And then he says, This is a -- this
19 exact circumstance is what I had thought
20 you, meaning Ken Wallis, assured me, Jean
21 Brown, and Ed Packard was not occurring.

22 Do you recall ever having a meeting
23 with Ken Wallis about felony

1 disenfranchisement?

2 A. I don't recall having a meeting with him
3 about felony disenfranchisement.

4 Q. Do you remember anything about these
5 conversations with Mr. Sikes about how
6 felony disenfranchisement should be
7 implemented?

8 A. I do not recall any conversations on this
9 matter.

10 Q. Do you remember ever talking to Mr. Sikes
11 about felony disenfranchisement generally?

12 A. I remember having conversations with
13 Mr. Griffin Sikes, but I can't recall the
14 content of any of those conversations or
15 what we discussed. It's been a long time.

16 Q. Fair enough. Do you have any reason to
17 doubt the authenticity of what's been
18 represented here by Mr. Sikes?

19 MS. MESSICK: Object to the form.

20 A. I don't -- I don't have any reason to doubt
21 the authenticity of this e-mail.

22 Q. Having read this e-mail, do you have any
23 contrary recollection than Mr. Sikes --

1 what Mr. Sikes has recounted?

2 MS. MESSICK: Object to the form.

3 A. No, I don't have a contrary recollection
4 either.

5 Q. Okay.

6 A. So either way, I don't have any
7 recollection.

8 Q. All right. We're going to have to continue
9 along this topic because Mr. Sikes did
10 communicate with you quite a bit about this
11 issue at the time.

12 A. And apparently my memory has gone quite a
13 bit.

14 Q. That's all right. I'm going to mark
15 Packard Exhibit 7. It's from a few days
16 later, on September 24, 2008.

17 (Packard Exhibit 7 was marked for
18 identification.)

19 Q. And it is a memorandum from Mr. Sikes to
20 the chief justice, but you are copied on
21 the memorandum as the supervisor of voter
22 registration at that time; is that correct?

23 A. Yes.

1 Q. I'd like to give everybody a chance to at
2 least peruse it. And I'll direct you to
3 some paragraphs in particular.

4 (Witness reviews document.)

5 MS. MESSICK: Danielle, on page 2
6 of this document, it says that his
7 November 8th of 2007 memo is attached, and
8 it's not. Can you represent that that is
9 the same memo that you have given us as
10 Exhibit 4 and also all other attachments
11 are here?

12 MS. LANG: I can confirm that the
13 November 2007 memo referenced is the one
14 marked as Exhibit 4 and that all other
15 attachments that I am aware of are
16 included. This is a document that was
17 pulled from defendant's production.

18 MS. MESSICK: Does that last line
19 suggest you're not the one who removed that
20 exhibit? You think it was produced to you
21 this way?

22 MS. LANG: I am not aware of any
23 additional attachments. I think that's all

1 I can represent at the moment.

2 MS. MESSICK: Okay.

3 A. Okay.

4 Q. (By Ms. Lang) Does this memo refresh any of
5 your recollection about the events of 2008
6 and the implementation of the felony
7 disenfranchisement scheme at that time?

8 A. No. I still don't recall this happening.

9 Q. I'd just like to put on the record that we
10 gave you plenty of time to read the
11 document.

12 A. Yes.

13 Q. And although this memo recounts several
14 meetings that you were involved in, you
15 don't recall anything about these events?

16 MS. MESSICK: Object to the form.

17 A. Correct. I don't recall the meetings.

18 Q. And you don't recall anything about the
19 change from the -- well, strike that.

20 You don't recall any of the events
21 recounted in Mr. Sikes' memo?

22 A. No, I do not.

23 Q. Okay. You've had an opportunity to read

1 this memo?

2 A. Yes.

3 Q. Do you have any contrary recollections
4 about how the felony disenfranchisement
5 scheme was implemented during this time?

6 MS. MESSICK: Object to the form.

7 A. No, I do not.

8 Q. Like, do you have any different memories of
9 how the felony disenfranchisement scheme
10 was implemented during this time?

11 A. No, I do not.

12 MS. MESSICK: Object to the form.

13 Q. Okay. On page 3, paragraph 2, Mr. Sikes
14 recounts that of the approximately 575
15 felonies existing under Alabama law,
16 Mr. Wallis's offices's list -- so the
17 governor's list -- included approximately
18 480 felony offenses that they believed
19 would involve moral turpitude. Does that
20 refresh your recollection that there was a
21 much longer governor's list of
22 disqualifying crimes?

23 MS. MESSICK: Object to the form.

1 A. No, that doesn't refresh my recollection.

2 Q. Three paragraphs down, Mr. Sikes recounts
3 that it was his understanding that based on
4 the secretary of state's insistence, the
5 AOC's list would be used to determine what
6 felony conviction information would be
7 provided to the board of registrars for the
8 purpose of determining voters' eligibility
9 to vote and voter applicants' eligibility
10 to register to vote. Do you recall there
11 ever being a conversation that restricting
12 which felonies were sent to the board of
13 registrars to those that appear on the AOC
14 list?

15 MS. MESSICK: Object to the form.

16 MS. LANG: Can you clarify what the
17 issue with the question is?

18 MS. MESSICK: Asked and answered.
19 He already told you repeatedly he doesn't
20 remember anything about this. You're just
21 asking him the same thing over and over in
22 different ways. You asked it clearly, but
23 you asked it again.

1 MS. LANG: Okay. Thank you.

2 Q. (By Ms. Lang) I'd like an answer.

3 A. Yeah, I don't have any recollection of that
4 happening -- of that occurring.

5 Q. Is it your understanding that the list that
6 was sent from the AOC to the board of
7 registrars was all felonies?

8 A. My recollection was that at some point the
9 only information that was being sent over
10 was all felonies. Now, this intervening or
11 this other -- these other occurrences that
12 happened in the interim, from my
13 recollection, I don't recall this
14 happening. But I thought at some point we
15 got to the point where the only thing being
16 sent over were all felonies and the
17 registrars had to determine for themselves
18 which ones were the moral turpitude
19 felonies.

20 Q. Is it possible that at some points the AOC
21 was screening which felonies it was sending
22 either based on the governor's list or the
23 AOC's list?

1 MS. MESSICK: Object to the form.

2 A. Who was screening them?

3 Q. The AOC as in -- I'll rephrase. And I'm
4 going to ask your counsel.

5 MS. LANG: Could you clarify when
6 you are -- when the only objection is asked
7 and answered? because I want to make sure
8 that I'm asking the question clearly. So
9 if the only objection is asked and
10 answered, it would really help me if you
11 could say that.

12 MS. MESSICK: Okay.

13 MS. LANG: Thank you.

14 Q. (By Ms. Lang) Is it possible that at some
15 point prior to HB 282 the AOC was not
16 sending all felonies to the board of
17 registrars but instead was sending either
18 only the felonies on the governor's list or
19 only the felonies on the AOC list?

20 MS. MESSICK: Asked and answered.

21 A. It may be possible, but I don't have any
22 recollection of that.

23 Q. Okay. On page 6, about halfway down the

1 page, there's a one-sentence paragraph that
2 says, I asked what needed to be done to
3 correct this. Mr. Wallis said that the,
4 quote, big list was, quote, in the system
5 and that taking it out would be, quote,
6 very expensive.

7 Do you think that cost is an
8 appropriate reason not to change a system
9 that is incorrectly disqualifying people
10 from voting?

11 MS. MESSICK: Object to the form.

12 A. No, I don't think cost should be a factor.
13 The system should operate properly and
14 only -- if it's going to be used to report
15 disqualifying felonies, it should work that
16 way and cost shouldn't be a factor.

17 Q. Thank you. And the last page, which is an
18 attachment, appears to be kind of the
19 transmission of felony convictions from the
20 AOC, and the last -- the second to last
21 column says "list from" and it says the
22 governor. Are you familiar with this
23 format of a database?

1 MS. MESSICK: Object to the form.

2 Q. Is this document familiar to you in any
3 way?

4 A. No, this document is not familiar to me.

5 Q. Does this document appear similar to
6 documents you've seen before, the format?

7 A. Specifically related to felon
8 disenfranchisement or any kind of reports
9 coming out of the system?

10 Q. Any kind of reports.

11 A. I mean, because there's various reports
12 that they look similar but not deal with
13 felony disenfranchisement in any way.

14 Q. Okay. You've never seen one that deals
15 with felony disenfranchisement --

16 A. No.

17 Q. -- that looks like this?

18 A. I have not.

19 Q. Okay. Thank you. If you can pick that
20 back up. I went too quickly. On page 6 --
21 I believe it's on page 6. Strike that.

22 Mr. Sikes in one of his memos raises
23 the issue of noticing that sometimes felony

1 convictions -- or people who were charged
2 with felonies but ultimately convicted of
3 misdemeanors were sometimes in the AOC
4 transmission leading to people with
5 misdemeanors being disenfranchised. Are
6 you aware of that ever happening?

7 MS. MESSICK: Object to the form.

8 A. I was -- I was aware that sometimes
9 misdemeanor crimes would be reported.
10 Whether or not anyone was actually
11 disenfranchised based on that, no, I don't
12 know. But I was aware of the reporting of
13 the misdemeanors.

14 Q. If misdemeanors were reported, was there a
15 way that registrars could know that it was
16 actually a misdemeanor based on the report?

17 A. Well, from what the memo says, no.

18 Q. Are you aware of what was done if -- strike
19 that.

20 If such an issue was identified for an
21 individual voter who'd already been
22 disenfranchised, how would that issue have
23 been resolved?

1 A. Well, hopefully they would have fixed the
2 situation and they would have restored the
3 voter, but I'm not aware of any case where
4 they actually disenfranchised anyone who
5 was reported with a misdemeanor.

6 Q. And you would define "fixed" as restored
7 the voter to active status?

8 A. Correct.

9 Q. Would you think it was appropriate to send
10 the voter a notice?

11 A. Yes.

12 Q. Okay. If you had become aware of such an
13 issue, would you have advised the registrar
14 to send a notice?

15 A. Yes.

16 Q. After these memos were sent on which you
17 were copied, do you recall sending any
18 instructions to the registrars about which
19 list to use when determining whether a
20 felony involved moral turpitude?

21 MS. MESSICK: Object to the -- I'm
22 sorry. Asked and answered.

23 A. I don't -- I don't recall.

1 Q. Do you recall there ever being any public
2 education done about the AOC list as a list
3 of disqualifying crimes?

4 A. I don't recall there being any --

5 Q. At any time?

6 A. -- public instruction, no.

7 Q. Did anybody ever suggest doing public
8 education around which crimes were
9 disqualifying?

10 A. I don't -- I don't recall anyone suggesting
11 that. They may have. I just don't recall.

12 Q. Did it ever occur to you to do public
13 education around which crimes were
14 disqualifying?

15 A. Well, I'd like to say yes, but I don't
16 recall because -- because I worked on a lot
17 of our voter outreach materials at the
18 time, but I don't recall there being a
19 discussion of that.

20 Q. And you don't recall ever including that
21 information in any of the materials you
22 worked on?

23 A. Right. We just always referred to not

1 being convicted of a disqualifying felony.

2 Q. Was it your experience that voters

3 understood what that meant?

4 A. If they didn't understand what that meant,

5 then we advised them to call their board of

6 registrars to find out whether or not it

7 was a disqualifying crime or to contact the

8 state board of pardons and paroles.

9 Q. Was that written somewhere on the

10 materials, that if they did not know what a

11 disqualifying felony was they should

12 contact the board of registrars or the

13 board of pardons and paroles?

14 A. No, not to my knowledge.

15 Q. If you were not an election administrator

16 and you were just a person with a past

17 conviction and you read that people with

18 disqualifying felony convictions could not

19 register to vote, do you think you would

20 have understood what that meant?

21 A. I think I would have had to call someone

22 for help.

23 Q. Do you think it's possible some people

1 thought that that meant that felonies were
2 disqualifying in and of themselves?

3 MS. MESSICK: Object to the form.

4 A. It's possible, yes.

5 Q. Okay. If in fact there was a change in the
6 list that was being used from the
7 governor's list to the AOC list as
8 Mr. Sikes represents, would it then be the
9 case that somebody who had registered in
10 2007 may have been rejected because of
11 their felony conviction but a person with
12 the exact same conviction who registered in
13 2008 would have been accepted?

14 MS. MESSICK: Can I ask the court
15 reporter to read that back, please?

16 MS. LANG: Yes.

17 (Court reporter reads back the last
18 question.)

19 MS. MESSICK: Object to the form.

20 A. It's possible.

21 Q. Is it perhaps even likely given the
22 difference in the size of the governor's
23 list and the AOC list?

1 MS. MESSICK: Object to the form.

2 A. I'm not an oddsmaker, so -- but maybe so.

3 Q. If a list --

4 A. It might have been more likely, yeah.

5 Q. -- of 475 felonies was being used at one
6 point and then a list of approximately 70
7 felonies was being used at a different
8 point, it would be likely that the time at
9 which someone registered would affect
10 whether or not they were accepted?

11 MS. MESSICK: Object to the form.

12 A. It's possible.

13 Q. Okay. Would you agree that it's likely?

14 MS. MESSICK: Object to the form.

15 A. I'll give you it's likely.

16 Q. Okay. Would you agree that anyone with a
17 conviction on the governor's list that was
18 not on the AOC list, whether or not they
19 were accepted would depend on when they
20 registered to vote?

21 MS. MESSICK: Object to the form.

22 A. It's possible.

23 Q. Okay. I'm going to mark Packard Exhibit 8,

1 which is, surprise-surprise, another memo
2 from Mr. Sikes.

3 (Packard Exhibit 8 was marked for
4 identification.)

5 Q. And this one is dated just a few days
6 later, on September 30th. Now, you may not
7 have received this memo, but it was sent to
8 all circuit clerks, all probate judges, and
9 all sheriffs.

10 (Witness reviews document.)

11 Q. And I would refer you to the last page,
12 which I'd like to ask you some questions
13 about. So if you could just read that last
14 page.

15 (Witness reviews document.)

16 A. All right. I'm ready.

17 Q. Mr. Sikes represents that Judge Brown from
18 your -- from the secretary of state's
19 office committed to changing which felonies
20 would be transmitted through the electronic
21 system to the registrars and committed
22 further to looking into people who had been
23 inappropriately disenfranchised under the

1 governor's list and seeking to notify them.

2 To your knowledge, did either of the --
3 well, to your knowledge, did the change in
4 which felonies were transmitted to the
5 registrars actually occur?

6 MS. MESSICK: Object to the form.

7 A. Well, to my knowledge, there was a change
8 at some point in what felonies were being
9 transmitted. The particular nature of that
10 change may be different based on whether it
11 was an AOC list or the governor's list or
12 not filtering it at all. But based on my
13 understanding, there was a change in the
14 way they were being reported. Just like
15 I've testified before, at some point they
16 began sending all felony convictions, not
17 just ones from any particular list.

18 Q. Do you know when that change occurred?

19 A. I don't recall when that change occurred.

20 Q. But more recently, your representation is
21 that registrars were receiving all
22 felonies?

23 MS. MESSICK: Object to the form.

1 A. Prior to the passage of the new law, yes.

2 Q. So immediately prior to the passage of the
3 new law, registrars were receiving all
4 felonies?

5 A. That's my understanding, yes.

6 Q. Okay. And that's true despite the events
7 that occurred in 2008 where there were
8 discussions of limiting which felonies were
9 transmitted to the registrars?

10 A. That's my understanding.

11 Q. Okay. Thank you. I'm going to mark as
12 exhibit -- Packard Exhibit No. 9 an e-mail
13 chain.

14 (Packard Exhibit 9 was marked for
15 identification.)

16 Q. And at the bottom of this e-mail chain,
17 Mr. Sikes had sent an e-mail to you in the
18 same time period, on September 25, 2008,
19 and includes copies of two op-eds. And
20 these op-eds refer to voter registration
21 drives in state prisons. And specifically
22 these op-eds allege that the corrections
23 commissioner, Richard Allen, stopped

1 attempts at voter registration drives in
2 state prison and acted, quote, under
3 pressure from the Alabama Republican party,
4 end quote, mainly from party chairman Mike
5 Hubbard.

6 Are you -- do you recall which
7 particular --

8 (Interruption.)

9 MR. SINCLAIR: Let's go off the
10 record.

11 MS. LANG: Yes.

12 (Off the record.)

13 Q. (By Ms. Lang) Before we took a break, I had
14 handed you Packard Exhibit 9, which was an
15 e-mail chain directed from Griff Sikes to
16 you around the same time period of
17 September 2008 that we've been discussing,
18 but the topic is a bit different. And he
19 discusses a few op-eds that discuss events
20 around voter registration drives in
21 prisons. Are the op-eds correct in saying
22 that there was an attempt at a voter
23 registration drive and was shut down by the

1 corrections commissioner, Richard Allen, in
2 2008?

3 MS. MESSICK: Object to the form.

4 A. I don't have any recollection of this
5 event.

6 Q. During your tenure at the secretary of
7 state's office, have you addressed --
8 strike that.

9 During your tenure at the secretary of
10 state's office, have issues been raised to
11 you about the ability to conduct voter
12 registration drives in prisons?

13 A. There -- I don't recall any situation where
14 they've expressly talked about conducting
15 voter registration drives, but there have
16 been cases of -- or reports where
17 individual inmates wanted to know what
18 their voting rights were and how they
19 could -- how they could vote and
20 participate in the process.

21 Q. And how were those incidents resolved?

22 A. We usually -- whatever -- and normally
23 those reports came from advocates that were

1 helping the inmates, and so we advised
2 them, you know, that as long as their crime
3 wasn't a disqualifying crime, that they
4 still maintained their voting rights. And
5 we would provide forms, absentee forms, and
6 voter registration forms to the advocates
7 that they could use to -- to go in and
8 assist the inmates.

9 Q. Was one of those advocates Pastor Glasgow?

10 A. Yes.

11 Q. And Mr. Glasgow actually filed a lawsuit in
12 order to be able to conduct this activity
13 in prisons; isn't that correct?

14 A. To my knowledge, that is correct.

15 Q. And that was in 2008; is that correct?

16 A. I don't remember the exact year.

17 Q. And how was that lawsuit resolved?

18 A. My understanding is they ruled in his favor
19 to the order -- and ordered the system,
20 the -- the detention facilities to allow
21 them to conduct the voter drives. That's
22 my understanding.

23 Q. Okay. I believe there was a settlement,

1 I'll represent to you.

2 A. Okay.

3 Q. But that was the accurate result.

4 A. I may not have had complete information.

5 Q. Yeah. And I do believe that you are

6 correct that that was the result of the

7 lawsuit, that he was allowed to conduct

8 these drives. Would you find it

9 appropriate for legislators or party

10 officials to get involved in whether or not

11 voter registration activities should happen

12 in prisons?

13 (Brief pause.)

14 MS. MESSICK: I'm sorry. Go ahead.

15 THE WITNESS: Okay. I didn't know

16 if you -- giving you a moment to do your

17 thing.

18 MS. MESSICK: Thank you.

19 A. Well, I certainly think they can have their

20 opinion on whether or not that can occur.

21 But in terms of trying to insinuate

22 themselves into the process and work to

23 deprive people of their ability to

1 participate, I personally would find that
2 inappropriate.

3 Q. So you would personally find it
4 inappropriate if someone pressured the
5 corrections commissioner to not allow this
6 activity?

7 A. Right. That's correct.

8 Q. Why would you find it inappropriate?

9 A. Because -- because I don't think a
10 legislator ought to be using their power,
11 power of their position, to deny people of
12 their ability to participate in the
13 democratic process. And given that it's a
14 special population that we're talking about
15 due to their incarceration, I think
16 accommodations need to be made to assist
17 them in being able to exercise their right
18 to vote.

19 Q. I agree. Why do you think a party chairman
20 might oppose voter registration drives in
21 prison?

22 MS. MESSICK: Object to the form.

23 A. Well, I can't really speculate what's --

1 what might be in their mind.

2 Q. Have you ever heard anyone, any -- strike
3 that.

4 Have you ever heard any Alabama-elected
5 official or party official suggest that
6 they would prefer that people with
7 convictions not be able to vote?

8 A. Yes, I've heard a lot of people say that.

9 Q. And have you ever heard any party official
10 or elected official suggest that that
11 population would vote for democrats?

12 A. No, I've not heard that -- that specific
13 line.

14 Q. Are you -- could I refresh your
15 recollection of whether or not you ever
16 heard of Roy Moore suggesting that this
17 population would vote for democrats?

18 A. I'll be honest with you, I don't recall
19 hearing Roy Moore say much of anything
20 because I don't tend to listen to what he
21 says, so -- personally. Personally.

22 Q. All right. Thank you. I'm going to give
23 you what we'll mark as Packard Exhibit 10.

1 (Packard Exhibit 10 was marked for
2 identification.)

3 Q. It's another e-mail chain. It's just a
4 little bit after the time that we were
5 discussing in which Mr. Sikes was urging
6 that only the AOC list be used to
7 disenfranchise people with convictions.
8 And this e-mail chain that begins on the
9 second to last page with an e-mail from
10 yourself to the board of registrars in
11 October of 2008, it is a message from
12 Secretary of State Beth Chapman in which
13 she advises that registrars should
14 determine themselves whether or not people
15 are qualified or not qualified and whether
16 a felony offense involves moral turpitude
17 or not, and then she advises them to seek
18 legal advice if they so need. Do you know
19 why Secretary Chapman and yourself decided
20 not to advise the board of registrars to
21 only use the AOC list as Mr. Sikes
22 recommended?

23 A. May I finish --

1 Q. Absolutely.

2 A. -- looking over the document?

3 (Witness reviews document.)

4 A. I don't -- I don't recall why there was a
5 determination made to not advise them to
6 use the AOC list.

7 MS. LANG: I'm sorry. Can you read
8 back that response?

9 (Court reporter reads back the last
10 answer.)

11 Q. This memorandum does not advise them to use
12 only the AOC list; is that correct?

13 A. Correct.

14 Q. Why didn't you advise board of registrars
15 to only use the AOC list?

16 MS. MESSICK: Asked and answered.

17 A. I don't know the reason why Secretary
18 Chapman did not advise them to use the AOC
19 list.

20 Q. As supervisor of voter registration, would
21 you have been involved in this decision-
22 making process?

23 A. Given -- given the way the office was

1 structured, not necessarily.

2 Q. Were you involved in this decision-making
3 process?

4 A. As to which list to use?

5 Q. As to the decision to tell registrars to
6 make their own determinations and not use
7 only one guiding list.

8 A. To my recollection, I was not involved in
9 the decision-making process on that.

10 Q. Do you think that this was the right
11 decision to make?

12 MS. MESSICK: Object to the form.

13 A. I think -- I don't know that there was
14 anything particularly wrong with this
15 decision, because certainly people were
16 aware of the AOC list and Jean Brown would
17 have been aware of the AOC list. And given
18 the way the system has evolved where we
19 eventually published the AOC list in the
20 handbook and advised them to use the AOC
21 list, I don't -- I don't see anything
22 necessarily inappropriate with what they --
23 what was put into this particular document.

1 Q. But the AOC list was not used exclusively;
2 is that correct?

3 MS. MESSICK: Asked and answered.

4 A. Correct.

5 Q. And for convictions that did not appear on
6 the AOC list, board of registrars were left
7 to make their own determinations?

8 A. Or seek legal advice from the DA, county
9 attorney, or our legal counsel in the
10 secretary of state's office.

11 Q. But ultimately they were told to make the
12 determination after consulting?

13 A. Right. Ultimately it's up to them to make
14 the final decision based on whatever
15 assistance they may have gotten from a list
16 or from any of those officials.

17 Q. Would it have provided more uniformity if
18 just the AOC list had been used exclusively
19 as Mr. Sikes had suggested?

20 A. Certainly there would be more uniformity if
21 only one singular list or one source was
22 being used.

23 Q. But Secretary Chapman decided instead not

1 to use an exclusive list?

2 A. Apparently so.

3 Q. Would there have been anything wrong with
4 using one exclusive list, the AOC list, to
5 determine whether or not a crime was one
6 involving moral turpitude?

7 MS. MESSICK: Object to the form.

8 A. No, there wouldn't have been anything wrong
9 in using an exclusive list. In fact, I
10 think that's where we tried to head,
11 particularly with the legislation that was
12 recently passed.

13 Q. And, in fact, that would have ensured that
14 people were only disenfranchised if there
15 had been a court determination or attorney
16 general determination that that crime
17 involved moral turpitude?

18 A. Correct.

19 Q. And what level of education are board of
20 registrars required to have?

21 A. Just a high school diploma.

22 Q. How many of them have law degrees?

23 A. I'm not sure any of them now have law

1 degrees, but we have had at least one that
2 had a law degree at one time.

3 Q. Would you say the majority do not have law
4 degrees?

5 A. Yes.

6 Q. The vast majority do not have law degrees?

7 A. Yes.

8 MS. MESSICK: Asked and answered.

9 Q. Who do you think is best suited to make
10 decisions about whether or not a felony
11 involves moral turpitude?

12 A. Well, personally I think -- I think the
13 legislature is the best source to define
14 that.

15 Q. And in the absence of a legislative
16 decision, who do you think would be best
17 suited to make those determinations?

18 A. I think coming from a court would be the
19 best source.

20 Q. All right. Thank you. Given the lack of
21 uniform determinations about felonies
22 involving moral turpitude, were you ever
23 personally concerned that this could create

1 arbitrary results?

2 A. I was personally concerned that it -- that
3 there could be some arbitrariness, that
4 certainly there could be inconsistency.

5 Q. And were you ever concerned that the system
6 could create differential results racially?

7 A. I don't know -- I don't know that I saw
8 that as a purposeful outcome of that, but I
9 don't know that I really gave it any
10 thought in that regard. I was concerned
11 about the inconsistencies, but in general.

12 Q. Your response raises a question, which is
13 were you ever concerned that even if folks
14 were not intentionally or purposefully
15 racially discriminating, the results could
16 end up being racially biased?

17 A. I don't think I ever gave it that much
18 thought on the racial angle.

19 Q. Did the office ever do a study of the
20 inconsistent results of this system?

21 MS. MESSICK: Object to the form.

22 A. Not to my knowledge.

23 Q. Did the secretary of state ever do a study

1 of the racial results of the system?

2 A. Not to my knowledge.

3 Q. Did anybody ever suggest doing a study of
4 the inconsistent results of this system?

5 A. Not that I'm aware of.

6 Q. Did anyone ever suggest doing a study of
7 the racial results of this system?

8 A. Not that I'm aware of.

9 Q. Did anybody ever tell Mr. Sikes that it was
10 decided that they would not -- that the
11 secretary would not follow his
12 recommendation to use solely the AOC list?

13 A. Not that I recall.

14 Q. Whose responsibility would that have been
15 to inform Mr. Sikes?

16 A. Whomever the secretary designated to tell
17 Mr. Sikes.

18 Q. Would that have potentially fallen within
19 your responsibilities as supervisor of
20 voter registration?

21 MS. MESSICK: Object to the form.

22 A. It potentially could have.

23 Q. Okay. If we could refer back to Packard

1 Exhibit 10. As we discussed, the e-mail
2 chain begins with a message from Secretary
3 Chapman, but then there is a dialogue
4 between Robin Foster and yourself. Who was
5 Robin Foster?

6 A. Robin Foster was a registrar from
7 Tallapoosa County.

8 Q. And could you take a quick read of this
9 e-mail chain?

10 (Witness reviews document.)

11 A. Okay. I'm ready.

12 Q. In the e-mail, you appear concerned about a
13 registrar relying on the board of pardon
14 and paroles to make a moral turpitude
15 determination; is that correct?

16 A. My concern was that they appeared to be --
17 what seemed to be the case was that it
18 appeared they were letting pardons and
19 paroles to make the decision for them as to
20 who was disqualified from voting.

21 Q. And would it be improper for the board of
22 registrars to rely on the board of pardons
23 and paroles' determination?

1 MS. MESSICK: Object to the form.

2 A. I think that they could make -- they could
3 use some -- strike that. It would be
4 acceptable for them to collect information
5 based on pardons and paroles'
6 interpretation of the law, but ultimately
7 it's the registrars' call to make the
8 decision.

9 Q. Okay. The board of pardons and paroles did
10 have to make the determination, though, in
11 deciding who to give a certificate of
12 eligibility to register to vote; is that
13 correct?

14 A. Yes, that's correct.

15 Q. Did it ever -- did having two different
16 decision-makers about which felonies
17 involved moral turpitude ever cause a
18 problem?

19 MS. MESSICK: Object to the form.

20 A. I'm not aware of any instance where it
21 actually caused a problem.

22 Q. Let me ask you more specifically. Did you
23 ever encounter a circumstance with a voter

1 where the board of pardons and paroles told
2 that voter they were not eligible for a
3 CERV because their crime was not one
4 involving moral turpitude but that when
5 they attempted to register to vote, the
6 registrar determined that their crime was
7 one involving moral turpitude?

8 A. I don't -- I don't recall one offhand.

9 Q. Would that have been a possible outcome of
10 this system?

11 A. Yes, that's a potential outcome of the
12 system.

13 Q. And where does that leave the voter?

14 A. Well, if the voter was denied the ability
15 to register to vote by the board of
16 registrars, they have an appeal right to
17 the probate judge to have that decision
18 reconsidered.

19 Q. And what if the probate judge decided that
20 it was also involving moral turpitude?

21 A. If the voter still feel -- or the
22 prospective voter still feels that the
23 decision's in error, they can appeal it to

1 the circuit court.

2 Q. Let's say it goes all the way through the
3 court process and it's determined that it's
4 a crime of moral turpitude. What does the
5 voter do then?

6 MS. MESSICK: Object to the form.

7 Q. What should the voter do in that
8 circumstance if the voter wishes to get --
9 restore their right to vote?

10 MS. MESSICK: Object to the form.

11 A. Well, hopefully at that point pardons and
12 paroles, if there were court decisions
13 saying it's a moral turpitude crime, they
14 would take notice of that and do the proper
15 investigation and administration of the
16 CERV process.

17 Q. Yeah. Do you know how long an average
18 court case regarding moral turpitude takes?

19 MS. MESSICK: Object to the form.

20 Q. An appeal -- let me rephrase. Do you know
21 how long an appeal from a board of
22 registrar's determination of moral
23 turpitude takes to be decided by a probate

1 judge?

2 A. No, I don't.

3 Q. Are you aware of any such cases being
4 filed?

5 A. My understanding is that that's happened a
6 fair amount in Jefferson County, they've
7 had appeals in Jefferson County.

8 Q. Okay. And are you aware of the outcomes of
9 those cases?

10 A. Not specific ones, but I understand that in
11 some cases they've said the person is
12 eligible to register to vote even though
13 the registrars felt they weren't.

14 Q. And has the secretary of state tracked
15 those decisions in order to determine when
16 a court has decided that a specific crime
17 is one involving moral turpitude or not?

18 A. No, not to my knowledge.

19 Q. And would there be any way of -- for boards
20 of registrars across the state to know that
21 a judge had determined that a specific
22 conviction was disqualifying or not?

23 MS. MESSICK: Object to the form.

1 A. Not to my knowledge.

2 Q. Do you think it would be important for
3 registrars to have known if there were
4 court decisions deciding a specific felony
5 was either disqualifying or not?

6 MS. MESSICK: Object to the form.

7 A. Personally, I would think that would be
8 important to know.

9 Q. So under the system that was in place, a
10 judge could decide that a crime was not
11 disqualifying in Jefferson County and yet
12 voters in another county could still be
13 disqualified for that felony?

14 A. Correct. That's my understanding.

15 Q. Do you think that likely happened?

16 MS. MESSICK: Object to the form.

17 A. It's possible.

18 Q. If a voter was left in the position that we
19 discussed a moment ago in which board of
20 pardons and paroles said that a crime was
21 not disqualifying and the board of
22 registrars said that it was, would the
23 voter likely be able to resolve that issue

1 before the upcoming election?

2 MS. MESSICK: Object to the form.

3 A. How close to the election?

4 Q. Let's assume that they registered to vote
5 at the end of the registration deadline.

6 A. I would -- I would suspect it would be very
7 difficult to -- to be able to challenge
8 that decision and get that worked out
9 before the deadline.

10 Q. Yeah. So imagine a voter becomes eligible
11 for a CERV a couple months before the
12 registration deadline and applies for CERV
13 and the board of pardons and paroles gets
14 back to them within the statutory time
15 frame, which is 45 days, and leaves them
16 just enough time -- and tells them that
17 they are ineligible for a CERV because
18 their crime is not disqualifying, at which
19 point they seek to register to vote and the
20 registrar determines that crime is not
21 disqualifying -- was disqualifying. Under
22 the system that was in place, that voter
23 was likely to be disenfranchised in the

1 upcoming election; is that correct?

2 MS. MESSICK: Before you answer,

3 can you read it back, please?

4 (Court reporter reads back the last
5 question.)

6 MS. MESSICK: Object to the form.

7 A. Not necessarily, because the voter would
8 have the opportunity to cast a provisional
9 ballot and then -- which could be reviewed
10 during the seven days after the election,
11 which not being familiar with the way the
12 probate court handles its appeal option or
13 appeal procedure, they might could make a
14 decision during that time as to whether or
15 not the ballot could count.

16 Q. If a decision -- if a lawsuit was not --
17 strike all that.

18 If a voter did not both file a lawsuit
19 and get a decision within 21 days, that
20 voter would be disenfranchised; is that
21 correct?

22 MS. MESSICK: Object to the form.

23 A. That's correct.

1 Q. Do you know how much it costs to file a
2 lawsuit?

3 A. No, I don't.

4 MS. MESSICK: Object to the form.

5 Q. Have you ever hired a lawyer?

6 A. Yes, I have.

7 Q. How much do you pay for -- how much have
8 you paid for an hourly rate for an
9 attorney?

10 A. It was quite a lot.

11 Q. Okay. Thanks. Give you what I'll mark as
12 Packard Exhibit 11.

13 (Packard Exhibit 11 was marked for
14 identification.)

15 Q. This is an e-mail from yourself to a man
16 named Jeff Campbell in 2008. Do you know
17 Jeff Campbell?

18 A. No, not that I have any recollection of
19 him.

20 Q. Could you take a moment to read the e-mail
21 chain?

22 (Witness reviews document.)

23 A. Okay.

1 Q. Mr. Campbell's a prospective voter; is that
2 correct? Someone who wishes to register to
3 vote?

4 A. Yes.

5 Q. And he's asking you for guidance on whether
6 or not he is eligible to register to vote?

7 A. Yes.

8 Q. And he represents to you that he was
9 convicted of possession only of
10 hydrocodone; is that correct?

11 A. Yes.

12 Q. And what was your response to him?

13 A. The ultimate response was to speak with the
14 state board of pardons and paroles to see
15 whether he lost his voting rights and could
16 have them restored.

17 Q. Why did you refer him to the board of
18 pardons and paroles instead of to the
19 registrars' office?

20 A. I think the reason I referred him to
21 pardons and paroles was because he already
22 had the conviction and it was a crime that
23 could well have been disqualifying, so it

1 seemed -- it seemed more prudent to put him
2 on the path of getting his rights restored
3 as opposed to sending him to register
4 first.

5 Q. Are you aware that the board of pardons and
6 paroles had a policy of determining that
7 possession-only drug crimes were not
8 disqualifying and not eligible for a CERV?

9 MS. MESSICK: Object to the form.

10 A. I don't know that I knew about it at this
11 particular time, but -- but I was aware at
12 some point that simple possession without
13 intent to distribute was not moral
14 turpitude.

15 Q. So you are aware that at some point the
16 board of pardons and paroles decided that
17 possession only --

18 A. Right.

19 Q. -- was not involving moral turpitude?

20 A. Right.

21 Q. Okay. Given the policy of the board of
22 pardons and paroles, was it ever
23 communicated to the registrars that there

1 should be a uniform policy of treating all
2 possession crimes as not disqualifying?

3 MS. MESSICK: Object to the form.

4 A. My recollection is that at some point the
5 registrars were told that if something --
6 if a case involved only simple possession,
7 that it wasn't disqualifying.

8 Q. By whom were they told that?

9 A. By the secretary of state's office.

10 Q. By whom in the secretary of state's office?

11 A. I don't remember offhand.

12 Q. And when was that?

13 A. I don't -- I don't recall offhand.

14 Q. It was clearly after 2008?

15 A. Clearly after this, yes.

16 Q. Do you have any recollection if it was more
17 recently or less recently?

18 A. Less recently.

19 Q. Okay.

20 A. I know they've been working with that
21 understanding for quite a number of years.

22 Q. Are you sure that all registrars were
23 implementing the law such that possession

1 crimes were not disqualifying prior to
2 HB 282?

3 MS. MESSICK: Object to the form.

4 A. Well, not knowing what every registrar has
5 done, I can't -- I can't really make that
6 kind of definitive statement.

7 Q. You're not confident that this was being
8 administered uniformly?

9 A. Right.

10 MS. MESSICK: Object to the form.

11 A. Correct.

12 Q. I'll give you what I'll mark as Packard
13 Exhibit 12.

14 (Packard Exhibit 12 was marked for
15 identification.)

16 Q. And this is an e-mail chain from yourself
17 to a person in the board of registrars
18 office of Marion County from 2014; is that
19 correct?

20 A. Yes, that's correct.

21 Q. And the staff member, Ms. Enlow, was
22 requesting advice about several crimes and
23 whether or not they are disqualifying or

1 not; is that correct?

2 A. Right. That is correct.

3 Q. And what guidance did you give her?

4 A. I advised her to contact our legal counsel,
5 Jean Brown.

6 Q. So how often did you refer these issues to
7 Judge Brown?

8 A. At that time, when any of them came in,
9 I -- we didn't get a lot of calls or
10 e-mails about that, but at that time,
11 during that administration, it would --
12 that would have been the practice.

13 Q. And which administration was that?

14 A. This would either have been -- I'm not --
15 by the date, I don't recall if this was
16 right before Ms. Chapman resigned or right
17 after she resigned and Secretary Bennett
18 came in to fulfill the rest of her term,
19 but this was the established practice at
20 that time.

21 Q. Established practice under Ms. Chapman or
22 Secretary Bennett?

23 A. It began under Secretary Chapman and then

1 continued under Secretary Bennett.

2 Q. And did that practice continue -- when did
3 that practice continue until?

4 A. Well, even now if we get calls, even though
5 we have the legislation if we have any
6 questions, if people have questions about
7 whether a crime is moral turpitude, then
8 they send them to our legal counsel.

9 Q. And when did that practice begin?

10 A. Sending them to the legal counsel? Some of
11 that goes back to under Ms. Worley.

12 Q. And what do you mean by "some of that"?

13 A. Referring registrars to legal counsel in
14 the agency to get guidance on moral
15 turpitude crimes. To the best of my
16 recollection, it began under Ms. Worley and
17 then continued under Ms. Chapman.

18 Q. And was the requirement that all inquiries
19 go to Judge Brown?

20 MS. MESSICK: Object to the form.

21 A. At some point that became the policy. I
22 can't -- I don't know exactly when that
23 became the exclusive policy.

1 Q. Were there any exceptions to that, for
2 example, if -- well, were there any
3 exceptions to that policy?

4 A. Like my own e-mail addressing sending the
5 person to pardons and paroles instead of to
6 legal counsel?

7 Q. Yes.

8 A. Yeah. The best I can recall was at some
9 point they made it clear they wanted those
10 questions to go to legal counsel rather
11 than trying to field any of them ourselves.

12 Q. And who would be the "they" in that?

13 A. The secretary of state.

14 Q. I'll give you what we'll mark as Packard
15 Exhibit 13.

16 (Packard Exhibit 13 was marked for
17 identification.)

18 Q. And this is an e-mail from Judge Brown to
19 Harry Butler. And who is Harry Butler?

20 A. Harry Butler is a registrar in Etowah
21 County.

22 Q. And in this e-mail, Mr. Butler, per the
23 protocol that you've established, asked

1 Judge Brown about a number of crimes of
2 moral turpitude, or a number of crimes
3 asking if they were ones involving moral
4 turpitude, and Ms. Brown responds: I do
5 have a list of crime codes, semicolon;
6 however, other than the attorney general's
7 opinion that specifically addresses crimes
8 that have and have not been determined by
9 the courts to constitute a crime of moral
10 turpitude, the decision must be made by the
11 registrars on a case-by-case basis and I'm
12 happy to provide assistance if you have
13 questions regarding specific crimes.

14 Were you aware of Judge Brown having a
15 list of crime codes that she considered
16 involving moral turpitude or not?

17 MS. MESSICK: Object to the form.

18 A. I knew she was -- I was aware -- let me
19 start over. I was aware that she had a
20 list of the codes that are sent over by AOC
21 to identify which crimes someone was guilty
22 of committing. I wasn't aware that that
23 was -- had been -- she had compiled that

1 into a list of moral turpitude crimes.

2 Q. Do you know where such a list would have
3 been kept by Judge Brown?

4 A. No.

5 Q. So you did not have a copy of her list?

6 A. No.

7 Q. Do you think that it would have provided
8 more uniformity if Judge Brown told all
9 registrars about crime codes that she had
10 determined involved moral turpitude?

11 MS. MESSICK: Object to the form.

12 A. I think any -- yes, I think there would be
13 more uniformity if there -- if she had
14 shared the information with all registrars.

15 Q. And then she goes on to say that it was her
16 belief that MCS, which is identified in the
17 e-mail as unlawful manufacturing of
18 controlled substance, would definitely be a
19 crime involving moral turpitude. Do you
20 know what kinds of resources Judge Brown
21 relied upon in coming to those
22 determinations?

23 A. No, I do not.

1 Q. Do you think that unlawful manufacturing of
2 a controlled substance is definitely a
3 crime involving moral turpitude?

4 A. Under the --

5 MS. MESSICK: Object to the form.

6 A. Under the current law?

7 Q. No. Under the prior law.

8 A. Under the prior law? That wasn't part of
9 my job to determine whether it was moral
10 turpitude or not and so I don't have an
11 opinion on that.

12 Q. Do you know what the governing definition
13 of moral turpitude was prior to the passage
14 of HB 282?

15 A. No.

16 MS. MESSICK: Excuse me. Why is
17 his copy highlighted? Did you do that?

18 MS. LANG: Oh, I'm sorry.

19 THE WITNESS: No.

20 MS. MESSICK: So you're going to
21 switch? So take the sticker off.

22 MS. LANG: For the record, I
23 accidentally gave Mr. Packard a copy that

1 had been marked up by myself.

2 (Packard Exhibit 13 was re-marked
3 for identification.)

4 MS. MESSICK: Thank you.

5 MS. LANG: Thank you, Misty.

6 Q. (By Ms. Lang) So I think we left off with
7 you saying that you do not know what the
8 governing standard for moral turpitude was
9 prior to HB 282?

10 MS. MESSICK: Object to the form.

11 A. Correct.

12 Q. Do you have any sense of how to define
13 moral turpitude?

14 A. Well, the -- the only -- the only
15 definition that I've heard -- and I'm not
16 sure where I heard it at -- was a crime of
17 moral turpitude would be something that
18 would be inherently wrong even if it was
19 not illegal.

20 Q. And is it inherently wrong to manufacture
21 controlled substances if there was no law
22 against it?

23 MS. MESSICK: Object to the form.

1 A. If there was no law against it. Not
2 having -- you know, you're asking me on the
3 spur of the moment to make a decision like
4 that; but offhand, I would -- if there's no
5 law against it, I would say no.

6 Q. Thank you. I'm going to give you what I'll
7 mark as Packard Exhibit 14.

8 (Packard Exhibit 14 was marked for
9 identification.)

10 Q. And this is another e-mail involving Judge
11 Brown in which Jacqueline Knighten sent an
12 e-mail to Judge Brown saying that she had
13 tried numerous times to get ahold of her
14 about whether certain crimes involved moral
15 turpitude or not. Were you ever aware of
16 long delays between Judge Brown and
17 registrars in responding to whether or not
18 crimes involved moral turpitude?

19 MS. MESSICK: Object to the form.

20 A. No, I was not aware of any long delays.

21 Q. If there was a delay, could that lead to a
22 voter being disenfranchised in a given
23 election?

1 MS. MESSICK: Object to the form.

2 A. Potentially, depending upon the timing of
3 the request.

4 Q. Thank you. I'm trying to understand the
5 sources that were available to the board of
6 registrars in deciding whether a crime was
7 involved -- involved moral turpitude during
8 this era. One of the sources that was
9 available to them was the AOC list in the
10 election handbook; is that correct?

11 A. Right.

12 Q. Another source was the 2005 attorney
13 general opinion to Mr. Segrest about which
14 crimes involved moral turpitude or not; is
15 that correct?

16 A. That's correct.

17 Q. I do not --

18 MS. MESSICK: Do you need copies of
19 something?

20 MS. LANG: I do.

21 MS. MESSICK: Okay.

22 MR. SINCLAIR: I can do it.

23 MS. LANG: Thank you.

1 Q. We're going to --

2 MR. SINCLAIR: It's five minutes
3 till one.

4 MS. MESSICK: I'll just run it
5 right there.

6 MR. SINCLAIR: I've got it.

7 MR. GABER: Thank you.

8 MS. LANG: Thank you. We can go
9 off the record.

10 (Off the record.)

11 (Packard Exhibit 15 was marked for
12 identification.)

13 Q. (By Ms. Lang) So I just marked Packard
14 Exhibit 15, which is a board of registrars
15 handbook and -- or a portion of the board
16 of registrars handbook that's dated May 14,
17 2015. The final two pages of this excerpt,
18 there is a chart that has on one column
19 crimes involving moral turpitude and
20 another crimes not involving moral
21 turpitude. Do you know how this list was
22 created?

23 A. I do not know how this list was created. I

1 know it was created by John Bennett, but I
2 don't know how he came up with the list.

3 Q. This list was personally created by John
4 Bennett?

5 A. My understanding is it was created by John
6 Bennett.

7 Q. Were you involved in the creation of this
8 list?

9 A. No.

10 Q. Do you know if anyone else other than John
11 Bennett was involved in the creation of
12 this list?

13 A. I'm not aware of anyone else who may have
14 been involved. There may have been
15 somebody else, but I understood that John
16 Bennett had compiled this list.

17 Q. What was the position of John Bennett at
18 that time?

19 A. He was assistant to the chief of staff or
20 something like that. This was right when
21 they first came into office, so I don't --
22 I don't remember exactly what his title
23 was, but I think it might have been

1 assistant to the chief of staff.

2 Q. The front page confirms your belief --

3 A. Oh, there you go.

4 Q. -- that it was John Bennett, assistant to
5 the chief of staff. Do you know if anyone
6 was consulted in the creation of this list?

7 MS. MESSICK: Asked and answered.

8 A. I don't have any knowledge about how the
9 list was prepared.

10 Q. Okay. Thank you. Another potential source
11 is the list that Judge Brown may have been
12 keeping. But you are not aware of that
13 list being distributed; is that correct?

14 A. I'm not aware of that.

15 Q. Do you know if the board of pardons and
16 paroles kept a list of crimes that were and
17 were not involving moral turpitude?

18 A. I do not know.

19 Q. And are you aware if there were any
20 registrars that treated everything except
21 the few -- strike that.

22 In the 2005 attorney general opinion,
23 there are a few crimes that are identified

1 as definitively not involving moral
2 turpitude; is that correct?

3 A. I believe that's correct.

4 Q. Driving under the influence is --

5 A. Right.

6 Q. -- one example? To my knowledge, that's
7 the only source that has crimes that are
8 definitively not involving moral turpitude;
9 is that correct?

10 MS. MESSICK: Object to the form.

11 A. To my knowledge, that's correct.

12 Q. Were there any registrars, to your
13 knowledge, that treated everything except
14 the few crimes identified as not involving
15 moral turpitude in the 2005 AG opinion as
16 disqualifying?

17 A. I don't have any information on that.

18 Q. Do you think that may have been the case?

19 MS. MESSICK: Asked and answered.

20 A. I don't know.

21 Q. Do you know if registrars kept their own
22 internal list?

23 A. I don't know for a fact they did.

1 Q. In your declaration last year, you stated
2 that the secretary of state has also
3 provided individual guidance by phone to
4 registrars about whether a particular crime
5 is disqualifying. Is it true that most of
6 these inquiries were handled by phone
7 rather than e-mail?

8 A. I would suspect that they were mostly
9 handled by phone rather than e-mail.

10 Q. And did you handle some of these inquiries
11 by phone?

12 A. Yes. I took calls and then routed them to
13 whoever needed to assist them, the legal
14 counsel.

15 Q. Does the secretary of state have any
16 tracking system to ensure that the internal
17 guidance provided by the secretary of
18 state's office about specific crimes was
19 consistent?

20 MS. MESSICK: Object to the form.

21 A. I'm not aware of any tracking system of the
22 guidance given.

23 Q. But yourself, Clay Helms, and Judge Brown

1 all gave guidance at some point or another
2 about which crimes involved moral
3 turpitude; is that correct?

4 MS. MESSICK: Object to the form.

5 A. Well, I know Jean Brown did. I don't know
6 whether Clay has given -- what information
7 he may have given out. And I've given out
8 some information, but there's not been a
9 tracking system.

10 Q. Okay.

11 MS. LANG: We'll go off the record
12 now.

13 (Lunch recess.)

14 MS. MESSICK: We're back on the
15 record after lunch, and I am handing to
16 Danielle a production of Bates No. D150682
17 and D150683. And, also, Danielle, you were
18 going to let us have one moment to clarify
19 some testimony earlier about other
20 depositions that Mr. Packard might have sat
21 for.

22 A. Right. You had asked me if I had
23 participated in any previous depositions,

1 and I had neglected to mention -- I forgot
2 to mention that I had participated in a
3 deposition in a lawsuit regarding the
4 Uniformed and Overseas Absentee Voting Act
5 litigation.

6 Q. (By Ms. Lang) Thank you, Mr. Packard.

7 A. Thank you. I'd like to -- I'm going to
8 hand you a document that will be marked as
9 Packard Exhibit 16.

10 (Packard Exhibit 16 was marked for
11 identification.)

12 Q. This is an e-mail chain between yourself --
13 sent to you from Mr. Harry Butler. And I
14 believe we've established that Mr. Butler
15 is a registrar in Etowah County; is that
16 correct?

17 A. Yes.

18 Q. He references in the e-mail that Laural
19 Bunn had sent around to all of the
20 registrars a list of additional criminal
21 codes that she had determined with Judge
22 Brown involved moral turpitude, and
23 Mr. Butler asks you if it was appropriate

1 for one registrar to send such a list to
2 the whole registrar -- to all of the
3 registrars. Do you recall this e-mail?

4 A. Uh-uh. I do not recall this e-mail.

5 Q. Do you think it would be appropriate for
6 one registrar to send a list of crimes that
7 they believe are disqualifying to the
8 remainder of the board of registrars?

9 A. Yes. I don't -- I wouldn't have any
10 concern about that.

11 Q. Did anyone from the secretary of state's
12 office ever clarify with the registrars
13 whether they should follow this list that
14 Ms. Bunn had sent around?

15 A. I'm not aware of any communication like
16 that that was sent out.

17 Q. Let me give you what I'm going to mark as
18 Packard Exhibit 17, which is an e-mail from
19 Lucy Kynard. I apologize if I'm
20 mispronouncing her name.

21 (Packard Exhibit 17 was marked for
22 identification.)

23 Q. Who is Lucy Kynard?

1 A. She is a registrar in Perry County.

2 Q. And can you read this e-mail and then

3 explain to me what it's about?

4 A. Read it aloud or --

5 Q. You don't have to read it out loud, no.

6 (Witness reviews document.)

7 A. Okay. This is an e-mail from Lucy Kynard.

8 She also references the e-mail that Laural

9 Bunn sent out with the list of codes and

10 whether they're moral turpitude or not that

11 Jean Brown assisted her with. Then she

12 also mentions that that list is not

13 reflected in the election handbook and that

14 she also got information from Pinky

15 Reichert of Coosa County about another

16 criminal conviction code CHAB as supposedly

17 having been determined that it was moral

18 turpitude but it's not in the handbook

19 either. And then she reports that the

20 felon match list that comes out each week

21 has names on it that -- she says it has

22 names on it that are not on the list. I'm

23 not sure what she means there. And then

1 apparently -- and apparently the felon
2 match list includes names of people who
3 have been convicted of moral turpitude
4 crimes but they've got a record of pardons
5 on file with them so they've reinstated
6 them, because I guess they had been
7 previously removed.

8 Q. Great. So is it correct to report that
9 Ms. Kynard still didn't know two years
10 later if she should follow the guidance
11 that had been sent around by Ms. Bunn?

12 A. That appears to be the case, yes.

13 Q. And based on what's reported from
14 Ms. Kynard, does it appear as though
15 decisions were made that certain crimes
16 involved moral turpitude by Judge Brown but
17 that guidance given by the secretary of
18 state to the registrars was not updated to
19 include those conviction codes?

20 MS. MESSICK: Object to the form.

21 A. Can you restate the question?

22 Q. Yes. Judge -- it does appear that Judge
23 Brown was making individual determinations

1 that certain convictions were
2 disqualifying; is that correct?

3 MS. MESSICK: Object to the form.

4 A. I think that she was advising them of
5 certain crimes that she felt were moral
6 turpitude crimes, or had concluded were
7 moral turpitude crimes.

8 Q. And some of those codes were included in
9 Ms. Bunn's e-mail?

10 A. Correct.

11 Q. And some of those -- one of those was
12 included in an e-mail from Ms. Pinky
13 Reichert?

14 A. Yes.

15 MS. MESSICK: Object to the form.

16 A. Well, I'm not sure. The one -- the e-mail
17 from Pinky Reichert, I don't know if that
18 came from Jean Brown or if that was from
19 some other source.

20 Q. Fair enough. Thank you. At least with
21 respect to Ms. Bunn's e-mail, those codes
22 were not added to any official guidance in
23 the election handbook or board of

1 registrars handbook after Judge Brown made
2 those determinations?

3 MS. MESSICK: Object to the form.

4 A. Right. That's correct.

5 Q. I'll hand you what I'm going to mark as
6 Packard Exhibit 18.

7 (Packard Exhibit 18 was marked for
8 identification.)

9 Q. This is an e-mail chain between yourself
10 and Jody Campbell. Who is Jody Campbell?

11 A. Jody Campbell is the circuit clerk in
12 Baldwin County and also serves, when she's
13 able, as the absentee election manager.

14 Q. And Jody Campbell reported to you on
15 September 16, 2016, that a voter had been
16 denied registration on the basis of an
17 unlawful-possession-of-a-controlled-
18 substance conviction; is that correct?

19 A. Yes.

20 Q. And she was writing to you in confusion
21 because she believed that possession was
22 not a disqualifying crime; is that correct?

23 A. That is correct.

1 Q. And you ultimately referred her to Jean
2 Brown?

3 A. Yes, that's correct.

4 Q. And you were not clear as to whether or not
5 unlawful possession of a controlled
6 substance not marijuana was a disqualifying
7 conviction?

8 MS. MESSICK: Object to the form.

9 A. Right.

10 Q. According to this e-mail, you were not
11 clear in 2016 that unlawful possession was
12 a disqualifying offense; is that correct?

13 A. Right.

14 MS. MESSICK: Object to the form.

15 A. Right. That's correct.

16 Q. Earlier in your testimony, you let me know
17 that at some point, the board of registrars
18 had been told that unlawful possession of a
19 controlled substance was not a
20 disqualifying offense; is that correct?

21 A. That's correct.

22 Q. Does this e-mail refresh your recollection
23 about when that may have occurred?

1 A. When I came to know that it was a moral
2 turpitude -- or not a moral turpitude
3 felony? No, it doesn't help me recall when
4 I became aware of that.

5 Q. Would it be sometime after this e-mail was
6 sent?

7 A. It would be after this e-mail, yes.

8 Q. So up until September of 2016, it was not a
9 clear practice that unlawful possession of
10 a controlled substance was not a
11 disqualifying felony?

12 A. It was not within my knowledge.

13 Q. And it appears that it was also not within
14 the knowledge of the board of registrars in
15 Shelby County?

16 MS. MESSICK: Object to the form.

17 A. Correct. According to the -- according to
18 the prospective voter, yes.

19 Q. Thank you. I'm handing you what I'll mark
20 as Packard Exhibit 19.

21 (Packard Exhibit 19 was marked for
22 identification.)

23 Q. This is a pretty lengthy e-mail chain

1 between yourself and a prospective voter
2 named Richard Bearden. Do you recall
3 talking to this gentleman?

4 A. I don't recall the communications with this
5 gentleman.

6 Q. So he starts out the e-mail chain by just
7 asking you how he can get registered to
8 vote, but it becomes apparent through your
9 e-mails that he does have a felony
10 conviction, at which point you ask him for
11 his convictions. And he provides them to
12 you, and that's on page 4 of this e-mail
13 chain -- 5 of this e-mail chain. Do you
14 see that?

15 MS. MESSICK: Object to the form.

16 A. Yes, I see that.

17 Q. And he clarifies in the following page that
18 he only actually has one felony conviction,
19 and that is for unlawful manufacturing of a
20 controlled substance in the first degree;
21 is that correct?

22 A. Yes, I see that.

23 MS. LANG: If we can go off the

1 record.

2 (Off the record.)

3 Q. (By Ms. Lang) And he asks you on April 21,
4 2017, if he can be reasonably sure that he
5 did not lose his rights -- that he did lose
6 his rights with his prior felony
7 conviction. And he tells you that he's
8 just really not sure if that would be
9 disqualifying or not and that he would
10 think there would be a database that would
11 allow him to know if he had the right to
12 vote or not. And he also says it is
13 incredibly difficult to figure it out and
14 that he doesn't want to get himself in
15 trouble; is that correct?

16 A. That --

17 MS. MESSICK: Object to the form.

18 A. That is correct.

19 Q. What did you end up telling Mr. Bearden?

20 A. Well, I gave him a couple different pieces
21 of advice. I gave him advice that he could
22 speak with the board of pardons and paroles
23 since he indicated he completed all the

1 terms of his sentence, that they could
2 restore his voting rights, and that he
3 could speak to them about how to have his
4 rights restored to carry a firearm. When
5 he continued to ask about whether he was
6 disqualified or not, I recommended that he
7 speak to the Jefferson County Board of
8 Registrars since he was from Jefferson
9 County and that they could tell him for
10 sure whether he was disqualified from
11 voting or not.

12 Q. And why didn't you refer Mr. Bearden to
13 Judge Brown?

14 A. I don't recall why I didn't.

15 Q. Okay. Do you agree with Mr. Bearden that
16 it could be very difficult for the average
17 person to determine whether or not their
18 felony conviction was disqualifying or not?

19 MS. MESSICK: Object to the form.

20 A. Yes, I would agree with that.

21 Q. He engaged in a two-week-long e-mail
22 exchange with the director of elections and
23 did not get to a result of whether or not

1 he was eligible to vote or not; is that
2 correct?

3 A. That's correct.

4 MS. MESSICK: Object to the form.

5 Q. I'll give you what I'll mark as Packard
6 Exhibit 20.

7 (Packard Exhibit 20 was marked for
8 identification.)

9 Q. I'd also like to give at the same time what
10 I'll mark as Exhibit 21. These are related
11 e-mails.

12 (Packard Exhibit 21 was marked for
13 identification.)

14 Q. Both relate to an original e-mail sent on
15 October 6, 2016 from a woman named Beverly
16 Jo Jones who's alleging that she's
17 improperly being disenfranchised on the
18 basis of a prior felony conviction and
19 threatens to file a lawsuit because of it;
20 is that correct?

21 MS. MESSICK: Danielle, could you
22 give us a minute to look at it, please?

23 MS. LANG: Absolutely.

1 (Witness reviews document.)

2 MS. MESSICK: When he's done
3 reading, I'm going to ask the court
4 reporter to read back your characterization
5 of what the e-mail said now that we've
6 had -- once we've had a chance to read it.

7 A. Okay. I'm ready.

8 (Court reporter reads back the last
9 question.)

10 MS. MESSICK: Thank you.

11 A. Yes, that appears to be correct.

12 Q. And David Brewer sent you an e-mail the
13 following day asking you to inform
14 Secretary Merrill of this matter?

15 A. That is correct.

16 Q. Did you do that?

17 A. I don't have a recollection of doing that,
18 but that would have been the normal
19 practice.

20 Q. And why -- when was it the normal practice
21 to advise Secretary Merrill of an issue
22 like this?

23 MS. MESSICK: Object to the form.

1 A. Well, it depends on the seriousness or the
2 nature of the questions or charges that are
3 being contained in the message that comes
4 in. And so David Brewer, the chief of
5 staff, he'll make determinations at times
6 that certain things need to be reported to
7 the secretary and other things don't.

8 Q. And then David Brewer also says that,
9 quote, we will discuss together, parens,
10 our team of staff and report to him
11 thereafter. Who would be the, quote, team
12 of staff in that e-mail?

13 MS. MESSICK: Object to the form.

14 A. Generally that would have included at that
15 time Jean Brown, Brent Beal, Clay Helms --
16 Jean being legal counsel, Brent Beal being
17 legal counsel, and Clay Helms who at that
18 time would have been supervisor of voter
19 registration -- and then David Brewer
20 himself and John Bennett, the assistant to
21 the chief of staff.

22 Q. And do you recall what you -- what this
23 group discussed about Ms. Jones?

1 MS. MESSICK: Object to the form.

2 A. I don't -- I don't recall the actual
3 conversation that we had.

4 Q. And then on October 12th, you responded to
5 Ms. Jones; is that correct?

6 A. Yes.

7 Q. And what was the summary of your response?

8 A. Well, basically, we advised her that we
9 appreciated her contacting us and that the
10 secretary of state's office doesn't make
11 the determination as to whether someone is
12 eligible to vote; that's the registrar's
13 responsibility. We also explained further
14 the election process, that we don't tally
15 the election returns, and then provided
16 information about restoration of voting
17 rights and directed her to the pardons and
18 paroles website.

19 Q. Thank you. Do you know if yourself or
20 Mr. Helms or any other member of the
21 secretary of state's office followed up
22 with the board of registrars in Ms. Jones'
23 county, in Mobile County, to determine

1 whether or not she was being properly
2 disqualified?

3 A. I'm -- I don't have any recollection that
4 anybody followed up with the registrar's
5 office.

6 Q. Would it ordinarily be the practice of the
7 secretary of state's office to follow up on
8 this type of matter?

9 A. Again, it depends on the -- the particular
10 circumstances. In this case, it's hard to
11 tell from her letter whether this would
12 have triggered us to launch a review or
13 not.

14 Q. And you don't recall if you launched a
15 review or not?

16 A. I don't recall there being a review.

17 Q. Was this as far -- strike that. I'm going
18 to give you what I'm marking as Packard
19 Exhibit 22.

20 (Packard Exhibit 22 was marked for
21 identification.)

22 Q. And this is an e-mail chain that originated
23 from a woman named Shirley McDonald to

1 yourself and Clay Helms and Daniel Dean and
2 Janice McDonald and then you followed up
3 with the internal secretary of state team.

4 Who is Shirley McDonald? Do you know?

5 A. All I can tell from the e-mail is that she
6 was a prospective voter.

7 Q. Okay. Who's Janice McDonald?

8 A. Janice McDonald is a member of our staff,
9 formerly the director of elections and
10 currently a retired state employee working
11 in the office.

12 Q. And who is Daniel Dean?

13 A. And Daniel Dean was another employee in the
14 office. He works in the elections
15 division.

16 Q. And what was his title?

17 A. I'm not sure what his title was at the
18 time.

19 Q. Okay. And Ms. McDonald reported to her --
20 reported to you her belief that the
21 chairman of the board of registrars in
22 Limestone County was giving out false
23 information about the eligibility of people

1 with convictions and was doing so
2 intentionally to stop minorities from
3 voting.

4 MS. MESSICK: Object to the form.

5 Q. Is that correct?

6 A. That's correct.

7 Q. And you write back, I am handling this one,
8 to the secretary of state team; is that
9 correct?

10 A. That is correct.

11 Q. How did you handle this one?

12 A. To the best of my recollection, I contacted
13 Lee Liveoak and advised him what the proper
14 restoration-of-rights procedure is and
15 that -- to make sure he understood that
16 once they served their time and they've
17 completed all the terms of their sentence,
18 they could get their voting rights back to
19 the pardons and paroles board if it had
20 been a moral -- you know, a disqualifying
21 felony conviction.

22 Q. Did you also talk to him about how all
23 felony convictions were not disqualifying?

1 A. Right, that is correct. I would have.

2 Q. Do you recall this conversation in
3 particular?

4 A. I do. I do recall speaking to Lee Liveoak
5 about this particular matter.

6 Q. And was Mr. Liveoak receptive to your
7 comments?

8 A. Yes, he was.

9 Q. Did you tell him that there was an
10 allegation that he was racially
11 discriminating against voters?

12 A. Yes. I shared with him the content of this
13 letter.

14 Q. And what was his response?

15 A. He -- he was surprised and -- and said that
16 he wasn't discriminating. That's about all
17 I can recall about his reaction to it.

18 Q. Did your office do any further
19 investigation into whether or not there was
20 a racially discriminatory pattern in
21 Mr. Liveoak's behavior?

22 A. I'm not aware that there was any other
23 investigation to look into it deeper.

1 Q. Did you speak to Shirley McDonald any
2 further?

3 A. I don't recall. It would have been normal
4 practice to have responded, but I don't
5 recall responding to her.

6 Q. And you didn't speak to her on the phone?

7 A. Not that I recall.

8 Q. No one visited her to talk about her
9 allegations?

10 A. Not that I can recall.

11 Q. Earlier in your testimony I asked if -- if
12 you'd heard of racial -- racially-charged
13 allegations about the administration of
14 felony -- the felony disenfranchisement
15 law. Does this refresh your recollection
16 that you have heard such allegations?

17 MS. MESSICK: Object to the form.

18 A. I'm trying to remember my comment that I
19 made to you earlier.

20 Q. It would make sense to me --

21 A. But, yeah, this does -- this does -- this
22 does remind me that I've heard some
23 racially-charged allegations before.

1 Q. And are you certain this is the only one?

2 MS. MESSICK: Object to the form.

3 A. I can't be certain.

4 Q. Do you think this is the only one?

5 MS. MESSICK: Object to the form.

6 A. I can't be certain that it's the only one.

7 Q. Thank you. I'm going to hand you what

8 we'll mark as Packard Exhibit 23.

9 (Packard Exhibit 23 was marked for
10 identification.)

11 Q. If you could just take a moment to review
12 this e-mail chain between yourself and Clay
13 Helms and Barry Stephenson.

14 (Witness reviews document.)

15 MS. MESSICK: I know there wasn't a
16 question, but I'm going to object to the
17 statement because it's not -- it starts
18 with Barry Stephenson, but then he's not
19 part of the entire chain. Different people
20 come in and fall off.

21 MS. LANG: Yes. That's accurate.

22 A. Okay. I'm ready.

23 Q. In May 2016, Mr. Stephenson wrote to Clay

1 Helms -- strike that.

2 Who is Barry Stephenson, to start?

3 A. Barry Stephenson is the chairman of the
4 Jefferson County Board of Registrars.

5 Q. How long has he held that position?

6 A. That's been many years. I can't remember
7 when he took office.

8 Q. Great. And he is reporting that in one
9 week he received 2,258 electronic voter
10 registrations from ALEA, which is the
11 agency that processes driver's licenses; is
12 that correct?

13 A. That is correct.

14 Q. Do you know why there was a sudden uptick
15 in the number of driver's license voter
16 registration forms that were received by
17 the board of registrars?

18 A. Well, they -- well, earlier that year in
19 2016, we revamped our compliance process
20 with the National Voter Registration Act to
21 where ALEA performed electronic voter
22 registration through their offices, and so
23 actually Jefferson County had been seeing a

1 high volume of registrations ever since
2 that began, which would have been several
3 months before this.

4 Q. And did they find a way to make it
5 sustainable? He says it's unsustainable
6 here.

7 MS. MESSICK: Object to the form.

8 A. They're processing the applications.
9 That's all I know. I don't know if the
10 volume is still the same or -- you know.

11 Q. Okay. And he's particularly concerned that
12 a higher number of people with felony
13 convictions were coming through this
14 system; is that correct? He characterizes
15 them as criminals.

16 A. Yes, that is correct.

17 Q. And his proposal is to put up a disclaimer
18 that if a person has a criminal conviction,
19 they need to check with the pardon and
20 parole board to see if their rights have
21 been restored; is that correct?

22 A. Yes, that's correct.

23 Q. When you saw this e-mail, were you

1 concerned that Mr. Stephenson thought that
2 would be an appropriate response?

3 A. Yes, as I think my e-mail shows.

4 Q. Yeah. You let Clay know to tell
5 Mr. Stephenson that that would not be
6 appropriate because not all felonies are
7 disqualifying; is that right?

8 A. Right.

9 MS. MESSICK: Object to the form.

10 A. Right.

11 Q. Did anybody check Jefferson County Board of
12 Registrars to determine whether or not the
13 county was disenfranchising all people with
14 felony convictions after this e-mail was
15 received?

16 A. I don't have any knowledge of anybody
17 checking on that.

18 Q. And the second part of your response said
19 that, We cannot appear to be putting up a
20 barrier to registration for those
21 individuals who do not need or have to get
22 their rights restored; is that right?

23 A. Right. That's correct.

1 Q. What did you mean by you didn't want to
2 appear to be putting up a barrier?

3 A. Well, we wouldn't have wanted to instruct
4 people to check with pardons and paroles if
5 they didn't -- if they weren't convicted of
6 a disqualifying felony.

7 Q. Was there any training given to the
8 driver's license agency about how to advise
9 people with felony convictions about
10 whether or not they were eligible to vote
11 or not?

12 MS. MESSICK: Object to the form.

13 A. No. The only training that was conducted
14 with the driver's license offices were how
15 to administer the computer system with the
16 electronic registration and that they had
17 to post in their offices the list of
18 requirements, but there's nothing specific
19 about how to answer the questions if
20 someone is -- has a question about being
21 potentially disqualified.

22 Q. And the list of requirements put up in
23 driver's license agencies says what about

1 felony convictions?

2 MS. MESSICK: Object to the form.

3 A. It's the same verbiage from the voter
4 registration application that says that
5 I've not been convicted of a disqualifying
6 felony.

7 Q. And no --

8 A. Or had my rights restored, right.

9 Q. And no additional information was given to
10 the driver's license agency either in the
11 form of training or public education
12 materials about what "disqualifying felony"
13 meant?

14 MS. MESSICK: Object to the form.

15 A. No, not to my knowledge.

16 Q. Let me give to you what I will mark as
17 Packard Exhibit 24.

18 (Packard Exhibit 24 was marked for
19 identification.)

20 Q. The e-mail and the attached document are
21 from Mr. John Bennett about the difficulty
22 administering the moral turpitude
23 provision, and I want to call your

1 attention in particular to the memorandum
2 he sent you. The second sentence says, One
3 issue that has been voiced from the
4 beginning is related to the legally
5 ambiguous term "moral turpitude" being one
6 qualifying aspect to a registrant's
7 possible inability to register.

8 Would you agree with Mr. Bennett that
9 the term was ambiguous?

10 MS. MESSICK: Object to the form.

11 A. Yes, I think that's one way you can
12 characterize the phrase "moral turpitude."

13 Q. And then the last sentence of his -- this
14 first paragraph says, Additionally, we have
15 found some issues related to this
16 disqualifying factor that might change
17 depending on whether the individual was
18 attempting to vote in a local election as
19 opposed to a national election.

20 Are you aware of any circumstances
21 surrounding the implementation of the moral
22 turpitude provision that differed depending
23 on whether the individual was attempting to

1 vote in a local election as opposed to a
2 national election?

3 A. No, I'm not aware of any difference based
4 on type of election.

5 Q. Did you talk to Mr. Bennett about this
6 memorandum?

7 A. I don't -- I don't recall any conversation
8 with them or what that conversation may
9 have been if I did. This was prior to the
10 secretary, the current secretary, taking
11 office and before John Bennett was an
12 actual employee of the office.

13 Q. So what was John Bennett's position at that
14 time?

15 MS. MESSICK: Object to the form.

16 Q. Or how was John Bennett employed at the
17 time he sent you this?

18 MS. MESSICK: Object to the form.

19 A. I'm not sure -- I'm not sure how he was
20 employed, but he was working with Secretary
21 Merrill on the transition into office after
22 being elected.

23 Q. So this was during the transition period?

1 A. Right.

2 Q. Okay. Do you know what Mr. Bennett's role
3 was on the transition team?

4 A. I do not know what his role was on the
5 transition team.

6 Q. Thank you. I'll give you what's going to
7 be marked Packard Exhibit 25.

8 (Packard Exhibit 25 was marked for
9 identification.)

10 Q. And this is your response to Mr. Bennett's
11 memo. And we don't have to go into the
12 details. I believe you correctly laid out
13 the reasons why Mr. Bennett's solution in
14 which everyone would have to go through the
15 CERV process would not be proper under the
16 law. Do you recall if there were any kind
17 of further conversations with Mr. Bennett
18 about his proposal?

19 A. I don't recall anything after this.

20 Q. Okay. I'm going to shift gears a little
21 bit away from talking about the old system
22 and talking a little bit about how we got
23 to the new law that was passed. I'm very

1 used to calling the new law HB 282. It
2 came up in yesterday's deposition that
3 that's really not the proper term. The
4 proper term is Act 2017-378. I'm going to
5 continue to refer to the bill as HB 282
6 because otherwise I think I'm likely to
7 make a lot of errors. Can we all agree
8 that when I refer to HB 282, I'm referring
9 to the law that passed in 2017 that's
10 Act 2017-378?

11 A. That's fine.

12 MS. MESSICK: Which is the act --

13 A. That's fine.

14 MS. MESSICK: -- that lists the
15 moral turpitude crimes.

16 Q. Okay.

17 A. That's fine with me.

18 Q. Thank you. It's just really for my own
19 comfort. After Secretary of State Merrill
20 took office, when did he first raise with
21 you the possibility of drafting a law that
22 would define moral turpitude?

23 MS. MESSICK: Object to the form.

1 A. I don't remember when he first raised that
2 issue with me.

3 Q. When did you start working on potential
4 drafts of a moral turpitude bill?

5 MS. MESSICK: Object to the form.

6 A. I don't remember exactly when I started,
7 but it was after we formed the subcommittee
8 on -- or formed the committee to look at
9 voter disenfranchisement and restoration of
10 rights. I don't recall there being
11 anything before that.

12 Q. Do you remember working with Representative
13 England on a potential bill before the
14 committee was created?

15 A. I don't, but I guess you've got something
16 that says there might be.

17 Q. I'm going to mark as Exhibit 26 a document
18 that may refresh your recollection.

19 (Packard Exhibit 26 was marked for
20 identification.)

21 A. In February of 2015, you sent a draft bill
22 to Representative England that Secretary
23 Merrill hoped he would review.

1 A. Okay.

2 Q. Is that right?

3 A. Yes, that's what this document is.

4 Q. Who drafted this version of the bill in
5 2015?

6 A. I would have been the primary drafter on
7 it, to the best of my recollection.

8 Q. Okay. And when was this committee created?
9 Do you remember?

10 A. I don't remember the date it was created.

11 Q. Okay. If I told you that the first meeting
12 of the exploratory committee was on
13 November 18, 2015, does that sound correct
14 to you?

15 A. That would -- that sounds like that could
16 be correct.

17 Q. I'm happy to show you the minutes.

18 A. Okay.

19 Q. If you could confirm that the first meeting
20 was on November 18, 2015.

21 A. Yes.

22 Q. Okay.

23 MS. MESSICK: Can I just see if it

1 says it's the first meeting as opposed to
2 just a meeting?

3 MS. LANG: I mean, there's a bunch
4 of documents that say that there were three
5 meetings, and these were all the minutes
6 that were provided to me.

7 (Ms. Messick reviews documents.)

8 MS. MESSICK: Okay.

9 Q. (By Ms. Lang) Okay. So this e-mail to
10 Representative England predates the
11 exploratory committee; is that right?

12 A. Yes, that's correct.

13 Q. And you would have been the primary drafter
14 of this bill?

15 MS. MESSICK: Asked and answered.

16 A. To the best of my recollection, yes.

17 Q. Okay. And how did you determine what
18 convictions to put on this list of 32
19 convictions in the draft bill?

20 A. I really don't remember what that process
21 was, but it looks like it's -- just from
22 looking at it, it looks like it's mainly
23 based on the AOC list.

1 Q. And would Secretary Merrill have been
2 involved in working with you to determine
3 which crimes should be included or not?

4 A. There -- there would have been a group
5 effort.

6 Q. Who would have been --

7 A. But I --

8 Q. -- part of that group?

9 A. I don't remember who all may have
10 participated.

11 Q. Did Secretary Merrill participate?

12 A. He would have reviewed the legislation. I
13 don't remember if he gave any input on the
14 actual list of crimes, but he would have
15 reviewed the legislation before it was sent
16 out to anybody.

17 Q. He would need to sign off on it --

18 A. Right.

19 Q. -- before it was sent out?

20 A. Correct.

21 Q. Okay.

22 A. And he would have directed me to send it to
23 Representative England.

1 Q. Who else may have been involved in helping
2 you draft this bill?

3 MS. MESSICK: Object to the form.

4 A. Again, I'm not sure that anybody else was
5 involved, but on some of these things, we
6 would have had a team effort. But I don't
7 recall who may -- who else may have been
8 involved.

9 Q. And since you were the drafter of this
10 legislation, is there a reason why you
11 excluded public corruption crimes such as
12 bribery, public corruption, and perjury
13 from this list?

14 MS. MESSICK: Object to the form.

15 A. No, there wasn't any particular reason for
16 excluding them.

17 Q. Would you think that bribery would be a
18 crime involving moral turpitude?

19 A. It could be.

20 Q. A number of drug crimes are included on
21 this list. Can you tell me why drug crimes
22 are crimes involving moral turpitude?

23 A. Why drug crimes are crimes of moral

1 turpitude?

2 Q. Yes.

3 MS. MESSICK: Object to the form.

4 A. Again, I believe this list is -- is
5 primarily based on the AOC list, so we took
6 what the courts had previously decided had
7 been as moral turpitude crimes and included
8 them in this particular bill.

9 Q. Thank you. I'm going to give you what
10 we'll mark as Packard Exhibit 27, and it's
11 an e-mail and its attachment, which is why
12 there's a paper clip.

13 (Packard Exhibit 27 was marked for
14 identification.)

15 Q. And this is an e-mail from you
16 approximately a month later to
17 Representative Jones about the moral
18 turpitude bill; is that correct?

19 A. Yes, that's correct.

20 Q. So was Secretary Merrill hoping that both
21 Representative Jones and Representative
22 England would support this bill?

23 MS. MESSICK: Object to the form.

1 Do you have the other attachments?

2 MS. LANG: No.

3 MS. MESSICK: Okay.

4 A. To the best of my knowledge, since we were
5 e-mailing both of them then, I would
6 suspect Secretary Merrill was hoping that
7 they would both support the bill.

8 Q. And you talk about arranging a meeting with
9 Representative Jones. Did that meeting
10 occur?

11 A. I don't recall the meeting, but -- I don't
12 recall the meeting.

13 Q. Have you ever met with Representative
14 Jones?

15 A. I don't -- I don't recall meeting with him.
16 We may have, but I just don't recall it.

17 Q. And in this e-mail, you say Secretary
18 Merrill plans to attend if he can. Did
19 Secretary Merrill meet with legislators
20 about legislation that he's supporting?

21 A. He would have communicated or talked with
22 them with legislators when he was
23 interested in their support.

1 Q. And the attachment, or one of the
2 attachments to the e-mail, is headed
3 "crimes to potentially include in moral
4 turpitude bill." Who created this list?

5 A. To the best of my recollection, I was the
6 one that created this list.

7 Q. And do you know how you -- how you chose
8 these crimes to suggest adding to the bill?

9 A. I don't recall the exact process used for
10 identifying these crimes.

11 Q. Do you have any memory of why you might
12 have chosen these crimes?

13 A. Well, they seemed like to me that they were
14 serious enough and of great enough
15 importance that they should be included.

16 Q. Did you look at a code?

17 A. I would have looked at the Code of Alabama.

18 Q. Did anybody else provide input on this list
19 of nine additional crimes?

20 A. I don't remember -- I don't recall anybody
21 providing any further input on it, but
22 there may have been other input after they
23 saw the list.

1 Q. I'll give you what's marked as Packard
2 Exhibit 28.

3 (Packard Exhibit 28 was marked for
4 identification.)

5 Q. And in this e-mail, you send to a woman
6 named Karen a draft of the moral turpitude
7 bill. Who is Karen in this e-mail?

8 A. I am not sure, because I -- that e-mail
9 address looks familiar, but I can't think
10 of who that person is.

11 Q. Do you think you might be able to determine
12 who that is if you were to look at your
13 e-mail?

14 A. I might be able to. Not sure.

15 Q. Do you remember sharing the draft of the
16 bill with anyone other than Representative
17 Jones or Representative England?

18 MS. MESSICK: Object to the form.

19 A. No, I don't recall offhand.

20 Q. What happened to this draft bill that was
21 finalized on or before March 9, 2015?

22 MS. MESSICK: Object to the form.

23 A. I -- I don't have a recollection of what

1 happened to the bill, because they had a
2 different team that actually worked on the
3 legislative effort.

4 Q. And who was that?

5 A. That would have been Brandon Walters
6 coordinated our legislative effort for the
7 secretary. And, of course, the secretary
8 would have been involved.

9 Q. And Brandon Walters, was he involved in the
10 passage of HB 282 as well?

11 A. No.

12 Q. Who was involved in the legislative side of
13 HB 282 from the secretary of state's
14 office?

15 A. Brent Beal.

16 Q. Brent Beal. Thank you. And was the
17 secretary personally involved in helping
18 ensure that HB 282 was passed?

19 A. I don't have any personal knowledge that he
20 was, but I suspect he was.

21 Q. I'm just trying to determine if anyone is
22 looking for a breaking point.

23 A. I'm okay right now.

1 MS. MESSICK: Keep going.

2 Q. So I'd like to shift gears and talk about
3 the exploratory committee that you've
4 mentioned a couple of times. And I'm going
5 to mark as Exhibit 29 the minutes for that
6 committee.

7 (Packard Exhibit 29 was marked for
8 identification.)

9 Q. And these minutes were included as an
10 attachment to your declaration in this case
11 last year, and that's why you'll see the
12 court header at the top that indicates what
13 document number it is on the docket. Who
14 prepared the minutes for the exploratory
15 committee?

16 A. My recollection is that David Brewer
17 prepared them. Well, no. Actually, I
18 don't recall who prepared the minutes for
19 this committee.

20 Q. We're going to have to switch copies again.
21 I just saw that I've written on your copy.
22 I apologize.

23 (Packard Exhibit 29 was re-marked

1 for identification.)

2 Q. So you're not sure who --

3 A. Yeah.

4 Q. -- prepared the minutes?

5 A. Right. I don't recall who prepared the
6 minutes.

7 Q. Secretary Merrill signed off on the
8 minutes; is that right?

9 A. Yes.

10 Q. Yeah. Do you remember if John Bennett
11 attended any of these meetings to take
12 notes?

13 MS. MESSICK: Object to the form.

14 A. I don't have a -- I don't have a memory of
15 that.

16 Q. Okay. So could you tell me a little bit
17 about why this exploratory committee was
18 created?

19 MS. MESSICK: Object to the form.

20 A. Well, Secretary Merrill had heard the
21 concerns about there not being an
22 authoritative list of moral turpitude
23 felonies to be used for disenfranchising

1 voters and so he wanted to do something
2 about that. And so he decided to form a
3 committee where he could get the input from
4 various people across a wide spectrum to --
5 so that there would be an authoritative
6 list that could be used by registrars in
7 determining who should be disenfranchised
8 or not.

9 Q. Right. He had already drafted a bill, or
10 rather you had already drafted a bill --

11 A. Right.

12 Q. -- for him; is that right?

13 A. Right. That's correct.

14 MS. MESSICK: Asked and answered.

15 And object to the form.

16 Q. So why after the fact did Secretary Merrill
17 want to create a committee to explore the
18 issue?

19 A. Well, because the first draft didn't go
20 anywhere, so -- there may have been
21 political reasons. I'm not sure.

22 Q. Okay. I'd love to talk a little bit about
23 how the members of this committee were

1 selected. Who decided who the members on
2 the committee would be?

3 A. Secretary Merrill.

4 Q. Did he put together the original proposed
5 list of members?

6 A. That's my recollection.

7 Q. Did you have input on who was going to be
8 on the committee?

9 A. No.

10 Q. But you attended the meetings; is that
11 correct?

12 A. I did attend the meetings, yes.

13 Q. If you don't mind, I'm going to talk
14 through the members of the committee. Who
15 is Ms. Darlene Biehl?

16 A. Well, as it says here, she's a volunteer
17 crime victims advocate. She works in that
18 area.

19 Q. Do you know what office she works with or
20 volunteers for?

21 A. I do not know where she works right now.

22 Q. Okay. Then Ms. Holly Caraway was there
23 representing State Senator Linda Coleman.

1 And then the next member is Mr. Michael
2 Coleman, who's the executive director of
3 Hope Ministries. Do you know what Hope
4 Ministries is?

5 A. Yes. It's a local community-outreach type
6 organization that's faith-based here in
7 Montgomery.

8 Q. Do you know if Secretary Merrill knows
9 Michael Coleman?

10 A. To my knowledge, he does.

11 Q. Did he know him before this committee was
12 created?

13 MS. MESSICK: Object to the form.

14 A. I don't know what the nature of their
15 relationship was before this committee.

16 Q. So you're not sure why Secretary Merrill
17 chose to include him?

18 A. No. I don't have any personal knowledge of
19 why he selected him.

20 Q. Do you know anything about the relationship
21 between Secretary Merrill and Darlene
22 Biehl?

23 A. No.

1 Q. Jefferson Dunn is the Commissioner for the
2 Alabama Department of Corrections. Is that
3 still the case, if you know?

4 A. I don't know --

5 Q. Okay.

6 A. -- to be honest with you.

7 Q. Ms. Carol Hill is a registrar for the
8 Shelby County Board of Registrars, and she
9 was included in the committee. Do you know
10 why Ms. Carol Hill was selected rather than
11 a different registrar?

12 A. I don't know.

13 Q. Who is Mr. Quin Hillyer?

14 A. Well, as it indicates, he was a freelance
15 journalist that for whatever reason
16 Secretary Merrill thought he would be
17 useful on the committee.

18 Q. Do you have any sense of what that
19 "whatever reason" is?

20 MS. MESSICK: Object to the form.

21 A. No, I don't.

22 Q. After attending three meetings of this
23 committee, do you have an understanding of

1 why Mr. Hillyer was included in the
2 committee?

3 MS. MESSICK: Object to the form.

4 A. No. Maybe I'm dense, but no.

5 Q. I don't understand it. Did anybody ever
6 raise the question of why Mr. Hillyer was
7 included in the committee?

8 A. Not to my knowledge.

9 Q. Okay. Do you know if Secretary Merrill and
10 Mr. Hillyer have a personal relationship?

11 A. I do not.

12 Q. Okay. And then Judge Jolley was included
13 on the committee. Do you know why he was
14 selected?

15 A. No, I don't know why he was selected over,
16 say, some other circuit judge.

17 Q. There was a circuit clerk included,
18 Mr. Cliff Walker, who's the chairman of the
19 Alabama Board of Pardon and Paroles, some
20 members of the ACLU, someone who was
21 representing the director of the Alabama
22 Office of the Courts, and the secretary of
23 state was present. The minutes also list

1 two members that were absent,
2 Representative Chris England and State
3 Senator Cam Ward. Were there any other
4 members of the committee that are not
5 discussed in this opening paragraph of the
6 November 18, 2015 minutes?

7 MS. MESSICK: Object to the form.

8 A. You left off David Faulkner as an absent
9 member.

10 Q. Oh, yes. Thank you.

11 A. I don't -- I don't remember there being
12 others that were absent or anything
13 offhand.

14 Q. And then it says that you --

15 MS. MESSICK: I'm sorry. I'm
16 talking to him (indicating).

17 MS. LANG: Okay.

18 Q. (By Ms. Lang) And Mr. Laird from the
19 secretary of state's office was also
20 present; is that correct?

21 A. That is correct.

22 Q. Okay. So the minutes of the first meeting
23 of the committee discuss the issue of

1 automatic restoration of voting rights and
2 whether or not people who completed their
3 sentence should have their right
4 automatically restored. Was Secretary
5 Merrill in favor of an automatic
6 restoration process?

7 MS. MESSICK: Object to the form.

8 A. I don't recall him ever stating a position
9 on that.

10 Q. Okay. At the end of the meeting, he -- he
11 asked if there was anyone that disagreed
12 with automatic restoration. Who voiced
13 concerns? It says Quin Hillyer and a few
14 others. Who would be the others?

15 MS. MESSICK: Object to the form.

16 A. I don't recall who the others would have
17 been.

18 Q. And what was Mr. Hillyer's objection to
19 automatic restoration?

20 MS. MESSICK: Object to the form.

21 A. I don't recall what his objection was.

22 Q. And Mr. Hillyer talked about whether or not
23 automatic restoration -- well, strike that.

1 In addition to automatic restoration,
2 it appears that the issue of whether or not
3 fines and fees should be required to be
4 paid before restoration of voting rights
5 was an issue that was discussed.

6 A. Right.

7 MS. MESSICK: Object to the form.

8 A. Correct. That is correct.

9 Q. During this initial meeting, how did folks
10 react to the idea that fines and fees
11 should not be included in the requirements
12 for restoration of voting rights?

13 MS. MESSICK: Object to the form.

14 A. There was a -- there was a mixture of
15 opinion. There were some people like
16 Mr. Hillyer, as the minutes indicate, he
17 proposed removing the court costs and fees
18 and the requirements for
19 re-enfranchisement, but there were other
20 members that said they felt that that was
21 part of the, you know, original sentence
22 and should have to be taken care of just
23 like any other part of the sentencing.

1 Q. And there was, it sounds like, a discussion
2 about whether or not fines and fees were
3 part of the punishment. Was there a
4 conclusion about whether or not fines and
5 fees were part of the punishment?

6 MS. MESSICK: Object to the form.

7 A. I don't remember what the conclusion was on
8 that.

9 Q. And why was it relevant? Why would it be
10 relevant whether or not fines and fees were
11 part of the punishment in determining
12 whether or not voting rights should be
13 restored without payment of fines and fees?

14 MS. MESSICK: Object to the form.

15 A. Can you restate the question?

16 Q. Yeah. For those who believed that
17 automatic restoration should not occur
18 until after fines and fees were paid, why
19 was it relevant that fines and fees were
20 part of the punishment for the crime?

21 MS. MESSICK: Object to the form.

22 A. Well, they felt it was part of the sort of
23 paying your debt to society, that that's

1 part of the sentence just like any
2 potential jail time.

3 Q. Yeah. And is loss of voting rights kind of
4 wrapped up in part of that punishment as
5 well?

6 MS. MESSICK: Object to the form.

7 A. They felt like that was all a package deal,
8 that if you were sentenced to jail or
9 prison for so many years or whatever and
10 then you have these other fines and fees
11 and restitution, that that was all part of
12 the package and that paying all that --
13 completing all those different aspects of
14 the sentence were what you needed to do to
15 repay your debt to society before you
16 obtained your right to vote back.

17 Q. So the loss of voting rights should be
18 lifted when the punishment's complete.

19 MS. MESSICK: Object to the form.

20 Q. Is that another way of stating the view of
21 those in the committee?

22 MS. MESSICK: Object to the form.

23 A. Yes, I think you could characterize it that

1 way.

2 Q. Uh-huh. So is it correct that during this
3 first meeting of the committee the
4 discussion was largely on automatic
5 restoration instead of moral turpitude
6 issues?

7 A. Yes, from the minutes, that appears to be
8 the case.

9 Q. And is that your recollection?

10 A. I don't -- I don't have a clear memory of
11 how that was -- what percentage of time it
12 took up.

13 Q. Okay. I'm going to mark as Exhibit 30,
14 Packard Exhibit 30, a memorandum from the
15 ACLU December 9, 2015.

16 (Packard Exhibit 30 was marked for
17 identification.)

18 Q. And it appears in the documents I've taken
19 a look at that the ACLU and Alabama
20 Appleseed provided several memorandum to
21 share with the committee; is that right?
22 Is that your recollection?

23 MS. MESSICK: Object to the form.

1 A. Yeah. Yes.

2 Q. And so this memorandum that was sent to you
3 on December 9th about automatic voter
4 rights restoration and how it works in
5 various states, was that sent out to the
6 entire committee?

7 A. To the best of my recollection, it was.

8 Q. And what was the ACLU's position on
9 automatic restoration?

10 MS. MESSICK: Object to the form.

11 A. They were -- they were supportive of
12 automatic restoration of voting rights.

13 Q. I'm going to mark as Packard Exhibit 31
14 another memorandum from the ACLU dated
15 December 18, 2015.

16 (Packard Exhibit 31 was marked for
17 identification.)

18 Q. And I apologize. I did have one remaining
19 question about Exhibit 30, which is was
20 this memorandum circulated to the entire
21 committee?

22 MS. MESSICK: Asked and answered.

23 MS. LANG: Thank you.

1 MS. MESSICK: He said he thought it
2 was.

3 MS. LANG: Okay. I have just lost
4 track.

5 MS. MESSICK: That's
6 understandable.

7 Q. (By Ms. Lang) So I guess I have the same
8 question for Exhibit 31. Was this
9 memorandum from the ACLU sent around to the
10 entire committee?

11 A. To the best of my recollection, it was.

12 Q. And going to the last page, what were the
13 recommendations that the ACLU made to the
14 committee?

15 A. Well, they recommended defining the
16 felonies involving moral turpitude and they
17 provided a list that included -- or they
18 recommended a list that included no more
19 than 15 felonies, which were felonies that
20 were specifically already mentioned in
21 state law in the voting rights restoration
22 section, and then they recommended criteria
23 for restoration of rights upon the

1 completion of any period of incarceration
2 and the payment of all outstanding court-
3 ordered restitution, and of the restoration
4 of rights when that criteria has been met.

5 Q. Great. Thank you. I'm going to mark
6 Packard Exhibit 32.

7 (Packard Exhibit 32 was marked for
8 identification.)

9 Q. This is an e-mail with an attachment from
10 you to the committee members sending along
11 information from Cliff Walker, the chairman
12 of the Alabama Board of Pardons and
13 Paroles. I would like to talk about the
14 contents of Mr. Walker's proposals. What
15 was, in your own words, the role of pardon
16 and paroles' preferred outcome for the
17 restoration of rights for people with
18 convictions?

19 MS. MESSICK: Object to the form.

20 A. Can you restate the question?

21 Q. Did the board of pardons and paroles have a
22 position on automatic voter restoration or
23 how voting rights restoration should

1 proceed?

2 A. Yes. They were supportive of automatic
3 restoration of voting rights. And
4 according to Mr. Walker, they also didn't
5 believe that the fines or fees needed to be
6 paid. As they put it, the court monies
7 would not disqualify the individual from
8 automatic restoration.

9 Q. Right. So they laid out three possible
10 recommendations, and their top
11 recommendation was automatic restoration?

12 A. Right.

13 Q. And no payment of court monies?

14 MS. MESSICK: Object to the form.

15 A. Right.

16 Q. But all three would involve automatic
17 restoration for people with convictions; is
18 that correct?

19 MS. MESSICK: Object to the form.

20 A. Right. That is correct.

21 Q. The document also references a pardon
22 backlog of up to four years. Did
23 Mr. Walker talk about that backlog during

1 the committee meetings?

2 A. Not to my recollection.

3 Q. Have you ever spoken to Chairman Walker or
4 anyone from the board of pardons and
5 paroles office about the pardons backlog?

6 A. Not to my recollection.

7 Q. Have you ever talked to anybody at the
8 board of pardons and paroles office about
9 the backlog for issuing certificates of
10 eligibility to register to vote?

11 MS. MESSICK: Object to the form.

12 A. Not to my recollection.

13 Q. I'd like to mark as Packard Exhibit 33 an
14 e-mail chain on which you were copied
15 between Representative Faulkner and
16 Secretary Merrill dated December 18, 2015.

17 (Packard Exhibit 33 was marked for
18 identification.)

19 Q. Representative Faulkner lets Secretary
20 Merrill know that he's not going to be able
21 to make the second meeting of the
22 committee, but he was concerned that
23 decisions might be made in his absence and

1 so he asks Secretary Merrill if they can
2 meet; is that right?

3 (Witness reviews document.)

4 A. I'm sorry. Could you repeat the question?

5 Q. Yeah. Representative Faulkner says he's
6 not going to be able to make the upcoming
7 meeting, but he's concerned that, quote, he
8 doesn't want to, quote, commit to anything
9 I disagree with, and so he asked to set up
10 a meeting just with Secretary Merrill and
11 you; is that right?

12 MS. MESSICK: Object to the form.

13 A. That's basically correct. I think when he
14 talks about who they were going to meet
15 with, it would have been Secretary Merrill,
16 Representative Faulkner, and Senator Ward.

17 Q. But not other committee members?

18 A. Right.

19 Q. And Secretary Merrill agrees to have this
20 meeting and offers to come to Birmingham if
21 necessary; is that right?

22 A. Right. That's correct.

23 Q. When did that meeting happen?

1 MS. MESSICK: Object to the form.

2 A. I don't recall when that meeting occurred,
3 if it occurred.

4 Q. You don't know if Secretary Merrill ever
5 spoke to Representative Faulkner about the
6 committee?

7 A. I don't --

8 MS. MESSICK: Object to the form.

9 A. I don't recall it.

10 Q. Did you speak to Representative Faulkner
11 after this e-mail?

12 A. Not to my recollection.

13 Q. When you say "not to your recollection," is
14 it that you believe that you did not meet
15 with Representative Faulkner or that you --
16 you're simply having a memory lapse?

17 MS. MESSICK: Object to the form.

18 A. I just don't recall. I'm not saying I did
19 or didn't. I just don't recall.

20 Q. Have you ever met with Representative
21 Faulkner outside of the committee?

22 A. I don't remember ever meeting with
23 Representative Faulkner.

1 Q. Did you ever maybe talk to him on the
2 phone?

3 A. I really don't recall.

4 Q. And did Secretary Merrill ever talk to you
5 about his discussions with the
6 representatives on the committee about
7 potential bills?

8 A. Say that -- can you repeat the question?

9 Q. Did Secretary Merrill ever communicate with
10 you about his discussions with elected
11 officials about potential moral turpitude
12 bills?

13 A. Only -- only in general terms as to who
14 might carry the legislation or something
15 like that. I don't -- I don't recall
16 getting any particular feedback about
17 bills, although there may have been some.
18 I just don't recall.

19 Q. Okay. I'm going to mark Packard
20 Exhibit 34.

21 (Packard Exhibit 34 was marked for
22 identification.)

23 Q. This is an e-mail between Secretary Merrill

1 and Cam Ward, Senator Ward and
2 Representative Faulkner, on the same day
3 saying -- Secretary Merrill responding to
4 Senator Ward and saying that we, quote,
5 need to talk about this after the first of
6 the year. Why was it necessary that there
7 be a meeting between Secretary Merrill,
8 Representative Faulkner, and Senator Ward?

9 MS. MESSICK: Object to the form.

10 A. Well, it appears from the communication
11 that Representative Faulkner wanted to meet
12 with Secretary Merrill and Senator Ward to
13 discuss what he says -- to discuss the
14 draft legislation from, quote/unquote, the
15 legislative perspective, so --

16 Q. What do you think that means?

17 MS. MESSICK: Object to the form.

18 Q. What does the, "quote/unquote, from the
19 legislative perspective" mean to you?

20 A. Honestly, I have no earthly idea, unless
21 they were talking about what kind of
22 legislative strategy would be necessary to
23 pass the legislation.

1 Q. Could they have been talking about how the
2 bill needed to be drafted in order to pass
3 the legislature?

4 A. It could be.

5 MS. MESSICK: Object to the form.

6 A. It could be, yes.

7 Q. And if I wanted to find out if this meeting
8 happened or what was said in this meeting,
9 I would need to ask Secretary Merrill?

10 MS. MESSICK: Object to the form.

11 A. Certainly that would be one way of finding
12 out if the meeting occurred.

13 MS. LANG: I'm going to get into a
14 big document now, so --

15 MS. MESSICK: Yeah, let's take a
16 break.

17 MS. LANG: -- I'm going to propose
18 that we take a break and come back. We'll
19 go off the record.

20 (Short recess.)

21 Q. (By Ms. Lang) I'm going to mark as Packard
22 Exhibit 35 the materials that were attached
23 to the agenda for the second meeting of the

1 exploratory committee on December 21.

2 (Packard Exhibit 35 was marked for
3 identification.)

4 Q. The first few pages includes statistics
5 from Shelby County, Tallapoosa County, and
6 Tuscaloosa County about the number of
7 rejections or removals on the basis of
8 felony conviction sent out in 2013, 2014,
9 and 2015. Why was the committee interested
10 in this data?

11 MS. MESSICK: Object to the form.

12 A. I don't think that -- I don't think it's
13 that they expressed particular interest in
14 the data. It was just volunteered, to the
15 best of my recollection.

16 Q. Who is Carol Hill?

17 A. Carol Hill is --

18 MS. MESSICK: Asked and answered.

19 A. Carol Hill is a registrar in Shelby County.

20 Q. And the third document here is an e-mail
21 from Laural Bunn to Carol Hill saying here
22 are statistics for the years you requested.

23 A. Correct.

1 Q. So do you know why Ms. Hill requested this
2 data?

3 A. I don't know why she requested the data.

4 Q. How might this data have been helpful to
5 the committee?

6 MS. MESSICK: Object to the form.

7 A. I'm not sure how it would have been -- how
8 it was helpful or in what way it was used.
9 It certainly is not a representative
10 sampling of the state to provide any
11 particular guidance on anything.

12 Q. And then the following page is a document
13 entitled Quin Hillyer's Proposal to Amend
14 Act 2013-415. Do you know what
15 Act 2013-415 is?

16 A. If my memory serves me correctly, that's
17 the legislation that set up the
18 certificate-of-eligibility-to-register-to-
19 vote process.

20 Q. I believe that is right. And Mr. Hillyer
21 was proposing to amend that. And do you
22 know what his proposal was?

23 A. His proposal was to delete the word "fees"

1 from the list of requirements of things
2 that needed to be taken care of by the
3 individual before they could have the
4 certificate-of-eligibility issue.

5 Q. And did he support an automatic voter
6 restoration system or did he support
7 continuing the requirement of applying for
8 a certificate of eligibility to register to
9 vote?

10 MS. MESSICK: Object to the form.

11 A. He was -- to the best of my recollection,
12 he was supportive of continuing the
13 certificate-of-eligibility process.

14 Q. And why did he support that process?

15 MS. MESSICK: Object to the form.

16 A. I don't recall what his reasoning was
17 behind that.

18 Q. Did he voice any -- any explanation for his
19 proposal?

20 A. I don't -- I don't recall anything he spoke
21 in -- you know, to support his proposal.

22 Q. Did others during the meeting agree with
23 Mr. Hillyer's proposal to continue

1 requiring a certificate of eligibility to
2 register to vote?

3 MS. MESSICK: Object to the form.

4 A. To the best of my recollection, there were
5 other members that supported continuing the
6 CERV process, the certificate-of-
7 eligibility process.

8 Q. And which members were that -- which
9 members was that --

10 A. Which members were they?

11 Q. Were they.

12 MS. MESSICK: Object to the form.

13 A. I don't recall an exact list of names at
14 this time.

15 Q. Are there any members you remember
16 supporting Mr. Hillyer's proposal?

17 MS. MESSICK: Object to the form.

18 A. To do away with the fees but to continue
19 the CERV process? I don't remember exactly
20 which ones were in favor of the way this is
21 worded.

22 Q. If you could return to the exhibit given to
23 you of the minutes of the exploratory

1 committee.

2 A. Okay.

3 Q. Thank you. Page 4 begins the minutes of
4 the December 21 meeting.

5 A. Okay.

6 Q. Secretary Merrill is -- the minutes say
7 that Secretary Merrill directed members --
8 and this is on the second page of the
9 minutes -- directed members that the intent
10 is to give a complete package to the
11 legislative team that will carry the bill
12 so that there are as few policy concerns as
13 possible.

14 MS. MESSICK: I'm sorry. Where is
15 that?

16 MS. LANG: It's page 2 of the
17 December 18, 2015 minutes. Page 62 of 87
18 on top, if that makes sense.

19 MS. MESSICK: Okay. So the
20 December 21 minutes, page 2.

21 MS. LANG: Top of the page.

22 MS. MESSICK: Okay. You started on
23 the second sentence of that paragraph.

1 Thank you. The first paragraph of that
2 page.

3 MS. LANG: Yes.

4 MS. MESSICK: And I'm sorry. Can
5 you read back the question?

6 MS. LANG: I didn't ask a question,
7 I don't think.

8 MS. MESSICK: Okay. Well, then go
9 ahead. We're all in the same place.

10 Q. (By Ms. Lang) What kind of policy concerns
11 was Secretary Merrill worried about?

12 MS. MESSICK: Object to the form.
13 (Witness reviews document.)

14 A. I'm not sure what he meant by that
15 language.

16 Q. Was the goal of the committee to draft a
17 bill that could pass the legislature even
18 if it was not the preferred outcome of the
19 committee members?

20 MS. MESSICK: Object to the form.

21 A. No. The goal was always to come up with a
22 bill that had the support of all the
23 committee members even if committee members

1 didn't agree with particular aspects of the
2 bill, that they ultimately vote on a bill
3 altogether that they could all support even
4 if it didn't go their way, so to speak, in
5 particular instances.

6 Q. And was Secretary Merrill's -- strike that.

7 Was the goal of your office to approve
8 a bill that could pass the legislature?

9 MS. MESSICK: Object to the form.

10 A. I'm not sure I understand the question.

11 Q. Certainly there are some bills that one
12 might think are a good idea but one knows
13 will not pass a certain legislature. I'm
14 sure we all have things we wish Congress
15 would pass but we know that they will not;
16 right?

17 A. Right.

18 Q. In creating this committee with the goal of
19 coming out with a bill that Secretary
20 Merrill would support, was the goal to have
21 a bill that could pass the legislature?

22 MS. MESSICK: Object to the form.

23 A. The goal of the committee was to come up

1 with a bill that would pass the
2 legislature.

3 Q. So would Secretary Merrill have been
4 unhappy if a bill came out of this
5 committee that had no chance of passing the
6 Alabama legislature?

7 MS. MESSICK: Object to the form.

8 A. I can't say how he would have responded in
9 that situation.

10 Q. Was it your goal to come up with a bill
11 that could pass the legislature?

12 MS. MESSICK: Object to the form.

13 A. Personally? Well, as a member of the
14 staff, I hoped that we would come up with a
15 bill that would pass the legislature.

16 Q. And was that part of the consideration in
17 deciding how to draft the bill?

18 MS. MESSICK: Object to the form.

19 A. Yes, I would say that's always a
20 consideration when you're drafting
21 legislation.

22 Q. And Senator Coleman says in the minutes
23 that members need to be intentional about

1 what laws they select because legislatures
2 will be hypercritical before passage. Does
3 that suggest that Senator Coleman was also
4 focused on whether or not the bill would
5 ultimately pass the legislature?

6 MS. MESSICK: Object to the form.

7 A. I would say yes.

8 Q. The minutes suggest that during this
9 meeting Secretary Merrill started with a
10 list of 15 crimes that were already in
11 state law as crimes of moral turpitude in
12 the CERV statute and then proceeded to ask
13 if any additional crimes should be added.
14 Why did he start with this list of 15
15 crimes?

16 MS. MESSICK: Object to the form.

17 A. Is there a place in the minutes where it
18 refers to that?

19 Q. Yeah. So same page that we were already
20 looking at, page 2, five bolded names down,
21 Secretary Merrill posed the following
22 question: With the exception of the 15
23 laws already included in the current laws

1 requiring a pardon, are there any that
2 anyone would wish to add.

3 A. Okay.

4 MS. MESSICK: What was the
5 question?

6 Q. Why did Secretary Merrill start the
7 conversation with these 15 crimes?

8 MS. MESSICK: Object to the form.

9 A. My understanding is he started with those
10 15 because they were already listed in
11 statute whereas other moral turpitude --
12 what could be moral turpitude crimes were
13 not already listed in the statute. So
14 since these had been, they were a starting
15 point or jumping-off point for identifying
16 other crimes.

17 Q. And do you remember the group deciding to
18 add human trafficking to the list?

19 A. Yes, I do remember that.

20 Q. And then there was also a discussion about
21 terrorism, but there was no conclusion.
22 What were the pros and cons discussed at
23 the meeting about including terrorism?

1 MS. MESSICK: Object to the form.

2 MS. LANG: Can you clarify the
3 objection?

4 MS. MESSICK: You didn't lay a
5 foundation. You said that the discussion
6 happened. You didn't ask him if he
7 remembers that or if it's true. You just
8 read the minutes.

9 MS. LANG: Okay. Thank you.

10 Q. (By Ms. Lang) The minutes say that a group
11 consensus was reached regarding the
12 addition of human trafficking and a
13 discussion of the inclusion of terrorism
14 followed but no conclusion was reached. Is
15 that accurate?

16 A. To my recollection, that's accurate.

17 Q. And during the meeting that you were --
18 attended, what were the pros and cons
19 discussed about including terrorism?

20 A. I don't remember the exact pros and cons or
21 any of the pros and cons other than the
22 fact that, you know, people have a -- they
23 generally consider terroristic behavior to

1 be heinous.

2 Q. Yeah. Do you remember why there wasn't a
3 final conclusion about that?

4 A. No, I don't.

5 Q. And if you look at the exhibit of materials
6 we were looking at just a moment ago,
7 after --

8 MS. MESSICK: Is that 35?

9 MS. LANG: That is 45, yes.

10 MS. MESSICK: 35.

11 MS. LANG: 35. Thank you.

12 A. 35.

13 Q. So keep the minutes out because we're going
14 to refer to them again. But if you look at
15 Exhibit 35 and after the list of moral
16 turpitude felonies according to Alabama
17 courts, there's a page that has some
18 handwriting on it. I'll find it.

19 MS. MESSICK: It's the page right
20 after the single-spaced page titled 2015
21 Research?

22 MS. LANG: Yes.

23 A. Okay. Yes, I have that.

1 Q. Do you recognize the handwriting here?

2 A. It looks similar to Secretary Merrill's
3 handwriting.

4 Q. Okay. And it has handwritten the addition
5 of human trafficking and terrorism to this
6 list of 15 crimes.

7 A. Right.

8 Q. Is that accurate? And those are the two
9 crimes we just discussed potentially adding
10 during the December 21 meeting?

11 A. Yes, that's correct.

12 Q. And then the bottom one says, to the best
13 of my ability to read, parent, slash,
14 guardians permitting a child to engage in
15 obscene matter. Do you remember there
16 being a discussion about adding that
17 conviction during the meeting?

18 A. I don't recall. I don't recall.

19 Q. Okay. And during this meeting, did John
20 Pickens present on his research of the
21 racial discrimination behind the term
22 "moral turpitude"?

23 A. Yes.

1 Q. What do you remember about Mr. Pickens'
2 presentation?

3 A. I just remember generally him speaking
4 about how crimes of moral turpitude were
5 developed to racially discriminate against
6 African-Americans in the post Civil War era
7 as a way of racially discriminating against
8 African-Americans.

9 Q. And was that the first time you'd ever
10 heard that?

11 A. To my recollection, yes.

12 Q. And did everyone -- strike that.

13 Was there anyone who objected to John
14 Pickens' presentation?

15 MS. MESSICK: Object to the form.

16 By "objected," do you mean what they
17 thought or what they said?

18 MS. LANG: What they said.

19 A. I don't -- I don't recall anybody objecting
20 to what he said.

21 Q. Did Secretary Merrill comment on
22 Mr. Pickens' presentation?

23 A. I don't -- I don't recall him commenting on

1 it.

2 Q. Did anybody agree with Mr. Pickens'
3 presentation?

4 A. I don't recall anybody commenting.

5 THE WITNESS: I'm sorry.

6 MS. MESSICK: And object to the
7 form. Again, it's spoken or thought?

8 MS. LANG: I think it's clear that
9 it's spoken. He cannot read minds when we
10 ask if someone in a meeting agreed. It
11 would be vocally.

12 MS. MESSICK: I agree that he
13 can't, but I think you've asked a lot of
14 questions about what other people think,
15 and that's why I've been objecting. So
16 those were not as clearly -- those could
17 have been construed to be okay, so I'm
18 trying to help you make them okay.

19 Q. (By Ms. Lang) Mr. Packard, when I ask if
20 somebody agreed or disagreed or objected or
21 did not object, I mean to you and not what
22 their feelings were about something. I
23 want -- when I ask if somebody -- why

1 someone did something, I want to know to
2 your knowledge what you were told about the
3 reasons someone did something and not for
4 you to read the minds of anyone. Does that
5 make sense?

6 A. Yes, that makes sense.

7 Q. Thank you. Further down in the minutes
8 under the comment by Win Johnson, it
9 appears that the conversation returned to
10 the issue of fines and fees, court costs
11 and restitution, and the minutes only say
12 that there was an extensive discussion with
13 disagreement as to whether or not fines,
14 fees, and court costs are an aspect of
15 punishment or not and whether or not they
16 should be included in the requirements for
17 reinstatement. Who on the committee voiced
18 the opinion that fines, fees, and court
19 costs should not be included in the
20 requirements for reinstatement of voting
21 rights?

22 MS. MESSICK: Object to the form.

23 MS. LANG: Can you clarify the

1 objection?

2 MS. MESSICK: The paragraph doesn't
3 say anything about restitution, so your
4 first sentence laying the predicate for the
5 questions was a misrepresentation of the
6 document.

7 Q. The minutes say that there's an extensive
8 discussion and presence of some
9 disagreement as to whether or not fines,
10 fees, and court costs are an aspect of
11 punishment or not and whether or not they
12 should be included in the requirements for
13 reinstatement. Who on the committee voiced
14 the opinion that fines, fees, and court
15 costs should not be included in the
16 requirements for reinstatement?

17 A. If my memory serves me, Michael Coleman of
18 Hope Ministries, he said they should not be
19 included, as well as Will Harrell for the
20 American Civil Liberties Union. They were
21 two that I remember made that argument.

22 Q. And who thought that fines, fees, and court
23 costs are a part of punishment?

1 A. Win Johnson held that position.

2 Q. And Mr. Johnson held that position in --

3 I'll say this. Mr. Johnson -- the minutes
4 suggest that Mr. Johnson thought that part
5 of the reason for maintaining fees as part
6 of their requirement was, quote, the idea
7 that they might not get paid. Is that what
8 he was talking about?

9 A. Correct.

10 Q. And was his concern as he voiced it that
11 the CERV requirement that you pay fines was
12 an incentive for people to pay those fines
13 and removing it would remove an incentive
14 for payment of fines?

15 A. It would remove --

16 THE WITNESS: Sorry.

17 MS. MESSICK: Object to the form.

18 A. It would -- removing that from the
19 requirement would remove an incentive for
20 paying the fines.

21 Q. Did anybody agree with that concern?

22 A. There were others that just had the general
23 concern that they needed to be paid as part

1 of, you know, the complete sentencing
2 package. I don't remember if anyone agreed
3 with that exact point about the incentive.

4 Q. Who were the others that had concerns about
5 removing the fines and fees requirement for
6 reinstating voting rights?

7 A. Summer Scruggs, the circuit clerk of Clarke
8 County, had a concern about that as well.

9 Q. And did she say what her specific concern
10 was?

11 A. Best I can recall on her is she just felt
12 they needed to be paid because they were
13 part of the sentencing package.

14 Q. Anyone else?

15 A. Not that I can recall offhand.

16 Q. Was the majority or minority view that
17 fines and fees should be removed as part of
18 the requirement for reinstatement of voting
19 rights?

20 A. The final view that they came up with was
21 that they needed the fines and fees and
22 restitution and court costs that were
23 originally imposed as part of the original

1 sentence needed to be paid. The final
2 agreement was that those needed to be paid.
3 But if there were any additional court
4 costs or fines added because, say, they
5 were late paying or something like that,
6 would -- would not be part of what would be
7 required to get your voting rights back.

8 Q. Yeah. At the December 21 meeting before
9 final agreement was made, during this
10 discussion, was the majority or minority
11 view that fines and fees should be removed
12 from the requirement for reinstatement of
13 voting rights?

14 A. I don't -- I don't recall whether it was in
15 the majority or minority at that particular
16 meeting.

17 Q. Did Secretary Merrill voice an opinion?

18 A. Not that I can recall.

19 Q. Did Secretary Merrill voice an opinion to
20 you about whether or not fines and fees
21 should be part of the requirement for
22 reinstatement of voting rights?

23 A. Not that I recall.

1 Q. Did you voice an opinion about whether or
2 not fines and fees should be a requirement
3 for the reinstatement of voting rights?

4 A. I didn't take a position on that point.

5 Q. Do you personally have a position on that
6 issue?

7 A. Yes, I do.

8 Q. What is that position?

9 A. I don't believe that the fees and fines or
10 court costs should factor into obtaining
11 one's voting rights back.

12 Q. And why not?

13 A. Because I think once someone -- if
14 someone's been incarcerated, I think that
15 once they're released from incarceration,
16 they ought to be able to vote once they're
17 released.

18 Q. And what is your view about the purpose of
19 felony disenfranchisement? What purpose,
20 social purpose, does having a law that
21 disqualifies people from voting because of
22 a past conviction serve?

23 A. I don't know. I haven't really given that

1 a lot of thought.

2 Q. Did anyone at this committee talk about the
3 potential purposes of felony
4 disenfranchisement and what social purpose
5 it might serve?

6 A. Not -- not that I recall.

7 Q. There's a discussion of punishment here in
8 the minutes. Was it the view of any
9 committee members as voiced that losing
10 your voting rights is part and parcel of
11 the punishment for wrongdoing for a crime?

12 A. I don't recall anyone stating that
13 position.

14 Q. Do you remember why people were talking
15 about whether fines and fees were
16 punishment if not because that related to
17 whether voting rights should be restored or
18 not?

19 MS. MESSICK: Asked and answered.

20 A. Yeah, I don't recall.

21 Q. Earlier you testified that, I believe --
22 and I will not be able to exactly repeat
23 your testimony, but I believe that you

1 testified that there were folks on the
2 committee who believed that you should not
3 get your voting rights back until you've
4 paid the full punishment for your crime.

5 Is that accurate?

6 A. I don't know that I used the word
7 "punishment." Maybe -- maybe I did. But
8 it was -- the idea was that they felt that
9 people should complete the complete
10 sentence that had been imposed by the Court
11 to be able to get their voting rights back.

12 Q. And why would that be?

13 MS. MESSICK: Object to the form.

14 Q. Did anyone voice why it was important that
15 people serve their full sentence before
16 they get their voting rights back?

17 A. Well, they said they needed to pay their
18 debt to society, and that's how the debt
19 was meted out, was through the penalties or
20 what the Court decision -- what the
21 sentence of the Court was.

22 Q. And if I'm understanding you correctly,
23 folks voiced that once people had fully

1 paid their debt to society, their voting
2 rights should be restored?

3 A. They should be eligible for their vote to
4 be restored.

5 Q. Thank you. Who came up with the idea to
6 create a subcommittee on moral turpitude?

7 A. That would have been Secretary Merrill's
8 decision.

9 Q. And on page 3 of these minutes, the next
10 page, the members of the subcommittee are
11 identified as yourself, Carol Hill, Judge
12 Jolley, Win Johnson, Pastor Glasgow, and
13 Senator Coleman, and Judge Laird. Who
14 selected these subcommittee members?

15 A. To my recollection, Secretary Merrill
16 selected the committee members --
17 subcommittee members.

18 Q. Okay. Did he explain why he chose this
19 subgroup?

20 A. No.

21 Q. You put together a meeting of the
22 subcommittee in January. Did Secretary
23 Merrill give you any instructions about

1 what the goal of the subcommittee was?

2 MS. MESSICK: Object to the form.

3 A. Basically, the subcommittee was put
4 together to determine which -- which crimes
5 would be considered the moral turpitude
6 crimes and come up with input for the
7 legislation regarding that.

8 Q. And did he give you any instructions about
9 what the secretary of state's office's
10 position should be as a member of this
11 subcommittee?

12 A. No. He just asked me to lead the
13 subcommittee and to work with the other
14 members.

15 Q. So you did not present a view at the
16 subcommittee meeting?

17 MS. MESSICK: Object to the form.

18 A. I don't -- I don't recall anything about a
19 subcommittee meeting. I know we did -- we
20 had some e-mails that were sent, but I -- I
21 recall there being some e-mails, but . . .

22 Q. Did you express a view to the subcommittee
23 in any way about what crimes should be

1 moral turpitude in the draft bill?

2 A. The only ones I can remember expressing
3 anything in particular about were the
4 terrorism-related ones since I had come up
5 with those. I had identified those before.

6 Q. And so it was your position that those
7 terrorism- --

8 A. That they would --

9 Q. -- related crimes should be included?

10 A. That they should consider including them,
11 yes.

12 Q. Turning to Exhibit 35, which I believe you
13 have in front of you, after the Alabama
14 Appleseed memo, there's a list of crimes
15 that are -- is headed Additional Alabama
16 Crimes of Moral Turpitude. And in
17 handwriting at the top, it says Judge
18 Jolley. Is that Secretary Merrill's
19 handwriting?

20 A. I can't say for sure, but it appears to be
21 his handwriting.

22 Q. Okay. And was this a list that was
23 provided by Judge Jolley of crimes he

1 wanted to be considered as potentially
2 involving moral turpitude?

3 A. That's my recollection, yes.

4 Q. And this last document, last three pages,
5 is a fee summary. How did you obtain this
6 document?

7 MS. MESSICK: Object to the form.

8 A. I don't recall the source on this document.

9 Q. Do you remember who asked to see a -- who,
10 if anyone, asked to see a summary of fines
11 and fees?

12 A. No, I don't recall.

13 Q. Do you remember reviewing this document?

14 A. I remember seeing it, but I don't remember
15 anything beyond that.

16 Q. Were you surprised by the totals of amounts
17 ordered, amounts paid, and balances due?

18 A. I don't -- I don't recall my reaction to
19 those figures.

20 Q. Okay. When you look at them now, do you
21 find them surprising?

22 A. I don't necessarily find them surprising
23 personally because I know that a lot of --

1 you know, you have convicted individuals
2 who may not have the means to be able to
3 pay their fines, so that doesn't surprise
4 me.

5 MS. MESSICK: It appears there's a
6 page missing. I don't know if it was
7 missing when we gave it to you or -- okay.
8 You're not aware of --

9 MS. LANG: I am not aware of a page
10 missing. Which page?

11 MS. MESSICK: Well, it looks like
12 the last page probably --

13 MS. LANG: Oh, yeah.

14 MS. MESSICK: -- goes with another
15 17 counties, is my guess.

16 MS. LANG: It does seem as though
17 that would be the case.

18 MS. MESSICK: I don't know for
19 sure.

20 MS. LANG: This is the document as
21 produced.

22 MS. MESSICK: Okay.

23 Q. Okay. I'll give you a document that we'll

1 mark as Packard Exhibit 36.

2 (Packard Exhibit 36 was marked for
3 identification.)

4 Q. And I think this might have been at least
5 one of the e-mails that you were
6 referencing, and it's an e-mail from
7 yourself dated January 5, 2016 to the
8 members of the subcommittee on moral
9 turpitude crimes; is that correct?

10 A. Yes, that's what it appears to be.

11 Q. And you suggested that the committee uses a
12 reference guide/several different lists
13 that were available of moral turpitude
14 felonies; is that right?

15 A. That's correct.

16 Q. Okay. And I have as attachments to this
17 exhibit a list of crimes required -- that
18 required a full pardon for restoration of
19 rights under the CERV statute, a list of
20 felony crimes identified as moral turpitude
21 crimes in a 2015 bill called HB 344, a list
22 of proposed crimes from Judge Jolley, and
23 then another list from the pardons and

1 paroles board. Calling your attention to
2 the additional felony crimes identified as
3 moral turpitude crimes in HB 344, parens,
4 2015 regular session, do you know if HB 344
5 was the draft bill Secretary Merrill gave
6 to Representative England?

7 A. That's my recollection, was that that is
8 that legislation.

9 Q. Okay.

10 Q. I'll mark as Packard Exhibit 37 a document
11 labeled SOS Merrill's bill sponsored by
12 Representative Mike Jones, 2015 legislative
13 session, classification of crimes listed in
14 said bill.

15 (Packard Exhibit 37 was marked for
16 identification.)

17 (Witness reviews document.)

18 Q. And the second page indicates that this was
19 a document prepared by John Pickens of
20 Alabama Appleseed. Was this document
21 circulated to the subcommittee?

22 A. I don't recall whether this one was
23 circulated to the committee or not.

1 Q. On the second page, Mr. Pickens includes a
2 breakdown of classification of above-
3 referenced crimes, and he breaks them down
4 by their class, A, B, and C. Do you know
5 if John Pickens -- do you know what the
6 purpose of this bill -- this document was?

7 A. No, I don't know what the purpose of it
8 was.

9 Q. Do you know if the purpose of this document
10 was to demonstrate to the committee that
11 there was a very broad range of severity of
12 crimes included on this list?

13 MS. MESSICK: Asked and answered.

14 A. No, I don't know if that was his purpose.

15 Q. Would you be concerned if people with
16 convictions ranging in severity from
17 Class A murder and Class C theft, for
18 example, both ended up being punished with
19 disenfranchisement for the remainder of
20 their life?

21 MS. MESSICK: Object to the form.

22 A. Can you repeat the question?

23 Q. Would you be concerned if there was a

1 legislative scheme in which somebody who
2 was convicted of Class A murder and someone
3 who was convicted of Class C theft both
4 were punished the same when it comes to
5 voting rights and both lost their voting
6 rights permanently?

7 MS. MESSICK: Object to the form.

8 A. Personally I would have a concern about
9 that.

10 Q. And why would that be?

11 A. Because obviously one crime is much more
12 heinous than the other crime.

13 Q. Let me mark as Packard Exhibit 38 the
14 following exhibit.

15 (Packard Exhibit 38 was marked for
16 identification.)

17 Q. And this is a letter dated January 13, 2016
18 from John Pickens of Appleseed and Shay
19 Farley about the Alabama Appleseed. On
20 page 2 of this letter, they suggest two
21 approaches. One is to define felony
22 involving moral turpitude as limited to the
23 15 felonies included in the CERV statute.

1 And the second alternative approach is to
2 define felonies involving moral turpitude
3 to include only the Class A felonies in the
4 2015 bill that Secretary of State Merrill
5 had supported. Do you remember reading
6 this memo?

7 A. I do not remember reading this memo.

8 Q. Did you discuss these proposals with
9 Secretary Merrill?

10 A. I don't recall discussing these with
11 Secretary Merrill.

12 Q. I'm going to mark as Exhibit 39 another
13 exhibit.

14 (Packard Exhibit 39 was marked for
15 identification.)

16 Q. This is a January 13 memo sent to yourself,
17 Joel Laird, and John Merrill from Will
18 Harrell and Marissa McCall Dodson of the
19 ACLU and includes a proposed statutory
20 language that would lead to the automatic
21 restoration of voting rights for people
22 with convictions after completion of
23 sentence and payment of restitution but

1 excluded payment of court-ordered fines and
2 fees; is that accurate?

3 MS. MESSICK: Hold on just a
4 minute. I was trying to listen to you and
5 read this. Let me look at it and then I'm
6 going to ask her to repeat your question.

7 (Ms. Messick and witness review
8 document.)

9 MS. MESSICK: Can you repeat the
10 question, please?

11 (Court reporter reads back the last
12 question.)

13 MS. MESSICK: Thank you.

14 A. Yes.

15 Q. Did your office consider this proposal in
16 deciding what draft legislation to bring to
17 the final meeting of the committee?

18 A. I don't recall what consideration we gave
19 to this memo.

20 Q. Did you consider the idea of an automatic
21 restoration bill in deciding what draft
22 legislation to bring to the January
23 meeting?

1 A. To my recollection, we didn't -- we may
2 have considered automatic restoration, but
3 that wasn't what we -- we didn't see that
4 as the goal of the legislation.

5 Q. What did you see as the goal of the
6 legislation?

7 A. Well, that it would revise the procedure we
8 already had and just further define the
9 moral turpitude crimes and streamline the
10 restoration process.

11 Q. And why did you think -- did your office
12 think the goal should be streamlining the
13 process instead of changing it to automatic
14 restoration?

15 A. There just wasn't support for automatic
16 restoration.

17 Q. Wasn't support from who?

18 A. There wasn't -- either from the committee
19 or from Secretary Merrill on having
20 automatic restoration --

21 Q. Secretary Merrill --

22 A. -- to my recollection.

23 Q. Secretary Merrill did not support an

1 automatic restoration process?

2 A. I don't -- I don't recall him having any
3 support for automatic restoration.

4 Q. Because in the original minutes we
5 reviewed, there was a potential
6 discussion --

7 A. Right.

8 Q. -- about automatic restoration.

9 A. Right.

10 Q. But the draft legislation that Secretary
11 Merrill brought to the January meeting did
12 not include an automatic restoration bill?

13 A. Right.

14 MS. MESSICK: Object to the form.

15 A. Right. That's correct.

16 MS. MESSICK: Have we seen the
17 legislation he brought to the January
18 meeting?

19 MS. LANG: I mean, it's in here,
20 yes.

21 MS. MESSICK: In the exhibits we
22 already have?

23 MS. LANG: No.

1 MS. MESSICK: Okay.

2 MS. LANG: Mr. Packard was there
3 and was the one who drafted the legislation
4 and he remembers, so I wanted to get a
5 sense of his recollection --

6 MS. MESSICK: Okay.

7 MS. LANG: -- of what was decided.

8 MS. MESSICK: No, that's fine. I
9 just --

10 MS. LANG: Yeah, there's a lot of
11 documents.

12 MS. MESSICK: I haven't seen -- I
13 don't know what that says, so --

14 MS. LANG: Yeah.

15 MS. MESSICK: -- I don't know --

16 MS. LANG: Fair.

17 Q. (By Ms. Lang) When you and Secretary
18 Merrill came to the final meeting of the
19 exploratory committee, you had with you
20 some draft legislation; is that correct?

21 A. Right. That's correct.

22 Q. And one of those pieces of legislation
23 altered but did not remove the certificate-

1 of-eligibility-to-register-to-vote process?

2 A. That's my recollection.

3 Q. And the other bill defined moral turpitude;
4 is that correct?

5 A. That's my recollection.

6 Q. Who drafted those bills?

7 MS. MESSICK: Object to the form.

8 Q. Who drafted the moral turpitude bill that
9 you brought to the final meeting of the
10 committee of the exploratory committee?

11 A. I did.

12 Q. And who drafted the CERV-related bill that
13 you brought to the last meeting of the
14 exploratory committee?

15 A. I did, based on the input from the
16 committee, to the best of my recollection.

17 Q. According to the minutes that we've
18 reviewed, there was not a conclusion as to
19 what crimes should be included as moral
20 turpitude or not during the committee
21 meeting; is that accurate?

22 A. Yes.

23 Q. So when you drafted that bill, how did you

1 decide which crimes to include and which
2 crimes to exclude?

3 A. Well, we started, again, with what was on
4 the AOC list, and then we added in the ones
5 that had been discussed, even though there
6 had been no final determination as to what
7 to include. And then at the final meeting,
8 we went over the bill crime by crime to see
9 if anyone had any objections to what was
10 included.

11 Q. And when you say "we" with respect to the
12 original drafting, do you mean yourself and
13 Secretary Merrill?

14 A. I mean me.

15 Q. Did Secretary Merrill tell you to go about
16 drafting the bill by using the AOC list as
17 a guide?

18 A. That's my recollection. That was our
19 starting point.

20 Q. Do you know why that was the starting
21 point? because the minutes did not discuss
22 including all of the AOC crimes.

23 A. Right.

1 MS. MESSICK: Object to the form.

2 A. Just seemed like a natural starting point
3 because they were crimes that had been
4 previously deemed by a court or attorney
5 general's opinion to be moral turpitude
6 crimes.

7 Q. So you and Secretary Merrill -- and tell me
8 if this is correct or not -- that both you
9 and Secretary Merrill thought that should
10 be the starting point despite proposals by
11 the ACLU, Alabama Appleseed, and others
12 during the committee meetings that
13 suggested a more limited approach based on
14 the CERV statute crimes?

15 A. That was my understanding of my charge when
16 I drafted the legislation.

17 Q. And do you know why the idea of a more
18 limited list was rejected by Secretary
19 Merrill in giving you that charge?

20 A. I'm sorry.

21 Q. That's okay.

22 A. It's been a long day.

23 Q. It's been a very long day. And we can take

1 a break after this question, if you'd like.

2 A. Yeah. I think -- I think it was based --
3 my understanding was it was based on the
4 fact, the way the discussions of the
5 committee went, talking about and adding
6 human trafficking and things like that, and
7 that even though they discussed the more
8 limited range, we still thought that the
9 AOC list was the proper starting point.

10 Q. Is it possible that your charge was
11 influenced by discussions Secretary Merrill
12 had with the representatives thinking
13 through the legislative perspective?

14 MS. MESSICK: Object to the form.

15 A. I wasn't personally influenced by that. I
16 don't know -- because I -- I don't even
17 recollect what those discussions were. I'm
18 not even sure I was involved in them. I
19 think it was just going to be a starting
20 point given the way the discussions in the
21 committee, the exploratory committee, had
22 gone.

23 Q. And was there any discussion in deciding on

1 that longer list of the ability of the
2 legislation to pass the legislature?

3 A. I don't -- I don't recall any discussion of
4 that.

5 Q. Okay. Would you like to take a break?

6 A. Yeah, let's take a break.

7 Q. Thank you.

8 MS. LANG: Let's go off the record.

9 (Short recess.)

10 Q. (By Ms. Lang) I'm going to mark as
11 Exhibit 40 a document that will be
12 presented to you.

13 (Packard Exhibit 40 was marked for
14 identification.)

15 Q. And this is an e-mail from yourself to the
16 members of the committee, exploratory
17 committee, circulating a letter from Judge
18 Jolley. And the letter that is attached is
19 dated January 19, 2016 from Judge Jolley,
20 and he states as follows: After carefully
21 considering the obvious problem associated
22 with defining felony involving moral
23 turpitude, I believe the definition for

1 purposes of a disqualifying felony should
2 be narrow rather than broad. The more
3 felonies included in the traditional
4 concept of, quote, moral turpitude as
5 provided in the legislation proposed last
6 year would provide a number of challenges
7 from people convicted of similar crimes not
8 included. And then if you can skip down
9 the second -- on the next page, the second
10 paragraph from the end, he says, I am in
11 favor of a narrow construction that
12 includes the 18 or so felonies discussed at
13 our last meeting. I also feel they each
14 need to be specified by Alabama Code
15 section so there's no confusion concerning
16 which statutes are involved.

17 Do you recall that earlier today we
18 discussed a list of felonies involving
19 moral turpitude that Judge Jolley had
20 proposed?

21 A. Yes.

22 Q. But in this later letter, he said that
23 after consideration he -- he proposed a

1 narrower list of the 18 or so felonies
2 discussed in the last meeting?

3 A. Yes.

4 Q. And by the 18 or so felonies, do you
5 understand him to be referring to the 15
6 included in the CERV statute plus terrorism
7 and human trafficking and potentially this
8 one about parents permitting children to
9 engage in obscene matter?

10 A. I assume that's what he's referring to --

11 Q. Okay.

12 A. -- when he says 18.

13 Q. Did Secretary Merrill consider Judge
14 Jolley's letter in deciding what
15 legislation to bring to the final -- final
16 committee meeting?

17 MS. MESSICK: Object to the form.

18 A. I don't know whether he did or didn't.

19 Q. Did he discuss it with you?

20 A. I don't have a recollection that he
21 discussed it with him, no.

22 Q. In this letter, Judge Jolley talks about
23 his concerns that having a longer list will

1 almost certainly butt up against the issue
2 of people with similar convictions that did
3 similarly bad things being treated
4 differently. Was that a concern that was
5 discussed in any of the committee meetings?

6 A. I don't recall that issue being discussed.

7 Q. No?

8 A. I don't recall it being discussed.

9 Q. Was there any discussion of Judge Jolley's
10 letter in any of the meetings you attended?

11 A. Not to my recollection. We sent it out to
12 the committee members, but I don't remember
13 any discussion of it.

14 Q. I'm going to hand you a document marked
15 Exhibit 41.

16 (Packard Exhibit 41 was marked for
17 identification.)

18 Q. For the moment, I only give you this
19 document as an easy way for us to have a
20 list of the members of the committee. Can
21 you take a quick look at this committee
22 list and see if you think anyone is
23 missing?

1 (Witness reviews document.)

2 MS. MESSICK: The question was who
3 are the members and not who actually
4 attended; right?

5 MS. LANG: Exactly.

6 (Witness reviews document.)

7 A. It looks correct to me.

8 Q. Okay. Let's review who we know -- strike
9 that.

10 I'd like to review what the documents
11 suggest about the various positions of
12 people in the committee, starting with Will
13 Harrell from the ACLU. The letters we
14 reviewed suggested that the ACLU supported
15 a list limited to the 15 crimes in the CERV
16 statute; is that correct?

17 A. Yes.

18 Q. And Judge Jolley we just discussed
19 supported a limited list of approximately
20 18 crimes; is that correct?

21 A. Right. That's correct.

22 Q. Do you recall what Pastor Glasgow's view
23 was of how many crimes or which crimes

1 should be defined as involving moral
2 turpitude?

3 A. I don't -- I don't recall.

4 Q. Are you aware of Pastor Glasgow's advocacy
5 on this issue in general?

6 A. I am in general.

7 Q. And what is his general position about
8 access to the right to vote for people with
9 convictions?

10 A. Well, he believes in it being more open for
11 them to vote.

12 Q. Okay. Mr. Coleman from Hope Inspired
13 Ministries, do you recall his position on
14 how the committee should define moral
15 turpitude?

16 A. No, I don't remember his position.

17 Q. What about Senator Coleman?

18 A. I don't remember her position either.

19 Q. What about Darlene Biehl?

20 A. I don't remember her position.

21 Q. Representative England?

22 A. He generally wasn't at the meetings.

23 Q. Representative Faulkner?

1 A. I don't know his position either.

2 Q. What about Quin Hillyer?

3 A. I don't know his -- I don't remember his
4 position on moral turpitude.

5 Q. Carol Hill?

6 A. I don't know hers. I don't remember hers.

7 Q. What about Rich Hobson?

8 A. I don't -- I don't recall. He was
9 represented by a representative. I don't
10 remember.

11 Q. Cliff Walker?

12 A. I don't remember his position either.

13 Q. Summer Scraggs?

14 A. I don't remember her position on moral
15 turpitude.

16 Q. Senator Ward?

17 A. I don't remember his either.

18 Q. Jeff Williams?

19 A. No, I don't remember.

20 Q. Okay. So can you identify anyone on this
21 list that suggested a longer list of crimes
22 that you recall from the meeting?

23 MS. MESSICK: Did you cover Jeff

1 Dunn?

2 MS. LANG: I think I did.

3 Q. But Jeff Dunn?

4 A. Yeah. I don't recall his position.

5 MS. MESSICK: In that case, asked
6 and answered.

7 Q. I'd still like you to respond because you
8 may not remember -- you may not have
9 remembered when we do it individually, but
10 can you identify anyone that had suggested
11 a longer list of crimes?

12 A. When you say "longer," you mean --

13 Q. Longer than 18 --

14 A. Longer than 18?

15 Q. -- which is the one we've identified as the
16 longest so far.

17 A. Well, ultimately the committee voted to go
18 with the longer list, so.

19 Q. I'm talking about before --

20 A. Before then?

21 Q. Before the presentation of the bill that
22 your office drafted.

23 A. I don't recall offhand anybody supporting a

1 longer list.

2 Q. Even if you can't identify the specific
3 person, can you remember someone suggesting
4 a longer list before the presentation of
5 that list --

6 A. Well, of the --

7 Q. -- on January 20th?

8 A. Other than Tim Jolley had originally,
9 although he changed his position. So, no,
10 I don't -- I don't recall support for a
11 longer list.

12 Q. Okay. And we will come back to this, so we
13 might want to put it aside. If you could
14 return to the minutes and turn to the
15 January 20th minutes. Do you recall
16 that --

17 MS. MESSICK: I'm sorry. Can you
18 let me read this?

19 MS. LANG: Sure. I'm going to ask
20 a question that's unrelated to this
21 document, so --

22 MS. MESSICK: Oh, okay.

23 MS. LANG: -- I'll go ahead and

1 ask.

2 Q. (By Ms. Lang) Do you recall that the
3 subcommittee on moral turpitude met on
4 January 20th for an hour before the full
5 committee met?

6 MS. MESSICK: Object to the form.

7 A. No, I don't remember -- I don't recall
8 that.

9 Q. If you can look at Exhibit 41 on page 2,
10 the last sentence of the second paragraph
11 says, However, this subcommittee did meet
12 for an hour preceding the January 20th
13 committee meeting and apparently -- I'll
14 just leave it there.

15 (Brief pause.)

16 MS. MESSICK: Is there a question?

17 MS. LANG: I'm sorry.

18 Q. Does that refresh your recollection as to
19 whether or not the subcommittee met for an
20 hour preceding the January 20 meeting?

21 A. I still don't recall that. Not to say it
22 didn't happen. I just don't recall it.

23 Q. Were you charged with leading the

1 subcommittee?

2 A. Right.

3 MS. MESSICK: Asked and answered.

4 Q. Returning to the January 20th minutes, the
5 first section reports that you provided a
6 summary of the subcommittee's work and a
7 discussion of which felony crimes in
8 Alabama should be defined as moral
9 turpitude crimes. Mr. Packard related that
10 a majority of the members of the
11 subcommittee were leaning towards defining
12 as moral turpitude felonies only those
13 crimes currently identified in state law as
14 requiring a full pardon from the board of
15 pardons and paroles for restoration of
16 voting rights.

17 So did the subcommittee vote or -- or
18 decide that you would let the full
19 committee know that they favored the list
20 of 15 crimes in the CERV statute?

21 A. I don't have any recollection of that.

22 Q. You have no memory --

23 A. I have no memory of that meeting. I just

1 don't.

2 Q. But you actually came to this meeting with

3 a draft bill already; isn't that correct?

4 A. Right, we had a draft bill ready for the

5 full exploratory committee.

6 Q. And that was not of the 15 crimes?

7 A. That was not of the 15 crimes.

8 Q. So assuming that these minutes are not

9 incorrect, you had a subcommittee

10 discussion in which they favored a list of

11 15 crimes, but you had already drafted a

12 longer list before that meeting occurred?

13 A. Right.

14 Q. Did you consider changing that longer list

15 in light of these views?

16 A. Not to my recollection.

17 Q. And so after you reported that the

18 subcommittee that was tasked with deciding

19 this question favored a list of 15 crimes,

20 it says that Secretary Merrill led a

21 discussion of the draft bill. Is that to

22 your recollection?

23 A. Right, that's my recollection.

1 Q. And that that draft bill was prepared by
2 you?

3 A. Right. That's correct.

4 Q. And am I correct in saying that that draft
5 bill had over 40 crimes on it?

6 A. I don't know the exact number, but it's
7 certainly more than the 15.

8 Q. If you look at Exhibit 41, the last
9 paragraph on page 2 before the SB 231
10 definition of moral turpitude, it starts,
11 At the committee's final meeting. I'll
12 just read these two sentences to you. At
13 the committee's final meeting on
14 January 20, 2016, Ed Packard reported that
15 the majority of the subcommittee was in
16 favor of only listing the 15 crimes from
17 Alabama Code Section 15-22-36.1(g) plus the
18 three other offenses. However, after a
19 brief discussion of the 15 offenses,
20 Secretary of State Merrill redirected the
21 discussion to the full list in the draft
22 bill patterned after the 2015 House bill
23 that passed the House and led the committee

1 in a discussion of each numbered offense
2 listed in that bill.

3 Does that accord with your recollection
4 of the meeting?

5 A. Well, except for not recollecting the
6 subcommittee part of it. The rest of it
7 accords with my memory, that he did lead a
8 discussion on the draft bill which had the
9 longer list. And we went through each
10 offense to see if anyone thought that any
11 of them should be removed.

12 Q. And did anyone voice objection with the
13 change from a listing of 15 to the longer
14 listing that Secretary Merrill was
15 proposing?

16 A. I don't recall any objection.

17 Q. Would you be surprised that no one would
18 object given that an hour previous there
19 had been a vote for a smaller list?

20 MS. MESSICK: Object to the form.

21 A. I just don't have a recollection that there
22 was any objection, but -- so it's possible
23 someone may have. I don't know whether I

1 would have been surprised or not, but.

2 Q. Did Secretary of State Merrill suggest that
3 one of the reasons this list was a good
4 idea was because it was patterned on a bill
5 that had already passed the House?

6 A. I don't recall him ever stating anything to
7 that effect.

8 Q. Was that one of the reasons that the
9 secretary supported this bill?

10 MS. MESSICK: Object to the form.

11 A. I can't speak for why he supported it or
12 thought it was a good idea.

13 Q. Do you think that the committee's input
14 ultimately made a major change in the
15 secretary of state's position on what
16 crimes to include in a proposed bill?

17 MS. MESSICK: Object to the form.

18 A. In Secretary Merrill's position?

19 Q. Yes.

20 A. I can't speak on behalf of him.

21 Q. I understand that, but you were heavily
22 involved in the process at every stage; is
23 that not -- is that correct?

1 A. I was very involved, yes.

2 Q. You drafted all of the bills that Secretary
3 of State --

4 A. Right.

5 Q. -- Merrill supported?

6 A. On the moral turpitude issue, yes.

7 Q. Yeah. And he had drafted a bill in 2015
8 that was based on the AOC list --

9 A. Right.

10 Q. -- prior to this committee?

11 A. Right. That's correct.

12 Q. This committee was convened and met several
13 times. The vote on the issue recommended a
14 list of 15 crimes, but before that vote
15 even occurred, the secretary of state had
16 instructed you to draft a bill based on the
17 AOC list and bring it to this meeting; is
18 that correct?

19 MS. MESSICK: Object to the form.

20 A. Right. That's correct.

21 Q. So based on those facts, do you think that
22 the positions of the members of the
23 committee had a major impact on the

1 secretary of state's position?

2 MS. MESSICK: Object to the form.

3 A. Well, I think the subcommittee wanted to go
4 with a lesser number, but the full
5 committee hadn't expressed its opinion so
6 we brought -- so the fact that they took up
7 a longer list and then went through the
8 crimes one by one, I don't -- I don't think
9 there's -- even though they ended up with a
10 different result, I don't know that that
11 speaks to whether the committee
12 influenced -- had an influence on the
13 outcome of the draft bill.

14 Q. Well, did -- and did the committee have an
15 influence on the draft bill? Did
16 comments -- strike that.

17 Did comments from the committee lead to
18 changes in the draft bill that you proposed
19 during this meeting?

20 A. Yes. Some of the minutes reflect that,
21 that kidnapping was included, aggravated
22 child abuse was included, and drug
23 trafficking was included.

1 Q. And who suggested those changes?

2 A. I couldn't tell you exactly who. I don't
3 recall that.

4 Q. Who abstained from voting?

5 A. I don't remember who abstained.

6 Q. Can you remember even one of the
7 abstentions?

8 A. No. I couldn't remember the vote.

9 Q. Were any crimes removed from the list based
10 on the committee's comments?

11 A. Not to my recollection.

12 Q. And prior to Secretary Merrill presenting
13 this draft bill, had theft of property been
14 discussed as a potential crime of moral
15 turpitude in any of the prior meetings?

16 A. I don't recollect any specific discussion
17 on that.

18 Q. And we've reviewed the minutes. Did any of
19 the minutes suggest discussion of this
20 longer list of crimes before Secretary
21 Merrill presented it at the last meeting?

22 MS. MESSICK: Object to the form.

23 A. No, I don't believe so.

1 Q. Why was it proposed to add drug trafficking
2 to the list?

3 A. I don't recall why they chose to add -- to
4 vote for adding drug trafficking.

5 Q. Was there a discussion in the committee
6 about whether or not drug crimes are ones
7 involving moral turpitude?

8 A. I don't remember any particular discussion
9 on that.

10 Q. How do you think it is that you got to a
11 unanimous vote when there were people who
12 had voted only a few hours earlier for a
13 different list?

14 MS. MESSICK: Object to the form.

15 A. I don't know, because I can't speak for
16 what's in people's minds.

17 Q. There was nothing said in the meeting that
18 suggested why people were changing their
19 vote?

20 A. Not that --

21 MS. MESSICK: Object to the form.

22 A. Not that I recall.

23 Q. With respect to the CERV bill that you

1 drafted, why did the secretary of state
2 support a bill that continued to include
3 fines and fees despite prior discussions in
4 the minutes regarding only including
5 restitution?

6 MS. MESSICK: Object to the form.

7 A. Well, I believe even -- I think the
8 consensus in the committee from the
9 discussion was that they wanted the fines
10 and fees to stay but only the ones that
11 came with the original sentence, not with
12 the ones that came -- that might have been
13 tacked on later. And so that's the way the
14 bill was drafted.

15 Q. When you say the consensus, when do you
16 think that that consensus was built or
17 agreed upon?

18 A. Maybe consensus is not the right word, but
19 the sense of what the committee wanted.

20 Q. Because I was not at the meeting. But from
21 reading the minutes, I did not get the
22 sense that that was agreed upon or -- or
23 the majority feeling until the minutes at

1 the January 20 meeting and the bill had
2 already been drafted at that point. So
3 could you explain to me when this consensus
4 was built and who supported keeping fines
5 and fees as part of the requirement?

6 A. No, I can't explain that.

7 Q. And I think it's my understanding that your
8 personal position is that fines and fees
9 should not be included?

10 MS. MESSICK: Object to the form.

11 A. Right. That is correct.

12 Q. Did you voice that opinion to the secretary
13 of state?

14 A. I don't recall ever voicing that to him.

15 Q. At any point during the committee's work
16 did anyone suggest looking at the racial
17 impact of what crimes you chose?

18 A. I don't recall anybody raising a racial
19 angle to it.

20 Q. Well, there was a discussion about race in
21 the meeting; right?

22 A. But in terms of selecting the actual crimes
23 and whether that was a basis for it, I

1 don't recall a discussion about that.

2 Q. I will represent to you that at least

3 Alabama Appleseed and ACLU did represent in

4 their memos that part of the reason to keep

5 the list limited was because of racial

6 impact. Was that issue discussed in the

7 committee meetings?

8 A. Not to my recollection.

9 Q. And did you ever look at any data about how

10 the list you chose that ended up in the

11 draft bill would play out with respect to

12 race?

13 A. No.

14 Q. Would you be surprised to find out that the

15 list of crimes that were selected as

16 disenfranchising may be more racially

17 discriminatory or had greater racial

18 disparate impact than the overall felony

19 conviction -- than the group of felony

20 convictions overall?

21 A. I don't know. Is that the case?

22 Q. It does appear to be the case.

23 A. Okay.

1 Q. But I do not have the evidence to show you
2 now, so just asking if that would be
3 surprising to you or not.

4 A. I don't know. I haven't given that any
5 real thought.

6 Q. When you were discussing which crimes to
7 include on the list and going through them
8 one by one as Secretary Merrill did, what
9 standard was guiding the discussion of
10 whether something should be included or
11 not?

12 MS. MESSICK: Object to the form.

13 A. The purpose behind the discussion was to
14 see what their thoughts were on each of
15 those crimes. I don't know that there was
16 a spoken, verbalized standard as to what
17 constituted, you know, whether it was moral
18 turpitude or not.

19 Q. What, if any, standard did you think should
20 guide whether a crime should be included or
21 not included?

22 A. I don't -- I don't recall my own thoughts
23 on that from the time.

1 Q. And there was no set criteria that the
2 committee was using to decide which crimes
3 should go in or out?

4 A. Correct. To my knowledge.

5 Q. Did anybody mention any criteria that they
6 personally were using?

7 A. I don't remember anybody mentioning any
8 personal criteria that they were using.

9 Q. When somebody said yes, I agree with that
10 crime being included, do you recall any
11 reasons people gave for why a crime should
12 be included?

13 A. No.

14 Q. You don't remember any reasons anyone gave
15 for any conviction being included?

16 A. No.

17 Q. I guess I'm trying to understand how this
18 conversation unfolded if -- if people
19 weren't providing reasons for or against
20 including certain crimes. Could you try to
21 explain to me what happened in this
22 conversation in which you went through each
23 crime?

1 A. Well, we literally just went down through
2 the list and said what the crime was and
3 asked if people thought it should be
4 removed from the list, and they, you
5 know -- and it went from there.

6 Q. Was there much discussion or was it just
7 Secretary Merrill reading aloud a list and
8 there being no objections made?

9 A. I don't recall there being that much
10 discussion about it.

11 Q. So primarily this was a discussion in which
12 Secretary Merrill read aloud the list that
13 he had prepared?

14 A. Right.

15 MS. MESSICK: Object to the form.

16 Q. Actually, Secretary Merrill read aloud a
17 list that he charged you with preparing?

18 MS. MESSICK: Object to the form.

19 A. Well, he provided them the opportunity to
20 speak on it if they wanted to.

21 Q. But they did not?

22 A. Right. To my recollection.

23 Q. Was there any discussion of including

1 bribery on the list?

2 A. I don't remember any discussion on bribery.

3 Q. Was there any discussion of including
4 public corruption on the list?

5 A. I don't -- I don't remember any discussion
6 on that.

7 Q. Voter fraud?

8 A. I don't remember any discussion on that.

9 Q. In the prior draft bill that you had
10 prepared in 2015 --

11 MS. MESSICK: You're looking for
12 the one attached to the e-mail to
13 Representative England, so that's
14 Exhibit 26.

15 Q. -- I believe that the last crime listed is
16 impeachment; is that correct?

17 A. Impeachment was listed as the first crime.

18 Q. Oh, first crime. Thank you. Was there any
19 discussion of including impeachment on this
20 list?

21 A. I don't recall there being any discussion
22 of that.

23 Q. Do you know why you did not include

1 impeachment in the bill you drafted in late
2 2015 even though it was included in the
3 bill earlier in the year?

4 MS. MESSICK: Object to the form.

5 A. Because we used as a starting point the AOC
6 list again, and it wasn't on the AOC list.

7 Q. Now, you told me that you used the AOC list
8 as the starting point for the 2015 bill as
9 well.

10 A. Right.

11 Q. How did impeachment end up on that bill?

12 A. I don't recall. That's been a long time
13 ago.

14 Q. Yeah. But it was not included in the late
15 2015 bill?

16 A. Right.

17 MS. MESSICK: Object to the form.

18 Q. As I understand it, impeachment in the
19 state of Alabama is -- only applies to
20 public officials that can be impeached by
21 the legislature for crimes involving moral
22 turpitude or other reasons. Is that your
23 understanding?

1 A. Generally speaking, that's my
2 understanding.

3 Q. So is it right that as compared to the
4 earlier 2015 bill, this bill removed a
5 crime that would only apply to elected
6 officials?

7 A. Right.

8 Q. All right. Do you know if any changes were
9 made between -- sorry. I'll hand you an
10 exhibit marked Packard Exhibit 42.

11 (Packard Exhibit 42 was marked for
12 identification.)

13 Q. I will represent to you this was produced
14 by your office alongside an e-mail
15 distributing this bill on January 22, 2016.
16 Is this the bill that you prepared after
17 the January 20th meeting?

18 MS. MESSICK: Did you say
19 January 22nd e-mail?

20 MS. LANG: I did.

21 (Witness reviews document.)

22 A. It appears to be the bill that I worked on.

23 Q. Do you know what changes, if any, were made

1 between the draft bill that you wrote and
2 the one that passed in May of 2017?

3 A. Actually, I don't recall any changes that
4 may have occurred. I didn't work
5 closely -- I wasn't on the legislative
6 team, and I don't work as closely with the
7 moral turpitude felonies now.

8 Q. And you said that the person that worked
9 most closely on the legislative team with
10 Secretary Merrill was Brent Beal; is that
11 correct?

12 A. Yes.

13 MS. MESSICK: Asked and answered.

14 A. That's correct.

15 MS. MESSICK: Let the record
16 reflect Mr. Beal did join the deposition a
17 few minutes ago.

18 Q. And I'll mark as Exhibit 43 your
19 declaration from this case.

20 (Packard Exhibit 43 was marked for
21 identification.)

22 Q. Do you recall writing and signing this
23 declaration last year?

1 A. Yes, I do.

2 MS. MESSICK: And for the record,
3 this is the declaration without exhibits.

4 MS. LANG: Yes.

5 MS. MESSICK: Just to be clear.

6 Q. In paragraph 10 of this declaration, to lay
7 the foundation, in paragraph 9, there's a
8 discussion of your understanding of
9 plaintiffs' request that there be some sort
10 of mailing to people who might be eligible
11 given the new law. And in paragraph 10,
12 you said that the mailing would likely
13 cause confusion. I understand paragraph 9
14 to talk about why it would be impractical,
15 in your view, to do this, but could you
16 explain to me why you think this mailing
17 would cause confusion?

18 A. Well, it would cause -- it potentially
19 could cause confusion, because the person
20 may be convicted -- I think convicted later
21 of additional crimes that might fall under
22 the new legislation and we don't even know
23 if the individuals even meet the other

1 qualifications. We don't know if they're
2 still a resident of Alabama or they have
3 some other issue that keeps them from being
4 able to vote.

5 Q. Yeah.

6 A. And it's -- the way our system is set up is
7 it states in the declaration -- the system
8 doesn't identify specifically which crime a
9 person's been convicted of in any way that
10 we can automate this process, so you have
11 to go through the records individually.
12 And that even assumes that the registrars
13 have even put any notes or images of
14 information to let you know what the
15 conviction was and which -- my
16 understanding is not all of them do.

17 Q. Could a mailing have been crafted that said
18 there's been a change in the law, here is
19 what the change in the law is; based on our
20 records, that may mean that you are
21 eligible to vote if you meet other
22 qualifications and have not been convicted
23 of one of the crimes listed above?

1 MS. MESSICK: Object to the form.

2 A. Theoretically you could come up with some
3 kind of mailing like that, but you don't
4 get to the answer of whether you can
5 actually get it to the people you're trying
6 to get it to because the addresses in the
7 database may be stale from --

8 Q. Right.

9 A. -- individuals moving around and that sort
10 of thing.

11 Q. And I understand that practicality part, so
12 I just want to put that aside and say if
13 you were to craft an e-mail -- or a
14 mailing -- that said what I just related,
15 do you think that would likely cause
16 confusion?

17 A. Based -- based on my dealing with the
18 public, it could.

19 Q. Would it create more confusion than having
20 people who had been told that they could
21 not vote because of their felony conviction
22 and were never told otherwise? Would it
23 make those people more or less confused

1 about their rights?

2 MS. MESSICK: Object to the form.

3 A. I think it would -- I don't know how to
4 quantify confusion, but --

5 Q. Okay.

6 A. -- I think they would be just as
7 confused -- some people would be just as
8 confused if they received that letter and
9 they may misinterpret what it means and
10 what their -- what options they have
11 available to them at that point.

12 Q. Yeah. Undoubtedly there are people, many
13 people, who were told by boards of
14 registrars that they were not eligible to
15 vote because of their felony conviction who
16 are now eligible under the new law; is that
17 correct?

18 MS. MESSICK: Object to the form.

19 A. Right. There are some number of people,
20 yes.

21 Q. For those people, if they received a
22 mailing, would those people be more or less
23 likely to understand that they can now

1 vote?

2 MS. MESSICK: Object to the form.

3 A. More or less likely?

4 Q. Yes.

5 A. It gets again to the issue of being able to
6 quantify confusion when people see a letter
7 and based on circumstances that we don't
8 know about the particular situation.

9 Q. No. Mr. Packard, I'm talking about in the
10 aggregate. I understand that individual
11 people may have been confused. But if
12 there is a group of a hundred people who
13 have been previously told that they are
14 ineligible to vote --

15 A. Right.

16 Q. -- and they are -- and that's the only
17 information they've ever received but
18 they're actually in fact eligible to vote
19 now, there's that group of people; they're
20 eligible to vote but they've been told they
21 are not and they've never received
22 additional information from the secretary
23 of state. And there's a group of a hundred

1 people who were previously told they were
2 ineligible to vote who are now eligible and
3 they received a mailing from the secretary
4 of state saying the law has changed, here's
5 the new law, you may be eligible to vote.

6 In the aggregate, which group is more
7 likely to understand their voting rights?

8 MS. MESSICK: Does your
9 hypothetical assume that each group could
10 be conclusively determined?

11 MS. LANG: Yes. I said a hundred
12 people and their specific characteristics.

13 A. Can you give me the two groups again?

14 MS. MESSICK: Hold on. Have the
15 court reporter read it back.

16 (Court reporter reads back the last
17 question.)

18 A. Probably the second group.

19 MS. MESSICK: I'm sorry. I need a
20 five-minute break. Can I take that while
21 you're looking for your next question?

22 MS. LANG: Yes, Misty.

23 MS. MESSICK: Thank you.

1 (Short recess.)

2 Q. (By Ms. Lang) Before we took the break, we
3 were looking at your declaration. And I'd
4 like you to look at paragraph 15 in which
5 you wrote and signed that felons are not
6 prejudiced by the fact that specific
7 disqualifying crimes are not listed on
8 form. And then you go on to provide the
9 reason for that belief as registrars often
10 receive registration forms with incomplete
11 or inaccurate information when a person
12 attempts to register to vote and
13 incorrectly states that he or she has not
14 been convicted of a disqualifying felony;
15 the registrar simply denies that person's
16 registration.

17 I will represent to you that
18 plaintiffs' position was not that people
19 would necessarily be prejudiced because
20 they would be prosecuted for incorrectly
21 turning in a form but that people would be
22 deterred from turning in a form because
23 they did not know if they were eligible.

1 Are you aware that the form requires people
2 to declare under penalty of perjury that
3 they are eligible to vote?

4 A. Yes, I'm aware of that.

5 Q. And so do you think it's possible that some
6 people who do not know if they have a
7 conviction for a disqualifying felony would
8 refrain from signing that and turning in a
9 form even if you know that the reality is
10 that person would not be prosecuted?

11 A. Yes.

12 MS. MESSICK: Object to the form.

13 A. Yes, I can see that.

14 Q. You have no reason to believe that people
15 are, in the regular course, committing
16 perjury, do you?

17 A. Repeat the question.

18 Q. Do you have any reason to believe that
19 people are regularly signing things under
20 penalty of perjury that they don't know to
21 be true?

22 A. No.

23 Q. All right. People ordinarily try to

1 refrain from signing under penalty of
2 perjury things that they don't know to be
3 true?

4 A. Right.

5 MS. MESSICK: Object to the form.

6 Q. Given that concern that it's not that
7 people will be prosecuted but that people
8 who are eligible to vote might be deterred
9 from registering to vote, do you stand by
10 your statement that felons are not
11 prejudiced by the fact that specific
12 disqualifying crimes are not listed on the
13 form?

14 A. I would -- I would have to alter that
15 statement to more fully reflect what you
16 discussed.

17 Q. That there is a possibility of --

18 A. Yes.

19 Q. -- prejudice?

20 A. Yes.

21 Q. Thank you. We will mark as Exhibit 44 your
22 second declaration in this case.

23 (Packard Exhibit 44 was marked for

1 identification.)

2 Q. I think you were referring to this
3 declaration earlier. And what I understand
4 this declaration to be saying is that you
5 did not know how in the computer system to
6 create a list of people who had been denied
7 or purged on the basis of felony conviction
8 for a specific time period.

9 MS. MESSICK: Object to the form.

10 A. Um --

11 Q. I'll give you a moment to read your
12 declaration first.

13 A. Yeah.

14 (Witness reviews document.)

15 A. Okay.

16 Q. Last summer your office produced a list of
17 people with felony convictions who had been
18 removed or denied registration on the basis
19 of their felony conviction and provided it
20 to the plaintiffs in this case. Plaintiffs
21 asked if that list could provide a date of
22 removal or date of denial or date of
23 registration so that we could cull down the

1 list to people who'd most recently
2 attempted to register to vote, and your
3 declaration responded to that request; is
4 that right?

5 A. Right.

6 Q. And you indicated that your knowledge of
7 the computer system did not allow you to do
8 that in an automated way.

9 MS. MESSICK: Object to the form.

10 MS. LANG: Can you clarify?

11 MS. MESSICK: Your question and the
12 one before where you asked him to read this
13 suggests that it can be done and he doesn't
14 know how. I understand his declaration to
15 say it can't be done.

16 MS. LANG: Okay.

17 Q. (By Ms. Lang) You suggest in your
18 declaration that it can't be done in an
19 automated way; is that correct?

20 A. Right. That's correct.

21 Q. I will represent to you that your office
22 has since provided such a list that
23 includes a date of status change and a date

1 of registration. Of course the screen shot
2 that I created does not appear.

3 MS. MESSICK: Do we need to take a
4 break?

5 Q. Let's see what we can do with this. I'm
6 going to mark as Exhibit 45 a screen shot.

7 (Packard Exhibit 45 was marked for
8 identification.)

9 Q. This is a screen shot of a list that has
10 been provided to me by your counsel that
11 includes --

12 MS. LANG: Can we go off the record
13 for a moment?

14 (Off-the-record discussion.)

15 Q. I've been provided an Excel spreadsheet of
16 everyone who's been removed or denied on
17 the basis of felony conviction, and this is
18 a screen shot of part of that spreadsheet.
19 I tried to capture, but evidently failed,
20 that there is a date of status change and a
21 date of registration column in this Excel
22 spreadsheet that has allowed me to
23 personally and systematically sort people

1 by the date that their status was changed
2 and the date that they registered. Given
3 that information, would you change your
4 view that it's not possible to gather this
5 type of information automatically through
6 the computer system in the secretary of
7 state's office?

8 MS. MESSICK: I'm going to object
9 to the form. As you said, this doesn't
10 show that, and we have produced a lot of
11 different databases.

12 MS. LANG: Okay. I think we should
13 take a break, then.

14 (Off-the-record discussion.)

15 MS. LANG: I'm going to re-call
16 Exhibit 45 from the record.

17 Q. (By Ms. Lang) Mr. Packard, I'm going to
18 show you on a computer screen an Excel
19 spreadsheet that is titled D009606. It's a
20 document that's been produced by your
21 office to the plaintiffs by your counsel.
22 And it is described by counsel as
23 containing a May 28 snapshot of all records

1 who have a status of not eligible or
2 disqualified and a status reason of
3 criminal conviction, slash, moral
4 turpitude. And this contains a little over
5 80,000 records. So I'm going to show you
6 this document on the screen. And can you
7 confirm to me that in this document there
8 is a column entitled status change -- date
9 of status change or something along those
10 lines?

11 A. Can I widen the column so --

12 Q. Yes.

13 A. -- I can read the heading?

14 Q. Absolutely.

15 A. Okay. Yes, there is a field called status
16 change date.

17 Q. And then if you were to tab over until
18 after the date of birth, I believe, there
19 is a date-of-registration column as well?

20 A. Right. That's correct.

21 Q. Now, you told me, or you put in your
22 declaration, that last summer there was
23 produced a document of approximately 60,000

1 felons who had been removed from voter
2 lists or denied registration, and you
3 prepared that list.

4 A. Right.

5 Q. Is that right?

6 A. That is correct.

7 Q. But that list did not include a status-
8 change date or a date-of-registration
9 column; is that correct?

10 A. In which file again?

11 Q. Last year you prepared a file of voter
12 information for approximately 60,000 felons
13 who were removed from voter lists or denied
14 registration, and you said that you
15 prepared that list.

16 A. Right. That's correct.

17 Q. And that list did not include a status-
18 change date column or a date-of-
19 registration column.

20 A. I'm assuming that's correct about the file
21 from last year --

22 Q. Okay.

23 A. -- not having it to look at.

1 Q. All right. If you could take that as an
2 assumption, then you indicated, as far as I
3 can understand in your declaration, that at
4 least based on your knowledge of the system
5 you were not able to determine the date-of-
6 status change, the date someone was
7 removed, without clicking through each
8 individual voter file.

9 A. Right. That's correct.

10 Q. But this list does provide a date of status
11 change for people in that circumstance; is
12 that right?

13 MS. MESSICK: Object to the form.

14 A. It does, although it doesn't give it for
15 every -- everybody similarly situated.

16 Q. But it does have a date-of-status change
17 column?

18 A. Yes.

19 Q. Do you know who prepared this list?

20 MS. MESSICK: By which you're
21 referring to the one on the computer?

22 Q. Yes, the one you're looking at now that was
23 produced in May.

1 A. If I remember correctly, I'm the one that
2 produced this file.

3 Q. Do you know how you created this file?

4 A. Yeah. There's a -- it's a swap pick in the
5 software where you can choose the variables
6 you're going to output, so that's why I'm
7 not -- I'm a little bit at a loss. I know
8 we had some enhancements done to our
9 computer system related to status-change
10 dates, and I don't know if that was
11 something that was added in, because we did
12 this earlier this year. We enhanced our
13 system to be able to pull out some
14 information like this. So I don't know if
15 that was an enhancement that was made after
16 last year, but before this particular date,
17 a file was pulled. I would have to look
18 into that.

19 Q. Do you have any other potential
20 explanations for why that field was not
21 included last time you produced a similar
22 document?

23 A. Unless I just at the time didn't know it

1 was available.

2 Q. Did you consult with ES&S about the
3 possibility of creating this list before
4 you wrote this declaration?

5 A. No.

6 Q. Okay. Moving on. I'm going to mark
7 Exhibit 45.

8 (Packard Exhibit 45 was re-marked
9 for identification.)

10 Q. And this is an e-mail chain between
11 yourself and Cookie Adair in July 2017.
12 Who is Cookie Adair?

13 A. Cookie Adair is a registrar in Talladega
14 County.

15 Q. And so I'd like to give you a moment to
16 read Cookie's e-mail, your response, and
17 then her response.

18 (Witness reviews document.)

19 A. Okay. I'm ready.

20 Q. So Cookie Adair was contacting you about a
21 voter who had a conviction whose code was
22 FTAV. I will confess to not knowing what
23 that crime is. But he felt certain that

1 under the new law that had passed, HB 282,
2 it was not one of moral turpitude. And
3 Ms. Adair seems confused, one, as to
4 whether or not this charge code falls
5 within the new law and, two, about whether
6 or not she can allow him to register to
7 vote even if it is not disqualifying under
8 the new law because the registration
9 deadline was July 31st but the effective
10 date for this law was August 1. My
11 understanding, based on representations by
12 counsel, was that boards of registrars were
13 implementing the new law in July such that
14 people were allowed to register to vote
15 under the new law in order to vote in the
16 election that would happen after August 1.
17 Is that your understanding of the
18 implementation date of HB 282?

19 A. I don't recall that provision being made.
20 It may have been made, but I don't recall
21 that provision being made.

22 Q. Was this after you had left your
23 responsibilities as director of elections?

1 A. Yes.

2 Q. Okay. And so you were not aware one way or
3 another if HB 282 was governing voter
4 registration in July of 2017?

5 A. I don't recall that.

6 Q. And you asked Ms. Adair if pardons and
7 paroles had ever told her that this crime
8 was disqualifying and whether that was in
9 writing or not. Do you know if you
10 followed up with Ms. Adair after she told
11 you that it was verbal and if she was able
12 to clarify whether this gentleman should be
13 able to register despite the effective date
14 of August 1 for the new law?

15 A. I don't --

16 MS. MESSICK: Object to the form.

17 A. I don't remember this correspondence. I
18 don't remember the eventual resolution of
19 it.

20 Q. Do you know when the codes were sent out to
21 the board of registrars for the crimes
22 involving moral turpitude under the new
23 law?

1 A. I don't recall when they went out.

2 Q. Okay. Given the change in your position

3 that I was not aware of, you might not know

4 the answer to this question either, but

5 I'll ask you. We'll mark as Exhibit 46 a

6 template letter that says, Dear Registrar

7 blank, signed by -- or the template is as

8 if it would be signed by Mr. Beal informing

9 a registrar or registrars that due to their

10 comments in a news story that suggested

11 they were improperly implementing the new

12 law, they were asked for their resignation.

13 Are you aware of any registrars being asked

14 for their resignation because of their

15 failure to implement HB 282?

16 (Packard Exhibit 46 was marked for

17 identification.)

18 A. May I finish reading this?

19 Q. Yes.

20 A. Thank you.

21 (Witness reviews document.)

22 A. Could you restate the question? Or not

23 restate it. Just repeat it.

1 Q. Are you aware of any registrars that were
2 asked to resign as a result of their
3 failure to implement HB 282 correctly?

4 A. I'm not aware.

5 Q. Were you aware of any registrars that were
6 implementing HB 282 improperly?

7 A. I remember this particular news story that
8 was in the media.

9 Q. Do you remember any meetings within the
10 secretary of state's office about how to
11 respond to this news story?

12 A. No, I don't recall any meeting.

13 Q. Okay. I'm going to mark as Exhibit 47 this
14 e-mail chain between yourself and -- again,
15 I apologize for name pronunciation -- Linda
16 Pickelsimer.

17 (Packard Exhibit 47 was marked for
18 identification.)

19 Q. She sends you a draft of a notice that
20 she's planning to use. It says, Dear
21 Mr. Blank, Upon review of your voter
22 status, the Cherokee County Board of
23 Registrars has determined that your past

1 conviction did not involve a moral
2 turpitude offense. Your current voting
3 status is active.

4 And you approved of this notice. My
5 question is, what circumstances led to
6 Ms. Pickelsimer to need to create this
7 notice?

8 MS. MESSICK: Object to the form.

9 A. I don't -- I don't remember what the
10 circumstances were that led to the creation
11 of this notice.

12 Q. Okay. I'll mark this Exhibit 48, going
13 back in time a bit, to 2008 e-mail from
14 Shannon Curtis.

15 (Packard Exhibit 48 was marked for
16 identification.)

17 Q. Do you know who Shannon Curtis is?

18 A. Shannon Curtis was an employee of ES&S, the
19 election company that provides our voter
20 registration software.

21 Q. And I'll give you a moment to read it, but
22 the e-mail suggests that there was an error
23 made in the ES&S system that led to the

1 removal of people who were in fact eligible
2 to vote, that their criminal records
3 erroneously show that they were ineligible.

4 (Witness reviews document.)

5 Q. And the error had to do with a change from
6 the initial charge code to the final
7 disposition code. Is that accurate?

8 A. Yes.

9 Q. And in the last -- second to last
10 paragraph, the second sentence says, It is
11 the discretion of each county registrar if
12 you wish to send any corrective
13 communications or correspondence to any
14 affected voters. My understanding is that
15 these voters were improperly removed or
16 denied on the basis of incorrect
17 information about their convictions; is
18 that accurate?

19 A. That's my --

20 MS. MESSICK: Object to the form.

21 A. That's my understanding based on the
22 content of the e-mail.

23 Q. And do you recall this event?

1 A. I do not recall this event.

2 Q. And if these voters were rejected or denied
3 because of a felony conviction, they would
4 have been sent a notice telling them they
5 were ineligible. Isn't that also true?

6 A. That is correct.

7 Q. And yet it says that it was in the
8 discretion of each county registrar whether
9 or not to correct that notice and inform
10 voters that they were eligible to vote; is
11 that right?

12 A. That's what the e-mail states.

13 Q. Who would have made the decision that it
14 was in the discretion of the county
15 registrars whether or not to send such a
16 notice?

17 MS. MESSICK: Object to the form.

18 A. I don't know who made that decision.

19 Q. Do you think that that was the right
20 decision?

21 A. No, I personally don't think that's the
22 right decision.

23 Q. So there were -- all of the voters on this

1 list were improperly disenfranchised,
2 identified as such, but not necessarily
3 notified of that fact; is that correct?

4 MS. MESSICK: Object to the form.

5 A. Well, if they didn't -- if they didn't have
6 a disqualifying felony, because it does
7 state unless there's another reason beyond
8 the conviction record, particular
9 conviction record. Of course, we don't
10 know if any of the counties actually sent
11 notices or decided not to send the notices,
12 but if they didn't send the notice, then
13 the voter didn't know the situation and
14 should have known the situation.

15 Q. Thank you. All right. I'd like to move on
16 to one of our last topics, which has to do
17 with the voter registration forms and edits
18 to the voter registration form. I'm going
19 to mark as Exhibit 49 an e-mail chain
20 amongst members of your office and
21 officials in the election assistance
22 commission.

23 (Packard Exhibit 49 was marked for

1 identification.)

2 Q. We don't need to go through the e-mail
3 chain in depth, but can you tell me what
4 happened that led to a change in the
5 NVRA -- well, in the state-specific
6 instructions on the national mail-in voter
7 registration form for Alabama?

8 MS. MESSICK: I don't think you
9 finished that sentence.

10 Q. Let's start over. Can you tell me what
11 happened that led to a change in the state-
12 specific instructions on the national
13 mail-in voter registration form for Alabama
14 with respect to felony disqualification?

15 A. Okay. Well, it's indicated in the e-mail
16 correspondence there was a
17 correspondence -- there was correspondence
18 to Clay Helms from the EAC, Cliff Tatum,
19 general counsel for the EAC, where he was
20 asking how the new Felony Voter
21 Disqualification Act will change our
22 existing instructions. And I was
23 instructed by David Brewer, our chief of

1 staff, to communicate with Cliff Tatum to
2 let them know what our changes would be to
3 the instructions on the federal form
4 related to that act.

5 Q. And did you draft the new instructions?

6 A. It was -- I made the initial draft and then
7 it was approved through a team process
8 within the office.

9 Q. And who was on that team?

10 A. Brent Beal, David Brewer, Clay Helms, John
11 Bennett.

12 Q. And were there several drafts considered?

13 A. Yes, there were multiple drafts.

14 Q. Yeah. So I'm going to mark as Exhibits 50,
15 51, and 52 what I believe to be three
16 drafts of potential instructions.

17 MS. MESSICK: And I'm going to ask
18 that you make it very clear to me which is
19 which as you hand them to me.

20 MS. LANG: Yes.

21 (Packard Exhibits 50, 51, and 52
22 were marked for identification.

23 MS. LANG: Here is Exhibit 50.

EDWARD PACKARD 9/19/2018

Page 281

1 MS. MESSICK: Thank you.

2 MS. LANG: Here is Exhibit 51.

3 MS. MESSICK: Thank you.

4 MS. LANG: And here -- oh, 52.

5 That's 52, the one I just handed you.

6 Q. (By Ms. Lang) So did you prepare all three
7 of these drafts?

8 A. Yes, I did.

9 MS. MESSICK: This isn't right. 51
10 appears to be page 2 of something.

11 MS. LANG: Return 51 to me.

12 Q. So did you prepare these three drafts?

13 MS. MESSICK: Can you give him a
14 paper clip? And let's make sure 51 is --
15 I thought I gave you four.

16 MS. LANG: Of?

17 MS. MESSICK: I thought there were
18 four of these files.

19 MS. LANG: I have only seen three
20 drafts.

21 THE WITNESS: There were three
22 drafts. Do you have all three? Do you
23 have 50?

1 MS. MESSICK: I have the three
2 she's given us today, but my recollection
3 was that I had gotten four files from you,
4 so I'm just going to check that while you-
5 all continue.

6 Q. (By Ms. Lang) So did you draft at least
7 these three versions?

8 A. Yes.

9 Q. And why did you ultimately determine to use
10 Exhibit 50?

11 A. Well, it was -- it was the decision of the
12 team that it was more concise and pointed
13 people to the right information rather than
14 being a lengthy exposé on all the crimes.

15 Q. And why did your team decide that any
16 change at all was worth making?

17 MS. MESSICK: Object to the form.

18 A. Just so the voters would have notice of
19 what crimes were potentially disqualifying
20 for them.

21 Q. And do you know what event precipitated
22 you getting a -- Clay being contacted by
23 the Election Assistance Commission?

1 A. No, I don't know what precipitated that
2 unless it was -- I don't know if it was
3 based on some previous e-mail
4 correspondence he had.

5 Q. Yeah. I'll represent to you that Secretary
6 Merrill sent a letter in April of 2018
7 advising the Election Assistance Commission
8 of the new law. Do you have any reason
9 why -- do you know of any reason why
10 Secretary Merrill waited until April of
11 2018 to advise the Election Assistance
12 Commission of that new law?

13 A. No.

14 MS. MESSICK: Object to the form.

15 A. No, I don't.

16 MS. MESSICK: Also, I want to be
17 clear for the record, we did give you four
18 documents. There was the one that includes
19 the codes, the one that doesn't include the
20 codes, and I thought that there were two
21 versions with the URL list -- or with the
22 URL reference, so I don't know if this is
23 the first or second version of that --

1 MS. LANG: Thank you.

2 MS. MESSICK: -- as Exhibit 50.

3 MS. LANG: Okay.

4 Q. (By Ms. Lang) You ultimately decided to use
5 some version that only directs voters to a
6 URL?

7 A. Right.

8 MS. MESSICK: Object to the form.

9 Q. Do you know when that change was actually
10 made to the form?

11 A. It's in the -- well, it would have been
12 late -- late August, early September.

13 Q. Thank you.

14 A. Because we did get confirmation back from
15 the EAC that they made the change.

16 Q. Do you think it would be helpful to make a
17 similar change to the state voter
18 registration form?

19 A. Yes, personally I think it would be helpful
20 to make a similar change to the state form.

21 Q. And is that currently under consideration
22 within your office?

23 A. Yes, that is.

1 Q. Has any decision been made about whether or
2 not to make that change?

3 A. We've been drafting mockups of that, but no
4 final decision has been made as to what
5 form that will take.

6 Q. How many different drafts have been made
7 up?

8 A. To my knowledge, only one.

9 Q. And did you make that draft?

10 A. No.

11 Q. Who made -- who put that draft together?

12 A. John Bennett.

13 Q. Okay. And do you know when your office
14 began considering making a change to the
15 state form?

16 A. I don't remember exactly.

17 Q. Can you give me an approximate -- one
18 month, two months, six months, a year?

19 A. I know my knowledge of it goes back to when
20 we made the change with the federal form
21 and we were talking about mirroring the
22 information onto the state form.

23 Q. Yeah.

1 A. But whether anything predates that, I'm not
2 aware.

3 Q. But you were aware last summer that
4 plaintiffs had asked you to make a change
5 to the form; is that correct?

6 A. Yes.

7 Q. Was there any followup to that discussion
8 at that time?

9 A. Not that I'm aware of.

10 Q. What's changed?

11 A. All -- I can only tell you my role in it,
12 and that was they asked me to come up with
13 the language for the national form so that
14 we could respond to the EAC.

15 Q. And who asked you to do that?

16 A. David Brewer, our chief of staff.

17 Q. Okay. I'm going to mark as Exhibit 53 the
18 draft I have of potential change in the
19 state form.

20 (Packard Exhibit 53 was marked for
21 identification.)

22 Q. And my understanding is that the change is
23 in Box 12; is that right?

1 A. Right. That is correct.

2 Q. And can you read aloud the text in that
3 box?

4 A. The Code of Alabama designates a number of
5 felony convictions that caused a voter to
6 be considered ineligible to vote unless
7 they have met certain parameters outlined
8 in information provided by the Alabama
9 State Department of Corrections. For a
10 full list of these crimes, please visit
11 alabamavotes.gov/felony or text MT to
12 ALVOTE, and then it gives the number for
13 the texting.

14 Q. Do you know if that text capacity is
15 already working or is that a proposal for
16 the future?

17 A. I'm not aware that it's -- it's activated
18 yet.

19 Q. So if I text MT to this number now, there's
20 no reason to believe that would work now?

21 A. I'm not aware of it being active now.

22 Q. Okay. Do you know of a timeline in which
23 your office is planning on making a

1 decision about how to change the state
2 form?

3 MS. MESSICK: Object to the form.

4 A. I do not know the timeline on that.

5 Q. Has anyone discussed a need to change the
6 form before the voter registration deadline
7 for this upcoming election cycle?

8 A. Let me think on that. You talking about
9 for the November election?

10 Q. I am.

11 A. There's been -- there's been some general
12 comments made that we wouldn't be able to
13 implement it that fast because of the
14 printing.

15 Q. Would it be possible to make a change on
16 the website immediately?

17 MS. MESSICK: I'm going to object
18 to the form.

19 A. Well, we have to promulgate -- our forms
20 are promulgated under administrative rule,
21 and so they would have to be promulgated
22 that way before they could go live on the
23 website, so that's -- my understanding of

1 the timeline under the Administrative
2 Procedures Act is there wouldn't be enough
3 time to do this before the election even on
4 just the website.

5 Q. If it was possible to promulgate this on an
6 emergency basis that would allow a faster
7 time rate, putting aside any Administrative
8 Procedures Act issues, do you think it
9 would be helpful to voters to have this
10 information available to them during this
11 registration cycle?

12 MS. MESSICK: Object to the form.

13 A. Well --

14 MS. MESSICK: This information in
15 Box 12? I just want to be sure that's what
16 you're asking.

17 MS. LANG: That is what I'm asking.

18 MS. MESSICK: Okay.

19 A. Well, this is draft language --

20 Q. Yeah.

21 A. -- that needs to be modified.

22 Q. I was going to ask that question as well.

23 MS. MESSICK: Well, I thought you

1 might be avoiding it with this witness with
2 the time, so that's why I just wanted to be
3 sure, so go ahead.

4 A. Yeah. So there would need to be work on
5 that.

6 Q. Yeah. So let me ask you that question. Do
7 you think this is written in a way that's
8 accessible, that the average person would
9 understand?

10 A. I think that this is language that's a
11 little more complicated than it needs to
12 be.

13 Q. Okay. Do you think that having information
14 available on the form that explained to
15 people that there was a list of
16 disqualifying felonies and that list was
17 limited would be helpful to voters during
18 this registration cycle if it was possible?

19 A. Personally, I think that would be helpful.

20 Q. Thank you. The current language on the
21 state base -- the current language about
22 disqualifying felony conviction, is that
23 the same across all voter registration

1 forms created by the Alabama Secretary of
2 State?

3 A. Yes, it should be.

4 Q. And so that --

5 A. It's all based on the same template.

6 Q. And that would include the agency?

7 A. Yes.

8 Q. Have there ever been any instructions given
9 to the agencies that do voter registration
10 work? And by that I mean the agencies
11 under the National Voter Registration Act
12 that must provide voter registration
13 services. Has there any -- has any
14 training been given to those people with
15 respect to HB 282 and what crimes are
16 disqualifying?

17 A. Not to my knowledge.

18 Q. Has any guidance been sent to those
19 agencies regarding HB 282 and what are
20 disqualifying crimes?

21 A. Not to my knowledge.

22 Q. I'd like to mark Exhibit 54.

23 (Packard Exhibit 54 was marked for

1 identification.)

2 Q. And this is an e-mail to you from a
3 Ms. Beverly Nix on March 27, 2018, or
4 rather her -- the original e-mail came from
5 Jerri Oliver from the department of --
6 Franklin County Department of Human
7 Resources March 26th, and then it reached
8 you through Beverly Nix, who's the
9 assistant director of the food assistance
10 division. And what Jerri Oliver says is
11 that he wanted to know what was meant by
12 disqualifying felony on the voter
13 registration form. And he indicates
14 that -- or she -- that she had assumed that
15 all felony convictions were disqualifying
16 before, but now she realizes that the
17 phrase "disqualifying felony" might mean a
18 more limited set. And your advice was that
19 those individuals would need to go to the
20 board of registrars in order to determine
21 if the crime was one involving moral
22 turpitude; is that correct?
23 A. Right. That's correct.

1 Q. So would that make it such that people with
2 felony convictions weren't able to use the
3 voter registration services of NVRA
4 agencies the same way that everyone else
5 could because they would need to go to the
6 board of registrars to determine their
7 eligibility?

8 MS. MESSICK: Object to the form.

9 A. They could still avail themselves of it.
10 And like we've stated before, we don't feel
11 they're prejudiced if they go ahead and
12 fill out a form and then turn it in.

13 Q. But would they -- would some people feel
14 uncomfortable signing a form under penalty
15 of perjury to something that they could not
16 know if it was true or not?

17 MS. MESSICK: Object to the form.

18 A. That's -- that is correct, to go back to
19 our previous discussion.

20 Q. And no -- and these agencies were not
21 trained to explain to people that they
22 could go ahead and turn in the form
23 notwithstanding --

1 MS. MESSICK: Object to the form.

2 Q. -- their felony conviction?

3 A. Right. That's correct.

4 MS. MESSICK: Object to the form.

5 Q. That's all I have on that.

6 (Packard Exhibit 55 was marked for
7 identification.)

8 Q. I'm going to mark Exhibit 55. This
9 document is normally much larger because I
10 think it's in poster form, but this is a
11 voting rights poster created by the board
12 of pardons and paroles. Are you familiar
13 with it?

14 A. Yes, I am.

15 Q. And my understanding is that the Office of
16 the Alabama Secretary of State worked with
17 the board of pardons and paroles to create
18 this updated poster that includes the list
19 of disqualifying convictions.

20 A. Right. That is correct.

21 Q. But I'd like to ask you this question.

22 Well, strike that.

23 First, were you involved in helping to

1 draft this document?

2 A. I was involved in the review process.

3 Q. I'd like you to imagine for a moment

4 bringing fresh eyes to this poster.

5 Imagine that you do not know that Alabama

6 has a law that says that people with

7 convictions involving moral turpitude are

8 ineligible to vote and that people without

9 convictions involving moral turpitude are

10 not ineligible to vote and can vote.

11 Looking at this poster, is there anywhere

12 on this poster that explains that first

13 fact, that would be the crimes on the right

14 are disqualifying and all other crimes are

15 not?

16 A. No. That information is not there.

17 Q. Do you think it would be helpful if that

18 information was presented on this poster?

19 A. It probably would be helpful.

20 Q. My understanding is that this poster is

21 used by the secretary of state's office at

22 photo ID events; is that correct?

23 A. Yes. We have hand-distributed them at some

1 photo ID events.

2 Q. Does your office have any other kind of
3 public education materials about voting
4 rights for people with convictions other
5 than this poster?

6 A. This is the only one I'm familiar with.

7 Q. Were you involved in the drafting of the
8 2018 voter guide?

9 A. Yes.

10 Q. Did anybody suggest including information
11 about HB 282 in the 2018 voter guide?

12 A. I don't recall anyone recommending that.

13 Q. And do you know if that information was
14 included?

15 A. I don't believe it was, to the best of my
16 recollection.

17 Q. Okay. Can you explain to me the system for
18 removing voter registrants based on a
19 felony conviction? And I'm not concerned
20 at this point with, you know, whether a
21 crime is disqualifying or not -- we've been
22 over that -- but, rather, kind of how are
23 registrars told to go through the process

1 systemically of removing people that they
2 become aware have a felony conviction?

3 MS. MESSICK: Object to the form.

4 A. Do you mean the actual process of removing
5 them in the computer system --

6 Q. Well --

7 A. -- and notifying the voter of that
8 determination?

9 Q. Yes. Is there a regular kind of weekly or
10 monthly or biweekly process by which the
11 registrars get new notices and then go
12 through them, determine who is
13 disqualified, and remove those people?

14 A. They should be. The information that's
15 provided to them through what's called
16 Agency Central is provided to them on a
17 regular basis, and I believe it is weekly
18 or biweekly or every two weeks, something
19 like that. And they're advised that they
20 need to work those batches when they come
21 in and not let them get stale.

22 Q. Yeah. So they get batches?

23 A. Right.

1 Q. And then they remove that batch?

2 A. Right.

3 Q. And then they get a new batch?

4 A. Right.

5 Q. And then they remove that batch?

6 A. Right. They process the batch, because
7 they may end up deciding that the person
8 doesn't need to be removed.

9 Q. They remove when appropriate?

10 A. Right.

11 Q. I understand. And when do they have to
12 stop doing that before an election?

13 A. We generally advise them to discontinue
14 work on that 45 days before an election.

15 Q. Okay. Does your office provide any
16 guidance to people who are arrested after
17 the absentee ballot deadline but before
18 election day about how they can vote?

19 A. Only if they somehow communicate with us
20 for that information.

21 Q. That guidance isn't publicly available?

22 A. I'm sorry?

23 Q. That guidance isn't publicly available in

1 some format?

2 A. No, ma'am.

3 MS. MESSICK: Did you say the
4 question was somebody was arrested after
5 the deadline for securing an absentee
6 ballot?

7 MS. LANG: Yes.

8 MS. MESSICK: Okay. Then I object
9 to the question and the follow-up question.

10 MS. LANG: Can you provide the
11 basis?

12 MS. MESSICK: If you've missed the
13 absentee ballot deadline, you've missed the
14 absentee ballot deadline. I'm not aware of
15 any special provision that would let you
16 vote --

17 MS. LANG: Well, that's --

18 MS. MESSICK: -- because you were
19 thereafter arrested, and I think --

20 MS. LANG: Right.

21 MS. MESSICK: -- that you presumed
22 that there was something and --

23 MS. LANG: I did not.

1 MS. MESSICK: -- you're asking him
2 how they notify people about that, so --

3 MS. LANG: I will clarify, then.

4 MS. MESSICK: Thank you.

5 Q. (By Ms. Lang) Does your office provide any
6 way for people who are arrested after the
7 absentee ballot deadline to nonetheless
8 receive an absentee ballot and vote?

9 A. No, because state law doesn't provide an
10 option in that case for someone to vote by
11 absentee ballot.

12 Q. So those people, even though they have the
13 right to vote, will have no opportunity to
14 do so; is that correct?

15 A. That is correct.

16 MS. MESSICK: Object to the form.

17 MS. LANG: Can you clarify?

18 MS. MESSICK: Those people might be
19 disqualified for all kinds of other reasons
20 and they don't have -- you said they have
21 the right to vote, but they don't, because
22 the only way they'd be able to vote at that
23 point is absentee and they missed the

1 deadline.

2 Q. (By Ms. Lang) If otherwise eligible voters
3 are planning to vote at their polling
4 location on election day and then they are
5 arrested after the absentee election
6 deadline, those people will not be
7 permitted to vote in the state of
8 Alabama -- is that correct? -- if they are
9 still incarcerated at the time of election
10 day?

11 A. That is correct.

12 Q. Do you have a system in place for ensuring
13 that incarcerated individuals understand
14 how to obtain an absentee ballot?

15 A. We don't have a program to educate them on
16 that.

17 Q. Have you had communications with the
18 department of corrections about that issue?

19 A. I'm not aware of communications with the
20 DOC about that.

21 Q. What would an eligible voter do if they
22 were incarcerated and could not afford the
23 postage to seek an absentee ballot?

1 A. I -- I have no knowledge on that.

2 MS. LANG: I don't have any further
3 questions.

4 MS. MESSICK: Okay. Well, by my
5 count, we've got only about 15 minutes, so
6 I'm going to follow up on a very limited
7 set of things.

8 EXAMINATION

9 BY MS. MESSICK:

10 Q. Mr. Packard, you discussed earlier with
11 Ms. Lang the board of registrars -- I'm
12 sorry -- the board of pardon and paroles'
13 position on possession of drugs. Do you
14 remember that coming up earlier today?

15 A. Yes.

16 Q. Is it your understanding -- what is your
17 understanding of what the board of pardons
18 and paroles' position was on the possession
19 of drugs prior to the 2017 list of moral
20 turpitude crimes?

21 A. My understanding is that if someone simply
22 possessed drugs but it was not with an
23 intent to distribute, then that was not a

1 moral turpitude crime. But if they possess
2 the drugs with the intent to distribute,
3 then that was a moral turpitude crime.

4 Q. And when you discussed with Ms. Lang the
5 fact that that position had been clarified
6 down the road, was that with respect to a
7 difference about simple possession versus
8 intent to distribute or with respect to the
9 drugs at issue?

10 MS. LANG: Object to the form.

11 Q. And I'd ask you to answer the question.

12 A. And clarify as to which drugs were covered.

13 Q. Right. What happened was that the board of
14 pardons and paroles took the position that
15 it didn't matter what drugs were being --

16 A. Right.

17 Q. -- possessed.

18 A. Correct.

19 Q. But the board of pardons and paroles, to
20 your knowledge, continued to understand
21 that there was a line between simple
22 possession for personal use and possession
23 with the intent to distribute?

1 A. Yes, that's correct.

2 Q. Do you know where that line came from?

3 A. I do not know where that line came from.

4 Q. Ms. Lang showed you on her computer a May
5 2018 snapshot that you testified that you
6 thought you had prepared in this case. Do
7 you remember that?

8 A. Yes.

9 Q. And do you remember that that snapshot
10 included a field that concerned date of
11 registration?

12 A. Yes.

13 Q. And do you remember that that snapshot
14 contained a field that concerned date of
15 status change?

16 A. Yes.

17 Q. If a voter applied to register to vote
18 three times in 2018, what date is supposed
19 to be on the date of registration field?

20 A. It's supposed to maintain whatever the
21 original date of registration was.

22 Q. Do you --

23 A. Not updated -- not updated based on new

1 registrations or updates.

2 Q. And who is "they"?

3 A. Boards of registrars.

4 Q. If a voter had multiple status changes,
5 what date is supposed to be the date of
6 status-change field?

7 A. If the status has actually been changed,
8 then it should be the date of the last
9 change.

10 Q. So if there were multiple changes, only the
11 last change would show?

12 A. That's my understanding.

13 Q. If I was in a car accident on the way to
14 the polls and was hurried off in an
15 ambulance to the hospital, would I have an
16 ability to vote by absentee ballot if I --
17 be it from my hospital room or if I got out
18 of the hospital later that day and was
19 confined to my bed at home?

20 MS. LANG: Object to the form.

21 A. Before noon or after noon?

22 Q. By the time I'm released, it's after noon.

23 A. Then no.

1 Q. Are there other circumstances that might
2 occur that would prevent somebody from --
3 who planned to vote at the polls from being
4 able to vote at the polls?

5 A. Yes.

6 Q. I want to refer you back to Exhibit 48,
7 which was an e-mail from Shannon Curtis
8 concerning an error that had been made in
9 some files that were sent apparently in
10 late -- the second half of 2007. Do you
11 have that e-mail in front of you?

12 A. In 2007?

13 Q. So the e-mail is dated 2008.

14 A. Okay.

15 Q. But she's referring to an error that
16 occurred in late 2007.

17 A. Okay. Yes, yes. I see that.

18 Q. First of all, can you tell from this e-mail
19 whether it was actually sent to the boards
20 of registrars?

21 A. No, you can't tell from the e-mail.

22 Q. Who is the -- who is listed in the "from"
23 field?

1 A. Shannon Curtis.

2 Q. And who is listed in the "to" field?

3 A. Shannon Curtis.

4 Q. Do you know whether this e-mail was ever
5 sent to the boards of registrars?

6 A. I have no knowledge of that.

7 Q. At the time that Ms. Curtis -- well, on
8 January 7, 2008, the date of this e-mail,
9 was -- who had control of the voter
10 registration system? Was it the secretary
11 of state's office or the special master's
12 office?

13 A. I believe at this time it was still under
14 the special master.

15 Q. And the special master was appointed by the
16 federal court?

17 A. Yes.

18 Q. And that specialmaster was Governor Riley?

19 A. Yes.

20 Q. January 7th of 2008, who was secretary of
21 state?

22 A. Beth Chapman.

23 Q. Okay. Ms. Lang has asked you a lot of

1 questions today about things that have
2 happened as recently as last month and as
3 long ago as 2007. Do you work on other
4 things at the secretary of state's office
5 besides felon voting?

6 A. Yes, I do.

7 Q. Do you actually work on a great many other
8 things besides felon voting?

9 A. Yes, I do.

10 Q. Is it fair to say that felon voting takes
11 up a very small percentage of your time?

12 A. Yes.

13 Q. The other matters that you work on, are
14 they all related to elections?

15 A. Yes.

16 Q. Are you aware of the United States
17 government suing the State of Alabama for
18 an alleged UOCAVA violation on at least one
19 occasion since 2007?

20 A. Yes.

21 Q. Are you aware of the State of Alabama
22 implementing -- or passing and implementing
23 and being sued about a photo ID law?

1 A. Yes.

2 Q. Are there a lot of aspects to voter
3 registration besides felon voting?

4 A. Yes.

5 MS. MESSICK: I'd like to take a
6 quick break to consult with my co-counsel
7 about whether I have additional questions.

8 MS. LANG: Okay.

9 (Short recess.)

10 MS. MESSICK: I just want to say
11 that I misspoke in my haste at the end.
12 These gentlemen, of course, are not
13 co-counsel. They're representatives here
14 today of the secretary of state's office.
15 They have not entered an appearance in the
16 case. And given the absence of time to
17 cover other things, I'm going to stop
18 there.

19 MS. LANG: Okay. I will have, at
20 most, two minutes of questions.

21 MS. MESSICK: Okay.

22 EXAMINATION

23 BY MS. LANG:

1 Q. Ms. Messick asked you about the e-mail from
2 Shannon Curtis that was marked Exhibit
3 forty- --

4 MS. MESSICK: 48, I believe.

5 Q. -- eight.

6 A. Okay.

7 Q. This document was produced to plaintiffs
8 from the secretary of state's office, so
9 that would mean that somebody in the
10 secretary of state's office received that
11 e-mail; is that correct?

12 A. Right. That would be correct.

13 Q. And, you know, it's common for there to be
14 a BCC line in e-mails where it doesn't show
15 who all the recipients of e-mail are; is
16 that also right?

17 MS. MESSICK: Object to the form.

18 A. That is correct.

19 Q. Okay. And this e-mail is addressed to
20 Alabama registrars; is that correct?

21 A. Yes, it is.

22 Q. All right. Ms. Messick asked you about
23 what might happen if someone were to get in

1 a car accident or have some other
2 circumstance arise in their life that might
3 cause them to miss voting on election day.
4 Can you think of another circumstance other
5 than incarceration in which it is the state
6 that is responsible -- I'll rephrase.

7 Can you think of any other circumstance
8 that would result in someone missing voting
9 on election day because the state will not
10 allow them to go to a polling place?

11 A. Not offhand, no, I can't think of one.

12 MS. LANG: I don't have any further
13 questions.

14 MS. MESSICK: I've got one
15 question.

16 EXAMINATION

17 BY MS. MESSICK:

18 Q. Do you remember -- well, I have one line of
19 questions. Do you remember Super Storm
20 Sandy?

21 A. Yes.

22 Q. And do you remember there being an issue
23 with national guard being called up?

1 A. Yes.

2 Q. And do you remember any details of that?

3 A. Yes. Provisions were made for them to be
4 able to vote by absentee ballot because
5 they weren't here locally to be able to
6 vote in person.

7 Q. Were provisions made for those people
8 responding to Super Storm Sandy or were
9 those provisions made for the next time it
10 happens? Basically, was Super Storm Sandy
11 a learning experience?

12 A. I don't remember the chronology on that.

13 Q. Okay. And do you remember specifically
14 what the provisions are if there would
15 still -- ultimately my question is going to
16 be isn't there going to be a deadline? If
17 the guard got called up the day of the
18 election, there's no provision we can make,
19 is there?

20 A. Right. That is correct.

21 MS. MESSICK: No further questions.

22 MS. LANG: No further questions.

23 (The deposition of Edward Packard

EDWARD PACKARD 9/19/2018

Page 313

1 concluded at 7:19 p.m. on
2 September 19, 2018.)
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1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA)
3)
4 ELMORE COUNTY)

5
6 I do hereby certify that the above and
7 foregoing transcript was taken down by me
8 in stenotype, and the questions and answers
9 thereto were transcribed by means of
10 computer-aided transcription, and that the
11 foregoing represents a true and correct
12 transcript of the testimony given by said
13 witness.

14 I further certify that I am neither of
15 counsel, nor any relation to the parties to
16 the action, nor am I anyway interested in
17 the result of said cause.

18 I further certify that I am duly
19 licensed by the Alabama Board of Court
20 Reporting as a Certified Court Reporter as
21 evidenced by the ACCR number following my
22 name below.

23
Bridgette Mitchell
Certified Court Reporter and
Commissioner for the State of
Alabama at Large
ACCR No. 231 - Expires 9/30/19
MY COMMISSION EXPIRES 12/15/21

EDWARD PACKARD 9/19/2018

Page 1

A			
a.m	accident	activity	administrative
1:23	305:13 311:1	80:12 82:6	9:10 15:16 20:1 23:5
ability	accidentally	actual	36:1 41:4 42:19
11:21 79:11 81:23	110:23	45:13 134:2 147:12	44:14,21 288:20
82:12 94:14 195:13	accommodations	153:14 244:22 297:4	289:1,7
224:1 305:16	82:16	Adair	administrator
able	accord	270:11,12,13,20 271:3	13:15,17 14:18,21
11:2 23:9 80:12 82:17	23:21 43:1 237:3	272:6,10	37:17 72:15
83:7 97:23 98:7	accords	add	advice
125:13 158:11,14	237:7	12:6,8 36:2 192:2,18	25:6 30:9 31:6,14 33:6
177:20 178:6 203:16	accountability	242:1,3	33:22 34:4 35:6,19
204:22 205:11 210:2	39:8	added	47:16 84:18 87:8
254:4 257:5 268:5	accountable	124:22 191:13 202:4	104:22 129:21,21
269:13 272:11,13	18:15	221:4 269:11	292:18
288:12 293:2 300:22	ACCR	adding	advise
306:4 312:4,5	314:16,21	157:8 195:9,16 223:5	84:20 85:5,11,14,18
above-	accurate	242:4	132:21 144:8 283:11
213:2	24:7 25:12,15 55:19	addition	298:13
absence	58:15 81:3 140:21	169:1 193:12 195:4	advised
16:20 89:15 177:23	193:15,16 195:8	additional	24:13 32:3,4 38:14,14
309:16	205:5 216:2 220:21	12:9 61:23 120:20	39:6 70:13 72:5 80:1
absent	276:7,18	145:9 157:19 191:13	86:20 105:4 134:8
167:1,8,12	ACLU	202:3 208:15 212:2	137:13 297:19
absentee	166:20 172:15,19	253:21 257:22 309:7	advises
13:21 80:5 120:4	173:14 174:9,13	Additionally	84:13,17
125:13 298:17 299:5	215:19 222:11	146:14	advising
299:13,14 300:7,8,11	228:13,14 245:3	Additions	124:4 283:7
300:23 301:5,14,23	ACLU's	6:12	Advisory
305:16 312:4	173:8	address	5:10 28:15
Absolutely	act	158:9	advocacy
85:1 131:23 266:14	13:19,21,23 120:4	addressed	229:4
abstained	141:20 149:4,10,12	18:12 79:7 310:19	advocate
241:4,5	184:14,15 279:21	addresses	163:17
abstentions	280:4 289:2,8 291:11	108:7 255:6	advocates
241:7	acted	addressing	79:23 80:6,9
abuse	78:2	18:2 107:4	affect
240:22	action	administer	11:21 74:9
acceptable	1:8 314:12	23:10 144:15	affirmed
93:4	actions	administered	10:7
accepted	39:17	104:8	afford
73:13 74:10,19	activated	administering	301:22
access	287:17	145:22	African-Americans
229:8	active	administration	196:6,8
accessible	70:7 275:3 287:21	13:1,2 22:11 36:22	AG
290:8	activities	37:23 57:7 95:15	35:19 117:15
	81:11	105:11,13 139:13	agencies

144:23 291:9,10,19 293:4,20 agency 106:14 141:11 144:8 145:10 291:6 297:16 agenda 182:23 aggravated 240:21 aggregate 257:10 258:6 ago 97:19 194:6 250:13 252:17 308:3 agree 33:7,8 37:22 53:7,9,15 74:13,16 82:19 130:15,20 146:8 149:7 185:22 189:1 197:2,12 200:21 247:9 agreed 3:2,18 46:22 197:10 197:20 201:2 243:17 243:22 agreement 202:2,9 agrees 178:19 ahead 12:18 38:10 81:14 188:9 232:23 290:3 293:11,22 ahold 112:13 al 1:5,11 Alabama 1:2,19,22 2:15,16,21 2:22 3:9 5:12,18 6:10,18,20 7:19 9:13 9:15,16,18,21 19:8 27:22 29:14 45:7,9 48:19 51:4,16 63:15 78:3 157:17 165:2 166:19,21 172:19	175:12 190:6 194:16 208:13,15 212:20 214:19 222:11 225:14 234:8 236:17 245:3 250:19 254:2 279:7,13 287:4,8 291:1 294:16 295:5 301:8 308:17,21 310:20 314:2,15,21 Alabama-elected 83:4 alabamavotes.gov/f... 287:11 ALEA 7:3 141:10,21 allegation 138:10 allegations 23:19 139:9,13,16,23 allege 77:22 alleged 22:17 308:18 alleging 131:16 Allen 77:23 79:1 allow 80:20 82:5 129:11 263:7 271:6 289:6 311:10 allowed 81:7 264:22 271:14 alongside 251:14 aloud 122:4 248:7,12,16 287:2 alter 261:14 altered 219:23 alternative 215:1 altogether 189:3	ALVOTE 287:12 ambiguous 146:5,9 ambulance 305:15 amend 12:6 40:22 184:13,21 amended 41:15 amendment 19:9 American 199:20 amount 96:6 amounts 209:16,17 angle 90:18 244:19 Anita 20:16 answer 11:8,21 12:1,6,15 33:12 35:10 38:10 40:17,23 41:14,16 65:2 85:10 99:2 144:19 255:4 273:4 303:11 answered 12:5 64:18 66:7,10,20 70:22 85:16 87:3 89:8 116:7 117:19 152:15 162:14 173:22 183:18 204:19 213:13 231:6 234:3 252:13 answering 12:17 50:15 answers 11:3,10 314:7 anybody 71:7 91:3,9 135:4 143:11,16 153:16 154:4 157:18,20 166:5 177:7 196:19	197:2,4 200:21 231:23 244:18 247:5 247:7 296:10 anyway 17:21 anywise 314:12 AOC 5:17,19 23:11 40:8 42:22 43:14 48:17,18 50:6 55:7 58:11 64:13 65:6,20 66:3 66:15,19 67:20 69:3 71:2 73:7,23 74:18 76:11 84:6,21 85:6 85:12,15,18 86:16,17 86:19,20 87:1,6,18 88:4 91:12 108:20 113:9 152:23 155:5 221:4,16,22 223:9 239:8,17 250:5,6,7 AOC's 50:10 64:5 65:23 apologize 31:11 57:9 121:19 160:22 173:18 274:15 apparent 128:8 apparently 60:12 88:2 123:1,1 233:13 306:9 appeal 94:16,23 95:20,21 99:12,13 appeals 96:7 appear 64:13 68:5 87:5 92:12 123:14,22 143:19 144:2 245:22 264:2 appearance 309:15 APPEARANCES 2:1 appeared

92:16,18	189:7	asking	224:18 249:12
appears	approved	11:1 26:19 36:10	attachment
21:22 45:12 51:14	275:4 280:7	46:15 64:21 66:8	67:18 155:11 157:1
58:8 67:18 123:12	approximate	101:5 108:3 112:2	160:10 175:9
127:13 132:11 169:2	285:17	128:7 132:13 246:2	attachments
172:7,18 181:10	approximately	279:20 289:16,17	61:10,15,23 156:1
198:9 208:20 210:5	13:12 14:13 16:1,4	300:1	157:2 211:16
211:10 251:22	43:12 55:3 63:14,17	asks	attempt
281:10	74:6 155:16 228:19	120:23 129:3 178:1	78:22
apples	266:23 267:12	aspect	attempted
44:5,5	April	146:6 198:14 199:10	94:5 263:2
Appleseed	129:3 283:6,10	aspects	attempting
172:20 208:14 212:20	arbitrariness	171:13 189:1 309:2	146:18,23
214:18,19 222:11	90:3	assigned	attempts
245:3	arbitrary	14:1,1 15:7 16:10 37:6	78:1 259:12
applicants	34:19 35:3 90:1	assist	attend
5:20	area	27:10 32:13 80:8	156:18 163:12
applicants'	163:18	82:16 118:13	attended
64:9	argument	assistance	161:11 163:10 193:18
application	48:4,5 49:5 199:21	28:1 87:15 108:12	227:10 228:4
145:4	arrange	278:21 282:23 283:7	attending
applications	57:14	283:11 292:9	165:22
28:7 142:8	arranging	assistant	attention
applied	156:8	16:21 115:19 116:1,4	146:1 212:1
304:17	arrested	133:20 292:9	attorney
applies	298:16 299:4,19 300:6	assisted	1:18 2:14 10:13 23:6
98:12 250:19	301:5	122:11	23:12 24:15 25:3,6
apply	aside	associated	27:21 30:18 31:15,22
29:17 251:5	232:13 255:12 289:7	224:21	32:5,18 33:4,23 34:5
applying	asked	assume	34:12 35:6,23 40:20
185:7	44:18 46:10 56:7	11:17 98:4 226:10	41:18 50:17 51:4,9
appointed	64:18,22,23 66:6,9	258:9	51:15 87:9 88:15
307:15	66:20 67:2 70:22	assumed	100:9 108:6 113:12
appreciate	85:16 87:3 89:8	292:14	116:22 222:4
53:18	107:23 116:7 117:19	assumes	attorneys
appreciated	119:22 139:11	254:12	22:6
134:9	152:15 162:14	assuming	Auburn
approach	168:11 173:22 178:9	235:8 267:20	13:1,3
215:1 222:13	183:18 197:13	assumption	augmenting
approaches	204:19 207:12 209:9	268:2	35:14
214:21	209:10 213:13 231:5	assured	August
appropriate	234:3 248:3 252:13	58:20	271:10,16 272:14
32:16 67:8 70:9 81:9	262:21 263:12 272:6	ations	284:12
120:23 121:5 143:2,6	273:12,13 274:2	7:18	authentic
298:9	286:4,12,15 307:23	attached	55:23
approve	310:1,22	61:7 145:20 182:22	authenticity

59:17,21 authoritative 36:5 161:22 162:5 automate 254:10 automated 263:8,19 automatic 7:15 168:1,5,12,19,23 169:1 170:17 172:4 173:3,9,12 175:22 176:2,8,11,16 185:5 215:20 216:20 217:2 217:13,15,20 218:1,3 218:8,12 automatically 34:8 168:4 265:5 avail 293:9 available 23:8 52:12,18 53:1 113:5,9 211:13 256:11 270:1 289:10 290:14 298:21,23 Avenue 1:19 2:9,15,21 average 95:17 130:16 290:8 avoiding 290:1 aware 26:6 35:9,12 36:3 41:11,12 47:2,7 49:7 50:23 51:2,11,18,21 52:5 56:20,23 61:15 61:22 69:6,8,12,18 70:3,12 86:16,17 91:5,8 93:20 96:3,8 102:5,11,15 108:14 108:18,19,22 112:15 112:20 115:13 116:12,14,19 118:21 121:15 127:4 138:22 146:20 147:3 210:8,9 229:4 260:1,4 272:2 273:3,13 274:1,4,5	286:2,3,9 287:17,21 297:2 299:14 301:19 308:16,21 B B 213:4 bachelor 13:2 back 12:8 40:22 41:1 47:13 49:16,19 57:1 68:20 73:15,17 85:8,9 91:23 98:14 99:3,4 106:11 119:14 132:4 132:8 137:7,18 171:16 182:18 188:5 202:7 203:11 205:3 205:11,16 216:11 232:12 258:15,16 275:13 284:14 285:19 293:18 306:6 background 12:22 backlog 176:22,23 177:5,9 bad 227:3 balances 209:17 Baldwin 125:12 ballot 18:7,8,10,11 99:9,15 298:17 299:6,13,14 300:7,8,11 301:14,23 305:16 312:4 ballots 18:13 barrier 143:20 144:2 Barry 140:13,18 141:2,3 base 290:21 based	8:15 64:3 65:22 69:11 69:16 76:10,12 87:14 93:5 123:13 147:3 152:23 155:5 220:15 222:13 223:2,3 239:8 239:16,21 241:9 254:19 255:17,17 257:7 268:4 271:11 276:21 283:3 291:5 296:18 304:23 basically 37:5,16 134:8 178:13 207:3 312:10 basis 50:1 58:14 108:11 125:16 131:18 183:7 244:23 262:7,18 264:17 276:16 289:6 297:17 299:11 batch 298:1,3,5,6 batches 297:20,22 Bates 119:16 BCC 310:14 Beal 2:19 133:15,16 159:15 159:16 252:10,16 273:8 280:10 Bearden 128:2 129:19 130:12 130:15 bed 305:19 began 14:19 19:1 76:16 105:23 106:16 142:2 285:14 beginning 25:17 50:3 146:4 begins 84:8 92:2 187:3 behalf 1:17 47:16 238:20	behavior 138:21 193:23 belief 50:10 109:16 116:2 136:20 259:9 believe 29:15 42:7 43:4 44:22 55:18 68:21 80:23 81:5 117:3 120:14 121:7 148:12 155:4 176:5 179:14 184:20 203:9 204:21,23 208:12 224:23 241:23 243:7 249:15 260:14,18 266:18 280:15 287:20 296:15 297:17 307:13 310:4 believed 35:5 63:18 125:21 170:16 205:2 believes 229:10 Bennett 105:17,22 106:1 115:1 115:4,6,11,16,17 116:4 133:20 145:21 146:8 147:5,11,16 148:17 161:10 280:11 285:12 Bennett's 147:13 148:2,10,13 best 11:5,6,15 15:21 25:13 25:15 37:20 38:11 52:7 89:9,13,16,19 106:15 107:8 137:12 151:7 152:16 156:4 157:5 173:7 174:11 183:15 185:11 186:4 195:12 201:11 220:16 296:15 Beth 5:12 84:12 307:22 better 43:19

Beverly 131:15 292:3,8	bit 12:21 22:1 60:10,13 78:18 84:4 148:21,22 161:16 162:22 269:7 275:13	bottom 54:7 77:16 195:12	220:9,13 240:6
beyond 209:15 278:7	biweekly 297:10,18	box 286:23 287:3 289:15	Brown 30:17 31:1,10,12 58:21 75:17 86:16 105:5,7 106:19 107:18 108:1,4,14 109:3,8,20 112:11,12 112:16 116:11 118:23 119:5 120:22 122:11 123:16,23 124:18 125:1 126:2 130:13 133:15
biased 90:16	blank 273:7 274:21	Brandon 159:5,9	
Biehl 163:15 164:22 229:19	BLOCK 2:9	break 12:11,14,18 78:13 182:16,18 223:1 224:5,6 258:20 259:2 264:4 265:13 309:6	
big 67:4 182:14	board 5:10 6:10,11 7:4,6 9:21 19:16 25:4 28:15 29:20 32:16 37:4 38:15 39:3 48:15 49:8 50:13 51:1,22 52:6 64:7,12 65:6 66:16 72:5,8,12 72:13 84:10,20 85:14 87:6 88:19 92:13,21 92:22 93:9 94:1,15 95:21 97:19,21 98:13 101:14,17 102:5,16 102:21 104:17 113:5 114:14,15 116:15 121:8 124:23 126:17 127:14 129:22 130:7 134:22 136:21 137:19 141:4,17 142:20 143:11 165:8 166:19 175:12,21 177:4,8 212:1 234:14 272:21 274:22 292:20 293:6 294:11 294:17 302:11,12,17 303:13,19 314:15	breakdown 213:2	
bigger 44:2		breaking 159:22	built 243:16 244:4
bill 7:8,10,11 8:8,10,22 149:5 150:4,13,21 151:4 152:14,19 154:2 155:8,18,22 156:7 157:4,8 158:7 158:16,20 159:1 162:9,10 182:2 187:11 188:17,22 189:2,2,8,19,21 190:1,4,10,15,17 191:4 208:1 211:21 212:5,11,14 213:6 215:4 216:21 218:12 220:3,8,12,23 221:8 221:16 231:21 235:3 235:4,21 236:1,5,22 236:22 237:2,8 238:4 238:9,16 239:7,16 240:13,15,18 241:13 242:23 243:2,14 244:1 245:11 249:9 250:1,3,8,11,15 251:4,4,15,16,22 252:1		breaks 12:13 213:3	bunch 152:3
		Brent 2:19 133:15,16 159:15 159:16 252:10 280:10	Bunn 120:19 121:14 122:9 123:11 183:21
		brent.beal@sos.ala... 2:23	Bunn's 124:9,21
		Brewer 14:4 17:2 132:12 133:4,8,19 160:16 279:23 280:10 286:16	Butler 107:19,19,20,22 120:13,14,23
		bribery 154:12,17 249:1,2	butt 227:1
		Bridgette 1:20 3:7 49:16 314:19	C
		brief 29:7 38:7 81:13 233:15 236:19	C 213:4,17 214:3
		bring 216:16,22 226:15 239:17	call 30:16 72:5,21 93:7 145:23
		bringing 295:4	called 52:19,20,23 211:21 266:15 297:15 311:23 312:17
		broad 213:11 225:2	calling 149:1 212:1
		broader 55:2,10 56:9,11	calls 105:9 106:4 118:12
		brought 48:4,4 218:11,17	Cam 167:3 181:1
binding 32:9,12	boards 5:23 15:10,15,19 23:8 36:23 37:8 41:9 96:19 256:13 271:12 305:3 306:19 307:5		campaign 2:4 13:22,23
Birmingham 178:20	bolded 191:20		Campbell
birth 266:18	BOR 6:7 9:8		

100:16,17 125:10,10 125:11,14 Campbell's 101:1 capacity 1:11 287:14 Capitol 2:21 capricious 34:20 35:3 captioned 22:8 capture 264:19 car 305:13 311:1 Caraway 163:22 care 169:22 185:2 careful 46:15 carefully 224:20 Carol 165:7,10 183:16,17,19 183:21 206:11 230:5 Carolina 19:16 carry 130:4 180:14 187:11 case 3:20,21 10:14 23:17 29:13,16 46:6 70:3 73:9 92:17 95:18 103:6 117:18 123:12 135:10 160:10 165:3 172:8 210:17 231:5 245:21,22 252:19 261:22 262:20 300:10 304:6 309:16 case-by-case 108:11 cases 56:21 79:16 96:3,9,11 cast	99:8 category 30:19 cause 33:10,18,21 34:14 35:7 93:17 253:13,17 253:18,19 255:15 311:3 314:12 caused 93:21 287:5 CENTER 2:4 Central 297:16 certain 112:14 123:15 124:1,5 133:6 140:1,3,6 189:13 247:20 270:23 287:7 certainly 55:13 81:19 86:15 87:20 90:4 182:11 184:9 189:11 227:1 236:7 certificate 93:11 185:8 186:1 314:1 certificate- 219:23 certificate-of- 186:6 certificate-of-eligibi... 185:4,13 certificate-of-eligibi... 184:18 certificates 177:9 Certified 314:15,20 certify 314:6,11,14 CERV 94:3 95:16 98:11,12 98:17 102:8 148:15 186:6,19 191:12 200:11 211:19	214:23 222:14 226:6 228:15 234:20 242:23 CERV-related 220:12 CHAB 122:16 chain 53:21 77:13,16 78:15 84:3,8 92:2,9 100:21 104:16 120:12 125:9 127:23 128:6,13,13 135:22 140:12,19 177:14 270:10 274:14 278:19 279:3 chair 38:15,23 chairman 78:4 82:19 136:21 141:3 166:18 175:11 177:3 challenge 98:7 challenged 29:17 challenges 225:6 chance 28:23 61:1 132:6 190:5 change 28:4 36:17,18 37:1 62:19 67:8 73:5 76:3 76:7,10,13,18,19 146:16 237:13 238:14 254:18,19 263:23 264:20 265:3 266:8,9,16 267:8,18 268:6,11,16 273:2 276:5 279:4,11,21 282:16 284:9,15,17 284:20 285:2,14,20 286:4,18,22 288:1,5 288:15 304:15 305:9 305:11 changed	18:5,23 19:10 22:2 23:1,4 232:9 258:4 265:1 286:10 305:7 changes 7:5,7 22:11 23:3 240:18 241:1 251:8 251:23 252:3 280:2 305:4,10 changing 75:19 217:13 235:14 242:18 Chapman 5:9,12 6:3 22:8 31:3 54:4 84:12,19 85:18 87:23 92:3 105:16,21 105:23 106:17 307:22 characteristics 258:12 characterization 132:4 characterize 146:12 171:23 characterizes 142:14 charge 222:15,19 223:10 271:4 276:6 charged 69:1 233:23 248:17 charges 133:2 chart 114:18 check 142:19 143:11 144:4 282:4 checking 143:17 Cherokee 9:8 274:22 chief 14:2,3 17:2 58:4 60:20 115:19 116:1,5 133:4 133:21 279:23 286:16

child 195:14 240:22	clarifies 128:17	309:6,13	288:12
children 226:8	clarify 11:15 64:16 66:5	code 122:16 157:16,17	commission 3:10 278:22 282:23
choose 269:5	119:18 121:12 193:2	225:14 236:17	283:7,12 314:22
chose 157:7 164:17 206:18	198:23 263:10	270:21 271:4 276:6,7	commissioner 77:23 79:1 82:5 165:1
242:3 244:17 245:10	272:12 300:3,17	287:4	314:20
chosen 157:12	303:12	codes 108:5,15,20 109:9	commit 44:1 178:8
Chris 167:2	clarifying 7:18	120:21 122:9 123:19	committed 75:19,21
chronological 14:8	Clarke 201:7	124:8,21 272:20	committee 7:13,21 8:6,16,18,20
chronologically 18:18	class 213:4,17,17 214:2,3	283:19,20	48:2,3 150:8,14
chronology 312:12	215:3	Coleman 163:23 164:2,9 190:22	151:8,12 152:11
circuit 75:8 95:1 125:11	classification 8:10 212:13 213:2	191:3 199:17 206:13	160:3,6,15,19 161:17
166:16,17 201:7	Clay 16:21 118:23 119:6	229:12,17	162:3,17,23 163:2,8
circulated 48:14 173:20 212:21	133:15,17 136:1	collect 93:4	163:14 164:11,15
212:23	140:12,23 143:4	24:2 25:1 67:21	165:9,17,23 166:2,7
circulating 224:17	279:18 280:10	114:18 264:21 266:8	166:13 167:4,23
circumstance 58:19 93:23 95:8	282:22	266:11,19 267:9,18	171:21 172:3,21
268:11 311:2,4,7	clear 46:9 107:9 126:4,11	267:19 268:17	173:6,21 174:10,14
circumstances 34:7 135:10 146:20	127:9 172:10 197:8	come 26:21 39:21 44:18	175:10 177:1,22
257:7 275:5,10 306:1	253:5 280:18 283:17	140:20 178:20	178:17 179:6,21
Citizens 13:21	clearly 64:22 66:8 103:14,15	182:18 188:21	180:6 183:1,9 184:5
Civil 1:8 3:5,17 4:1 196:6	197:16	189:23 190:10,14	187:1 188:16,19,23
199:20	clerk 125:11 166:17 201:7	207:6 208:4 232:12	188:23 189:18,23
claim 38:21,22,23 55:14,15	clerks 75:8	255:2 286:12 297:20	190:5 198:17 199:13
claims 38:16	clicking 268:7	comes 122:20 133:3 214:4	204:2,9 205:2 206:16
clarification 53:19	Cliff 166:18 175:11 230:11	comfort 149:19	211:11 212:23
clarified 303:5	279:18 280:1	coming 68:9 89:18 109:21	213:10 216:17
	clip 155:12 281:14	142:13 189:19	217:18 219:19
	close 98:3	302:14	220:10,10,14,16,20
	closely 252:5,6,9	commencing 1:23	222:12 223:5,21,21
	co-counsel	comment 139:18 196:21 198:8	224:16,17 226:16
		commenting 196:23 197:4	227:5,12,20,21
		comments 138:7 240:16,17	228:12 229:14
		241:10 273:10	231:17 233:5,13
			234:19 235:5 236:23
			239:10,12,23 240:5
			240:11,14,17 242:5
			243:8,19 245:7 247:2
			committee's 236:11,13 238:13
			241:10 244:15
			committing

108:22 260:15 common 310:13 communicate 60:10 180:9 280:1 298:19 communicated 102:23 156:21 communication 49:8 121:15 181:10 communications 47:17 128:4 276:13 301:17,19 community-outreach 164:5 company 275:19 compared 40:8 55:5 251:3 compiled 55:4,7 108:23 115:16 complete 12:7 81:4 171:18 187:10 201:1 205:9,9 completed 129:23 137:17 168:2 completely 11:22 completing 171:13 completion 175:1 215:22 compliance 13:18,20 141:19 complicated 290:11 compound 45:3 comptroller 39:5 computer 144:15 262:5 263:7 265:6,18 268:21 269:9 297:5 304:4 computer-aided 314:8	concept 225:4 concern 46:1,4 50:21 58:11 92:16 121:10 200:10 200:21,23 201:8,9 214:8 227:4 261:6 concerned 89:23 90:2,5,10,13 92:12 142:11 143:1 177:22 178:7 213:15 213:23 296:19 304:10,14 concerning 225:15 306:8 concerns 47:3,11 48:8 161:21 168:13 187:12 188:10 201:4 226:23 concise 282:12 concluded 124:6 313:1 conclusion 46:7 170:4,7 192:21 193:14 194:3 220:18 conclusively 258:10 conduct 79:11 80:12,21 81:7 conducted 24:10 144:13 conducting 5:7 21:2 79:14 confess 270:22 confident 104:7 confined 305:19 confirm 20:19 61:12 151:19 266:7 confirmation 284:14 confirms	116:2 conflict 39:12 confused 255:23 256:7,8 257:11 271:3 confusion 125:20 225:15 253:13 253:17,19 255:16,19 256:4 257:6 Congress 189:14 cons 192:22 193:18,20,21 consensus 8:15 193:11 243:8,15 243:16,18 244:3 consider 36:5 193:23 208:10 216:15,20 226:13 235:14 consideration 190:16,20 216:18 225:23 284:21 considered 34:22 108:15 207:5 209:1 217:2 280:12 287:6 considering 224:21 285:14 consistent 49:12 118:19 consistently 34:4 constitute 108:9 constituted 246:17 constitutional 19:9 construction 225:11 construed 197:17 consult 31:22 270:2 309:6	consulted 116:6 consulting 87:12 contact 30:21 72:7,12 105:4 contacted 137:12 282:22 contacting 134:9 270:20 contained 133:3 304:14 containing 265:23 contains 266:4 content 59:14 138:12 276:22 contents 175:14 continue 24:14 31:16 60:8 106:2,3 149:5 185:23 186:18 282:5 continued 6:1 7:1 8:1 9:1 31:18 106:1,17 130:5 243:2 303:20 continuing 58:13 185:7,12 186:5 contradicts 56:3 contrary 59:23 60:3 63:3 control 36:19 39:15 307:9 controlled 6:15 109:18 110:2 111:21 126:5,19 127:10 128:20 convened 239:12 conversation 54:8,9,13 64:11 134:3 138:2 147:7,8 192:7 198:9 247:18,22

conversations 30:2,4,5 59:5,8,12,14 148:17	coordinated 159:6	183:23 195:11 200:9 211:9,15 218:15 219:20,21 220:4 222:8 228:7,16,20,21 235:3 236:3,4 238:23 239:11,18,20 244:11 247:4 249:16 252:11 252:14 256:17 263:19,20 266:20 267:6,9,16,20 268:9 277:6,9 278:3 286:5 287:1 292:22,23 293:18 294:3,20 295:22 300:14,15 301:8,11 303:18 304:1 310:11,12,18 310:20 312:20 314:8	106:8,10,13 107:6,10 118:14 133:16,17 264:10 265:21,22 271:12 279:19 314:11
convicted 21:14 27:1 40:3 69:2 72:1 101:9 123:3 144:5 145:5 210:1 214:2,3 225:7 253:20 253:20 254:9,22 259:14	coordinates 16:9	Coosa 122:15	count 99:15 302:5
conviction 5:14,22 6:6 9:10 51:14 51:14 64:6 72:17 73:11,12 74:17 96:22 101:22 122:16 123:19 125:18 126:7 128:10,18 129:7 130:18 131:18 137:21 142:18 183:8 195:17 203:22 245:19 247:15 254:15 255:21 256:15 260:7 262:7 262:19 264:17 266:3 270:21 275:1 277:3 278:8,9 290:22 294:2 296:19 297:2	coordinating 15:19	copied 58:6,9 60:20 70:17 177:14	counties 210:15 278:10
convictions 20:2 22:20 23:13 25:19 28:8,9 41:3 49:4,7 52:13 67:19 69:1 72:18 76:16 83:7 84:7 87:5 124:1 128:11 137:1,23 142:13 143:14 144:9 145:1 152:18,19 175:18 176:17 213:16 215:22 227:2 229:9 245:20 262:17 276:17 287:5 292:15 293:2 294:19 295:7,9 296:4	copies 5:15 77:19 113:18 160:20	copy 25:2 45:13 109:5 110:17,23 160:21	counting 44:5
Cookie 270:11,12,13,20	correct 11:15 13:8 19:22,23 21:9,10 23:14 25:22 42:20 44:23 46:3 58:7 60:22 62:17 67:3 70:8 78:21 80:13,14,15 81:6 82:7 85:12,13 87:2,4 88:18 92:15 93:13,14 97:14 99:1,21,23 101:2,10 104:11,19 104:20 105:1,2 111:11 113:10,15,16 116:13 117:2,3,9,11 119:3 120:16 123:8 124:2,10 125:4,18,22 125:23 126:3,12,15 126:20,21 127:17 128:21 129:15,18 131:2,3,20 132:11,15 134:5 137:5,6,9,10 138:1 141:12,13 142:14,16,21,22 143:23 151:13,16 152:12 153:20 155:18,19 162:13 163:11 167:20,21 169:8,8 172:2 176:18 176:20 178:13,22	corrected 57:1	county 87:8 92:7 96:6,7 97:11 97:12 104:18 107:21 120:15 122:1,15 125:12 127:15 130:7 130:9 134:23,23 136:22 141:4,23 143:11,13 165:8 183:5,5,6,19 201:8 270:14 274:22 276:11 277:8,14 292:6 314:3
Cookie's 270:16		corrections 5:14 9:10 57:5 77:22 79:1 82:5 165:2 287:9 301:18	Court's 46:6
		corrective 276:12	court-
		correctly 57:3 148:12 184:16 205:22 269:1 274:3	
		correspondence 272:17 276:13 279:16 279:17,17 283:4	
		corruption 154:11,12 249:4	
		cost 67:7,12,16	
		costs 100:1 169:17 198:10 198:14,19 199:10,15 199:23 201:22 202:4 203:10	
		counsel 3:3,19 18:1 27:9,10 28:3 29:9 30:6,7 31:1,13 33:5 34:5 35:20 52:21 58:4 66:4 87:9 105:4	

175:2 court-ordered 216:1 courts 9:11 20:2 23:5 36:1 41:4 42:19 44:14 51:6 108:9 155:6 166:22 194:17 Courts' 44:21 45:8 cover 230:23 309:17 covered 303:12 craft 255:13 crafted 254:17 create 89:23 90:6 162:17 206:6 255:19 262:6 275:6 294:17 created 42:2 48:14 114:22,23 115:1,3,5 150:14 151:8,10 157:4,6 161:18 164:12 264:2 269:3 291:1 294:11 creating 189:18 270:3 creation 115:7,11 116:6 275:10 crime 17:23 26:4,16 32:23 35:20 42:11 50:18 51:3,5,6,17 54:19,20 72:7 80:2,3 88:5,16 94:3,6 95:4,13 96:16 97:10,20 98:18,20 101:22 106:7 108:5,9 108:15 109:9,19 110:3 111:16 113:6 118:4 125:22 154:18 163:17 170:20 204:11 205:4 214:11 214:12 221:8,8	241:14 246:20 247:10,11,23 248:2 249:15,17,18 251:5 254:8 270:23 272:7 292:21 296:21 303:1 303:3 crimes 6:14 8:7,10 19:20 23:7 27:2,8,23 30:19,22 31:16,23 34:1,22 35:15 39:22 40:3,4 40:19 41:18 42:9 43:13 48:1 49:5 50:12 52:13,14 53:3 53:6 55:4,7 63:22 69:9 71:3,8,13 102:7 103:2 104:1,22 106:15 108:1,2,7,13 108:21 109:1 112:14 112:18 113:14 114:19,20 116:16,23 117:7,14 118:18 119:2 121:6 123:4,15 124:5,6,7 149:15 153:3,14 154:11,20 154:21,22,23,23 155:7 157:3,8,10,12 157:19 191:10,11,13 191:15 192:7,12,16 195:6,9 196:4 207:4 207:6,23 208:9,14,16 208:23 211:9,17,20 211:21,22 212:2,3,13 213:3,12 217:9 220:19 221:1,2,22 222:3,6,14 225:7 228:15,20,23,23 230:21 231:11 234:7 234:9,13,20 235:6,7 235:11,19 236:5,16 238:16 239:14 240:8 241:9,20 242:6 244:17,22 245:15 246:6,15 247:2,20 250:21 253:21 254:23 259:7 261:12	272:21 282:14,19 287:10 291:15,20 295:13,14 302:20 criminal 120:20 122:16 142:18 266:3 276:2 criminals 142:15 criteria 174:22 175:4 247:1,5 247:8 cull 262:23 current 13:13 15:1 110:6 147:10 191:23 275:2 290:20,21 currently 13:7 17:9 136:10 234:13 284:21 Curtis 275:14,17,18 306:7 307:1,3,7 310:2 cycle 288:7 289:11 290:18 D D009606 265:19 D150682 119:16 D150683 119:17 DA 87:8 Daniel 136:1,12,13 Danielle 2:4 10:13 61:5 119:16 119:17 131:21 Darlene 163:15 164:21 229:19 data 5:18,20 183:10,14 184:2,3,4 245:9 database	67:23 129:10 255:7 databases 265:11 date 36:15 105:15 151:10 262:21,22,22 263:23 263:23 264:20,21 265:1,2 266:8,16,18 267:8,18 268:6,10 269:16 271:10,18 272:13 304:10,14,18 304:19,21 305:5,5,8 307:8 date-of- 267:18 268:5 date-of-registration 266:19 267:8 date-of-status 268:16 dated 75:5 114:16 173:14 177:16 211:7 214:17 224:19 306:13 dates 269:10 David 14:4 17:1 132:12 133:4,8,19 160:16 167:8 279:23 280:10 286:16 day 132:13 181:2 222:22 222:23 298:18 301:4 301:10 305:18 311:3 311:9 312:17 days 60:15 75:5 98:15 99:10,19 298:14 DC 2:6,10 deadline 98:5,9,12 271:9 288:6 298:17 299:5,13,14 300:7 301:1,6 312:16 deal 68:12 171:7

dealing 255:17	decision-making 86:2,9	88:22 89:1,4,6	deprive 81:23
deals 68:14	decisions 33:2 37:20 89:10	delay 112:21	depth 279:3
Dean 136:1,12,13	95:12 96:15 97:4	delays 112:16,20	described 265:22
Dear 273:6 274:20	123:15 177:23	delete 184:23	description 24:7 55:19 58:16
debt 170:23 171:15 205:18	declaration 9:3,4 118:1 160:10	Delete/ 5:14	designated 91:16
205:18 206:1	252:19,23 253:3,6	democratic 82:13	designates 287:4
December 172:15 173:3,15	254:7 259:3 261:22	democrats 83:11,17	desire 46:8
177:16 183:1 187:4	262:3,4,12 263:3,14	demonstrate 213:10	despite 77:6 222:10 243:3
187:17,20 195:10	263:18 266:22 268:3	demoted 17:5 18:6,14,16	272:13
202:8	270:4	denial 262:22	Destroy 5:15
decide 26:16 97:10 221:1	declare 260:2	denied 94:14 125:16 262:6,18	details 148:12 312:2
234:18 247:2 282:15	deemed 222:4	264:16 267:2,13	detention 80:20
decided 84:19 87:23 91:10	deeper 138:23	276:16 277:2	determination 27:3,16 32:19 42:23
94:19 95:23 96:16	defendant's 61:17	denies 259:15	85:5 87:12 88:15,16
102:16 155:6 162:2	Defendants 1:12 2:13	dense 166:4	92:15,23 93:10 95:22
163:1 219:7 278:11	define 47:23 70:6 89:13	deny 82:11	134:11 221:6 297:8
284:4	111:12 149:22	department 165:2 287:9 292:5,6	determinations 17:22 27:7 35:15 86:6
deciding 93:11 97:4 113:6	214:21 215:2 217:8	301:18	87:7 89:17,21 109:22
190:17 192:17	229:14	depend 74:19	123:23 125:2 133:5
216:16,21 223:23	defined 220:3 229:1 234:8	depending 113:2 146:17,22	determine 26:20 42:10 64:5
226:14 235:18 298:7	defining 8:12 50:18 174:15	depends 133:1 135:9	65:17 84:14 88:5
decision 23:17 26:3,10 27:11	224:22 234:11	deposed 10:15,17	96:15 110:9 130:17
27:12 32:14,22 86:5	definitely 109:18 110:2	deposition 1:15 3:4,6,14,20 10:23	134:23 143:12
86:11,15 87:14 89:16	definition 8:20 29:14 110:12	18:18 120:3 149:2	152:17 153:2 158:11
92:19 93:8 94:17	111:15 224:23	252:16 312:23	159:21 207:4 268:5
98:8 99:14,16,19	236:10	depositions 119:20,23	282:9 292:20 293:6
108:10 112:3 205:20	definitive 104:6		297:12
206:8 277:13,18,20	definitively 117:1,8		determined 35:21 94:6 95:3 96:21
277:22 282:11 285:1	degree 89:2 128:20		108:8 109:10 120:21
285:4 288:1	degrees		122:17 258:10
decision's 94:23			274:23
decision- 85:21			
decision-makers 93:16			

determines 98:20	20:5,12	54:9 78:19	161:23 245:16
determining 25:7 64:8 70:19 102:6 162:7 170:11	director 14:11 16:6,7,12,20,21 17:1,10,17 20:10 130:22 136:9 164:2 166:21 271:23 292:9	discussing 29:16 38:8 57:12 78:17 84:5 215:10 246:6	dismiss 33:9,18
deterred 259:22 261:8	disagree 32:17 178:9	discussion 29:12 71:19 170:1 172:4 192:20 193:5 193:13 195:16 198:12 199:8 202:10 204:7 218:6 223:23 224:3 227:9,13 234:7 235:10,21 236:19,21 237:1,8 241:16,19 242:5,8 243:9 244:20 245:1 246:9,13 248:6 248:10,11,23 249:2,3 249:5,8,19,21 253:8 264:14 265:14 286:7 293:19	disparate 245:18
developed 196:5	disagreed 168:11 197:20	discussions 77:8 180:5,10 223:4 223:11,17,20 243:3	disposition 276:7
Dexter 2:21	disagreeing 33:22	disenfranchise 25:19 26:23 49:3,6 51:13 84:7	disqualification 279:14,21
dialogue 92:3	disagreement 198:13 199:9	disenfranchise- 7:18	disqualified 92:20 97:13 130:6,10 135:2 144:21 266:2 297:13 300:19
diem 38:22	disclaimer 142:17	disenfranchised 58:13 69:5,11,22 70:4 75:23 88:14 98:23 99:20 112:22 131:17 162:7 278:1	disqualifies 203:21
differed 35:5 146:22	discontinue 298:13	disenfranchisement 5:16 7:12,15 8:5,19 17:13,16,20 18:22 19:4,6,13 20:7 22:12 39:13,18 42:15 59:1 59:3,6,11 62:7 63:4,9 68:8,13,15 139:14 150:9 203:19 204:4 213:19	disqualify 5:18,20 176:7
difference 34:11 39:11 73:22 147:3 303:7	discretion 276:11 277:8,14	disenfranchisement... 7:21 8:4,17	disqualifying 6:6 21:20 28:10 39:22 40:3 51:8 52:14,15 53:3 55:3 63:22 67:9 67:15 71:3,9,14 72:1 72:7,11,18 73:2 80:3 96:22 97:5,11,21 98:18,21,21 101:23 102:8 103:2,7 104:1 104:23 117:16 118:5 121:7 124:2 125:22 126:6,12,20 127:11 129:9 130:18 137:20 137:23 143:7 144:6 145:5,12 146:16 225:1 259:7,14 260:7 261:12 271:7 272:8 278:6 282:19 290:16 290:22 291:16,20 292:12,15,17 294:19 295:14 296:21
differences 37:11,14,15	discriminate 46:8 196:5	disenfranchising 22:19 50:12 143:13	dissemination 5:22
different 15:16 32:19 63:8 64:22 74:7 76:10 78:18 93:15 129:20 140:19 159:2 165:11 171:13 211:12 240:10 242:13 265:11 285:6	discriminating 90:15 138:11,16 196:7		distribute 39:2 102:13 302:23 303:2,8,23
differential 90:6	discrimination 46:3 47:5,11 48:9 195:21		distributed 41:11 48:21 116:13
differently 227:4	discriminatory 48:6 138:20 245:17		distributing
difficult 98:7 129:13 130:16	discuss 45:20 51:20 57:12 78:19 133:9 167:23 181:13,13 215:8 221:21 226:19		
difficulty 145:21	discussed 20:20 58:2 59:15 92:1 97:19 133:23 167:5 169:5 192:22 193:19 195:9 221:5 223:7 225:12,18 226:2,21 227:5,6,8 228:18 241:14 245:6 261:16 288:5 302:10 303:4		
diploma 88:21	discusses		
direct 39:4 49:21 52:20 61:2			
directed 78:15 134:17 153:22 187:7,9			
directly			

251:15 DISTRICT 1:1,2 division 1:3 16:8,14 17:3 18:9 136:15 292:10 dlang@campaignle... 2:7 DOC 301:20 docket 160:13 document 20:17 21:22 28:19,21 29:4 44:16,17,20 45:7,11,21 49:14 54:5,11 61:4,6,16 62:11 68:2,4,5 75:10 75:15 85:2,3 86:23 92:10 100:22 120:8 122:6 132:1 140:14 145:20 150:17 151:3 160:13 176:21 178:3 182:14 183:20 184:12 188:13 199:6 209:4,6,8,13 210:20 210:23 212:10,17,19 212:20 213:6,9 216:8 224:11 227:14,19 228:1,6 232:21 251:21 262:14 265:20 266:6,7,23 269:22 270:18 273:21 276:4 294:9 295:1 310:7 documentary 52:22 documents 43:20,21 68:6 152:4,7 172:18 219:11 228:10 283:18 Dodson 8:21 215:18 doing 71:7 91:3,6 132:17 137:1 298:12	door 50:16 doubt 55:22 59:17,20 draft 7:8,9,11 8:22 9:18 150:21 152:19 154:2 158:6,15,20 162:19 181:14 188:16 190:17 208:1 212:5 216:16,21 218:10 219:20 235:3,4,21 236:1,4,21 237:8 239:16 240:13,15,18 241:13 245:11 249:9 252:1 274:19 280:5,6 282:6 285:9,11 286:18 289:19 295:1 drafted 151:4 162:9,10 182:2 219:3 220:6,8,12,23 222:16 231:22 235:11 239:2,7 243:1 243:14 244:2 250:1 drafter 151:6 152:13 154:9 drafting 47:23 149:21 190:20 221:12,16 285:3 296:7 drafts 150:4 280:12,13,16 281:7,12,20,22 285:6 drive 5:7 21:3 78:23 driver's 141:11,15 144:8,14,23 145:10 drives 77:21 78:1,20 79:12 79:15 80:21 81:8 82:20 Driving 117:4 drug 102:7 154:20,21,23	240:22 242:1,4,6 drugs 302:13,19,22 303:2,9 303:12,15 due 37:1,2 82:15 209:17 273:9 duly 10:7 314:14 Dunn 165:1 231:1,3 duties 13:16 14:1 15:3 16:23 20:11 36:17,22 duty 32:21 dwell 18:3 E E 2:8 E-207 2:22 e-mail 5:13,16,21 6:3,4,6,7,9 6:12,13,15,17,18,20 6:22 7:3,4,6,8,9,11 7:20,22 8:3,7,17 9:5 9:8,9,12,19 53:21 54:3,14,23 55:8,15 56:6 57:23 58:2,6,9 58:10 59:21,22 77:12 77:16,17 78:15 84:3 84:8,9 92:1,9,12 100:15,20 104:16 107:4,18,22 109:17 112:10,12 118:7,9 120:12,18 121:3,4,18 122:2,7,8 124:9,12 124:16,21 125:9 126:10,22 127:5,7,23 128:6,12,13 130:21 131:14 132:5,12 133:12 135:22 136:5 140:12 142:23 143:3	143:14 145:20 152:9 155:11,15 156:17 157:2 158:5,7,8,13 175:9 177:14 179:11 180:23 183:20 211:6 224:15 249:12 251:14,19 255:13 270:10,16 274:14 275:13,22 276:22 277:12 278:19 279:2 279:15 283:3 292:2,4 306:7,11,13,18,21 307:4,8 310:1,11,15 310:19 e-mailing 156:5 e-mails 105:10 128:9 131:11 207:20,21 211:5 310:14 EAC 279:18,19 284:15 286:14 earlier 47:16 56:4 119:19 126:16 139:11,19 141:18 204:21 225:17 242:12 250:3 251:4 262:3 269:12 302:10,14 early 14:14 21:8 38:12 284:12 earthly 181:20 easier 11:11 easiest 14:7 easy 227:19 Ed 3:4 58:21 236:14 edits 278:17 educate

301:15 education 19:17 71:2,8,13 88:19 145:11 296:3 educational 12:22 Edward 1:15 9:3,4 10:6 312:23 effect 238:7 effective 271:9 272:13 effort 57:6 153:5 154:6 159:3,6 eight 310:5 either 3:22 30:16 35:22 51:15 60:4,6 65:22 66:17 76:2 97:5 105:14 122:19 145:10 217:18 229:18 230:1,12,17 273:4 elected 37:18 83:10 147:22 180:10 251:5 election 27:22 45:9,9 48:20 72:15 98:1,3 99:1,10 112:23 113:10 122:13 124:23 125:13 134:14,15 146:18,19 147:1,2,4 271:16 275:19 278:21 282:23 283:7 283:11 288:7,9 289:3 298:12,14,18 301:4,5 301:9 311:3,9 312:18 elections 13:15,17 14:11,18,22 16:6,7,8,10,12,13,20 16:22 17:1,3,10,17 18:9 19:17 130:22 136:9,14 271:23	308:14 electronic 7:3 75:20 141:9,21 144:16 eligibility 21:12 64:8,9 93:12 136:23 177:10 185:8 186:1,7 293:7 eligible 94:2 96:12 98:10 101:6 102:8 131:1 134:12 144:10 206:3 253:10 254:21 256:14,16 257:18,20 258:2,5 259:23 260:3 261:8 266:1 276:1 277:10 301:2,21 ELMORE 314:3 emergency 289:6 employed 147:16,20 employee 136:10,13 147:12 275:18 encounter 93:23 encouraged 30:16,21 ended 213:18 240:9 245:10 engage 195:14 226:9 engaged 130:21 England 150:13,22 152:10 153:23 155:22 158:17 167:2 212:6 229:21 249:13 enhanced 269:12 enhancement 269:15 enhancements	269:8 Enlow 104:21 ensure 118:16 159:18 ensured 88:13 ensuring 301:12 entered 309:15 entire 16:8 140:19 173:6,20 174:10 entitled 184:13 266:8 era 113:8 196:6 erroneously 5:20 276:3 error 94:23 275:22 276:5 306:8,15 errors 149:7 ES&S 5:18,21 270:2 275:18 275:23 Esquire 2:3,4,8,13,14,19,20 established 105:19,21 107:23 120:14 estimate 15:21 et 1:5,11 Etowah 6:7 107:20 120:15 Evans 2:20 event 79:5 276:23 277:1 282:21 events 62:5,15,20 77:6 78:19	295:22 296:1 eventual 272:18 eventually 86:19 everybody 61:1 268:15 evidence 3:15 246:1 evidenced 314:16 evidently 264:19 evolved 86:18 ex-felon 24:12 exact 15:23 45:14 58:19 73:12 80:16 157:9 186:13 193:20 201:3 236:6 exactly 21:6 36:10,14 106:22 115:22 150:6 186:19 204:22 228:5 241:2 285:16 EXAMINATION 5:3 10:10 302:8 309:22 311:16 example 38:5 107:2 117:6 213:18 Excel 264:15,21 265:18 exception 191:22 exceptions 107:1,3 excerpt 114:17 exchange 130:22 exclude 221:2 excluded

154:11 216:1 excluding 154:16 exclusive 50:11 88:1,4,9 106:23 exclusively 49:3 87:1,18 Excuse 110:16 executive 164:2 exercise 82:17 exhibit 5:6,8,9,11,13,15,17,19 5:21 6:2,2,4,5,7,8,10 6:11,13,14,16,17,19 6:21 7:2,2,4,6,8,9,10 7:12,14,17,19,22 8:2 8:4,6,8,11,14,16,18 8:21 9:2,3,5,6,7,9,11 9:13,14,16,17,19,20 20:18,21 23:16,23 28:14,17 44:8,11 53:20,21,22 57:10,20 57:21 60:15,17 61:10 61:14,20 74:23 75:3 77:12,12,14 78:14 83:23 84:1 92:1 100:12,13 104:13,14 107:15,16 111:2 112:7,8 114:11,14 120:9,10 121:18,21 125:6,7 127:20,21 131:6,7,10,12 135:19 135:20 140:8,9 145:17,18 148:7,8 150:17,19 155:10,13 158:2,3 160:5,7,23 172:13,14,16 173:13 173:16,19 174:8 175:6,7 177:13,17 180:20,21 182:22 183:2 186:22 194:5 194:15 208:12 211:1 211:2,17 212:10,15	214:13,14,15 215:12 215:13,14 224:11,13 227:15,16 233:9 236:8 249:14 251:10 251:10,11 252:18,20 261:21,23 264:6,7 265:16 270:7,8 273:5 273:16 274:13,17 275:12,15 278:19,23 280:23 281:2 282:10 284:2 286:17,20 291:22,23 294:6,8 306:6 310:2 exhibits 5:6 8:2 9:2 218:21 253:3 280:14,21 existence 42:2 existing 63:15 279:22 expenses 38:22 expensive 67:6 experience 72:2 312:11 Expires 314:21,22 explain 43:18 122:3 206:18 244:3,6 247:21 253:16 293:21 296:17 explained 134:13 290:14 explains 295:12 explanation 185:18 explanations 269:20 exploratory 7:13 8:6,19 151:12 152:11 160:3,14 161:17 183:1 186:23 219:19 220:10,14	223:21 224:16 235:5 explore 162:17 exposé 282:14 express 207:22 expressed 183:13 240:5 expresses 45:23 58:10 expressing 208:2 expressly 79:14 extensive 198:12 199:7 eyes 295:4 F facilities 80:20 fact 73:5 88:9,13 117:23 162:16 193:22 223:4 240:6 257:18 259:6 261:11 276:1 278:3 295:13 303:5 factor 67:12,16 146:16 203:10 facts 239:21 factual 23:19 failed 264:19 failure 29:17 273:15 274:3 fair 13:23 24:23 52:1 59:16 96:6 124:20 219:16 308:10 Fairbanks 2:13 30:17,22	faith-based 164:6 fall 30:19 140:20 253:21 fallen 91:18 falls 271:4 false 6:22 136:22 familiar 17:6 22:9 52:21 67:22 68:2,4 99:11 158:9 294:12 296:6 far 135:17 231:16 268:2 Farley 214:19 fast 288:13 faster 289:6 Faulkner 167:8 177:15,19 178:5 178:16 179:5,10,15 179:21,23 181:2,8,11 229:23 favor 80:18 168:5 186:20 225:11 236:16 favored 234:19 235:10,19 February 16:18 150:21 federal 3:5,17,23 16:12 280:3 285:20 307:16 fee 209:5 feedback 180:16 feel 94:21 225:13 293:10 293:13 feeling 243:23

feelings 197:22	28:8,9 39:13,18,22 41:2 42:14 58:23	filing 23:1 29:18	10:6 24:19 25:1 49:17 58:16 102:4 115:21
feels 94:22	59:3,6,11 62:6 63:4,9 63:18 64:6 67:19	fill 38:16 293:12	128:20 146:14 149:20 150:1 151:11
fees 169:3,10,17 170:2,5 170:10,13,18,19 171:10 176:5 184:23 186:18 198:10,14,18 199:10,14,22 200:5 201:5,17,21 202:11 202:20 203:2,9 204:15 209:11 216:2 243:3,10 244:5,8	68:13,15,23 70:20 72:1,11,18 73:11 76:16 84:16 89:10 97:4,13 127:3,11 128:9,18 129:6 130:18 131:18 137:21,23 139:14,14 142:12 143:14 144:6 144:9 145:1,6,12 183:8 203:19 204:3 211:20 212:2 214:21 224:22 225:1 234:7 245:18,19 255:21 256:15 259:14 260:7 262:7,17,19 264:17 277:3 278:6 279:14 279:20 287:5 290:22 292:12,15,17 293:2 294:2 296:19 297:2	filling 38:20 filtering 76:12 final 87:14 114:17 194:3 201:20 202:1,9 216:17 219:18 220:9 221:6,7 226:15,15 236:11,13 276:6 285:4 finalized 158:21 finance 13:22 find 44:23 72:6 81:8 82:1,3 82:8 142:4 182:7 194:18 209:21,22 245:14 finding 182:11 fine 149:11,13,17 219:8 fines 169:3,10 170:2,4,10 170:13,18,19 171:10 176:5 198:10,13,18 199:9,14,22 200:11 200:12,14,20 201:5 201:17,21 202:4,11 202:20 203:2,9 204:15 209:10 210:3 216:1 243:3,9 244:4 244:8 finish 84:23 273:18 finished 12:17 279:9 firearm 130:4 first	151:19 152:1 162:19 167:22 172:3 181:5 183:4 188:1 196:9 199:4 234:5 249:17 249:18 262:12 283:23 294:23 295:12 306:18 five 114:2 191:20 five-minute 258:20 fix 57:6 fixed 70:1,6 flagged 54:18,20 flaws 57:6 focused 191:4 folks 90:13 169:9 205:1,23 follow 91:11 121:13 123:10 135:7 302:6 follow-up 299:9 followed 134:21 135:4 136:2 193:14 272:10 following 51:12 57:10 128:17 132:13 184:12 191:21 214:14 314:16 follows 10:9 224:20 followup 286:7 food 292:9
fell 32:21 42:10	felon 68:7 122:20 123:1 308:5,8,10 309:3		
Felon/moral 9:5			
felonies 8:22 19:6,12 21:13,19 22:2,3,19,22 42:23 44:19 53:6 55:10 58:15 63:15 64:12 65:7,10,16,19,21 66:16,18,19 67:15 69:2 73:1 74:5,7 75:19 76:4,8,22 77:4 77:8 89:21 93:16 143:6 161:23 174:16 174:19,19 194:16 211:14 214:23 215:2 215:3 225:3,12,18 226:1,4 234:12 252:7 290:16	felt 37:17 39:7 96:13 124:5 169:20 170:22 171:7 201:11 205:8 270:23 field 17:18 52:18 107:11 266:15 269:20 304:10,14,19 305:6 306:23 307:2 figure 129:13 figures 209:19 file 5:14 99:18 100:1 123:5 131:19 267:10 267:11,20 268:8 269:2,3,17 filed 22:4,13,17 80:11 96:4 files 281:18 282:3 306:9		
felons 6:19,21 55:3 259:5 261:10 267:1,12			
felony 5:13,22 6:6 7:15,18 8:13,20 9:9 17:12,16 17:19 18:22 19:3 20:2,6 21:15 22:12 22:20 23:13 25:8			

footnote 45:19,23 foregoing 314:6,8 forgot 120:1 form 3:12 9:18 17:14 21:21 22:15 25:21,23 26:11 26:18 27:4,19 28:11 32:20 33:11,15 34:2 34:15 35:8,17 38:21 39:19 40:11 42:4 43:5,18 47:6 50:2,8 51:10,23 52:16 55:12 55:21 56:17 57:16 59:19 60:2 62:16 63:6,12,23 64:15 66:1 67:11 68:1 69:7 73:3,19 74:1,11,14 74:21 76:6,23 79:3 82:22 86:12 88:7 90:21 91:21 93:1,19 95:6,10,19 96:23 97:6,16 98:2 99:6,22 100:4 102:9 103:3 104:3,10 106:20 108:17 109:11 110:5 111:10,23 112:19 113:1 117:10 118:20 119:4 123:20 124:3 124:15 125:3 126:8 126:14 127:16 128:15 129:17 130:19 131:4 132:23 133:13 134:1 137:4 139:17 140:2,5 142:7 143:9 144:12 145:2 145:11,14 146:10 147:15,18 149:23 150:5 154:3,14 155:3 155:23 158:18,22 161:13,19 162:2,15 164:13 165:20 166:3 167:7 168:7,15,20 169:7,13 170:6,14,21	171:6,19,22 172:23 173:10 175:19 176:14,19 177:11 178:12 179:1,8,17 181:9,17 182:5,10 183:11 184:6 185:10 185:15 186:3,12,17 188:12,20 189:9,22 190:7,12,18 191:6,16 192:8 193:1 196:15 197:7 198:22 200:17 205:13 207:2,17 209:7 213:21 214:7 218:14 220:7 222:1 223:14 226:17 233:6 237:20 238:10,17 239:19 240:2 241:22 242:14,21 243:6 244:10 246:12 248:15,18 250:4,17 255:1 256:2,18 257:2 259:8,21,22 260:1,9 260:12 261:5,13 262:9 263:9 265:9 268:13 272:16 275:8 276:20 277:17 278:4 278:18 279:7,13 280:3 282:17 283:14 284:8,10,18,20 285:5 285:15,20,22 286:5 286:13,19 288:2,3,6 288:18 289:12 290:14 292:13 293:8 293:12,14,17,22 294:1,4,10 297:3 300:16 303:10 305:20 310:17 formality 3:10 format 67:23 68:6 299:1 formed 48:11 150:7,8 formerly 8:12 136:9 forms	25:11 80:5,5,6 141:16 259:10 278:17 288:19 291:1 forty- 310:3 Foster 92:4,5,6 found 146:15 foundation 193:5 253:7 four 176:22 281:15,18 282:3 283:17 Fourth 7:20,22 8:3 frame 98:15 Franklin 292:6 frankly 37:10 fraud 249:7 freelance 165:14 fresh 295:4 front 116:2 208:13 306:11 FTAV 270:22 fulfill 105:18 full 205:4,15 211:18 233:4 234:14,18 235:5 236:21 240:4 287:10 fully 205:23 261:15 function 38:18 functions 16:10 further 3:18 28:1 75:22	134:13 138:18 139:2 148:17 157:21 198:7 217:8 302:2 311:12 312:21,22 314:11,14 future 50:20 287:16 G Gaber 2:3 114:7 gather 265:4 gears 148:20 160:2 general 1:18 2:14 23:12 25:6 30:2 34:5 35:6 40:20 51:4,15 88:16 90:11 113:13 116:22 180:13 200:22 229:5 229:6,7 279:19 288:11 general's 23:6 25:3 27:21 30:18 31:15,22 32:5,18 33:4,23 34:12 35:23 41:19 51:9 108:6 222:5 generally 14:9 15:10 17:15,18 22:9 27:15,17,20 59:11 133:14 193:23 196:3 229:22 251:1 298:13 generals' 50:17 gentleman 128:3,5 272:12 gentlemen 309:12 getting 46:16 102:2 180:16 282:22 give 11:8 23:15 28:23 38:1 54:2 61:1 74:15

83:22 93:11 100:11 104:12 105:3 107:14 112:6 121:17 131:5,9 131:22 135:18 145:16 148:6 155:9 158:1 187:10 206:23 207:8 210:23 227:18 258:13 262:11 268:14 270:15 275:21 281:13 283:17 285:17	293:22 296:23 297:11 311:10 goal 188:16,21 189:7,18,20 189:23 190:10 207:1 217:4,5,12 goes 95:2 106:11 109:15 210:14 285:19 going 20:17 28:13,13 29:6 30:3 35:2 40:16 43:17 46:18 51:19 53:20 57:13,19 60:8 60:14 66:4 67:14 74:23 77:11 83:22 110:20 112:6 114:1 119:18 120:7 121:17 125:5 132:3 135:17 140:7,16 148:6,20 149:4 150:17 155:9 160:1,4,20 163:7,13 172:13 173:13 174:12 175:5 177:20 178:6,14 180:19 182:13,17,21 194:13 215:12 216:6 223:19 224:10 227:14 232:19 246:7 264:6 265:8,15,17 266:5 269:6 270:6 274:13 275:12 278:18 280:14,17 282:4 286:17 288:17 289:22 294:8 302:6 309:17 312:15,16	308:17 governor 36:7 39:15,17 41:7 42:2 58:5 67:22 307:18 governor's 40:5,8,12,19 41:7,9,13 41:17,22 42:8,22 43:12,16 44:15 55:4 58:3,14 63:17,21 65:22 66:18 73:7,22 74:17 76:1,11 graduate 13:4 great 123:8 141:8 157:14 175:5 308:7 greater 245:17 Griff 78:15 Griffin 42:12,14,17 44:9,13 46:10,11,12 54:10,14 54:17,23 57:23 59:13 grounds 34:6,9,13,23 group 133:23 153:4,8 192:17 193:10 245:19 257:12,19,23 258:6,9 258:18 groups 258:13 guard 311:23 312:17 guardians 195:14 guess 123:6 150:15 174:7 210:15 247:17 guidance 21:18 22:1 26:2,6,22 27:11 29:19 30:11 32:5,9,12,17 33:3,6 101:5 105:3 106:14	118:3,17,22 119:1 123:10,17 124:22 184:11 291:18 298:16,21,23 guide 5:7 21:2,6,17 221:17 246:20 296:8,11 guide/several 211:12 guided 27:14 28:2 guiding 86:7 246:9 guilty 108:21 H H 1:10 half 306:10 halfway 66:23 hand 20:17 28:13 57:19 120:8 125:5 140:7 227:14 251:9 280:19 hand-distributed 295:23 handbook 6:11 27:22 45:10,13 48:20 86:20 113:10 114:15,16 122:13,18 124:23 125:1 handed 78:14 281:5 hanging 119:15 127:19 handle 18:1 29:21 118:10 137:11 handled 20:11 118:6,9 handles 15:16 99:12 handling

137:7 hands-on 17:3 handwriting 194:18 195:1,3 208:17 208:19,21 handwritten 195:4 happen 81:11 178:23 233:22 271:16 310:23 happened 23:20 24:8,18 25:13 41:6 65:12 96:5 97:15 158:20 159:1 182:8 193:6 247:21 279:4,11 303:13 308:2 happening 62:8 65:4,14 69:6 happens 312:10 happy 108:12 151:17 hard 135:10 harp 35:1 Harrell 199:19 215:18 228:13 Harry 107:19,19,20 120:13 haste 309:11 HAVA 36:9 HB 66:15 104:2 110:14 111:9 149:1,5,8 159:10,13,18 211:21 212:3,4 271:1,18 272:3 273:15 274:3,6 291:15,19 296:11 he'll 133:5 head	88:10 headed 157:2 208:15 header 160:12 heading 266:13 hear 38:3,6 heard 35:18 83:2,4,8,9,12,16 111:15,16 139:12,16 139:22 161:20 196:10 hearing 57:3 83:19 heavily 238:21 heinous 194:1 214:12 held 14:6,10 18:15 141:5 200:1,2 Helms 16:21 118:23 133:15 133:17 134:20 136:1 140:13 141:1 279:18 280:10 help 66:10 72:22 127:3 197:18 helpful 29:5 43:23 44:8 184:4 184:8 284:16,19 289:9 290:17,19 295:17,19 helping 80:1 154:1 159:17 294:23 hereto 3:23 high 88:21 142:1 higher 142:12 highlighted	110:17 Hill 165:7,10 183:16,17,19 183:21 184:1 206:11 230:5 Hillyer 165:13 166:1,6,10 168:13,22 169:16 184:20 230:2 Hillyer's 168:18 184:13 185:23 186:16 hired 100:5 Hobson 230:7 Hold 216:3 258:14 Holly 163:22 home 305:19 honest 83:18 165:6 Honestly 181:20 Hope 164:3,3 199:18 229:12 hoped 150:23 190:14 hopefully 70:1 95:11 hoping 155:20 156:6 hospital 305:15,17,18 hostile 38:3 hour 12:13 233:4,12,20 237:18 hourly 100:8 hours 242:12 House	236:22,23 238:5 Hubbard 78:5 Hugh 2:20 human 192:18 193:12 195:5 223:6 226:7 292:6 hundred 55:7 257:12,23 258:11 hurried 305:14 hydrocodone 101:10 hypercritical 191:2 hypothetical 258:9 I ID 10:20 295:22 296:1 308:23 idea 169:10 181:20 189:12 200:6 205:8 206:5 216:20 222:17 238:4 238:12 identification 20:22 24:1 28:18 44:12 53:23 57:22 60:18 75:4 77:15 84:2 100:14 104:15 107:17 111:3 112:9 114:12 120:11 121:22 125:8 127:22 131:8,13 135:21 140:10 145:19 148:9 150:20 155:14 158:4 160:8 161:1 172:17 173:17 175:8 177:18 180:22 183:3 211:3 212:16 214:16 215:15 224:14 227:17 251:12 252:21 262:1 264:8

270:9 273:17 274:18 275:16 279:1 280:22 286:21 292:1 294:7 identified 51:6 69:20 109:16 116:23 117:14 206:11 208:5 211:20 212:2 231:15 234:13 278:2 identify 52:2 108:21 230:20 231:10 232:2 254:8 identifying 157:10 192:15 ignoring 33:21 34:4 III 2:20 illegal 111:19 images 254:13 imagine 98:10 295:3,5 immediate 8:15 29:23 immediately 14:12 77:2 288:16 impact 239:23 244:17 245:6 245:18 impeached 250:20 impeachment 249:16,17,19 250:1,11 250:18 implement 273:15 274:3 288:13 implementation 36:9 62:6 146:21 271:18 implemented 40:13,15 41:2,8 55:6 56:5 59:7 63:5,10 implementing 103:23 271:13 273:11	274:6 308:22,22 importance 157:15 important 6:3 11:4,7 97:2,8 205:14 importantly 54:6 imposed 201:23 205:10 impractical 253:14 improper 92:21 improperly 131:17 273:11 274:6 276:15 278:1 improving 7:18 inability 146:7 inaccurate 259:11 inadvertently 56:22 inappropriate 82:2,4,8 86:22 inappropriately 75:23 incarcerated 8:12 203:14 301:9,13 301:22 incarceration 82:15 175:1 203:15 311:5 incentive 200:12,13,19 201:3 incidents 37:13 79:21 include 19:10 123:19 157:3 164:17 215:3 218:12 221:1,7 238:16 243:2 246:7 249:23 267:7 267:17 283:19 291:6 included	40:19 41:18 45:8 61:16 63:17 124:8,12 133:14 153:3 154:20 155:7 157:15 160:9 165:9 166:1,7,12,17 169:11 174:17,18 191:23 198:16,19 199:12,15,19 208:9 213:12 214:23 220:19 221:10 225:3 225:8 226:6 240:21 240:22,23 244:9 246:10,20,21 247:10 247:12,15 250:2,14 269:21 296:14 304:10 includes 77:19 123:2 183:4 213:1 215:19 225:12 263:23 264:11 283:18 294:18 including 71:20 192:23 193:19 208:10 221:22 243:4 247:20 248:23 249:3 249:19 296:10 inclusion 193:13 incomplete 259:10 inconsistencies 90:11 inconsistency 90:4 inconsistent 90:20 91:4 incorrect 46:13 55:16 235:9 276:16 incorrectly 22:18 56:15 67:9 259:13,20 incredibly 129:13 INDEX 5:1 6:1 7:1 8:1 9:1	indicate 169:16 indicated 129:23 263:6 268:2 279:15 indicates 160:12 165:14 212:18 292:13 indicating 167:16 individual 48:3 57:4,4 69:21 79:17 118:3 123:23 146:17,23 176:7 185:3 257:10 268:8 individually 231:9 254:11 individuals 143:21 210:1 253:23 255:9 292:19 301:13 ineligible 98:17 257:14 258:2 276:3 277:5 287:6 295:8,10 influence 117:4 240:12,15 influenced 223:11,15 240:12 inform 40:1 91:15 132:13 277:9 information 5:22 6:22 7:20,23 8:3 9:22 37:19 38:2,5 50:23 52:12,17,22 53:1 64:6 65:9 71:21 81:4 93:4 109:14 117:17 119:6,8 122:14 134:16 136:23 145:9 175:11 254:14 257:17,22 259:11 265:3,5 267:12 269:14 276:17 282:13 285:22 287:8 289:10 289:14 290:13

295:16,18 296:10,13 297:14 298:20 informing 273:8 inherently 111:18,20 initial 169:9 276:6 280:6 inmates 79:17 80:1,8 input 153:13 157:18,21,22 162:3 163:7 207:6 220:15 238:13 inquiries 106:18 118:6,10 inquiry 24:16 insinuate 81:21 insisted 42:21 insistence 64:4 Inspired 229:12 instance 93:20 instances 189:5 instruct 144:3 instructed 239:16 279:23 instruction 71:6 instructions 9:12 10:22 70:18 206:23 207:8 279:6 279:12,22 280:3,5,16 291:8 intent 102:13 187:9 302:23 303:2,8,23 intentional 190:23	intentionally 90:14 137:2 interest 183:13 interested 23:18 156:23 183:9 314:12 interim 65:12 internal 117:22 118:16 136:3 interpretation 46:14 93:6 interpretations 46:16 interrupt 11:5,7 Interruption 78:8 intervening 65:10 introduced 3:21 investigate 34:6 investigated 34:10 investigation 34:18 95:15 138:19,23 invited 25:5 involve 40:21 41:19 63:19 176:16 275:1 involved 20:6,12 25:8 26:4,16 34:1 42:23 54:1 62:14 70:20 81:10 85:21 86:2,8 88:17 93:17 103:6 109:10 112:14,18 113:7,7,14 115:7,11,14 119:2 120:22 123:16 153:2 154:1,5,8 159:8,9,12 159:17 223:18 225:16 238:22 239:1	294:23 295:2 296:7 involves 84:16 89:11 involving 8:13,20 22:3,22 25:20 44:19 55:11 88:6 89:22 94:4,7,20 96:17 102:19 108:3 108:16 109:19 110:3 112:10 114:19,20 116:17 117:1,8,14 154:18,22 174:16 209:2 214:22 215:2 224:22 225:18 229:1 242:7 250:21 272:22 292:21 295:7,9 irrelevant 38:9,10 issue 29:21 42:8,13 60:11 64:17 68:23 69:20,22 70:13 97:23 132:21 146:3 150:2 162:18 167:23 169:2,5 185:4 198:10 203:6 227:1,6 229:5 239:6,13 245:6 254:3 257:5 301:18 303:9 311:22 issued 21:4,6,17 issues 17:12 20:7 39:13 79:10 105:6 146:15 172:6 289:8 issuing 177:9 IV 29:6,11 30:15 J J 2:14 Jacqueline 112:11 jail 171:2,8	Janice 136:2,7,8 January 25:2 206:22 211:7 214:17 215:16 216:22 218:11,17 224:19 232:7,15 233:4,12,20 234:4 236:14 244:1 251:15 251:17,19 307:8,20 Jean 58:20 86:16 105:5 119:5 122:11 124:18 126:1 133:15,16 Jeff 100:16,17 230:18,23 231:3 Jefferson 96:6,7 97:11 130:7,8 141:4,23 143:11 165:1 JENNER 2:9 Jerri 292:5,10 Jo 131:16 job 13:16 16:5 17:9,10,15 19:8 20:4 27:6 37:1 37:8,18,21 110:9 Jody 125:10,10,11,14 Joel 215:17 John 1:10 115:1,3,5,10,15 115:17 116:4 133:20 145:21 147:11,13,16 161:10 195:19 196:13 212:19 213:5 214:18 215:17 280:10 285:12 Johnson 198:8 200:1,2,3,4 206:12

join	K	112:2 114:21,23	91:2 96:18 97:1
252:16	K	115:1,2,10 116:5,15	116:8 117:6,11,13
joined	2:5	116:18 117:20,21,23	127:12,14 143:16
19:15,21	Karen	119:5,5 123:9 124:17	145:15 156:4 159:19
Jolley	158:6,7	126:16 127:1 129:11	164:10,18 166:8
166:12 206:12 208:18	keep	134:19 136:4 137:20	198:2 247:4 263:6
208:23 211:22	160:1 194:13 245:4	140:15 141:14 142:9	268:4 285:8,19
224:18,19 225:19	keeping	142:9,10 143:4 148:2	291:17,21 302:1
226:22 228:18 232:8	35:13 116:12 244:4	148:4 157:7 163:19	303:20 307:6
Jolley's	keeps	163:21 164:3,8,11,14	known
226:14 227:9	254:3	164:20 165:3,4,9,12	97:3 278:14
Jones	Ken	166:9,13,15 169:21	knows
8:9 131:16 133:23	58:3,20,23	177:20 179:4 184:1,3	164:8 189:12
134:5 155:17,21	kept	184:14,22 185:21	Kynard
156:9,14 158:17	109:3 116:16 117:21	189:15 193:22 198:1	121:19,23 122:7 123:9
212:12	kidnapping	201:1 203:23 205:6	123:14
Jones'	240:21	207:19 209:23 210:1	
134:22	kind	210:6,18 212:4 213:4	L
journalist	14:5 18:21 36:4 56:13	213:5,7,9,14 219:13	labeled
165:15	67:18 68:8,10 104:6	219:15 221:20	212:11
judge	148:16 171:3 181:21	222:17 223:16	lack
30:17 31:1,10,12	188:10 255:3 296:2	226:18 228:8 230:1,3	89:20
75:17 94:17,19 96:1	296:22 297:9	230:6 234:19 236:6	laid
96:21 97:10 105:7	kindly	237:23 240:10	148:12 176:9
106:19 107:18 108:1	39:7	242:15 245:21 246:4	Laird
108:14 109:3,8,20	kinds	246:15,17 248:5	167:18 206:13 215:17
112:10,12,16 116:11	109:20 300:19	249:23 251:8,23	Lang
118:23 120:21	knew	253:22 254:1,14	2:4 5:3,4 10:3,11,13
123:16,22,22 125:1	102:10 108:18	256:3 257:8 259:23	29:2,5,10 43:20 44:6
130:13 166:12,16	Knighten	260:6,9,20 261:2	44:7 46:18,22 47:2
206:11,13 208:17,23	112:11	262:5 263:14 268:19	50:3,9,10 53:9,12,15
211:22 224:17,19	know	269:3,7,10,14,23	53:18 61:12,22 62:4
225:19 226:13,22	11:10,14 12:8,11,12	272:9,20 273:3	64:16 65:1,2 66:5,13
227:9 228:18	12:14 15:23 21:5	275:17 277:18	66:14 73:16 78:11,13
judges	23:21 30:6 33:12	278:10,13 280:2	85:7 110:18,22 111:5
75:8	34:7,8 36:14 37:9	282:21 283:1,2,9,22	111:6 113:20,23
judgment	40:12,14,17,18 41:13	284:9 285:13,19	114:8,13 119:11
26:20	41:17 42:17 48:13	287:14,22 288:4	120:6 128:23 129:3
judicial	50:21 51:19 69:12,15	292:11 293:16 295:5	131:23 140:21 152:3
33:1,1	72:10 76:18 79:17	296:13,20 304:2,3	152:9 156:2 167:17
July	80:2 81:15 84:18	307:4 310:13	167:18 173:23 174:3
270:11 271:9,13 272:4	85:17 86:13 90:7,7,9	knowing	174:7 182:13,17,21
jumping-off	95:17,20 96:20 97:8	56:4 104:4 270:22	187:16,21 188:3,6,10
192:15	100:1,16 102:10	knowledge	193:2,9,10 194:9,11
justice	103:20 106:22 109:2	28:12 40:23 72:14	194:22 196:18 197:8
60:20	109:20 110:12 111:7	76:2,3,7 80:14 90:22	197:19 198:23 210:9

210:13,16,20 218:19 218:23 219:2,7,10,14 219:16,17 224:8,10 228:5 231:2 232:19 232:23 233:2,17 251:20 253:4 258:11 258:22 259:2 263:10 263:16,17 264:12 265:12,15,17 280:20 280:23 281:2,4,6,11 281:16,19 282:6 284:1,3,4 289:17 299:7,10,17,20,23 300:3,5,17 301:2 302:2,11 303:4,10 304:4 305:20 307:23 309:8,19,23 311:12 312:22	93:6 103:23 110:6,7 110:8 111:21 112:1,5 139:15 148:16,23 149:1,9,21 174:21 191:11 203:20 234:13 253:11 254:18,19 256:16 258:4,5 271:1,5,8,10 271:13,15 272:14,23 273:12 283:8,12 295:6 300:9 308:23	87:6 97:18 111:6 167:8 271:22	letter 5:11 8:11 9:7 44:15 135:11 138:13 214:17,20 224:17,18 225:22 226:14,22 227:10 256:8 257:6 273:6 283:6
language 8:15 19:10,11 188:15 215:20 286:13 289:19 290:10,20,21	laws 191:1,23,23	legal 2:4 17:23 27:9,9 28:2 30:9 31:1,12 33:5 34:5 35:20 46:13,16 49:4 52:20 58:4 84:18 87:8,9 105:4 106:8,10,13 107:6,10 118:13 133:16,17	letters 228:13
lapse 179:16	lawsuit 10:20 22:4,6,9,13,16 23:2 47:19 80:11,17 81:7 99:16,18 100:2 120:3 131:19	legally 146:4	letting 92:18
Large 1:22 3:9 314:21	lawyer 100:5	legislation 47:23 88:11 106:5 153:12,15 154:10 156:20 180:14 181:14,23 184:17 190:21 207:7 212:8 216:16,22 217:4,6 218:10,17 219:3,20 219:22 222:16 224:2 225:5 226:15 253:22	level 88:19
largely 20:19 172:4	lay 193:4 253:6	legislative 8:9 89:15 159:3,6,12 181:15,19,22 187:11 212:12 214:1 223:13 252:5,9	Liberties 199:20
larger 294:9	laying 199:4	legislator 82:10	license 141:15 144:8,14,23 145:10
late 22:13,17 202:5 250:1 250:14 284:12,12 306:10,16	LDF 22:5	legislators 81:9 156:19,22	licensed 314:15
launch 135:12	lead 112:21 207:12 215:20 237:7 240:17	legislature 89:13 182:3 188:17 189:8,13,21 190:2,6 190:11,15 191:5 224:2 250:21	licenses 141:11
launched 135:14	leading 69:4 233:23	legislatures 191:1	lieu 23:13
Laural 120:18 122:8 183:21	leaning 234:11	lengthy 44:16 127:23 282:14	life 213:20 311:2
law 13:22 15:8 16:12,12 19:4,5 22:12,21 23:10 29:18 46:14 57:7 63:15 77:1,3 88:22,23 89:2,3,6	learning 312:11	lesser 240:4	lifted 171:18
	leave 17:4 50:16 94:13 233:14	let's 78:9 95:2 98:4 182:15 224:6,8 228:8 264:5 279:10 281:14	light 18:12 235:15
	leaves 98:15		Limestone 136:22
	led 19:6,12 235:20 236:23 275:5,10,23 279:4,11		limited 214:22 222:13,18 223:8 228:15,19 245:5 290:17 292:18 302:6
	Lee 137:13 138:4		limiting 77:8
	left		Linda 163:23 274:15
			line 15:11 61:18 83:13 303:21 304:2,3 310:14 311:18
			lines

266:10	235:10,12,14,19	location	171:3,17 269:7
list	236:21 237:9,19	301:4	lost
6:12,18,20 9:13,15,16	238:3 239:8,14,17	logic	101:15 174:3 214:5
19:19 23:7,12 27:23	240:7 241:9,20 242:2	41:7	lot
35:4,4,5,10,13 36:2,4	242:13 245:5,10,15	long	16:22 53:6 71:16 83:8
36:4 39:22 40:5,6,8,9	246:7 248:2,4,7,12	13:10 16:2,17 18:4	100:10 105:9 149:7
40:12,19 41:1,7,9,14	248:17 249:1,4,20	43:13 49:17 59:15	197:13 204:1 209:23
41:17,22 42:2,9	250:6,6,7 262:6,16	80:2 95:17,21 112:16	219:10 265:10
43:12,14,16 44:18,21	262:21 263:1,22	112:20 141:5 222:22	307:23 309:2
44:23 45:8,14 48:13	264:9 267:3,7,15,17	222:23 250:12 308:3	loud
48:16,17,18 49:2	268:10,19 270:3	longer	122:5
50:11,19 55:2,6,10	278:1 283:21 287:10	37:7 43:13 63:21	love
55:10 56:5,9,11	290:15,16 294:18	224:1 226:23 230:21	162:22
58:11,14 63:16,17,21	302:19	231:11,12,13,14,18	Lucy
64:5,14 65:5,22,23	listed	232:1,4,11 235:12,14	121:19,23 122:7
66:18,19 67:4,21	8:10 192:10,13 212:13	237:9,13 240:7	lunch
70:19 71:2,2 73:6,7,7	237:2 249:15,17	241:20	119:13,15
73:23,23 74:3,6,17	254:23 259:7 261:12	longest	
74:18 76:1,11,11,17	306:22 307:2	231:16	M
84:6,21 85:6,12,15	listen	longstanding	ma'am
85:19 86:4,7,16,17	83:20 216:4	24:14	17:8 299:2
86:19,21 87:1,6,15	listing	look	mail-in
87:18,21 88:1,4,4,9	236:16 237:13,14	21:1,11 29:1 45:6	9:18 279:6,13
91:12 108:5,15,20	lists	47:22 68:12 131:22	mailing
109:1,2,5 113:9	15:18 35:14,22 149:14	138:23 150:8 157:16	253:10,12,16 254:17
114:21,23 115:2,3,8	211:12 267:2,13	158:12 172:19 194:5	255:3,14 256:22
115:12,16 116:6,9,11	literally	194:14 209:20 216:5	258:3
116:13,16 117:22	248:1	227:21 233:9 236:8	maintain
120:20 121:1,6,13	litigation	245:9 259:4 267:23	304:20
122:9,12,20,22 123:2	17:7 24:19 29:22	269:17	maintained
144:17,22 152:18,23	120:5	looked	80:4
153:14 154:13,21	little	157:17	maintaining
155:4,5 157:4,6,18	12:21 17:15 22:1 84:4	looking	200:5
157:23 161:22 162:6	148:20,22 161:16	23:18 75:22 85:2	major
163:5 166:23 174:17	162:22 266:4 269:7	152:22 159:22	238:14 239:23
174:18 185:1 186:13	290:11	191:20 194:6 244:16	majority
191:10,14 192:18	live	249:11 258:21 259:3	89:3,6 201:16 202:10
194:15 195:6 208:14	288:22	268:22 295:11	202:15 234:10
208:22 211:17,19,21	Liveoak	looks	236:15 243:23
211:23 213:12 221:4	137:13 138:4,6	68:17 152:21,22 158:9	making
221:16 222:18 223:9	Liveoak's	195:2 210:11 228:7	26:3 27:10,15 32:14
224:1 225:18 226:1	138:21	lose	55:13 85:22 123:23
226:23 227:20,22	local	129:5,5	282:16 285:14
228:15,19 230:21,21	146:18 147:1 164:5	losing	287:23
231:11,18 232:1,4,5	locally	204:9	man
232:11 234:19	312:5	loss	100:15

manager 125:13	125:7 127:21 131:7 131:12 135:20 140:9	292:17 297:4 310:9	251:17 274:12
manages 16:13	145:18 148:7,8	meaning 58:20	meetings 24:10,13 48:2 62:14
manner 3:22	150:19 155:13 158:1	means 122:23 181:16 210:2	62:17 152:5 161:11
manning 16:19	158:3 160:7 172:16	256:9 314:7	163:10,12 165:22
manufacture 111:20	173:16 175:7 177:17	meant 72:3,4,20 73:1 145:13	177:1 222:12 227:5
manufacturing 109:17 110:1 128:19	180:21 183:2 211:2	188:14 292:11	227:10 229:22
March 25:3 158:21 292:3,7	212:15 214:15	measure 18:7,10	241:15 245:7 274:9
marijuana 126:6	215:14 224:13	media 274:8	member 39:2 52:23 104:21
Marion 104:18	227:14,16 251:10,11	medications 11:20	134:20 136:8 164:1
Marissa 8:21 215:18	252:20 261:23 264:7	medium 48:22,23	167:9 190:13 207:10
mark 2:3 20:18 23:16 28:14	273:16 274:17	meet 156:19 178:2,14	members 48:3 162:23 163:1,5
44:8 53:20 57:20	275:15 278:23	179:14 181:11	163:14 166:20 167:1
60:14 74:23 77:11	280:22 286:20	233:11 253:23	167:4 169:20 175:10
83:23 100:11 104:12	291:23 294:6 310:2	254:21	178:17 186:5,8,9,10
107:14 112:7 121:17	marking 135:18	meeting 5:10 28:15 29:12 31:4	186:15 187:7,9
125:5 127:19 131:5	master 39:21 307:14,15,18	57:12,14,17 58:22	188:19,23,23 190:23
131:10 140:8 145:16	master's 12:23 13:5 307:11	59:2 151:11,19 152:1	204:9 206:10,14,16
150:17 155:10 160:5	match 56:4 122:20 123:2	152:2 156:8,9,11,12	206:17 207:14 211:8
172:13 173:13 175:5	materials 71:17,21 72:10 145:12	156:15 167:22	224:16 227:12,20
177:13 180:19	182:22 194:5 296:3	168:10 169:9 172:3	228:3 234:10 239:22
182:21 211:1 212:10	matter 34:10 59:9 132:14	177:21 178:7,10,20	278:20
214:13 215:12	135:8 138:5 195:15	178:23 179:2,22	memo 5:17,19 7:15,17 8:14
224:10 252:18	226:9 303:15	181:7 182:7,8,12,23	42:12 44:9 45:15
261:21 264:6 270:6	matters 308:13	185:22 187:4 191:9	48:18 49:11 52:3
273:5 274:13 275:12	McCall 8:21 215:18	192:23 193:17	61:7,9,13 62:4,13,21
278:19 280:14	McDonald 135:23 136:2,4,7,8,19	195:10,17,19 197:10	63:1 69:17 75:1,7
286:17 291:22 294:8	139:1	202:8,16 206:21	148:11 208:14 215:6
marked 20:21 23:23 28:17	MCS 109:16	207:16,19 216:17,23	215:7,16 216:19
44:11 53:22 57:21	mean 35:1 53:6,7,10,12	218:11,18 219:18	memorandum 49:1 60:19,21 85:11
60:17 61:14 75:3	68:11 106:12 144:1	220:9,13,21 221:7	146:1 147:6 172:14
77:14 84:1 100:13	152:3 181:19 196:16	225:13 226:2,16	172:20 173:2,14,20
104:14 107:16 111:1	197:21 218:19	230:22 233:13,20	174:9
112:8 114:11,13	221:12,14 231:12	234:23 235:2,12	memories 63:8
120:8,10 121:21	254:20 291:10	236:11,13 237:4	memory 42:18 60:12 157:11
		239:17 240:19	161:14 172:10
		241:21 242:17	179:16 184:16
		243:20 244:1,21	199:17 234:22,23
			237:7
			memos

51:20,21 52:2,5,9 68:22 70:16 245:4 ment 7:19 mention 120:1,2 247:5 mentioned 160:4 174:20 mentioning 247:7 mentions 122:12 Merrill 1:10 47:22 132:14,21 147:21 149:19 150:23 153:1,11 155:20 156:6,18,19 161:7,20 162:16 163:3 164:8,16,21 165:16 166:9 168:5 177:16,20 178:1,10 178:15,19 179:4 180:4,9,23 181:3,7 181:12 182:9 187:6,7 188:11 189:20 190:3 191:9,21 192:6 196:21 202:17,19 206:15,23 212:5 215:4,9,11,17 217:19 217:21,23 218:11 219:18 221:13,15 222:7,9,19 223:11 226:13 235:20 236:20 237:14 238:2 239:5 241:12,21 246:8 248:7,12,16 252:10 283:6,10 Merrill's 8:8 189:6 195:2 206:7 208:18 212:11 238:18 message 6:3 84:11 92:2 133:3 Messick 2:13 5:4,5 10:4 17:14 21:21 22:15 25:21,23	26:11,18 27:4,19 28:11,23 29:3 32:20 33:11,15 34:2,15 35:8,17 38:8 39:19 40:11 42:4 43:5,17 43:22 46:9,19,23 47:6,15 48:16 49:10 49:14,15,23 50:5 51:10,23 52:4,16 53:5,11,14 55:12,21 56:17 57:16 59:19 60:2 61:5,18 62:2,16 63:6,12,23 64:15,18 66:1,12,20 67:11 68:1 69:7 70:21 73:3 73:14,19 74:1,11,14 74:21 76:6,23 79:3 81:14,18 82:22 85:16 86:12 87:3 88:7 89:8 90:21 91:21 93:1,19 95:6,10,19 96:23 97:6,16 98:2 99:2,6 99:22 100:4 102:9 103:3 104:3,10 106:20 108:17 109:11 110:5,16,20 111:4,10,23 112:19 113:1,18,21 114:4 116:7 117:10,19 118:20 119:4,14 123:20 124:3,15 125:3 126:8,14 127:16 128:15 129:17 130:19 131:4 131:21 132:2,10,23 133:13 134:1 137:4 139:17 140:2,5,15 142:7 143:9 144:12 145:2,14 146:10 147:15,18 149:12,14 149:23 150:5 151:23 152:7,8,15 154:3,14 155:3,23 156:3 158:18,22 160:1 161:13,19 162:14 164:13 165:20 166:3	167:7,15 168:7,15,20 169:7,13 170:6,14,21 171:6,19,22 172:23 173:10,22 174:1,5 175:19 176:14,19 177:11 178:12 179:1 179:8,17 181:9,17 182:5,10,15 183:11 183:18 184:6 185:10 185:15 186:3,12,17 187:14,19,22 188:4,8 188:12,20 189:9,22 190:7,12,18 191:6,16 192:4,8 193:1,4 194:8,10,19 196:15 197:6,12 198:22 199:2 200:17 204:19 205:13 207:2,17 209:7 210:5,11,14,18 210:22 213:13,21 214:7 216:3,7,9,13 218:14,16,21 219:1,6 219:8,12,15 220:7 222:1 223:14 226:17 228:2 230:23 231:5 232:17,22 233:6,16 234:3 237:20 238:10 238:17 239:19 240:2 241:22 242:14,21 243:6 244:10 246:12 248:15,18 249:11 250:4,17 251:18 252:13,15 253:2,5 255:1 256:2,18 257:2 258:8,14,19,23 260:12 261:5 262:9 263:9,11 264:3 265:8 268:13,20 272:16 275:8 276:20 277:17 278:4 279:8 280:17 281:1,3,9,13,17 282:1,17 283:14,16 284:2,8 288:3,17 289:12,14,18,23 293:8,17 294:1,4 297:3 299:3,8,12,18	299:21 300:1,4,16,18 302:4,9 309:5,10,21 310:1,4,17,22 311:14 311:17 312:21 met 156:13 175:4 179:20 233:3,5,19 239:12 287:7 meted 205:19 mgaber@campaign... 2:7 Michael 2:8 164:1,9 199:17 MIDDLE 1:2 Mike 8:9 78:4 212:12 mind 83:1 163:13 minds 197:9 198:4 242:16 Ministries 164:3,4 199:18 229:13 minorities 137:2 minority 201:16 202:10,15 minute 131:22 216:4 minutes 5:10 28:16 114:2 151:17 152:5 160:5,9 160:14,18 161:4,6,8 166:23 167:6,22 169:16 172:7 186:23 187:3,6,9,17,20 190:22 191:8,17 193:8,10 194:13 198:7,11 199:7 200:3 204:8 206:9 218:4 220:17 221:21 232:14,15 234:4 235:8 240:20 241:18 241:19 243:4,21,23 252:17 302:5 309:20

mirroring 285:21	39:2	161:22 172:5 174:16	186:13 191:20
misdeemeanor 69:9,16 70:5	monies 176:6,13	180:11 191:11	Nancy 21:5,7
misdeemeanors 53:12 69:3,5,13,14	Montgomery 1:19 2:16,22 164:7	192:11,12 194:15	narrow 225:2,11
misinterpret 256:9	month 155:16 285:18 308:2	195:22 196:4 206:6	narrower 226:1
mispronouncing 121:20	monthly 297:10	207:5 208:1,16 209:2	national 13:18 141:20 146:19
misrepresentation 199:5	months 98:11 142:3 285:18,18	211:8,13,20 212:3	147:2 279:6,12
missed 299:12,13 300:23	Moore 83:16,19	214:22 215:2 217:9	286:13 291:11
missing 210:6,7,10 227:23	moral 6:9,12,13 7:5,7,10,11	220:3,8,19 222:5	311:23
311:8	8:7,13,20,22 17:22	224:22 225:4,19	natural 222:2
misspoke 309:11	19:10,19 22:3,22	229:1,14 230:4,14	nature 76:9 133:2 164:14
mistake 57:1	23:7 25:8,20 26:4,16	233:3 234:8,12	necessarily 33:7 37:22 38:2 86:1
Misty 2:13 30:17 111:5	27:1,7,23 29:13,17	236:10 239:6 241:14	86:22 99:7 209:22
258:22	30:22 31:15,23 32:15	242:7 246:17 250:21	259:19 278:2
Misuse 5:17	32:23 34:1,21,22	252:7 266:3 271:2	necessary 25:7 178:21 181:6,22
Mitchell 1:20 3:7 314:19	35:15,21 40:21 41:20	272:22 275:1 292:21	need 3:12 12:11,13 24:17
mixture 169:14	42:9,11 43:1 44:19	295:7,9 302:19 303:1	43:18 82:16 84:18
mmessick@ago.stat... 2:17	46:1 47:3,12 48:1,7	303:3	113:18 133:6 142:19
Mobile 134:23	48:10 50:18 51:5,7	morning 10:12	143:21 153:17 181:5
mockups 285:3	51:17 54:19,20 55:11	motivated 46:7	182:9 190:23 225:14
modified 289:21	56:15 57:7 58:14	move 278:15	258:19 264:3 275:6
moment 54:2,3 62:1 81:16	63:19 65:18 70:20	moving 255:9 270:6	279:2 288:5 290:4
97:19 100:20 112:3	84:16 88:6,17 89:11	mstewart@jenner.c... 2:11	292:19 293:5 297:20
119:18 140:11 194:6	89:22 92:14 93:17	MT 287:11,19	298:8
227:18 262:11	94:4,7,20 95:4,13,18	multiple 280:13 305:4,10	needed 28:1 67:2 118:13
264:13 270:15	95:22 96:17 102:13	murder 43:23 44:1 213:17	171:14 176:5 182:2
275:21 295:3	102:19 106:7,14	214:2	185:2 200:23 201:12
money	108:2,3,9,16 109:1		201:21 202:1,2
	109:10,19 110:3,9,13		205:17
	111:8,13,17 112:14		needs 289:21 290:11
	112:18 113:7,14		neglected 120:1
	114:19,20 116:17		neither 314:11
	117:1,8,15 119:2		never 41:21 57:5 68:14
	120:22 122:10,17		
	123:3,16 124:5,7		
	127:1,2 137:20		
	145:22 146:5,12,21		
	149:15,22 150:4		
	154:18,22,23 155:7		
	155:17 157:3 158:6		

255:22 257:21	76:1 300:2	104:3,10 106:20	284:8 288:3,17
new	notifying	108:17 109:11 110:5	289:12 293:8,17
2:9 23:12 77:1,3	297:7	111:10,23 112:19	294:1,4 297:3 299:8
148:23 149:1 253:11	notwithstanding	113:1 117:10 118:20	300:16 303:10
253:22 256:16 258:5	293:23	119:4 123:20 124:3	305:20 310:17
271:1,5,8,13,15	November	124:15 125:3 126:8	objected
272:14,22 273:11	24:3,8,9 44:9 55:6	126:14 127:16	196:13,16 197:20
279:20 280:5 283:8	61:7,13 151:13,20	128:15 129:17	objecting
283:12 297:11 298:3	167:6 288:9	130:19 131:4 132:23	196:19 197:15
304:23	number	133:13 134:1 137:4	objection
news	30:3 44:3 103:21	139:17 140:2,5,16	66:6,9 168:18,21
273:10 274:7,11	108:1,2 141:15	142:7 143:9 144:12	193:3 199:1 237:12
nine	142:12 154:20	145:2,14 146:10	237:16,22
157:19	160:13 183:6 225:6	147:15,18 149:23	objections
Nix	236:6 240:4 256:19	150:5 154:3,14 155:3	3:10,11 221:9 248:8
292:3,8	287:4,12,19 314:16	155:23 158:18,22	obscene
nod	numbered	161:13,19 162:15	195:15 226:9
11:9	237:1	164:13 165:20 166:3	obtain
nonexclusive	numerous	167:7 168:7,15,20	209:5 301:14
50:20	112:13	169:7,13 170:6,14,21	obtained
noon	NVRA	171:6,19,22 172:23	171:16
305:21,21,22	9:12,20 279:5 293:3	173:10 175:19	obtaining
normal	NW	176:14,19 177:11	203:10
15:11 132:18,20 139:3	2:5,9	178:12 179:1,8,17	obvious
normally		181:9,17 182:5,10	224:21
16:23 79:22 294:9	O	183:11 184:6 185:10	obviously
North	object	185:15 186:3,12,17	47:18 214:11
19:16	17:14 21:21 22:15	188:12,20 189:9,22	occasion
NORTHERN	25:21,23 26:11,18	190:7,12,18 191:6,16	308:19
1:3	27:4,19 28:11 32:20	192:8 193:1 196:15	occur
Notary	33:11,15 34:2,15	197:6,21 198:22	71:12 76:5 81:20
1:21 3:8	35:8,17 38:9 39:19	200:17 205:13 207:2	156:10 170:17 306:2
notes	40:11 42:4 43:5,17	207:17 209:7 213:21	occurred
161:12 254:13	47:6 50:2,7 51:10,23	214:7 218:14 220:7	22:11 36:12,14 55:20
notice	52:16 55:12,21 56:17	222:1 223:14 226:17	57:15,18 76:18,19
1:16 9:8 70:10,14	57:16 59:19 60:2	233:6 237:18,20	77:7 126:23 179:2,3
95:14 274:19 275:4,7	62:16 63:6,12,23	238:10,17 239:19	182:12 235:12
275:11 277:4,9,16	64:15 66:1 67:11	240:2 241:22 242:14	239:15 252:4 306:16
278:12 282:18	68:1 69:7 70:21 73:3	242:21 243:6 244:10	occurrences
notices	73:19 74:1,11,14,21	246:12 248:15,18	65:11
278:11,11 297:11	76:6,23 79:3 82:22	250:4,17 255:1 256:2	occurring
noticing	86:12 88:7 90:21	256:18 257:2 260:12	56:1 58:21 65:4
68:23	91:21 93:1,19 95:6	261:5 262:9 263:9	October
notified	95:10,19 96:23 97:6	265:8 268:13 272:16	55:6 84:11 131:15
278:3	97:16 98:2 99:6,22	275:8 276:20 277:17	134:4
notify	100:4 102:9 103:3	278:4 282:17 283:14	odds maker

74:2 of-eligibility-to-regi... 220:1 Off-the-record 264:14 265:14 offense 84:16 126:12,20 237:1 237:10 275:2 offenses 63:18 236:18,19 offered 3:15 offers 178:20 offhand 14:16 94:8 103:11,13 112:4 158:19 167:13 201:15 231:23 311:11 office 1:17 2:14,20 9:11 13:8 13:11,14 14:7 15:8 16:9,11 18:1 19:15 19:21 20:1 21:4,19 23:5,6,11 26:14 28:6 30:18 31:8,15,22 32:6,18 33:4,23 34:12 36:1 38:13 39:21 41:4,5 42:7,19 42:22 44:14,16,21 45:7 52:19 53:2 55:5 58:3,4 75:19 79:7,10 85:23 87:10 90:19 101:19 103:9,10 104:18 115:21 118:18 121:12 134:10,21 135:5,7 136:11,14 138:18 141:7 147:11,12,21 149:20 159:14 163:19 166:22 167:19 177:5,8 189:7 216:15 217:11 231:22 251:14 262:16 263:21 265:7 265:21 274:10	278:20 280:8 284:22 285:13 287:23 294:15 295:21 296:2 298:15 300:5 307:11 307:12 308:4 309:14 310:8,10 office's 42:1 207:9 officer 33:1 officers 33:2 offices 141:22 144:14,17 offices's 63:16 official 1:10 37:19 83:5,5,9,10 124:22 officials 81:10 87:16 180:11 250:20 251:6 278:21 oh 110:18 116:3 167:10 210:13 232:22 249:18 281:4 okay 11:18 14:11 15:3 16:5 17:4 18:3,17 19:19 21:23 23:11,15 25:17 26:2 28:22 29:8 36:6 39:15 40:12 41:13,23 43:22 45:5,15,18,22 47:1 48:13 49:23 50:9 52:11 53:11,14 53:16,17,20 54:12 56:2,6 57:3,19 58:18 60:5 62:2,3,23 63:13 65:1 66:12,23 68:14 68:19 70:12 73:5 74:13,16,23 77:6,11 80:23 81:2,15 91:23 92:11 93:9 96:8 100:11,23 102:21 103:19 113:21 116:10 119:10 122:7	130:15 132:7 136:7 136:19 140:22 142:11 148:2,20 149:16 151:1,8,11,18 151:22 152:8,9,17 153:21 156:3 159:23 161:16 162:22 163:22 165:5 166:9 166:12 167:17,22 168:10 172:13 174:3 180:19 187:2,5,19,22 188:8 192:3 193:9 194:23 195:4,19 197:17,18 206:18 208:22 209:20 210:7 210:22,23 211:16 212:9 219:1,6 222:21 224:5 226:11 228:8 229:12 230:20 232:12,22 245:23 256:5 262:15 263:16 265:12 266:15 267:22 270:6,19 272:2 273:2 274:13 275:12 279:15 284:3 285:13 286:17 287:22 289:18 290:13 296:17 298:15 299:8 302:4 306:14,17 307:23 309:8,19,21 310:6,19 312:13 old 148:21 Oliver 292:5,10 omits 6:18,20 omitted 18:11 once 10:18,19 12:16 132:6 137:16 203:13,15,16 205:23 one's 203:11	one-sentence 67:1 ones 65:18 76:17 96:10 108:3 186:20 208:2,4 221:4 242:6 243:10 243:12 op-eds 77:19,20,22 78:19,21 open 50:16 229:10 opening 167:5 opens 44:17 operate 67:13 opinion 25:3 27:21 34:11,18 35:23 39:11 40:20 41:19 46:13 51:4,9 51:16,16 81:20 108:7 110:11 113:13 116:22 117:15 169:15 198:18 199:14 202:17,19 203:1 222:5 240:5 244:12 opinions 50:17 opportunity 49:11 62:23 99:8 248:19 300:13 oppose 82:20 opposed 102:3 146:19 147:1 152:1 option 99:12 300:10 options 256:10 order 14:8 80:12,19 96:15 182:2 271:15 292:20 ordered

80:19 175:3 209:17 ordinarily 135:6 260:23 organization 164:6 organizational 18:20 organized 18:17 original 131:14 163:4 169:21 201:23 218:4 221:12 243:11 292:4 304:21 originally 22:7 201:23 232:8 originated 135:22 ought 82:10 203:16 outcome 90:8 94:9,11 175:16 188:18 240:13 outcomes 96:8 outlined 287:7 output 269:6 outreach 71:17 outside 179:21 outstanding 175:2 overall 245:18,20 Overseas 13:20 120:4 oversee 13:18,19 15:12 oversees 15:6,9 16:7 oversights 18:9	P 2:3 p.m 313:1 package 171:7,12 187:10 201:2 201:13 Packard 1:15 3:4 9:3,4 10:6,12 20:18,21 23:16,23 28:14,17 44:8,11 53:21,22 57:20,21 58:21 60:15,17 74:23 75:3 77:12,14 78:14 83:23 84:1 91:23 100:12,13 104:12,14 107:14,16 110:23 111:2 112:7,8 114:11 114:13 119:20 120:6 120:9,10 121:18,21 125:6,7 127:20,21 131:5,7,12 135:18,20 140:8,9 145:17,18 148:7,8 150:19 155:10,13 158:1,3 160:7,23 172:14,16 173:13,16 175:6,7 177:13,17 180:19,21 182:21 183:2 197:19 211:1,2 212:10,15 214:13,15 215:14 219:2 224:13 227:16 234:9 236:14 251:10 251:11 252:20 257:9 261:23 264:7 265:17 270:8 273:16 274:17 275:15 278:23 280:21 286:20 291:23 294:6 302:10 312:23 page 5:3,6 6:2 7:2 8:2 9:2 20:23 21:11 24:2,23 45:18 49:22 50:1,4 54:6 61:5 63:13 66:23 67:1,17 68:20	68:21 75:11,14 84:9 116:2 128:12,17 174:12 184:12 187:3 187:8,16,17,20,21 188:2 191:19,20 194:17,19,20 206:9 206:10 210:6,9,10,12 212:18 213:1 214:20 225:9 233:9 236:9 281:10 pages 45:1,6 114:17 183:4 209:4 paid 100:8 169:4 170:18 176:6 200:7,23 201:12 202:1,2 205:4 206:1 209:17 paper 155:12 281:14 paragraph 24:3,4,6 25:1 49:21 50:1 54:7 57:11,11 58:16 63:13 67:1 146:14 167:5 187:23 188:1 199:2 225:10 233:10 236:9 253:6,7 253:11,13 259:4 276:10 paragraphs 61:3 64:2 parameters 287:7 parcel 204:10 pardon 92:13 142:19 166:19 175:15 176:21 192:1 211:18 234:14 302:12 pardons 9:21 72:8,13 92:18,22 93:5,9 94:1 95:11 97:20 98:13 101:14 101:18,21 102:5,16 102:22 107:5 116:15	123:4 129:22 134:17 137:19 144:4 175:12 175:21 177:4,5,8 211:23 234:15 272:6 294:12,17 302:17 303:14,19 parens 55:3,5,7 133:9 212:3 parent 195:13 parents 226:8 parole 142:20 paroles 9:21 72:8,13 92:14,19 93:9 94:1 95:12 97:20 98:13 101:14 101:18,21 102:6,16 102:22 107:5 116:16 129:22 134:18 137:19 144:4 166:19 175:13,21 177:5,8 212:1 234:15 272:7 294:12,17 303:14,19 paroles' 92:23 93:5 175:16 302:12,18 part 18:10 27:6 36:21 37:7 48:19 110:8 140:19 143:18 153:8 169:21 169:23 170:3,5,11,20 170:22 171:1,4,11 190:16 199:23 200:4 200:5,23 201:13,17 201:23 202:6,21 204:10 237:6 244:5 245:4 255:11 264:18 participate 79:20 82:1,12 153:11 participated 119:23 120:2 153:10 particular 25:8 31:6 37:13 46:6 50:19 61:3 76:9,17
P			

78:7 86:23 102:11 118:4 135:9 138:3,5 146:1 154:15 155:8 180:16 183:13 184:11 189:1,5 202:15 208:3 242:8 257:8 269:16 274:7 278:8 particularly 86:14 88:11 142:11 parties 3:3,20 314:11 party 3:22 78:3,4 81:9 82:19 83:5,9 pass 181:23 182:2 188:17 189:8,13,15,21 190:1 190:11,15 191:5 224:2 passage 77:1,2 110:13 159:10 191:2 passed 19:9 50:23 88:12 148:23 149:9 159:18 236:23 238:5 252:2 271:1 passing 190:5 308:22 Pastor 80:9 206:12 228:22 229:4 path 102:2 pattern 138:20 patterned 236:22 238:4 pause 29:7 38:7 81:13 233:15 pay 100:7 200:11,12 205:17 210:3 paying	170:23 171:12 200:20 202:5 payment 170:13 175:2 176:13 200:14 215:23 216:1 penalties 205:19 penalty 260:2,20 261:1 293:14 pending 29:13,22 people 22:19,20 25:19 27:1 28:6 34:21 37:6 49:3 49:6 50:7 52:12,19 56:14,23 58:12 67:9 69:1,4 72:17,23 75:22 81:23 82:11 83:6,8 84:7,14 86:15 88:14 106:6 123:2 136:23 140:19 142:12 143:13 144:4 144:9 162:4 168:2 169:15 175:17 176:17 193:22 197:14 200:12 203:21 204:14 205:9 205:15,23 213:15 215:21 225:7 227:2 228:12 229:8 242:11 242:18 247:11,18 248:3 253:10 255:5 255:20,23 256:7,12 256:13,19,21,22 257:6,11,12,19 258:1 258:12 259:18,21 260:1,6,14,19,23 261:7,7 262:6,17 263:1 264:23 268:11 271:14 276:1 282:13 290:15 291:14 293:1 293:13,21 295:6,8 296:4 297:1,13 298:16 300:2,6,12,18 301:6 312:7 people's	242:16 percentage 172:11 308:11 performed 141:21 performs 16:22 period 30:13,20 31:20 32:3,7 36:7 42:15 52:11 54:2 77:18 78:16 147:23 175:1 262:8 perjury 154:12 260:2,16,20 261:2 293:15 permanently 214:6 permitted 301:7 permitting 195:14 226:8 Perry 122:1 person 8:12 72:16 73:11 96:11 104:17 107:5 130:17 142:18 158:10 232:3 252:8 253:19 259:11 260:10 290:8 298:7 312:6 person's 254:9 259:15 personal 34:17 159:19 164:18 166:10 244:8 247:8 303:22 personality 37:11,14,15 personally 82:1,3 83:21,21 89:12 89:23 90:2 97:7 115:3 159:17 190:13 203:5 209:23 214:8 223:15 247:6 264:23 277:21 284:19	290:19 personnel 39:4 persons 40:2 perspective 181:15,19 223:13 peruse 61:2 phone 118:3,6,9,11 139:6 180:2 photo 10:20 295:22 296:1 308:23 phrase 8:12 146:12 292:17 pick 68:19 269:4 Pickelsimer 274:16 275:6 Pickens 195:20 212:19 213:1,5 214:18 Pickens' 196:1,14,22 197:2 pieces 129:20 219:22 Pinky 122:14 124:12,17 place 97:9 98:22 188:9 191:17 301:12 311:10 plaintiffs 1:6,17 2:3 10:14 262:20,20 265:21 286:4 310:7 plaintiffs' 253:9 259:18 plan 18:17 planned 306:3 planning 274:20 287:23 301:3

plans 156:18	position 13:13 14:10,12,17,19 15:1,4,14,22 16:2,15 16:16 17:4 18:5 19:14 20:14 82:11 97:18 115:17 141:5 147:13 168:8 173:8 175:22 200:1,2 203:4 203:5,8 204:13 207:10 208:6 229:7 229:13,16,18,20 230:1,4,12,14 231:4 232:9 238:15,18 240:1 244:8 259:18 273:2 302:13,18 303:5,14	potential 57:12 94:11 116:10 150:3,13 171:2 180:7 180:11 204:3 218:5 241:14 269:19 280:16 286:18	preparing 248:17
play 245:11			presence 199:8
please 5:14 11:14 29:1 73:15 99:3 131:22 216:10 287:10		potentially 91:18,22 113:2 144:21 157:3 195:9 209:1 226:7 253:18 282:19	present 2:19 166:23 167:20 195:20 207:15
plenty 62:10		power 33:18 82:10,11	presentation 196:2,14,22 197:3 231:21 232:4
plus 13:23 226:6 236:17		practicality 255:11	presented 224:12 241:21 295:18
point 27:21 36:20 39:20 40:13 45:16 56:18 65:8,14,15 66:15 74:6,8 76:8,15 95:11 98:19 102:12,15 103:4 106:21 107:9 119:1 126:17 128:10 159:22 192:15,15 201:3 203:4 221:19 221:21 222:2,10 223:9,20 244:2,15 250:5,8 256:11 296:20 300:23	positions 14:6 228:11 239:22	practice 23:1 24:14 105:12,19 105:21 106:2,3,9 127:9 132:19,20 135:6 139:4	presenting 241:12
	possess 303:1	practices 13:23	presiding 31:4
	possessed 302:22 303:17	preceding 14:12 233:12,20	pressure 78:3
	possession 6:15 101:9 102:12,17 103:2,6,23 125:21 126:5,11,18 127:9 302:13,18 303:7,22 303:22	precipitated 282:21 283:1	pressured 82:4
	possession-only 102:7	predates 152:10 286:1	presumed 299:21
points 65:20	possibility 149:21 261:17 270:3	predicate 199:4	pretty 127:23
policy 102:6,21 103:1 106:21 106:23 107:3 187:12 188:10	possible 65:20 66:14,21 72:23 73:4,20 74:12,22 94:9 97:17 146:7 176:9 187:13 223:10 237:22 260:5 265:4 288:15 289:5 290:18	preferred 175:16 188:18	prevent 306:2
political 162:21		prejudice 261:19	previous 119:23 237:18 283:3 293:19
polling 301:3 311:10		prejudiced 259:6,19 261:11 293:11	previously 123:7 155:6 222:4 257:13 258:1
polls 305:14 306:3,4	post 144:17 196:6	prepare 281:6,12	primarily 155:5 248:11
population 82:14 83:11,17	postage 301:23	prepared 116:9 160:14,17,18 161:4,5 212:19 236:1 248:13 249:10 251:16 267:3,11,15 268:19 304:6	primary 151:6 152:13
portion 114:15	poster 294:10,11,18 295:4,11 295:12,18,20 296:5		printing 288:14
posed 12:16 191:21			prior 12:9 14:14,17 19:8,14 29:18 41:15,16 57:6 66:15 77:1,2 104:1 110:7,8,13 111:9 129:6 131:18 147:9 239:10 241:12,15 243:3 249:9 302:19

prison 78:2 82:21 171:9	61:17 119:16	107:23	punished 213:18 214:4
prisons 77:21 78:21 79:12 80:13 81:12	professional 37:17	provide 37:18 38:5 80:5 108:12 157:18 184:10 225:6 259:8 262:21 268:10 291:12 298:15 299:10 300:5,9	punishment 170:3,5,11,20 171:4 198:15 199:11,23 204:7,11,16 205:4,7
privileged 47:17	program 13:5 56:20 301:15	programs 15:6	punishment's 171:18
probably 40:17 45:4 210:12 258:18 295:19	promulgate 288:19 289:5	provided 3:16,23 38:6 52:22 64:7 87:17 109:7 118:3,17 134:15 152:6 172:20 174:17 208:23 225:5 234:5 248:19 262:19 263:22 264:10,15 287:8 297:15,16	purged 262:7
probate 75:8 94:17,19 95:23 99:12	promulgated 25:10 288:20,21	provides 15:13,14 44:20 128:11 275:19	purpose 3:16 64:8 203:18,19 203:20 204:4 213:6,7 213:9,14 246:13
problem 50:15 93:18,21 224:21	pronunciation 274:15	provision 56:16 145:23 146:22 271:19,21 299:15 312:18	purposeful 90:8
procedure 3:6,17 4:1 99:13 137:14 217:7	proper 95:14 137:13 148:15 149:3,4 223:9	providing 30:9 157:21 247:19	purposefully 90:14
Procedures 289:2,8	properly 67:13 135:1	provisional 99:8	purposes 204:3 225:1
proceed 176:1	property 241:13	provisions 312:3,7,9,14	pursuant 1:16 3:5
proceeded 191:12	proposal 142:17 148:18 184:13 184:22,23 185:19,21 185:23 186:16 216:15 287:15	prudent 102:1	purview 42:8
process 56:14 79:20 81:22 82:13 85:22 86:3,9 95:3,16 134:14 141:19 148:15 152:20 157:9 168:6 184:19 185:13,14 186:6,7,19 217:10,13 218:1 220:1 238:22 254:10 280:7 295:2 296:23 297:4,10 298:6	proposals 175:14 215:8 222:10	public 1:21 3:8 12:23 13:2 15:18 37:23 52:23 71:1,6,7,12 145:11 154:11,12 249:4 250:20 255:18 296:3	put 47:22 62:9 86:23 102:1 142:17 144:22 152:18 163:4 176:6 206:21 207:3 232:13 254:13 255:12 266:21 285:11
processes 141:11	propose 182:17	publicly 298:21,23	putting 143:19 144:2 289:7
processing 142:8	proposed 8:14 163:4 169:17 211:22 215:19 225:5 225:20,23 238:16 240:18 242:1	published 35:22 86:19	Q
produced 61:20 210:21 251:13 262:16 265:10,20 266:23 268:23 269:2 269:21 310:7	proposing 184:21 237:15	pull 269:13	qualifications 254:1,22
production	pros 192:22 193:18,20,21	pulled 61:17 269:17	qualified 6:18,20 84:15,15
	prosecuted 259:20 260:10 261:7		qualifying 146:6
	prospective 94:22 101:1 127:18 128:1 136:6		quantify 256:4 257:6
	prospectively 50:20		question 9:19 11:13,15,17 12:5 12:10,16,17 22:14
	protocol		

26:12 33:12 35:1,11 36:11 40:23 41:15 45:2,3 49:18,20 50:2 50:16,22 52:1 57:9 64:17 66:8 73:18 90:12 99:5 123:21 132:9 140:16 144:20 166:6 170:15 173:19 174:8 175:20 178:4 180:8 188:5,6 189:10 191:22 192:5 213:22 216:6,10,12 223:1 228:2 232:20 233:16 235:19 258:17,21 260:17 263:11 273:4 273:22 275:5 289:22 290:6 294:21 299:4,9 299:9 303:11 311:15 312:15 questions 3:11,12 6:8 11:1,3,22 12:2 17:19,21 18:2 30:4 40:16 52:18 75:12 106:6,6 107:10 108:13 133:2 144:19 197:14 199:5 302:3 308:1 309:7,20 311:13,19 312:21,22 314:7 quick 92:8 227:21 309:6 quickly 68:20 Quin 165:13 168:13 184:13 230:2 quite 18:21 37:10 49:1 60:10,12 100:10 103:21 quote 67:4,4,5 78:2,4 133:9 133:11 178:7,8 181:4 200:6 225:4 quote/unquote 181:14,18	R R 2:20 race 244:20 245:12 racial 46:3 47:4,11 48:9 90:18 91:1,7 139:12 195:21 244:16,18 245:5,17 racially 48:5 90:6,15,16 138:10,20 196:5,7 245:16 racially-charged 139:12,23 raise 149:20 166:6 raised 47:3 48:9 79:10 150:1 raises 68:22 90:12 raising 244:18 range 213:11 223:8 ranging 213:16 rate 100:8 289:7 rationale 43:15 re-call 265:15 re-enfranchisement 169:19 re-marked 111:2 160:23 270:8 reached 193:11,14 292:7 react 169:10 reaction 42:1 138:17 209:18 read 10:5 24:6,17 45:18	49:11,16 59:22 62:10 62:23 72:17 73:15 75:13 85:7 92:8 99:3 100:20 122:2,4,5 132:4,6 188:5 193:8 195:13 197:9 198:4 216:5 232:18 236:12 248:12,16 258:15 262:11 263:12 266:13 270:16 275:21 287:2 reading 132:3 215:5,7 243:21 248:7 273:18 reads 49:19 73:17 85:9 99:4 132:8 216:11 258:16 ready 29:10 54:12 75:16 92:11 132:7 140:22 235:4 270:19 real 246:5 reality 260:9 realizes 292:16 really 37:1 66:10 82:23 90:9 104:5 129:8 149:3,18 152:20 180:3 203:23 reason 12:1 33:9 55:18,22 59:16,20 67:8 85:17 101:20 154:10,15 165:15,19 200:5 245:4 259:9 260:14 260:18 266:2 278:7 283:8,9 287:20 reasonably 129:4 reasoning 185:16 reasons 148:13 162:21 198:3 238:3,8 247:11,14,19	250:22 300:19 recall 14:16 15:23 20:14 22:4 29:19 30:20 39:10,17 40:4,6,7 41:23 42:13,16 43:14 44:13 45:15 47:10,14 48:8,12 52:17 53:4 54:13,16,17,22 56:9 57:8,14,17 58:22 59:2,8,13 62:8,15,17 62:18,20 64:10 65:13 70:17,23 71:1,4,10 71:11,16,18,20 76:19 78:6 79:13 83:18 85:4 91:13 94:8 103:13 105:15 107:8 121:3,4 127:3 128:2 128:4 130:14 133:22 134:2 135:14,16 138:2,4,17 139:3,5,7 139:10 147:7 148:16 148:19 150:10 154:7 156:11,12,15,16 157:9,20 158:19 160:18 161:5 168:8 168:16,21 179:2,9,18 179:19 180:3,15,18 185:16,20 186:13 195:18,18 196:19,23 197:4 201:11,15 202:14,18,23 204:6 204:12,20 207:18,21 209:8,12,18 212:22 215:10 216:18 218:2 224:3 225:17 227:6,8 228:22 229:3,13 230:8,22 231:4,23 232:10,15 233:2,7,21 233:22 237:16 238:6 241:3 242:3,22 244:14,18 245:1 246:22 247:10 248:9 249:21 250:12 252:3 252:22 271:19,20 272:5 273:1 274:12

276:23 277:1 296:12 receipt 24:15 receive 17:20 259:10 300:8 received 9:10 75:7 141:9,16 143:15 256:8,21 257:17,21 258:3 310:10 receiving 76:21 77:3 receptive 138:6 recess 119:13 182:20 224:9 259:1 309:9 recipients 310:15 recognize 28:19 195:1 recollect 23:4 31:18,20 32:2,6 43:3 47:7,9 223:17 241:16 recollecting 237:5 recollection 10:23 23:22 24:18,20 25:14,16 26:1 28:20 30:10 38:11 42:5,6 43:2,6 45:17 52:8,9 55:9 56:12 59:23 60:3,7 62:5 63:20 64:1 65:3,8,13 66:22 79:4 83:15 86:8 100:18 103:4,16 106:16 126:22 132:17 135:3 137:12 139:15 150:18 151:7 152:16 157:5 158:23 160:16 163:6 172:9 172:22 173:7 174:11 177:2,6,12 179:12,13 183:15 185:11 186:4 193:16 196:11	206:15 209:3 212:7 217:1,22 219:5 220:2 220:5,16 221:18 226:20 227:11 233:18 234:21 235:16,22,23 237:3 237:21 241:11 245:8 248:22 282:2 296:16 recollections 63:3 Recommend- 7:17 recommendation 91:12 176:11 recommendations 174:13 176:10 recommended 33:20 84:22 130:6 174:15,18,22 239:13 recommending 296:12 recommends 49:2 reconsidered 94:18 record 11:2,12 12:9 46:10 62:9 78:10,12 110:22 114:9,10 119:11,15 123:4 129:1,2 182:19 224:8 252:15 253:2 264:12 265:16 278:8 278:9 283:17 records 9:10 57:2 254:11,20 265:23 266:5 276:2 recounted 54:14 60:1 62:21 recounts 62:13 63:14 64:2 rectify 28:6 redirected 236:20 refer 17:23 27:20 75:11	77:20 91:23 101:17 105:6 130:12 149:5,8 194:14 306:6 reference 211:12 283:22 referenced 61:13 213:3 references 120:18 122:8 176:21 referencing 211:6 referred 27:8,17 71:23 101:20 126:1 referring 106:13 149:8 226:5,10 262:2 268:21 306:15 refers 191:18 reflect 240:20 252:16 261:15 reflected 122:13 reflection 25:12 refrain 260:8 261:1 refresh 10:22 55:8 62:4 63:20 64:1 83:14 126:22 139:15 150:18 233:18 refute 55:15 regard 36:22 90:10 regarding 47:11 95:18 108:13 120:3 193:11 207:7 243:4 291:19 register 6:4 9:13,15,16 64:10 72:19 93:12 94:5,15 96:12 98:19 101:2,6 102:3 146:7 177:10 185:8 186:2 259:12	263:2 271:6,14 272:13 304:17 registered 73:9,12 74:9,20 98:4 128:7 265:2 registering 261:9 registrant's 146:6 registrants 296:18 registrar 20:11 26:21 32:17 33:21 34:3,11,19 38:19 70:13 92:6,13 94:6 98:20 104:4 107:20 120:15 121:1 121:2,6 122:1 165:7 165:11 183:19 259:15 270:13 273:6 273:9 276:11 277:8 registrar's 95:22 134:12 135:4 registrars 5:23 6:10,11 7:5,7 15:10,12,15,20 20:3 20:6 23:9 24:11,13 25:4,5,17 26:3,7,10 26:15 27:15 29:21 30:16,21 31:21 32:4 32:10,13,22 33:18 35:12,18 36:3,23 37:4,8 38:14,15,17 39:3 40:2 41:10 42:10 48:15,21 49:9 50:14 51:1,3,12,22 52:7 56:22 57:4 64:7 64:13 65:7,17 66:17 69:15 70:18 72:6,12 75:21 76:5,21 77:3,9 84:10,13,20 85:14 86:5 87:6 88:20 92:22 94:16 96:13,20 97:3,22 102:23 103:5 103:22 104:17 106:13 108:11 109:9

109:14 112:17 113:6 114:14,16 116:20 117:12,21 118:4 120:20 121:3,8,12 123:18 125:1 126:17 127:14 130:8 134:22 136:21 141:4,17 143:12 162:6 165:8 254:12 256:14 259:9 271:12 272:21 273:9 273:13 274:1,5,23 277:15 292:20 293:6 296:23 297:11 302:11 305:3 306:20 307:5 310:20	regularly 44:22 260:19 regulations 39:5 Reichert 122:15 124:13,17 reimbursement 39:1 reinstated 123:5 reinstatement 198:17,20 199:13,16 201:18 202:12,22 203:3 reinstating 201:6 rejected 28:8 73:10 222:18 277:2 rejections 183:7 relate 131:14 related 15:17 17:12,19 21:13 26:8 39:12,18 68:7 131:10 146:4,15 204:16 208:9 234:9 255:14 269:9 280:4 308:14 relation 314:11 relationship 164:15,20 166:10 relative 40:7 released 203:15,17 305:22 relevant 20:23 170:9,10,19 relied 109:21 rely 92:22 relying 92:13	remainder 121:8 213:19 remaining 173:18 remember 22:10 30:13 36:12 43:7,9 56:13 59:4,10 59:12 64:20 80:16 103:11 115:22 139:18 141:6 150:1,6 150:12 151:9,10 152:20 153:9,13 157:20 158:15 161:10 167:11 170:7 179:22 186:15,19 192:17,19 193:20 194:2 195:15 196:1,3 199:21 201:2 204:14 208:2 209:9,13,14,14 215:5,7 227:12 229:16,18,20 230:3,6 230:10,12,14,17,19 231:8 232:3 233:7 241:5,6,8 242:8 247:7,14 249:2,5,8 269:1 272:17,18 274:7,9 275:9 285:16 302:14 304:7,9,13 311:18,19,22 312:2 312:12,13 remembered 231:9 remembers 193:7 219:4 remind 47:15 139:22 removable 35:7 removal 20:3 33:20 34:9,13,23 262:22 276:1 removals 183:7 remove 200:13,15,19 219:23 297:13 298:1,5,9	removed 56:8,11,15,22 61:19 123:7 201:17 202:11 237:11 241:9 248:4 251:4 262:18 264:16 267:1,13 268:7 276:15 298:8 removing 34:20 169:17 200:13 200:18 201:5 296:18 297:1,4 repay 171:15 repeat 178:4 180:8 204:22 213:22 216:6,9 260:17 273:23 repeatedly 64:19 rephrase 66:3 95:20 311:6 report 67:14 69:16 123:8 133:10 reported 69:9,14 70:5 76:14 123:13 125:14 133:6 136:19,20 235:17 236:14 reporter 1:20 3:8 10:1 11:2,9 49:16,19 73:15,17 85:9 99:4 132:4,8 216:11 258:15,16 314:15,20 REPORTER'S 314:1 reporting 69:12 141:8 314:15 reports 68:8,10,11 79:16,23 122:19 234:5 represent 43:11 61:8 62:1 81:1 245:2,3 251:13 259:17 263:21 283:5

representation 43:19 49:13 55:23 76:20	198:16,20 199:12,16	270:16,17	result 81:3,6 130:23 240:10 274:2 311:8 314:12
representations 271:11	requires 260:1	responses 12:9	results 90:1,6,15,20 91:1,4,7
representative 150:12,22 152:10 153:23 155:17,21,21 156:9,13 158:16,17 167:2 177:15,19 178:5,16 179:5,10,15 179:20,23 181:2,8,11 184:9 212:6,12 229:21,23 230:9 249:13	requiring 186:1 192:1 234:14	responsibilities 16:5,19 91:19 271:23	retired 136:10
representatives 180:6 223:12 309:13	research 194:21 195:20	responsibility 91:14 134:13	return 186:22 232:14 281:11
represented 42:20 59:18 230:9	reserved 3:13	responsible 36:8 311:6	returned 198:9
representing 3:3,19 30:8 163:23 166:21	resident 254:2	rest 105:18 237:6	Returning 234:4
represents 73:8 75:17 101:8 314:8	resign 274:2	restate 22:14 123:21 170:15 175:20 273:22,23	returns 134:15
reprinted 18:13	resignation 9:7 273:12,14	rested 33:19	revamped 141:19
Republican 78:3	resigned 105:16,17	restitution 171:11 175:3 198:11 199:3 201:22 215:23 243:5	reveal 30:1,5 47:17
request 113:3 253:9 263:3	resolution 272:18	restoration 7:13,16 8:5,15,19 56:14 134:16 150:9 168:1,6,12,19,23 169:1,4,12 170:17 172:5 173:4,9,12 174:21,23 175:3,17 175:22,23 176:3,8,11 176:17 185:6 211:18 215:21 216:21 217:2 217:10,14,16,20 218:1,3,8,12 234:15	review 29:3 54:3 135:12,15 135:16 140:11 150:23 216:7 228:8 228:10 274:21 295:2
requested 183:22 184:1,3	resolve 97:23	restoration-of-rights 137:14	reviewed 99:9 153:12,15 218:5 220:18 228:14 241:18
requesting 104:22	resolved 69:23 79:21 80:17	restore 56:8,10 95:9 130:2	reviewing 209:13
required 88:20 169:3 202:7 211:17,18	resources 109:20 292:7	restored 21:16 70:2,6 101:16 102:2 130:4 142:21 143:22 145:8 168:4 170:13 204:17 206:2 206:4	reviews 45:11,21 49:14 54:5 54:11 61:4 75:10,15 85:3 92:10 100:22 122:6 132:1 140:14 152:7 178:3 188:13 212:17 228:1,6 251:21 262:14 270:18 273:21 276:4
requirement 106:18 185:7 200:6,11 200:19 201:5,18 202:12,21 203:2 244:5	respect 31:14 33:23 52:3 124:21 221:11 242:23 245:11 279:14 291:15 303:6 303:8	restricted 36:23 37:4	revise 217:7
requirements 21:13 144:18,22 169:11,18 185:1	respond 231:7 274:11 286:14	restricting 64:11	revised 7:9 25:10
	responded 134:4 139:4 190:8 263:3		Rich 230:7
	responding 112:17 139:5 181:3 312:8		Richard
	responds 108:4		
	response 24:15,19 29:23 40:18 85:8 90:12 101:12,13 134:7 138:14 143:2 143:18 148:10		

77:23 79:1 128:2 right 12:4,21 14:16,23 15:2 16:16 19:22 31:2 43:8 46:4,21 47:21 60:8,14 71:23 75:16 82:7,17 83:22 86:10 87:13 89:20 94:16 95:9 102:18,20 104:9 105:2,16,16 113:11 114:5 115:20 117:5 119:22 125:4 126:9 126:13,15 129:11 138:1 143:7,8,10,22 143:23 145:8 148:1 151:2 152:11 153:18 159:23 161:5,8 162:9 162:11,12,13 163:21 168:3 169:6 171:16 172:21 176:9,12,15 176:20 178:2,11,18 178:21,22 184:20 189:16,17 194:19 195:7 211:14 218:7,9 218:13,15 219:21 221:23 228:4,21 229:8 234:2 235:4,13 235:23 236:3 239:4,9 239:11,20 243:18 244:11,21 248:14,22 250:10,16 251:3,7,8 255:8 256:19 257:15 260:23 261:4 263:4,5 263:20 266:20 267:4 267:5,16 268:1,9,12 277:11,19,22 278:15 281:9 282:13 284:7 286:23 287:1 292:23 294:3,20 295:13 297:23 298:2,4,6,10 299:20 300:13,21 303:13,16 310:12,16 310:22 312:20 rights 6:17 7:13,16,21 8:5,12 8:18,19 21:15 79:18	80:4 101:15 102:2 129:5,6 130:2,4 134:17 137:18 142:20 143:22 145:8 150:10 168:1 169:4 169:12 170:12 171:3 171:17 173:4,12 174:21,23 175:4,17 175:23 176:3 198:21 201:6,19 202:7,13,22 203:3,11 204:10,17 205:3,11,16 206:2 211:19 214:5,6 215:21 234:16 256:1 258:7 294:11 296:4 Riley 36:7 42:3 307:18 road 303:6 Robin 92:4,5,6 role 17:3 20:5 36:17 37:3 148:2,4 175:15 286:11 room 30:8 305:17 rooted 46:2 roots 47:4 round 7:20,22 8:3 routed 118:12 routinely 33:21 Roy 83:16,19 rule 12:14 30:3 288:20 ruled 46:5 80:18 Rules 3:5,17,23 ruling	3:14 run 114:4 S sampling 184:10 Sandy 311:20 312:8,10 sat 119:20 saw 41:21 90:7 142:23 157:23 160:21 saying 19:23 44:17 46:20,20 46:23 78:21 95:13 111:7 112:12 179:18 181:3,4 183:21 236:4 258:4 262:4 says 25:1 26:22 29:11 30:15 46:17 58:18 61:6 67:2,21,21 69:17 83:21 122:21 129:12 133:8 142:5 144:23 145:4 146:2 146:14 150:16 152:1 163:16 167:14 168:13 178:5 181:13 190:22 195:12 208:17 219:13 225:10 226:12 233:11 235:20 273:6 274:20 276:10 277:7 292:10 295:6 SB 236:9 scheme 18:23 62:7 63:5,9 214:1 school 88:21 Scraggs 230:13 screen	264:1,6,9,18 265:18 266:6 screening 65:21 66:2 Scruggs 201:7 Sec 6:3 second 9:4 24:2 54:6 67:20 84:9 143:18 146:2 177:21 182:23 187:8 187:23 212:18 213:1 215:1 225:9,9 233:10 258:18 261:22 276:9 276:10 283:23 306:10 secretary 1:11 2:20 13:7,10,14 14:6 15:7 16:8,11 19:2,15,21 21:4,8,18 22:18,23 24:9 25:9 26:13 28:5 29:20 31:5 33:19 34:16 37:5,12 38:18 39:12 41:23 42:21 47:22 53:2 54:4 64:4 75:18 79:6,9 84:12,19 85:17 87:10,23 90:23 91:11,16 92:2 96:14 103:9,10 105:17,22 105:23 106:1 107:13 118:2,15,17 121:11 123:17 132:14,21 133:7 134:10,21 135:7 136:3 137:8 147:10,10,20 149:19 150:22 153:1,11 155:20 156:6,17,19 159:7,7,13,17 161:7 161:20 162:16 163:3 164:8,16,21 165:16 166:9,22 167:19 168:4 177:16,19 178:1,10,15,19 179:4 180:4,9,23 181:3,7

181:12 182:9 187:6,7 188:11 189:6,19 190:3 191:9,21 192:6 195:2 196:21 202:17 202:19 206:7,15,22 207:9 208:18 212:5 215:4,9,11 217:19,21 217:23 218:10 219:17 221:13,15 222:7,9,18 223:11 226:13 235:20 236:20 237:14 238:2 238:9,15,18 239:2,15 240:1 241:12,20 243:1 244:12 246:8 248:7,12,16 252:10 257:22 258:3 265:6 274:10 283:5,10 291:1 294:16 295:21 307:10,20 308:4 309:14 310:8,10	Segrest 113:13 select 191:1 selected 163:1 164:19 165:10 166:14,15 206:14,16 245:15 selecting 244:22 selling 15:18 semicolon 108:5 Senator 163:23 167:3 178:16 181:1,4,8,12 190:22 191:3 206:13 229:17 230:16 send 70:9,14 106:8 121:1,6 153:22 158:5 276:12 277:15 278:11,12 sending 20:2 65:21 66:16,17 70:17 76:16 102:3 106:10 107:4 175:10 sends 274:19 sense 14:9 16:1 111:12 139:20 165:18 187:18 198:5,6 219:5 243:19,22 sent 25:4 52:6,10 54:4 64:12 65:6,9,16 70:16 75:7 77:17 108:20 112:11 120:13,19 121:14,16 122:9 123:11 127:6 131:14 132:12 146:2 147:17 150:21 153:15,19 173:2,5 174:9 183:8 207:20 215:16 227:11	272:20 277:4 278:10 283:6 291:18 306:9 306:19 307:5 sentence 49:17 130:1 137:17 146:2,13 168:3 169:21 171:1,14 187:23 199:4 202:1 205:10,15,21 215:23 233:10 243:11 276:10 279:9 sentenced 171:8 sentences 236:12 sentencing 169:23 201:1,13 September 1:22 42:12 58:1 60:16 75:6 77:18 78:17 125:15 127:8 284:12 313:2 series 24:10 serious 157:14 seriousness 133:1 serve 203:22 204:5 205:15 served 15:22 16:2 137:16 serves 42:18 125:12 184:16 199:17 services 291:13 293:3 session 8:9 212:4,13 set 178:9 184:17 247:1 254:6 292:18 302:7 settlement 80:23 seven 16:4 99:10	severity 213:11,16 Shannon 275:14,17,18 306:7 307:1,3 310:2 share 22:10 23:3 172:21 shared 109:14 138:12 sharing 158:15 Shay 214:18 Sheet 9:22 Shelby 127:15 165:8 183:5,19 sheriffs 75:9 shift 55:9 148:20 160:2 Shirley 135:23 136:4 139:1 Short 182:20 224:9 259:1 309:9 shorter 55:5 Shorthand 1:20 3:7 shot 264:1,6,9,18 show 151:17 246:1 265:10 265:18 266:5 276:3 305:11 310:14 showed 34:18 304:4 shows 143:3 shut 78:23 side 159:12 sign 10:5 153:17

signed 161:7 259:5 273:7,8	skip 225:8	sounds 151:15 170:1	177:3 197:7,9 246:16
signing 252:22 260:8,19 261:1 293:14	slash 195:13 266:3	source 50:18 87:21 89:13,19 113:12 116:10 117:7 124:19 209:8	sponsored 8:8 38:18 212:11
Sikes 42:12,14,17 44:10,13 45:16,23 46:11,12,12 47:2 49:1 52:6 54:10 54:15,17 57:13,23 58:10 59:5,10,13,18 59:23 60:1,9,19 63:13 64:2 68:22 73:8 75:2,17 77:17 78:15 84:5,21 87:19 91:9,15,17	small 308:11	sources 113:5,8	spreadsheet 264:15,18,22 265:19
Sikes' 51:20 62:21	smaller 55:10 58:11 237:19	South 7:16	spur 112:3
similar 68:5,12 195:2 225:7 227:2 269:21 284:17 284:20	snapshot 265:23 304:5,9,13	speak 10:7 11:4 34:16 101:13 129:22 130:3 130:7 139:1,6 179:10 189:4 238:11,20 242:15 248:20	staff 14:2,3 16:13 17:2 29:20 38:1 104:21 115:19 116:1,5 133:5 133:10,12,21 136:8 190:14 280:1 286:16
similarly 227:3 268:15	So.2d 5:8	speaking 15:10 138:4 196:3 251:1	stage 238:22
simple 102:12 103:6 303:7,21	social 203:20 204:4	speaks 240:11	stale 255:7 297:21
simply 179:16 259:15 302:21	society 170:23 171:15 205:18 206:1	special 39:21 82:14 299:15 307:11,14,15,18	stand 261:9
Sinclair 2:14 78:9 113:22 114:2,6	software 269:5 275:20	specialist 19:18	standard 46:2 47:4,12 48:6,10 111:8 246:9,16,19
single-spaced 194:20	solely 91:12	specific 30:11 45:2 83:12 96:10,16,21 97:4 108:13 118:18 144:18 201:9 232:2 241:16 258:12 259:6 261:11 262:8 279:12	start 108:19 141:2 150:3 191:14 192:6 279:10
singular 87:21	solution 148:13	specifically 51:15 53:13 68:7 77:21 93:22 108:7 174:20 254:8 312:13	started 14:21 31:7 150:6 187:22 191:9 192:9 221:3
situated 268:15	somebody 73:9 115:15 197:20,23 214:1 247:9 299:4 306:2 310:9	specified 225:14	starting 192:14 221:19,20 222:2,10 223:9,19 228:12 250:5,8
situation 18:12,13 27:6 37:16 38:12 70:2 79:13 190:9 257:8 278:13 278:14	someone's 203:14	spectrum 162:4	starts 24:3 54:8 128:6 140:17 236:10
six 16:4 285:18	somewhat 18:18	speculate 82:23	state 1:11,21 2:15,20,21 3:9 5:12 9:18,21 15:8 16:11 19:2,8,16 21:5 21:8 22:18 24:9,11 25:5,9 31:5 33:19 34:17 37:5 38:18 39:4,5 42:21 72:8 77:21 78:2 84:12 90:23 96:14,20
size 40:7 73:22	sorry 27:18 31:10 70:22 81:14 85:7 110:18 167:15 178:4 187:14 188:4 197:5 200:16 222:20 232:17 233:17 251:9 258:19 298:22 302:12	spoken	
	sort 39:11 170:22 253:9 255:9 264:23		
	SOS 8:8 212:11		
	sound 151:13		

101:14 107:13 118:2 118:15 123:18 136:3 136:10 137:8 149:19 163:23 166:23 167:2 174:21 184:10 191:11 215:4 234:13 236:20 238:2 239:3 239:15 243:1 244:13 250:19 257:23 258:4 278:7 284:17,20 285:15,22 286:19 287:9 288:1 290:21 291:2 294:16 300:9 301:7 307:21 308:17 308:21 311:5,9 314:2 314:20 state's 13:8,11,14 14:7 15:8 16:9,11 19:15,21 21:18 23:1 26:14 28:6 29:20 42:1 53:2 64:4 75:18 79:7,10 87:10 103:9,10 118:18 121:11 134:10,21 135:7 159:13 167:19 207:9 238:15 240:1 265:7 274:10 295:21 307:11 308:4 309:14 310:8,10 state- 279:11 state-specific 279:5 stated 22:21 118:1 293:10 statement 104:6 140:17 261:10 261:15 states 1:1 21:14 173:5 224:20 254:7 259:13 277:12 308:16 statewide 18:14 25:11 stating	168:8 171:20 204:12 238:6 statistics 183:4,22 status 9:8 70:7 263:23 264:20 265:1 266:1,2 266:8,9,15 268:6,10 274:22 275:3 304:15 305:4,7 status- 267:7,17 status-change 269:9 305:6 statute 191:12 192:11,13 211:19 214:23 222:14 226:6 228:16 234:20 statutes 225:16 statutory 8:15 32:21 98:14 215:19 stay 243:10 stenotype 314:7 Stephenson 140:13,18,23 141:2,3 143:1,5 steps 56:7,10 Stewart 2:8 sticker 110:21 stipulated 3:2,18 stipulation 1:16 stipulations 3:1 10:2 stop 137:2 298:12 309:17 stopped	77:23 Storm 311:19 312:8,10 story 273:10 274:7,11 strategy 181:22 streamline 217:9 streamlining 217:12 Street 2:5 strike 30:14 43:10 51:19 62:19 68:21 69:18 79:8 83:2 93:3 99:17 116:21 135:17 141:1 168:23 189:6 196:12 228:8 240:16 294:22 strongly 49:2 structure 18:20 structured 86:1 study 90:19,23 91:3,6 subcommittee 8:7 47:21 48:11 150:7 206:6,10,14,17,22 207:1,3,11,13,16,19 207:22 211:8 212:21 233:3,11,19 234:1,11 234:17 235:9,18 236:15 237:6 240:3 subcommittee's 234:6 subgroup 206:19 subheader 29:11 subject 18:4 47:18 subsequent 43:14	substance 6:16 109:18 110:2 125:18 126:6,19 127:10 128:20 substances 111:21 successful 5:7 21:3 sudden 141:14 sued 308:23 suggest 55:16 61:19 71:7 83:5 83:10 91:3,6 157:8 191:3,8 200:4 214:20 228:11 238:2 241:19 244:16 263:17 296:10 suggested 87:19 211:11 222:13 228:14 230:21 231:10 241:1 242:18 273:10 suggesting 71:10 83:16 232:3 suggests 263:13 275:22 suing 308:17 Suite 2:5,10,22 suited 89:9,17 summary 134:7 209:5,10 234:6 summer 201:7 230:13 262:16 266:22 286:3 Super 311:19 312:8,10 supervisor 14:15 15:4,5,8,11 17:11,17 20:8 27:13 33:13,17 60:21 85:20 91:19 133:18

support 15:13,15 155:22 156:7 156:23 185:5,6,14,21 188:22 189:3,20 217:15,17,23 218:3 232:10 243:2	159:20 sustainable 142:5 swap 269:4 switch 110:21 160:20 sworn 10:7 system 36:9,19 39:16 40:1 55:1 67:4,8,13 68:9 75:21 80:19 86:18 90:5,20 91:1,4,7 94:10,12 97:9 98:22 118:16,21 119:9 142:14 144:15 148:21 185:6 254:6,7 262:5 263:7 265:6 268:4 269:9,13 275:23 296:17 297:5 301:12 307:10 systematic 56:20 systematically 264:23 systemic 57:6 systemically 297:1	265:13 268:1 285:5 309:5 taken 1:15 3:4,7 56:7,10 169:22 172:18 185:2 314:6 takes 95:18,23 308:10 talk 21:23 137:22 139:8 147:5 156:8 160:2 162:22 163:13 175:13 176:23 180:1 180:4 181:5 204:2 253:14 talked 79:14 156:21 168:22 177:7 talking 42:14,16 47:10 54:17 59:10 82:14 128:3 148:21,22 167:16 181:21 182:1 200:8 204:14 223:5 231:19 257:9 285:21 288:8 talks 178:14 226:22 Talladega 270:13 Tallapoosa 92:7 183:5 tally 134:14 tasked 235:18 tasks 15:16 37:6 Tatum 20:16 279:18 280:1 team 133:10,11 136:3 137:8 148:3,5 154:6 159:2 187:11 252:6,9 280:7 280:9 282:12,15 tell 11:16 12:21 14:5	15:21 18:4 24:6 27:3 36:6 46:17 86:5 91:9 91:16 130:9 135:11 136:5 138:9 143:4 154:21 161:16 221:15 222:7 241:2 279:3,10 286:11 306:18,21 telling 129:19 277:4 tells 98:16 129:7 template 9:7 273:6,7 291:5 tend 83:20 tenure 79:6,9 term 31:7 38:13 105:18 146:5,9 149:3,4 195:21 terms 31:3 81:21 130:1 137:17 180:13 244:22 terrorism 192:21,23 193:13,19 195:5 226:6 terrorism- 208:7 terrorism-related 208:4 terroristic 193:23 testified 10:9 76:15 204:21 205:1 304:5 testimony 119:19 126:16 139:11 204:23 314:9 text 287:2,11,14,19 texting 287:13 Thank
supported 186:5 215:5 228:14,19 238:9,11 239:5 244:4 supporting 156:20 186:16 231:23 supportive 173:11 176:2 185:12 supposed 38:23 304:18,20 305:5 supposedly 122:16 supreme 23:17 29:14 46:5 sure 26:12 29:2 35:10 36:10 44:4 49:11 66:7 88:23 103:22 111:16 122:23 124:16 129:4,8 130:10 136:17 137:15 147:19,19 154:4 158:8,14 161:2 162:21 164:16 184:7 188:14 189:10,14 208:20 210:19 223:18 232:19 281:14 289:15 290:3 surprise 210:3 surprise-surprise 75:1 surprised 138:15 209:16 237:17 238:1 245:14 surprising 209:21,22 246:3 surrounding 146:21 suspect 98:6 118:8 156:6	tab 266:17 tabbed 20:23 21:1,11 tacked 243:13 take 11:9,11 12:12,18 21:1 35:19 39:6 92:8 95:14 100:20 110:21 140:11 161:11 182:15,18 203:4 222:23 224:5,6 227:21 258:20 264:3	takes 95:18,23 308:10 talk 21:23 137:22 139:8 147:5 156:8 160:2 162:22 163:13 175:13 176:23 180:1 180:4 181:5 204:2 253:14 talked 79:14 156:21 168:22 177:7 talking 42:14,16 47:10 54:17 59:10 82:14 128:3 148:21,22 167:16 181:21 182:1 200:8 204:14 223:5 231:19 257:9 285:21 288:8 talks 178:14 226:22 Talladega 270:13 Tallapoosa 92:7 183:5 tally 134:14 tasked 235:18 tasks 15:16 37:6 Tatum 20:16 279:18 280:1 team 133:10,11 136:3 137:8 148:3,5 154:6 159:2 187:11 252:6,9 280:7 280:9 282:12,15 tell 11:16 12:21 14:5	15:21 18:4 24:6 27:3 36:6 46:17 86:5 91:9 91:16 130:9 135:11 136:5 138:9 143:4 154:21 161:16 221:15 222:7 241:2 279:3,10 286:11 306:18,21 telling 129:19 277:4 tells 98:16 129:7 template 9:7 273:6,7 291:5 tend 83:20 tenure 79:6,9 term 31:7 38:13 105:18 146:5,9 149:3,4 195:21 terms 31:3 81:21 130:1 137:17 180:13 244:22 terrorism 192:21,23 193:13,19 195:5 226:6 terrorism- 208:7 terrorism-related 208:4 terroristic 193:23 testified 10:9 76:15 204:21 205:1 304:5 testimony 119:19 126:16 139:11 204:23 314:9 text 287:2,11,14,19 texting 287:13 Thank

21:23 28:4 36:6 52:4 53:17 65:1 66:13 67:17 68:19 77:11 81:18 83:22 89:20 111:4,5 112:6 113:4 113:23 114:7,8 116:10 120:6,7 124:20 127:19 132:10 134:19 140:7 148:6 149:18 155:9 159:16 167:10 173:23 175:5 187:3 188:1 193:9 194:11 198:7 206:5 216:13 224:7 249:18 258:23 261:21 273:20 278:15 281:1,3 284:1 284:13 290:20 300:4	109:7,12,12 110:1 111:6 115:23 117:18 121:5 124:4 129:10 140:4 143:3 146:11 149:6 154:17 158:9 158:11 171:23 178:13 181:16 183:12,12 188:7 189:12 197:8,13,14 203:13,14 211:4 217:11,12 223:2,2,19 227:22 231:2 238:13 239:21 240:3,8 242:10 243:7,16 244:7 246:19 253:16 253:20 255:15 256:3 256:6 260:5 262:2 265:12 277:19,21 279:8 284:16,19 288:8 289:8 290:7,10 290:13,19 294:10 295:17 299:19 311:4 311:7,11	236:18 280:15 281:6 281:12,19,21,22 282:1,7 304:18 till 114:3 Tim 232:8 time 3:13,14 18:21,23 19:11,20 20:1,5,15 21:17 23:20 26:2 30:12,13,20 31:3,5 31:21 32:3,6 33:16 34:17 36:7,20 41:1,6 42:15 45:16 47:13 51:2,11 52:11 54:1 55:1,20 56:1,13,18 58:5 59:15 60:11,22 62:7,10 63:5,10 71:5 71:18 74:8 77:18 78:16 84:4 89:2 98:14,16 99:14 102:11 105:8,10,20 115:18 131:9 133:15 133:18 136:18 137:16 147:14,17 171:2 172:11 186:14 196:9 246:23 250:12 262:8 269:21,23 275:13 286:8 289:3,7 290:2 301:9 305:22 307:7,13 308:11 309:16 312:9	11:20 12:2 18:18 225:17 282:2 302:14 308:1 309:14 told 25:18 27:5 31:21 37:7 46:11 51:3,12,18 64:19 87:11 94:1 103:5,8 109:8 126:18 151:11 198:2 250:7 255:20,22 256:13 257:13,20 258:1 266:21 272:7,10 296:23 top 160:12 176:10 187:18 187:21 208:17 topic 17:6 24:12 60:9 78:18 topics 278:16 totals 209:16 touch 17:11 track 174:4 tracked 96:14 tracking 118:16,21 119:9 traditional 225:3 trafficking 192:18 193:12 195:5 223:6 226:7 240:23 242:1,4 trained 293:21 training 15:13,14 19:17 20:6 144:7,13 145:11 291:14 transcribed 314:7 transcript 314:6,9
Thanks 100:11 theft 213:17 214:3 241:13 Theoretically 255:2 thereto 314:7 they'd 300:22 thing 23:4 64:21 65:15 81:17 255:10 things 133:6,7 154:5 185:1 189:14 223:6 227:3 260:19 261:2 302:7 308:1,4,8 309:17 think 12:4 20:18 33:13 34:3 41:14 44:7 45:3,4 50:5 52:1 53:8 61:20 61:23 67:7,12 70:9 72:19,21,23 81:19 82:9,15,19 86:10,13 88:10 89:9,12,12,16 89:18 90:17 93:2 97:2,7,15 101:20	thinking 223:12 third 24:3 183:20 THOMPSON 1:5 thought 18:19 19:12,12 58:19 65:14 73:1 90:10,18 143:1 165:16 174:1 196:17 197:7 199:22 200:4 204:1 222:9 223:8 237:10 238:12 246:5 248:3 281:15 281:17 283:20 289:23 304:6 thoughts 246:14,22 threatens 131:19 three 64:2 152:4 165:22 176:9,16 209:4	311:7,11 timeline 287:22 288:4 289:1 times 10:17 39:10 112:13 133:5 160:4 239:13 304:18 timing 113:2 title 115:22 136:16,17 titled 194:20 265:19 today	

transcription 314:8	turning 38:21 208:12 259:21 259:22 260:8	225:19 229:2,15 230:4,15 233:3 234:9 234:12 236:10 239:6 241:15 242:7 246:18 250:22 252:7 266:4 271:2 272:22 275:2 292:22 295:7,9 302:20 303:1,3	uncomfortable 293:14
transition 147:21,23 148:3,5	Turp 6:12	Tuscaloosa 183:6	understand 11:14 26:12 44:2 72:4 96:10 113:4 166:5 189:10 226:5 238:21 247:17 250:18 253:13 255:11 256:23 257:10 258:7 262:3 263:14 268:3 290:9 298:11 301:13 303:20
transmission 67:19 69:4	turpitude 6:9,14 7:5,7,10,11 8:7 8:13,20,22 9:6 17:23 19:11,20 22:3,22 23:7 25:8,20 26:4,16 27:2,8,23 29:13,18 30:23 31:16,23 32:15 32:23 34:1,22 35:16 35:21 40:21 41:20 42:9,11 43:1 44:19 46:2 47:4,12 48:1,7 48:10 50:18 51:5,7 51:17 54:19,21 55:11 56:16 57:7 58:15 63:19 65:18 70:20 84:16 88:6,17 89:11 89:22 92:14 93:17 94:4,7,20 95:4,13,18 95:23 96:17 102:14 102:19 106:7,15 108:2,4,10,16 109:1 109:10,19 110:3,10 110:13 111:8,13,17 112:15,18 113:7,14 114:19,21 116:17 117:2,8,15 119:3 120:22 122:10,18 123:3,16 124:6,7 127:2,2 145:22 146:5 146:12,22 149:15,22 150:4 154:18,22 155:1,7,18 157:4 158:6 161:22 172:5 174:16 180:11 191:11 192:11,12 194:16 195:22 196:4 206:6 207:5 208:1,16 209:2 211:9,13,20 212:3 214:22 215:2 217:9 220:3,8,20 222:5 224:23 225:4	two 45:1,6 77:19 93:15 114:17 123:9 167:1 195:8 199:21 214:20 236:12 258:13 271:5 283:20 285:18 297:18 309:20	understandable 174:6
traveled 38:20		two-week-long 130:21	understanding 19:3,5 20:4,13 21:7 22:23 26:9,15 32:8 32:11 33:5 39:20 41:5 42:6 64:3 65:5 76:13 77:5,10 80:18 80:22 96:5 97:14 103:21 115:5 165:23 192:9 205:22 222:15 223:3 244:7 250:23 251:2 253:8 254:16 271:11,17 276:14,21 286:22 288:23 294:15 295:20 302:16,17,21 305:12
treated 116:20 117:13 227:3		type 135:8 147:4 164:5 265:5	understood 11:17 72:3,20 115:15 137:15
treating 103:1		U	Undoubtedly 256:12
TREVA 1:5		U.S 5:11	unfolded 247:18
trial 3:21		uh-hmm 11:10	unhappy 190:4
tried 88:10 112:13 264:19		uh-huh 11:9 172:2	uniform 89:21 103:1
triggered 135:12		Uh-uh 121:4	Uniformed 13:20 120:4
trouble 129:15		ultimate 101:13	uniformity 87:17,20 109:8,13
true 77:6 118:5 193:7 260:21 261:3 277:5 293:16 314:8		ultimately 18:14 22:2 69:2 87:11 87:13 93:6 126:1 189:2 191:5 231:17 238:14 282:9 284:4 312:15	uniformly 104:8
truth 10:7,8,8		Um 262:10	
truthful 12:7		unanimous 242:11	
truthfully 11:22 12:2		unaware 19:7	
try 12:12 247:20 260:23			
trying 81:21 107:11 113:4 139:18 159:21 197:18 216:4 247:17 255:5			
turn 232:14 293:12,22			

Union 199:20	10:1	visit 287:10	300:21,22 301:3,7
United 1:1 308:16	usually 79:22	visited 139:8	304:17 305:16 306:3
University 13:1,3	utilized 39:23 58:12	vocally 197:11	306:4 312:4,6
unlawful 6:15 109:17 110:1	utilizing 55:2	voice 185:18 202:17,19	voted 231:17 242:12
126:5,11,18 127:9	V	203:1 205:14 237:12	voter 5:7,10,16,20 7:12,16
128:19	v 5:9 22:7,8,16	244:12	8:5,19 9:8,18 10:20
unlawful-possession... 125:17	vacant 16:16,17	voiced 146:3 168:12 198:17	13:19 14:15 15:4,5,6
unrelated 232:20	vague 42:5,6	199:13 200:10 204:9	15:9,17,18 17:11,18
unsustainable 142:5	variables 269:5	205:23	20:8,10 21:3 25:10
untrue 43:4	various 68:11 162:4 173:5	voicing 244:14	27:13 28:7,15 33:14
UOCAVA 308:18	228:11	volume 142:1,10	33:17 36:8,19 39:16
upcoming 98:1 99:1 178:6 288:7	vast 89:6	volunteer 163:16	40:1 60:21 64:9
updated 123:18 294:18 304:23	verbal 11:8 272:11	volunteered 183:14	69:21 70:3,7,10
304:23	verbalized 246:16	volunteers 163:20	71:17 77:20 78:1,20
updates 305:1	verbiage 145:3	vote 6:5 64:9,10 72:19	78:22 79:11,15 80:6
uptick 141:14	version 151:4 283:23 284:5	74:20 79:19 82:18	80:21 81:11 82:20
urging 84:5	versions 282:7 283:21	83:7,11,17 93:12	85:20 91:20 93:23
URL 283:21,22 284:6	versus 303:7	94:5,15 95:9 96:12	94:2,13,14,21,22
use 5:19 23:13 25:11	victims 163:17	98:4,19 101:3,6	95:5,7,8 97:18,23
26:19 43:21 46:1,4	view 37:22 50:12 171:20	128:8 129:12 131:1	98:10,22 99:7,18,20
48:6 70:19 80:7	201:16,20 202:11	134:12 144:10	101:1 112:22 125:15
84:21 85:6,11,15,18	203:18 204:8 207:15	146:18 147:1 171:16	127:18 128:1 133:18
86:4,6,20 88:1 91:12	207:22 228:22	177:10 184:19 185:9	136:6 141:9,15,20,21
93:3 274:20 282:9	253:15 265:4	186:2 189:2 203:16	145:3 150:9 173:3
284:4 293:2 303:22	views 235:15	206:3 229:8,11	175:22 185:5 249:7
useful 165:17	violation 39:4 308:18	234:17 237:19	267:1,11,13 268:8
uses 211:11		239:13,14 241:8	270:21 272:3 274:21
Usual		242:4,11,19 254:4,21	275:19 278:13,17,18
		255:21 256:15 257:1	279:6,13,20 284:17
		257:14,18,20 258:2,5	287:5 288:6 290:23
		259:12 260:3 261:8,9	291:9,11,12 292:12
		263:2 271:7,14,15	293:3 296:8,11,18
		276:2 277:10 287:6	297:7 301:21 304:17
		295:8,10,10 298:18	305:4 307:9 309:2
		299:16 300:8,10,13	voters 5:18,20 6:18,20 72:2
			97:12 138:11 162:1
			276:14,15 277:2,10
			277:23 282:18 284:5
			289:9 290:17 301:2
			voters' 64:8
			voting 6:17,22 7:13 8:5,11,18

9:21 13:21 21:15 67:10 79:18 80:4 92:20 101:15 120:4 130:2,11 134:16 137:3,18 168:1 169:4 169:12 170:12 171:3 171:17 173:12 174:21 175:23 176:3 198:20 201:6,18 202:7,13,22 203:3,11 203:21 204:10,17 205:3,11,16 206:1 214:5,5 215:21 234:16 241:4 258:7 275:2 294:11 296:3 308:5,8,10 309:3 311:3,8	144:3 162:1 181:11 182:7 209:1 219:4 240:3 243:9,19 248:20 290:2 292:11 War 196:6 Ward 167:3 178:16 181:1,1 181:4,8,12 230:16 Washington 1:18 2:6,10,15 wasn't 20:11 27:6 35:22 36:3 80:3 103:7 108:22 110:8 138:16 140:15 154:15 194:2 217:3 217:15,17,18 223:15 229:22 250:6 252:5 way 24:21,22 34:20 37:3 39:8 43:7,8 52:10 60:6 61:21 67:16 68:3,13 69:15 76:14 85:23 86:18 95:2 96:19 99:11 142:4 146:11 171:20 172:1 182:11 184:8 186:20 189:4 196:7 207:23 223:4,20 227:19 243:13 254:6,9 263:8 263:19 272:2 288:22 290:7 293:4 300:6,22 305:13 ways 44:1 64:22 we'll 12:12 52:3 83:23 107:14 119:11 140:8 155:10 182:18 210:23 273:5 we're 38:8 46:19,20 51:19 57:19 60:8 82:14 114:1 119:14 160:20 188:9 194:13 we've	20:19 29:16 78:17 120:14 132:5,6 220:17 231:15 241:18 285:3 293:10 296:21 302:5 website 134:18 288:16,23 289:4 week 122:20 141:9 weekly 297:9,17 weeks 58:1 297:18 went 57:1 68:20 221:8 223:5 237:9 240:7 247:22 248:1,5 273:1 weren't 35:3 96:13 144:5 247:19 293:2 312:5 Westlaw 5:8 wide 162:4 widen 266:11 wildly 38:10 Williams 230:18 willing 50:6 Win 198:8 200:1 206:12 Winfield 2:14 wish 189:14 192:2 276:12 wishes 95:8 101:2 witness 27:18 29:3 45:11,21 54:5,11 61:4 75:10 75:15 81:15 85:3 92:10 100:22 110:19	122:6 132:1 140:14 178:3 188:13 197:5 200:16 212:17 216:7 228:1,6 251:21 262:14 270:18 273:21 276:4 281:21 290:1 314:9 woman 131:15 135:23 158:5 wondering 23:2 word 53:5 184:23 205:6 243:18 worded 186:21 words 175:15 work 13:7,22 15:12 37:8 67:15 81:22 207:13 234:6 244:15 252:4,6 287:20 290:4 291:10 297:20 298:14 308:3 308:7,13 worked 13:10 44:13 71:16,22 98:8 159:2 251:22 252:8 294:16 working 19:1,7 26:13 103:20 136:10 147:20 150:3 150:12 153:2 287:15 works 136:14 163:17,19,21 173:4 Worley 21:5,7 22:7,16 36:21 39:12 106:11,16 Worley's 38:13 worried 188:11 worth 282:16 wouldn't
vs 1:8 5:11			
W			
waited 283:10 waiting 29:9 Walker 166:18 175:11 176:4 176:23 177:3 230:11 Walker's 175:14 Wallis 58:3,20,23 67:3 Wallis's 63:16 Walters 159:5,9 want 18:3 23:15,20 30:1,4 38:3,6 46:9,14 66:7 129:14 144:1 145:23 162:17 178:8 197:23 198:1 232:13 255:12 283:16 289:15 306:6 309:10 wanted 39:9 79:17 107:9			

88:8 121:9 144:3 288:12 289:2 wrapped 171:4 write 137:7 writing 125:20 252:22 272:9 written 44:9,15 47:13 72:9 160:21 290:7 wrong 86:14 88:3,8 111:18 111:20 wrongdoing 204:11 wrongfully 5:18 wrote 42:13 140:23 252:1 259:5 270:4 wsinclair@ago.state... 2:17 X Y yeah 40:4 44:6 65:3 74:4 81:5 95:17 98:10 107:8 139:21 143:4 161:3,10 170:16 171:3 173:1 178:5 182:15 191:19 194:2 202:8 204:20 210:13 219:10,14 223:2 224:6 231:4 239:7 250:14 254:5 256:12 262:13 269:4 280:14 283:5 285:23 289:20 290:4,6 297:22 year 13:4 21:6 36:15 80:16 118:1 141:18 160:11 181:6 225:6 250:3 252:23 267:11,21	269:12,16 285:18 years 13:12 14:10 15:22,23 16:4 103:21 123:9 141:6 171:9 176:22 183:22 yes-or-no 11:10 yesterday's 149:2 York 2:9 you- 282:4 Z 0 1 1 5:6 8:9 20:18,21 45:19 271:10,16 272:14 1/13/16 8:11,14 1/19/16 8:17 1/20/16 7:14 1/5/16 8:7 1/7/08 5:14 9:9 10 5:3 6:2 25:2 83:23 84:1 92:1 253:6,11 10/12/16 6:20 10/14/08 6:3 10/17/08 6:4 10/21/16 6:22 10/7/16 6:18	10:07 1:23 100 6:4 104 6:5 1099 2:9 11 6:4 100:12,13 11/12/14 7:4,6 11/18/15 7:13 11/8/07 5:11 111 6:7 112 6:8 114 6:10 12 6:5 104:13,14 286:23 289:15 12/15/21 314:22 12/18/15 7:17,20,22 8:3 12/21/15 7:14 8:6 12/9/15 7:15 120 6:11 121 6:13 125 6:14 127 6:16 12th 134:4 13 6:7 44:1 107:15,16 111:2 214:17 215:16	131 6:17,19 135 6:21 14 6:8 112:7,8 114:16 140 7:2 1400 2:5 1411 2:5 145 7:4 148 7:6 15 6:10 114:11,14 174:19 191:10,14,22 192:7 192:10 195:6 214:23 226:5 228:15 234:20 235:6,7,11,19 236:7 236:16,19 237:13 239:14 259:4 302:5 15-22-36.1(g) 236:17 150 7:8 155 7:9 158 7:10 16 6:11 120:9,10 125:15 160 7:12 17 6:13 121:18,21 210:15 172 7:14 173 7:17 175 7:19 177 7:22

18 6:14 25:3 58:1 125:6,7 151:13,20 167:6 173:15 177:16 187:17 225:12 226:1 226:4,12 228:20 231:13,14	25:3 113:12 116:22 117:15 2006 25:2,9,13,17 26:13,21 28:5 36:16 2007 28:16 33:14 44:9 48:14,18 61:7,13 73:10 306:10,12,16 308:3,19 2008 42:21 54:1,4 58:1 60:16 62:5 73:13 77:7,18 78:17 79:2 80:15 84:11 100:16 103:14 275:13 306:13 307:8,20 2013 14:13 16:3 183:8 2013-415 184:14,15 2014 104:18 183:8 2015 8:9 48:11 114:17 150:21 151:5,13,20 158:21 167:6 172:15 173:15 177:16 183:9 187:17 194:20 211:21 212:4,12 215:4 236:22 239:7 249:10 250:2,8,15 251:4 2016 18:8 125:15 126:11 127:8 131:15 140:23 141:19 211:7 214:17 224:19 236:14 251:15 2017 14:14 16:18 129:4 149:9 252:2 270:11 272:4 302:19 2017-378 149:4,10 2018	1:22 283:6,11 292:3 296:8,11 304:5,18 313:2 202.637.6329 2:11 202.736.2200 2:6 20th 232:7,15 233:4,12 234:4 251:17 21 6:19 13:12 99:19 129:3 131:10,12 183:1 187:4,20 195:10 202:8 211 8:6 212 8:8 214 8:11 215 8:14 22 6:21 135:19,20 251:15 224 8:16 227 8:18 22nd 251:19 23 5:8 7:2 140:8,9 231 236:9 314:21 24 7:4 60:16 145:17,18 24th 42:12 25 7:6 77:18 148:7,8 251 8:21 252 9:2 26	7:8 150:17,19 249:14 261 9:3 26th 292:7 27 7:9 155:10,13 292:3 270 9:5 273 9:6 274 9:7 275 9:9 278 9:11 28 5:9 7:10 158:2,3 265:23 280 9:13,14,16 282 66:15 104:2 110:14 111:9 149:1,5,8 159:10,13,18 271:1 271:18 272:3 273:15 274:3,6 291:15,19 296:11 286 9:17 29 7:12 160:5,7,23 291 9:19 294 9:20
2 2 5:8 23:16,23 45:18 61:5 63:13 187:16,20 191:20 214:20 233:9 236:9 281:10 2,258 141:9 2/10/17 6:9 2/19/14 6:6 2/26/15 7:8 2:16-cv-783ECM-S... 1:8 20 5:6 6:17 131:6,7 233:20 236:14 244:1 20001 2:10 20005 2:6 2000s 21:8 2005 22:4,13,17 24:4,8,9,16		3 3 5:9 6:8 28:14,17 63:13 206:9 3/27/18 9:19 3/6/15 7:9	

EDWARD PACKARD 9/19/2018

Page 49

3/9/15 7:11	4/19/11 6:7	501 1:18 2:15	75 5:19
30 7:14 172:13,14,16 173:19	4/21/17 6:17	51 9:14 280:15,21 281:2 281:9,11,14	77 5:21
302 5:4	40 8:16 224:11,13 236:5	52 9:16 280:15,21 281:4 281:5	7th 307:20
30th 75:6	41 8:18 227:15,16 233:9 236:8	53 5:13 9:17 286:17,20	8
31 7:17 173:13,16 174:8	42 8:21 251:10,11	54 9:19 291:22,23	8 5:19 25:9 74:23 75:3
310 5:4	43 9:2 252:18,20	55 9:20 294:6,8	8/12/14 6:12
311 5:5	44 5:11 9:3 261:21,23	57 5:15	8/17/18 9:12
31st 271:9	45 9:5 98:15 194:9 264:6 264:7 265:16 270:7,8 298:14	575 63:14	8/22/08 5:13
32 7:19 152:18 175:6,7	46 9:6 273:5,16	6	80,000 266:5
33 7:22 177:13,17	47 9:7 274:13,17	6 5:15 50:4 57:20,21 66:23 68:20,21 131:15	84 6:2
334.353.9110 2:16	470 55:4	6/22/17 9:8	87 187:17
34 8:2 180:20,21	475 74:5	60 5:17	8th 61:7
344 211:21 212:3,4	48 9:9 275:12,15 306:6 310:4	60,000 266:23 267:12	9
35 8:4 182:22 183:2 194:8,10,11,12,15 208:12	480 43:12 44:2 63:18	600 2:21	9 5:21 24:2 77:12,14 78:14 158:21 172:15 253:7,13
36 8:6 211:1,2	49 9:11 278:19,23	62 187:17	9/18/08 5:16
36130 2:16,22	5	7	9/19/16 6:15
37 8:8 212:10,15	5 5:13 49:22 50:1 53:21 53:22 128:13 211:7	7 5:17 60:15,17 307:8	9/24/08 5:17
38 8:11 214:13,15	5/14/07 5:10	7/13/16 6:13	9/25/08 5:21
39 8:14 215:12,14	5/9/16 7:3	7/17/17 9:5	9/30/08 5:19
4	50 9:13 280:14,21,23 281:23 282:10 284:2	7:19 313:1	9/30/19 314:21
4 5:11 44:8,11 61:10,14 128:12 187:3		70 74:6	900 2:10
			972 5:8

EDWARD PACKARD 9/19/2018

Page 50

974
5:8
9th
173:3

EXHIBIT 6

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TREVA THOMPSON, et al.,
Plaintiffs,

vs. Civil Action No. 2:16-cv-783ECM-SRW

JOHN H. MERRILL, in his official
capacity as Secretary of State, et al.,
Defendants.

* * * * *

DEPOSITION OF JOHN CALVIN BENNETT, JR.,
taken pursuant to notice and stipulation on
behalf of the Plaintiffs, at the Office of
the Attorney General, 501 Washington
Avenue, Montgomery, Alabama, before
Bridgette Mitchell, Shorthand Reporter and
Notary Public in and for the State of
Alabama at Large, on September 20, 2018,
commencing at 9:17 a.m.

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22

23

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 3

1 STIPULATIONS

2 It is hereby stipulated and agreed
3 by and between counsel representing parties
4 that the deposition of JOHN CALVIN BENNETT,
5 JR., is taken pursuant to the Federal Rules
6 of Civil Procedure and that said deposition
7 may be taken before Bridgette Mitchell,
8 Shorthand Reporter and Notary Public in and
9 for the State of Alabama at Large, without
10 the formality of a commission; that
11 objections to questions, other than
12 objections as to the form of the questions,
13 need not be made at this time, but may be
14 reserved for a ruling at such time as the
15 deposition may be offered in evidence or
16 used for any other purpose as provided for
17 by the Federal Rules of Civil Procedure.

18 It is further stipulated and agreed
19 by and between counsel representing the
20 parties in this case that said deposition
21 may be introduced at the trial of this case
22 or used in any other manner by either party
23 hereto provided for by the Federal Rules of

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 4

1 Civil Procedure.

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1

INDEX

2

3	EXAMINATION	Page
	By Mr. Stewart.....	8
4	By Ms. Messick.....	184
	By Mr. Stewart.....	196

5

	EXHIBITS	Page
6	Exhibit 1.....	26
	Board of Registrars Handbook	
7	D000152-D000217	

	Exhibit 2.....	27

8	Board of Registrars Handbook	
	D021793-D021808	

9	Exhibit 3.....	40

10	12/2/14 e-mail re Proposed	
	Resolution to Moral Turpitude	
	Issue	

11	D064884-D064885	

	Exhibit 4.....	40

12	Moral Turpitude Changes Proposal	
	D064886-D064888	

13	Exhibit 5.....	54

14	1/14/16 e-mail re: Voter	
	Disenfranchisement Committee	
	D027919	

15	Exhibit 6.....	54

16	The Voter Disenfranchisement &	
	Restoration of Voting Rights	
	Exploratory Committee 12/21/15	
17	D027920-D027922	

	Exhibit 7.....	65

18	1/15/16 e-mail re: Memo for	
	Committee on Immediate	
19	Restoration Based on Consensus	
	of the Committee	

20	D028099-D028100	

	Exhibit 8.....	65

21	1/13/16 Memo re: Proposed	
	Statutory Language for Immediate	
22	Restoration Based on Consensus	
	of Committee	

23	D028101-D028103	

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 6

1	INDEX (continued)	
2	EXHIBIT	Page
3	Exhibit 9.....	70
4	1/19/16 e-mail re: Document 3	
5	D028211	
6	Exhibit 10.....	70
7	12/18/15 Memo re:	
8	Recommendations for Clarifying	
9	& Improving Felony Disenfran-	
10	chisement in Alabama	
11	D028212-D028216	
12	Exhibit 11.....	76
13	12/18/15 e-mail re: Fourth Round	
14	of Info for Disenfranchisement/	
15	Restoration of Rights Committee	
16	D028485-D028486	
17	Exhibit 12.....	76
18	Current Law 15-22-36.1, crimes	
19	involving moral turpitude	
20	D028487-D028489	
21	Exhibit 13.....	102
22	10/11/17 e-mail re: Couple	
23	Questions	
24	D024224-D024228	
25	Exhibit 14.....	114
26	10/19/17 e-mail re: Registering	
27	to Vote and Court Debt, Recent	
28	Clarifications to the law	
29	D024206-D024209	
30	Exhibit 15.....	121
31	1/22/18 SPLC Letter re: Felon	
32	Voting	
33	D023544-D023546	
34	Exhibit 16.....	137
35	10/10/17 e-mail re: Felon	
36	Notices	
37	D025000-D025001	
38	Exhibit 17.....	140
39	8/30/17 e-mail re: Felon	
40	Voter Issue	
41	D056687-D-056691	
42	Exhibit 18.....	149
43	1/31/18 e-mail re: Question	
44	from reporter	

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 7

1	INDEX (continued)	
2	EXHIBIT	Page
3	Exhibit 19.....	152
4	10/7/16 e-mail re: Alabama	
5	Voters List omits qualified	
6	felons	
7	D027848-D027852	
8	Exhibit 20.....	155
9	2/10/17 e-mail re: Moral	
10	Turpitude clarification needed	
11	D058201-D058202	
12	Exhibit 21.....	159
13	Excerpts of John Bennett's	
14	calendar	
15	D150398-D150679	

10

11

12

13

14

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JOHN CALVIN BENNETT, JR., 9/20/2018

Page 8

1 COURT REPORTER: Usual

2 stipulations?

3 MS. MESSICK: Yes. Except that we
4 would like to read and sign.

5 JOHN CALVIN BENNETT, JR., having
6 first been duly sworn or affirmed to speak
7 the truth, the whole truth, and nothing but
8 the truth, testified as follows:

9 EXAMINATION

10 BY MR. STEWART:

11 Q. All right. Good morning, Mr. Bennett. My
12 name is Mike Stewart. This is Danielle
13 Lang with me. Thank you for coming in this
14 morning. Have you been deposed before?

15 A. No, sir.

16 Q. Okay. So I just want to go over some of
17 the ground rules before we get started. If
18 you have any -- just following along on and
19 make sure it's all clear. So I assume your
20 attorney gave you some instructions about
21 the procedures before; is that correct? Or
22 did you --

23 MS. MESSICK: Object to the form.

1 Sorry. Object. Privileged what we talked
2 about.

3 Q. Yeah. Without revealing the context of
4 your conversation, did you get instruction
5 basically on what's going to happen today?

6 MR. SINCLAIR: We'll let him answer
7 that one.

8 MR. STEWART: Okay.

9 A. Just procedurally about how to --

10 Q. Sure.

11 A. -- you know, speak up, don't nod, that kind
12 of stuff.

13 Q. Perfect. So yeah. So during the
14 deposition, I'll be asking questions.
15 Ms. Mitchell will be able to record --
16 supposed to be able to record my questions
17 and your answers, so it's just important
18 you speak up, that we don't talk over each
19 other. Is that all right?

20 A. Yes, sir.

21 Q. Great. And then -- so I'll try and do the
22 same. I won't always be perfect, but I'll
23 do my best. If I ever ask a question

1 that's unclear because of the way I phrase
2 it or if for some other reason you don't
3 understand, will you just let me know you
4 don't understand and I can try and ask you
5 a better question?

6 A. Yes, sir.

7 Q. Great. And just a few minutes ago, or few
8 moments ago, rather, you took an oath to
9 tell the truth. Do you understand that?

10 A. Yes, sir.

11 Q. And you understand it's the same oath you
12 would take if you were testifying in court
13 today?

14 A. Yes, sir.

15 Q. So another thing. We're interested in
16 finding out everything about the facts and
17 circumstances of this matter, which means
18 we're looking for full and complete answers
19 to the questions I asked. Do you
20 understand that?

21 A. Yes, sir.

22 Q. Great. And if you need a break during the
23 course of these questions, that's just

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 11

1 fine. Tell your attorney or me and we'll
2 just finish whatever line of questions I'm
3 in the middle of and then we'll see what we
4 can do about a break. Is that all right?

5 A. Yes, sir.

6 Q. Great. And just to be clear, it's fine to
7 talk to your attorney. I just -- unless
8 it's a matter of privilege, I just ask that
9 you finish whatever question we're in the
10 middle of before doing that. Is that all
11 right?

12 A. Yes, sir.

13 Q. And it's also completely normal that
14 sometimes you'll give an answer as best you
15 can and then five, ten minutes later, two
16 hours later, you'll remember something else
17 to kind of clarify or that maybe even
18 contradicts what you said before but just
19 better recollection. If that happens and
20 you want to add something, just me know
21 when that comes up and we'll do it right
22 away so that you can get it out. Is that
23 all right?

1 A. Yes, sir.

2 Q. Great. Sometimes you might think of a
3 document that helps clarify the answer to a
4 question. If that happens, just let me
5 know. All right? And we can --

6 A. Yes, sir.

7 Q. That's great. We can see if we can find it
8 or if we have it. And just before we move
9 on, I have to ask whether you're taking any
10 medication or drug, medicine, cough syrup,
11 alcohol, anything that would affect your
12 ability to understand and answer my
13 questions today.

14 A. No, sir.

15 Q. Are you sick at all today?

16 A. No, sir.

17 Q. Okay. Under a doctor's care?

18 A. No, sir.

19 Q. Anything else that would affect your memory
20 or ability to answer?

21 A. No, sir.

22 Q. And just to get it out of the way, one
23 thing that's, I think, come up in the past

1 two days is I'll often refer to HB 282,
2 which I think goes by other names -- the
3 Definition of Moral Turpitude Act, I think
4 Act 2017-378. Just -- will you understand
5 I'm talking about the same thing if we --
6 if I call it HB 282 throughout? It's just
7 the way I'm used to talking about it.

8 A. Yes, sir.

9 Q. Great. So just to get started, can you
10 give me a little bit about your background,
11 I guess starting with education?

12 A. Yes. So I went to the University of
13 Alabama. I graduated in August of 2015
14 with a degree in political science and a
15 minor in international relations.

16 Q. And then were there any jobs you took or --
17 I'm sorry. Strike that.

18 What did you do after that, after
19 graduation?

20 A. I moved into full-time work in the
21 secretary of state's office.

22 Q. So in the secretary of state's office was
23 your first position after graduation?

1 MS. MESSICK: Object to the form.

2 Q. You can answer.

3 A. No.

4 Q. What else did you do before the secretary
5 of state's office after graduation?

6 MS. MESSICK: He said he moved into
7 full-time work. He had worked there part
8 time. You then asked him if that's when he
9 started.

10 Q. Sorry. Let me be clearer, then. All
11 right. I'll start over.

12 MS. MESSICK: Actually, if you back
13 up to the campaign, it probably makes sense
14 chronologically.

15 MR. STEWART: Yeah. We'll get --

16 Q. Yeah, let's do it that way. When did
17 you -- is there a point where you started
18 to work for Secretary Merrill, whether or
19 not he was secretary at that point?

20 A. Yes.

21 Q. When did that first occur?

22 A. In April of 2013.

23 Q. And what was your -- what were your

1 responsibilities at that time?

2 A. At first it was just driving him everywhere
3 that he needed to go, doing basically minor
4 needed things. I then helped him prepare
5 an event for his parent's 50th wedding
6 anniversary in his hometown where they
7 named a road after them. And then I also
8 did campaign finance work, that kind of
9 stuff.

10 Q. Okay. And so you continued to work for
11 Secretary Merrill after graduation?

12 A. That's correct.

13 Q. And what was your job title at that point?

14 A. It's important to distinguish between when
15 I was a campaign staffer --

16 Q. Sure.

17 A. -- and when I moved into employment with
18 the state. I was a campaign staffer from
19 April 2013 until I moved into -- or until
20 the campaign ended. Realistically in early
21 January following the inauguration. I then
22 transitioned to state employment at that
23 time -- or, actually, I transitioned on

1 January 19, 2015, when Secretary Merrill
2 took office.

3 Q. And what is your job now?

4 A. My title now is deputy chief of staff and
5 press secretary.

6 Q. Okay. And what are your responsibilities
7 in that role?

8 A. The short answer is I do whatever I'm asked
9 to do. The long answer is I manage our IT
10 division, I work on a multitude of projects
11 with the elections and business services
12 divisions. I manage our Help America Vote
13 Act grant money, write press releases,
14 interact with the media.

15 Q. And so what -- I guess what portion of your
16 job is election-related?

17 A. Like a percentage?

18 Q. If that is the best way to express it for
19 sure.

20 MS. MESSICK: Object to the form.

21 Q. What percentage would you estimate?

22 A. Fifty to sixty percent, maybe seventy-five.

23 Q. So as part of your job responsibilities,

1 are you familiar with the laws governing
2 whether felons may register to vote?

3 A. Yes.

4 Q. How did you become familiar with those
5 laws?

6 A. Initially became loosely familiar with them
7 in the campaign in preparing documents for
8 the secretary and doing analysis about
9 current things for the secretary, about
10 current laws for the secretary.

11 Q. So you had election-related -- or election-
12 law-related responsibilities during the
13 campaign?

14 A. I had research-related duties during the
15 campaign which, you know, pertain to
16 everything from how long it took the office
17 to process business filings to what the law
18 said on different things related to
19 elections.

20 Q. Got it. And you're also familiar with the
21 procedures around determining whether a
22 felon is eligible to vote? Or are you?
23 Let me rephrase that question.

1 A. Yes.

2 Q. Are you familiar with the procedures by
3 which voting rights are restored to
4 convicted felons who have had them removed?

5 A. Yes.

6 Q. So can you describe the current system
7 around felon disenfranchisement?

8 MS. MESSICK: Object to the form.

9 Q. You can answer.

10 A. Can you maybe be more specific in what
11 you're talking about? That's kind of a
12 large thing.

13 Q. Sure. Let's break it down. So what is
14 your understanding of the bases on which a
15 felon is not allowed to register?

16 A. In their initial interaction with the state
17 at the registrars' office if they were to
18 apply and they were to have a crime of
19 moral turpitude, the registrar -- so the
20 registrars would have a database, they
21 would review crimes for people that they'd
22 received. And if that crime was a crime of
23 moral turpitude, then they would not be

1 allowed to vote. They could then appeal
2 that decision, but I don't -- I don't know
3 too much about the appeal process, but I
4 know that there's an appeal process where
5 they could appeal that decision made by the
6 registrars' office.

7 Q. So the registrar is making the decision in
8 the first instance whether it's a crime of
9 moral turpitude?

10 MS. MESSICK: Object to the form.

11 A. Today?

12 Q. Yeah. Can you describe the current system
13 for me?

14 A. Yes. So the registrars are making -- are
15 reviewing the list of crimes and making a
16 determination if the crime was -- that was
17 indicated this person was convicted of was
18 a crime of this -- on the list of crimes.

19 Q. And where is that list of crimes coming
20 from?

21 A. The Code of Alabama.

22 Q. And that's HB 282?

23 A. Eventually, yeah. It's actually -- yeah.

1 Q. So before HB 282, how was that decision
2 made?

3 A. That decision -- the registrars maintain
4 that -- the ability to -- and the authority
5 to make that decision, as they do today.

6 Q. Each registrar had their own ability?

7 MS. MESSICK: Object to the form.

8 A. In reality, it's two registrars. Two
9 registrars have to sign off.

10 Q. So that's -- so there are two registrars
11 within each county?

12 A. There's three in each county.

13 Q. And two registrars have to sign off to
14 remove voting rights if they're a convicted
15 felon?

16 A. Well, two registrars have to register a
17 person to vote.

18 Q. Okay.

19 A. So they would . . .

20 Q. So to be clear on the procedure, someone
21 presents an application to vote. Say they
22 have a felony in their past. They would
23 need two registrars to --

1 A. They wouldn't be involved in the process
2 that way.

3 Q. Okay. Can you describe for me how the
4 process would work, then?

5 A. So they would turn in their application,
6 and more than likely if they had a crime
7 involving moral turpitude, they would
8 receive correspondence in the mail that
9 said they were not eligible to register to
10 vote because of a crime of moral turpitude.
11 If they would like, they can appeal that
12 decision through the proper channels.

13 Q. And in the pre HB 282 world, who is
14 deciding whether it is a crime of moral
15 turpitude?

16 A. The law.

17 Q. Sorry. What are the sources of law that a
18 registrar would look to to determine
19 whether it is a crime of moral turpitude
20 before HB 282 was passed?

21 A. Well, the registrars were the body that was
22 empowered as the judicial authority to make
23 that decision, so it would be totally up to

1 their discretion.

2 Q. Okay. So it's discretionary with the
3 registrars?

4 MS. MESSICK: Object to the form.

5 A. I don't -- I don't know what you mean.

6 Q. I'll withdraw that question. Is it
7 possible -- was it possible before HB 282
8 that the three registrars would not be
9 unanimous about whether a particular crime
10 was a crime of moral turpitude?

11 A. I don't know the answer to that question.

12 Q. You don't know how to answer it? Sorry.

13 A. (Witness shakes head.)

14 Q. Just couldn't hear you.

15 A. No, sir, I don't know the answer to that
16 question.

17 Q. And was it possible before HB 282 that
18 registrars from different counties or teams
19 of registrars from different counties could
20 decide the answer to that question whether
21 something was a crime of moral turpitude
22 differently?

23 A. I don't know the answer to that question.

1 Q. Okay. So if I had -- if I were convicted
2 of a felony for, say, bribery, it's
3 possible that in one county I would have
4 been permitted to register to vote and in a
5 separate county I would not have been
6 permitted to register to vote?

7 A. It seems to be a bit of speculation, but I
8 think theoretically that would be possible
9 under the law.

10 Q. And you worked in the secretary of state's
11 office before HB 282 was passed; correct?

12 A. Correct.

13 Q. Did you ever receive requests for guidance
14 on what was a crime of moral turpitude?

15 A. I can't remember if someone ever asked me
16 specifically. I would not have responded
17 to that question.

18 Q. What would you have done had you received
19 such a question?

20 A. My first statement would have been, you
21 know, that the law requires you to make
22 that decision and puts you as the sole body
23 with that authority. If they still wanted

1 it, if they still asked for guidance, I
2 would ask for one of our attorneys to speak
3 with them to remind them of that same
4 information.

5 Q. Did you ever recall getting a question from
6 a member of the public, a prospective
7 voter, about -- on the same topic about
8 whether they could register?

9 A. Probably, but I could not tell you any
10 specifics. I've talked to a lot of people.

11 Q. So to your knowledge, did anyone from the
12 secretary of state's office ever tell a
13 registrar whether a crime was or was not a
14 crime of moral turpitude?

15 A. No, sir, not to my knowledge.

16 Q. Okay. And the same question with a voter,
17 did someone from the secretary of state's
18 office ever tell them whether a crime was
19 or was not a crime of moral turpitude?

20 A. Did someone from the secretary of state's
21 office tell a voter?

22 Q. Right. Or prospective voter.

23 A. Prior to HB 282?

1 Q. Correct.

2 A. Not to my knowledge.

3 Q. Okay. Were you ever aware of an effort to
4 standardize advice coming from the
5 secretary of state's office to registrars
6 about what was or was not a crime of moral
7 turpitude before HB 282?

8 A. Yes.

9 Q. What was the nature of that effort?

10 A. Can you clarify what you mean by the nature
11 of effort?

12 Q. Sure. What activities were undertaken by
13 the secretary of state's office to
14 standardize the advice given about what was
15 a crime of moral turpitude?

16 A. I don't think it was action taken by the
17 secretary of state's office. It was action
18 taken during the campaign to build
19 something that was -- because there was --
20 it appeared there was -- or needed to be
21 more uniform guidance issued to them, and
22 so there was a document prepared in the
23 research stages of the campaign to that

1 end.

2 Q. Okay. And can you describe that document?

3 A. Yes. I believe you have a copy. It's the
4 registrar handbook.

5 Q. Registrar handbook?

6 A. The initial version.

7 Q. Going to mark Bennett 1.

8 (Bennett Exhibit 1 was marked for
9 identification.)

10 Q. So is this the registrars handbook you were
11 referring to? And just for the record,
12 I've handed you a document that says Board
13 of Registrars Handbook on the front, and on
14 the bottom right there's a D000152.

15 A. This is the current version. This is not
16 the original version that was created in
17 that instance.

18 Q. Okay. There was an earlier version of
19 this?

20 A. Yeah. You can see it says, Original,
21 October 24, 2014.

22 Q. Okay.

23 A. There's a lot of stuff that's been added to

1 this. We actually have added staff to the
2 secretary of state's office that were
3 former registrars that helped us since that
4 time.

5 Q. Let's mark this as Bennett 2.

6 (Bennett Exhibit 2 was marked for
7 identification.)

8 Q. And so this is a document that on the top
9 left corner it says, Proposal Number 3.0,
10 and the bottom right says D021793. This is
11 Bennett 2. Do you recognize this document?

12 A. Yes, sir.

13 Q. Is this the original Board of Registrars
14 Handbook you were referring to?

15 A. Yes, sir, without the typos. That's what
16 the 3.0 signifies.

17 Q. I see. So the -- to be clear, the Proposal
18 Number 3.0 in the top left corner means
19 that this is the clean final version?

20 A. Right. So -- yeah. Right.

21 Q. And so were there -- just to be clear, did
22 the proposal number mean there were
23 separate proposals about the contents of

1 this or --

2 A. No.

3 Q. So these are more version numbers?

4 A. Yeah. This is a template from Pages on
5 Mac, and it updates that each time you save
6 it.

7 Q. Okay. And then on the front, you'll see it
8 says, Prepared for John Merrill, state
9 representative. Prepared by John Bennett,
10 campaign staff. Are you the John Bennett
11 referred to there?

12 A. Yes, sir.

13 Q. So did you primarily draft this document?

14 A. Kind of. So -- kind of.

15 Q. Why do you say "kind of"?

16 A. So the contributing board members that are
17 listed here, we met with them for an
18 extended period of time about things that
19 could be more uniform in their guidance.
20 For instance, an example would be -- if you
21 turn to the end, there's several letters,
22 and there was a comment from the registrars
23 that it might be good to have a uniform

1 letter that went out on certain issues,
2 so -- you know, this is why such and such
3 happened. So a lot of the information in
4 this was provided. There were groups of
5 two in the -- the board members that were
6 set to do -- to prepare different sections,
7 and then I built out what they sent me from
8 that to, you know, fully flesh out certain
9 issues or to answer questions more in
10 depth.

11 Q. And on what I think is the fifth page of
12 this document -- on the bottom right it
13 ends in 97 -- this appears to be a list of
14 frequently asked questions; right?

15 A. Yes, sir.

16 Q. And one of the questions is: What is the
17 legal interpretation of moral turpitude, to
18 which you respond -- the document
19 responds -- conduct that is considered
20 contrary to community standards of justice,
21 honesty, or good morals.

22 Did you insert that definition in here?

23 A. I cannot remember the answer to that

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 30

1 question. I don't -- I don't know.

2 Q. Do you recall where that definition came
3 from?

4 A. No. No, sir.

5 Q. And then the next question asks: What
6 felonies qualify as involving moral
7 turpitude? And then the response is that a
8 chart of felonies meeting this
9 qualification can be found on pages 6 and 7
10 of the document. So could we turn to that,
11 which is on the page ending in 801? Did
12 you draft this list?

13 A. I personally did not write it. It's from
14 Wikipedia.

15 Q. I'm sorry. It's from Wikipedia as in this
16 list of crimes was on Wikipedia as?

17 A. It's a list of crimes that prevent you from
18 gaining a visa or citizenship to the United
19 States if you've had a felony conviction of
20 that type in another country. And because
21 this wasn't the final document and because
22 we didn't -- I personally didn't know a lot
23 about moral turpitude at the time, just

1 kind of set it in as a placeholder.

2 Q. I see. So did you undergo any effort to
3 kind of apply your understanding of the
4 definition of moral turpitude to these
5 crimes?

6 A. No.

7 MS. MESSICK: Object to the form.

8 Q. And was this list ultimately circulated to
9 registrars?

10 A. I don't know the answer to that question.

11 Q. But you did say this was more or less the
12 final form of this document; right?

13 MS. MESSICK: Object to the form.

14 A. This is the final form of the campaign
15 draft of this document before my secretary
16 was -- took office.

17 Q. And do you know to whom this document was
18 circulated?

19 A. I know that our chief of staff received it
20 because he was very complimentary of it. I
21 know that Secretary Merrill received it and
22 I know that this list of registrars would
23 have reviewed a version of it. That's all

1 that I would know.

2 Q. And so just to be clear, to take a step
3 back, you were the person who took this
4 list of crimes from Wikipedia and put it
5 onto this page; correct?

6 A. Correct.

7 Q. And so when you -- do you recall the
8 Wikipedia entry from which you took this?

9 A. No.

10 Q. Was it Alabama-specific?

11 A. No. It was federal.

12 Q. It was federal law. Was it federal law
13 regarding moral turpitude?

14 A. Federal immigration law regarding moral
15 turpitude. They're crimes that prevent you
16 from gaining a visa or citizenship in the
17 United States if you have a conviction of
18 that type in another country.

19 Q. I see. And was this list ultimately used
20 to create the list that went into HB 282?

21 A. No.

22 Q. No? Where did that list of crimes come
23 from that ultimately was used to create

1 HB 282's list?

2 A. I don't a hundred percent know the answer
3 to that question. It came out of that
4 committee, though.

5 Q. I see. So did you undertake any effort to
6 add or remove crimes to the list you found
7 on Wikipedia from federal law?

8 MS. MESSICK: Object to the form.

9 A. What do you --

10 Q. So does this list on this page about crimes
11 involving moral turpitude from the 2014
12 version of the handbook reflect exactly
13 what you found on Wikipedia from federal
14 law, from federal immigration law?

15 A. Yes. At least I believe so. I did not get
16 the list at all.

17 Q. Was there any Alabama-specific guidance to
18 what was a crime of moral turpitude at that
19 time from any source?

20 A. Can you -- is there -- can you repeat the
21 question?

22 Q. Yeah. Was there any document or other
23 guidance that was specific to Alabama law

1 that would guide a registrar as to what a
2 crime of moral turpitude was at the time?

3 A. That this was prepared?

4 Q. At the time this was prepared.

5 A. I don't know the answer to that question.

6 Q. And so then we're turning to Bennett 1. I
7 do just want to turn to the list on the
8 page beginning 173 in the bottom right, and
9 it's page 21 on this document, Bennett 1,
10 crimes involving moral turpitude. This
11 list reflects what is in HB 282; correct?

12 A. Is Act 2017-378 the same as HB 282?

13 Q. Yeah. So this -- well, this reflects what
14 is in Act 2017-378; correct?

15 A. Yes.

16 Q. Yeah.

17 MS. MESSICK: And we agree that act
18 is HB 282.

19 MR. STEWART: Yeah, I know.

20 Q. This has come up before. I use HB 282 to
21 refer to Act 2017-378. So I may continue
22 to do that. I know. I'm taking it's not
23 the practice around here, but if you could

1 just bear with me, that would be helpful.

2 A. I understand.

3 Q. Did you have any responsibilities for
4 drafting this list?

5 MS. MESSICK: Object to the form.

6 A. No, sir.

7 Q. Do you know who did draft this list?

8 A. No, sir.

9 MS. MESSICK: Object to the form.

10 Q. Do you know if there was any source in
11 Alabama law from which this list was
12 derived?

13 A. No, sir.

14 Q. Is this the exclusive list of crimes for
15 which a felon may be disenfranchised in
16 Alabama today?

17 A. I believe so, yes.

18 Q. If you look at the last bullet on page 22,
19 which is 174 on the bottom right, it says,
20 Any crime as defined by the laws of the
21 United States or by the laws of another
22 state, territory, country, or other
23 jurisdiction, which, if committed in this

1 state, would constitute one of the offenses
2 listed in this subsection.

3 How does a registrar determine whether
4 a crime committed in another jurisdiction,
5 you know, be it what's listed here --
6 state, territory, country, other
7 jurisdiction -- would be one of these
8 crimes if committed in Alabama?

9 A. I don't know the answer to that question.

10 Q. Have you ever seen guidance on that,
11 whether or not you recall the content?

12 A. I cannot remember seeing specifically that
13 information in -- I can't remember.

14 Q. If you were asked how to determine whether
15 a particular federal crime fell under this
16 list of Alabama crimes such that one should
17 be disenfranchised, what guidance would you
18 give someone?

19 A. None.

20 Q. You wouldn't tell them how to do that?

21 A. Not a lawyer.

22 Q. I see. Would you refer that question to
23 someone else?

1 A. If someone was calling our office asking
2 for specific legal advice, I would make
3 sure that they spoke with our lawyer, who
4 would more than likely tell them.

5 Q. I see. But have you ever seen any legal
6 guidance as to how to do so?

7 MS. MESSICK: Object to the form.

8 A. Can I go back and clarify? I was not
9 saying that they would tell them what --
10 how to make that determination. I was
11 telling them -- or saying that they would
12 tell them something. But can you ask your
13 question?

14 Q. Yeah.

15 MR. STEWART: Can you read it back,
16 please?

17 (Court reporter reads back the last
18 question.)

19 A. Not that I can recall.

20 Q. Do you know who is responsible for
21 determining when a voter presents an
22 application to register whether a crime is
23 defined by the laws of the United States or

1 in another state, territory, country, or
2 jurisdiction would, if committed in this
3 state, constitute one of these offenses
4 listed here on pages 21 and 22?

5 A. I'm not sure I understand the question.

6 Q. So if a voter presents an application to
7 register and it has a federal criminal
8 conviction on it, who is tasked with
9 determining whether that federal criminal
10 conviction, if committed in this state,
11 would constitute one of these offenses from
12 HB 282?

13 A. Who is the party responsible for
14 determining if that crime is disqualifying?

15 Q. Yes.

16 A. The registrars.

17 Q. The registrar. Are you aware of any --

18 MS. MESSICK: Object to the form.

19 He said it plural on purpose.

20 MR. STEWART: I see. The
21 registrar. I understand.

22 Q. So the three registrars in each county?

23 A. Yes, sir.

1 Q. Are you aware of any activity, guidance
2 from any source, to standardize the way
3 registrars from different counties make
4 that determination?

5 MS. MESSICK: Object to the form.

6 A. Can you repeat the question? Am I aware
7 of --

8 Q. -- any guidance or other endeavor to
9 standardize the way that registrars from
10 separate counties make the determination
11 whether a federal conviction is a state
12 disqualifying crime.

13 MS. MESSICK: Object to the form.

14 A. This list of crimes is standard, I believe,
15 to a degree, but I don't -- but beyond
16 that, no.

17 Q. I see.

18 A. I don't know.

19 Q. If an individual had a federal conviction
20 for fraud, is it possible that they would
21 be permitted to register in one county but
22 not permitted to register in another county
23 based on the way registrars interpret this

1 provision?

2 A. I don't know the answer to that question.

3 Q. Sorry. I may have asked this before, but
4 did you have any involvement in drafting
5 this provision of Act 2017-378?

6 A. No, sir.

7 MS. MESSICK: Asked and answered.

8 Q. So did there ever come a time when you
9 personally drafted a plan to create a
10 consistent interpretation of the phrase
11 "moral turpitude"?

12 A. You lost me. You have to repeat that.

13 Q. Did there ever come a time when you
14 personally drafted a plan to create a
15 consistent interpretation of the phrase
16 "moral turpitude" before HB 282?

17 A. There was work done during the campaign
18 that we've already discussed, but there was
19 no time that I recall where I have tried to
20 prepare a plan to get that.

21 Q. I see. I'm going to mark Bennett 3 and
22 then Bennett 4, do it at the same time.

23 (Bennett Exhibits 3 and 4 were

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 41

1 marked for identification.)

2 Q. And so 3 is an e-mail. The last-in-time
3 e-mail is from December 2, 2014 from Emily
4 Marsal to Jean Brown. But I want to refer
5 you to an earlier -- to the earlier e-mail,
6 the first in time. I think it begins at
7 the bottom of page 884 in the bottom right
8 and goes on to 885, which appears to be --
9 are you the John Calvin Bennett in the
10 "from" field of this e-mail?

11 A. Yes. Yes, sir.

12 Q. Do you recognize this e-mail? Take a
13 second to familiarize yourself with the
14 earliest-in-time e-mail.

15 (Witness reviews document.)

16 A. Okay.

17 Q. So do you recognize this e-mail?

18 A. I don't remember sending it, but I'm sure I
19 did.

20 Q. Okay. And who is Don Milligan?

21 A. He's the president of the board of
22 registrars.

23 Q. I see. And do you recall why you sent this

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 42

1 e-mail to Don Milligan?

2 A. He was on the team that was preparing this
3 handbook.

4 Q. I see. So had he asked you to do this or
5 did you do this -- withdrawn.

6 Did he ask you to do this?

7 A. I don't know what you mean.

8 Q. All right. Can we look quickly at
9 Bennett 4, which was an attachment to this
10 e-mail, which says in the top left,
11 Prepared for John H. Merrill, prepared by
12 John Bennett, and is entitled Moral
13 Turpitude Changes Proposal?

14 MR. SINCLAIR: Mike, before you do
15 that, let me take a moment to clarify an
16 earlier answer.

17 You identified Don as the president of
18 the board of registrars. Don't you mean
19 the association --

20 THE WITNESS: Yes. Sorry.

21 MR. SINCLAIR: -- as opposed to a
22 particular -- I think that might help your
23 questions.

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 43

1 Q. (By Mr. Stewart) So the association being
2 the state-level body? Just so I understand
3 the difference.

4 A. I think it's a state.

5 THE WITNESS: I don't know that
6 it's officially.

7 MS. MESSICK: There's a state
8 association of board of registrars.

9 MR. STEWART: Right.

10 MS. MESSICK: I don't know --

11 MR. SINCLAIR: It's not a state
12 agency.

13 MS. MESSICK: -- because a
14 government it's not.

15 MR. SINCLAIR: It's not an agency.

16 MR. STEWART: But it's not a --

17 MS. MESSICK: But that's what he's
18 the president of.

19 MR. STEWART: Not a specific board
20 of registrars.

21 MR. SINCLAIR: Right. It's not
22 three people you're talking about.

23 MR. STEWART: Right.

1 MR. SINCLAIR: You're talking about
2 a larger body.

3 MR. STEWART: Understood. Thank
4 you for that clarification. It's helpful.

5 Q. (By Mr. Stewart) Referring back to
6 Bennett 4, do you recall this document?

7 A. Can I read it real quick?

8 Q. Yes. Please do.

9 (Witness reviews document.)

10 A. Okay.

11 Q. So do you recall drafting this document?

12 A. Yeah. I mean, several years ago, but to an
13 extent, yes.

14 Q. In the first paragraph of this document,
15 you use the term "legally ambiguous" where
16 you say -- to read it, One issue that has
17 been voiced from the beginning is related
18 to the legally ambiguous term "moral
19 turpitude" being one qualifying aspect to a
20 registrant's possible inability to
21 register. What did you mean by the term
22 "legally ambiguous"?

23 A. At this time, I did not understand the term

1 "moral turpitude" to have a legal
2 definition. I only understood it to be
3 a -- I should have done more research to
4 understand that there was further mentions
5 of moral turpitude in state law outside of
6 that. And so at the time, it seemed much
7 more ambiguous than I was able to kind of
8 come to understand that it was when I
9 took -- or when I came into the office.

10 Q. I see. So you later had an understanding
11 that it was less ambiguous than you thought
12 at this time?

13 A. Correct.

14 Q. What cleared up that understanding?

15 A. Exposure to the larger body of state law.

16 Q. And what are those sources of state law
17 that have come to y'all?

18 A. The code.

19 Q. The code. So was there a portion of the
20 code that clarified what was a crime of
21 moral turpitude?

22 A. Well, there are legal definitions to moral
23 turpitude. At this time, I had only read

1 the code section that said moral turpitude
2 in the Code of Alabama. I'd never even
3 opened the code book before that. And so
4 at that time, it appeared to me that this
5 word had no, like -- that this was just a
6 word plugged in here. I did not realize
7 that there was case law on moral turpitude.
8 I did not understand at that point that
9 there was a legal definition.

10 Q. And then one thing this document says is,
11 One issue that has been voiced from the
12 beginning. Who was voicing this issue?

13 A. The registrars in this meeting.

14 MS. MESSICK: Can we take a quick
15 break?

16 MR. STEWART: Yeah, of course.

17 MS. MESSICK: Thank you.

18 (Short recess.)

19 MS. MESSICK: Thank you for letting
20 us take that break. We would like to give
21 Mr. Bennett the opportunity to clarify
22 his -- his earlier testimony.

23 And I would ask you to just tell

1 Mr. Stewart what your experience was only
2 with the board of registrars moving through
3 the campaign and forward.

4 A. Yeah. So the secretary asked me to kind of
5 research about some different -- the
6 registrars' office, really, and we came to
7 moral turpitude. Basically, the secretary
8 and I had a conversation about -- that this
9 seemed very arbitrary. The ability for the
10 registrars to make that determination
11 seemed arbitrary and it seemed like there
12 was a need, a desperate need, for uniform
13 guidance across the state. And we felt
14 like if that was not in place, then there
15 was opportunity for arbitrary
16 determinations to be made by the
17 registrars. But it was -- it was something
18 that was a problem that the secretary
19 noticed that needed to be fixed.

20 Q. (By Mr. Stewart) I see. And so this
21 document we were talking about right before
22 the break -- this was Bennett 4, I
23 believe -- was this a part of that effort

1 to fix that?

2 A. Yes. This was my best attempt to
3 articulate that problem to the secretary
4 and to the registrars after those.

5 Q. Got it. And so I think before, we had
6 talked about what was on page 1. Just a
7 couple things I want to ask on page 2. So
8 it says, The pardons unit offers a list of
9 several felonies which involved moral
10 turpitude but may not receive a pardon from
11 the department. Do you know what the
12 source of this list was?

13 A. I believe I would -- at the time -- I don't
14 know if it's still there, but at the time,
15 it would have come from the board of
16 pardons and paroles' website.

17 Q. I guess the question I'm asking is, is this
18 a piece of statutory law or is this
19 something pardons and paroles created?

20 A. Yes. I believe this list of crimes you
21 have to receive a pardon from the governor
22 to receive those rights back. At the time,
23 this is my interpretation or my

1 understanding.

2 Q. And then moving to the last full paragraph
3 on this page, The removal of a line in
4 registration which states I'm not barred
5 from voting by reason of felony conviction;
6 and then you offer an alternative: I have
7 been convicted of a felony. If you answer
8 yes, you're required to present your
9 official pardon from the state probation
10 and parole office.

11 What was the intent, if you recall,
12 behind this proposal?

13 MS. MESSICK: Object to the form.

14 A. So there were several -- I had to make
15 somewhat of an assumption, but my concern
16 was if I am a recent convicted felon, it
17 seems to me like there's something like a
18 negativity surrounding that, and if I have
19 to put on this form, I would be worried
20 that something negative would come back to
21 me and that if I had -- if it showed me
22 clearly that this is just a part of the
23 process that is a documented part of the

1 process, there's a possibility that you
2 could still vote and still register if you
3 have a felony conviction, then that might
4 be something that would be a better
5 encourager to get people to submit an
6 application.

7 Q. Reading this now, does it seem like an
8 accurate statement of law, understanding
9 that this was kind of early in the campaign
10 or during the campaign when you drafted it
11 and before HB 282? Do you think this
12 proposal would work?

13 A. You want me to answer the first question or
14 second question?

15 Q. Good point. Do you currently think this is
16 an accurate statement of the law around
17 felon disenfranchisement?

18 A. This was an accurate overview at the time
19 that this was written. I don't think this
20 is a current --

21 MS. MESSICK: I think he
22 misunderstands your question.

23 MR. STEWART: Yeah.

1 MS. MESSICK: You're asking him
2 what putting the phrase, I have been
3 convicted of a felony; if you answer yes,
4 you are required to present your official
5 pardon from the state probation and parole
6 office. Your question is whether --

7 Q. Is that an accurate statement of Alabama
8 law?

9 MR. STEWART: Thank you.

10 A. This sentence right here in quotations,
11 we're putting that on a form. That's not
12 on the form that way at this time and they
13 don't have to -- that does not work that
14 way.

15 Q. And then on the last page, so the last full
16 paragraph on page what ends in 888 down in
17 the bottom right, it says, Second, a clear
18 statement which lists the felony
19 convictions that permanently remove a
20 registrant and placing it on the
21 registration form in the office and on the
22 secretary of state's website.

23 So kind of breaking this down, was --

1 up to today, was a clear statement of
2 felonies that permanently remove a
3 registrant ever placed on the registration
4 form?

5 MS. MESSICK: Object to the form.

6 A. Well, up to today, no.

7 Q. Okay. And by "the office," do you mean the
8 secretary of state's office here?

9 A. Probably also would have meant the
10 registrars' office at that point. That
11 would have made sense.

12 Q. Do you know whether that clear statement
13 was ever placed in registrars' offices?

14 A. A clear list of the felony convictions? Is
15 that what you mean?

16 Q. Yeah. I think -- so this paragraph relates
17 to permanently -- felony convictions that
18 permanently remove a registrant.

19 A. I don't know the answer to that question.

20 Q. Just want to show you quickly what I'll
21 mark as Bennett 5. You know what? Let's
22 skip it.

23 Moving forward to -- moving forward in

1 time, when do you recall the first

2 suggestion of legislation that would list

3 crimes of moral turpitude?

4 A. I don't know if I can answer that question
5 factually.

6 Q. Were you a part of an effort to create
7 legislation that listed the crimes of moral
8 turpitude?

9 A. I was kind of ancillary, but I was a part
10 of the effort, yes.

11 Q. So what was your role?

12 A. I took meeting minutes; I did, like, you
13 know, coordination, making sure the meeting
14 took place, making sure the people
15 attended, you know.

16 Q. And so to take a step back, what meetings
17 are you describing?

18 A. I'm specifically talking about the felon
19 re-enfranchisement and -- well, it's a long
20 committee name. I can't remember the whole
21 name.

22 Q. And about what time was that committee --
23 in general terms, time frame, when was that

1 committee meeting?

2 A. I can't remember specifically. Maybe early
3 or mid 2015 was the start. I can't
4 remember the . . .

5 Q. Now, this will be Bennett 5.

6 (Bennett Exhibit 5 was marked for
7 identification.)

8 Q. And then I will right away do Bennett 6 as
9 well since it is an attachment to that
10 e-mail.

11 (Bennett Exhibit 6 was marked for
12 identification.)

13 Q. So have you had a chance to read that
14 e-mail?

15 A. Yes.

16 Q. Do you recognize it?

17 A. Yes.

18 Q. And what does this e-mail describe?

19 A. A mistake that I made.

20 Q. I guess in more general terms, does this
21 e-mail relate to the -- excuse me -- the
22 meetings that you were just discussing, the
23 committee meetings?

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 55

1 A. Yes.

2 Q. And so in this, you attach the minutes to

3 Ed Packard with a copy to -- excuse me --

4 Ed Packard with a copy to David Brewer.

5 Who is Ed Packard?

6 A. He works in the elections division in the

7 secretary of state's office.

8 Q. Do you know what his official role is?

9 A. Well, yes. At this time, it is -- sorry.

10 One second. Let me --

11 Q. It's not supposed to be a memory test.

12 A. I can't remember the -- it just blanked

13 out. Sorry.

14 Q. That's all right.

15 A. I know he works in the secretary of state's

16 office, yes.

17 Q. And what about --

18 A. Supervisor of elections? I can't remember.

19 Sorry.

20 Q. And what about David Brewer?

21 A. He's chief of staff.

22 Q. Okay. And so you sent these minutes to Ed

23 Packard and David Brewer. Did you take the

1 minutes at all of these meetings?

2 A. All but one. So there should be three

3 meetings. I took meeting minutes at two,

4 Ed took them at one.

5 Q. Do you remember which two you took the

6 meeting minutes at?

7 A. The first two, I believe.

8 Q. Okay. And if you turn to Document 6, which

9 is 920 at the bottom, this is a -- it

10 appears to be a December 21st meeting. Was

11 this the first or second meeting?

12 (Witness reviews document.)

13 A. I can't -- I would have to see something

14 else to remember --

15 Q. Okay.

16 A. -- more specifically.

17 Q. And then looking down under the section

18 that says, Consideration of amendments,

19 does that refer to -- what does that refer

20 to amendments to?

21 (Witness reviews document.)

22 A. So can you ask the question again?

23 Q. Yeah. So it says, Consideration of

1 amendments. Do you recall what was
2 being -- what the committee was considering
3 to amend?

4 MS. MESSICK: Are these the final
5 minutes? I see some strange things on the
6 second page.

7 A. Yeah. Where are these from?

8 Q. So these were what were attached to this --

9 A. E-mail.

10 Q. -- e-mail.

11 A. I'm going to be honest with you. I believe
12 that the consideration of amendments is a
13 part of a template that David Brewer
14 provided me for meeting minutes. I don't
15 think there's any more significance than
16 that with that.

17 Q. And in the first sentence under that, it
18 says, Secretary Merrill began the meeting
19 with a brief discussion regarding the
20 impetus of the committee and their
21 objectives in meeting.

22 Do you recall what the impetus of the
23 meeting was?

1 A. Yeah, just generally that if the process
2 for this group of people to be allowed to
3 register to vote is in any way arbitrary,
4 then the committee -- I mean then the
5 purpose of the committee is to eliminate
6 that from election law if possible.

7 Q. And was their objective from the beginning
8 to create a full list of crimes that would
9 be defined as crimes of moral turpitude?

10 A. I think their objective more specifically
11 was to provide uniform guidance to a -- on
12 a specific issue in this case to a body
13 that did not have uniform guidance.

14 Q. And that body would be the registrars?

15 A. Correct.

16 MS. MESSICK: Mike, you're saying
17 "crimes" a lot. I'm going to assume that
18 you mean felonies --

19 MR. STEWART: Sure.

20 MS. MESSICK: -- unless you're
21 specifically talking about misdemeanors and
22 he answers as well.

23 MR. STEWART: We'll understand that

1 it's felonies.

2 MS. MESSICK: And I'll say the same
3 thing; if there's discussion of convictions
4 or crimes, that that's going to mean
5 felonies.

6 MR. STEWART: That's fine. Thank
7 you.

8 Q. (By Mr. Stewart) And so then I see at the
9 bottom of this page it seems --

10 MS. MESSICK: Which page?

11 Q. Sorry. The first page, 920, page 1 of this
12 document, turning the conversation and
13 debate to the extent to which moral
14 turpitude would be defined, do you recall
15 anything about that discussion or that
16 debate?

17 A. Yes.

18 Q. And what do you recall?

19 A. That it was not the most contentious issue
20 in the room but it was something that it
21 needed a lot of discussion for -- from all
22 the parties to kind of come to some
23 agreement on.

1 Q. I see. So there were competing views in
2 the room about whether to define the full
3 list of crimes of moral turpitude at this
4 point?

5 MS. MESSICK: Object to the form.

6 A. Are you asking me if there were -- if there
7 were a lot of people discussing --

8 Q. I guess I'll phrase it this way. There --
9 was there a consensus at this point about
10 whether to even list the full list of
11 crimes -- or felonies -- that involve moral
12 turpitude?

13 A. That I don't believe was in question.

14 Q. So sorry. Just to back up, then. When
15 this group set out, at least as of when
16 this meeting began, it was not in question
17 that the full list of felonies and moral
18 turpitude would be created?

19 MS. MESSICK: Object to the form.

20 A. Not to a specific figure. I mean, there
21 was no list that was already prepared.
22 This -- this team met with the objective to
23 define based on all of these different

1 people that were experts in their
2 particular fields or representatives from
3 their particular advocacy groups.

4 Q. But was it possible at this point that it
5 would still just be a, perhaps, statement
6 of the definition of moral turpitude as
7 opposed to, you know, what ultimately ended
8 up being the list of felonies in HB 282?

9 A. No.

10 Q. No? So there was always, at this point,
11 going to be a list of felonies?

12 MS. MESSICK: Object to the form.

13 A. I think the committee could have determined
14 whatever they wanted and then it could have
15 gone whatever way, but I think the issue
16 was that there was not a -- that the
17 secretary did not feel that there was a
18 uniform list and there needed to be a
19 uniform list to make that decision.

20 Q. And then if we look at the second half of
21 page 2 of this document, which ends in 921
22 in the bottom right, underneath the
23 statement by Win Johnson, there's a

1 paragraph that says, Extensive discussion
2 followed, showing the presence of some
3 disagreement as to whether or not fines,
4 fees, and court costs are an aspect of
5 punishment or not.

6 So there -- were there some people in
7 the room stating that fines, fees, and
8 court costs were an aspect of punishment?

9 A. Yes. And that was the most contentious
10 debate that we had. That was the biggest
11 issue we had and took the longest time.

12 Q. And what was the import of that discussion?

13 A. The -- well, you know, you have -- you had
14 people that were specific to courts,
15 whether they be clerks or judges in some
16 instances. Some judges felt that you
17 needed to pay all your court costs because
18 the courts can't function without that.
19 That was their argument. Then there were
20 advocacy groups on the total opposite end
21 of that spectrum that say you're putting a
22 monetary kind of barrier to people
23 registering and participating. And then

1 there were people kind of in the middle
2 that said, Well, look, if this is a part of
3 their original sentence, that should be
4 significant. And so it went around and
5 around, but mostly centering on whether the
6 penalties that you would -- could add on to
7 your sentence while you were incarcerated.

8 Q. So the idea --

9 A. That was the biggest.

10 Q. Was the idea, then, you heard from at least
11 the proponents of this particular view,
12 that voting rights should be restored only
13 when you're no longer being punished?

14 A. Well --

15 MS. MESSICK: Can I have the court
16 reporter read that back?

17 (Court reporter reads back the last
18 question.)

19 MS. MESSICK: Object to the form.

20 A. So are you -- you're asking me to speculate
21 on -- on what, now?

22 Q. So maybe not speculating, but there were
23 certain people expressing the view that

1 fines, fees, and court costs are an aspect
2 of punishment; right?

3 A. There was a group, yes. A small number of
4 people, yeah.

5 Q. And so the reason they were expressing that
6 in this context was that they thought
7 voting rights should not be restored until
8 punishment was over?

9 MS. MESSICK: Object to the form.

10 A. Yeah. Well, really the debate was when
11 have you paid your debt to society, was the
12 way the conversation went. It was is the
13 debt paid once the initial crime that was
14 incurred for you to be sentenced, is that
15 paid -- does that mean you've paid your
16 debt or if you incur, you know, ten grand
17 in debt while you're incarcerated, is that
18 a part of your initial crime and how does
19 that all relate. I mean, that was -- that
20 was the debate and the discussion.

21 Q. And so to the extent you were still serving
22 part of the punishment for your initial
23 crime, you shouldn't be able to vote, was

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 65

1 the view of the people advancing that view?

2 MS. MESSICK: Object to the form.

3 A. It would seem -- yes.

4 Q. Did anyone state that the loss of voting
5 rights was part of punishment for a crime?

6 A. No.

7 Q. No one in the room stated that in that
8 aspect?

9 A. Not that I remember.

10 Q. Okay. All right. I believe we're at 7, so
11 I'll mark this as 7.

12 (Bennett Exhibit 7 was marked for
13 identification.)

14 Q. And then this was the attachment, which
15 I'll mark as 8.

16 (Bennett Exhibit 8 was marked for
17 identification.)

18 Q. So 7 ends in 099 on the bottom right, and
19 it appears to be an e-mail from Ed Packard
20 to a number of recipients beginning with
21 DFWeditor@aol.com.

22 MS. MESSICK: Hold on.

23 THE WITNESS: Is this two different

1 things?

2 MS. MESSICK: He's just been given

3 two copies of the memo and --

4 THE WITNESS: Think it's the same.

5 MS. MESSICK: -- no copy with the

6 e-mail. Oh, okay. You have e-mail.

7 MR. STEWART: I think this is -- do

8 you have one?

9 MS. MESSICK: I have that.

10 MR. STEWART: Okay. Just want to

11 make sure.

12 THE WITNESS: Sorry.

13 MS. MESSICK: Okay. So he's asking

14 you to look at No. 7.

15 Q. (By Mr. Stewart) Yeah, the e-mail. Do you

16 recall this e-mail?

17 A. Not -- I mean, honestly, not particularly,

18 no.

19 Q. Is this something that would have been

20 considered along with the work of the

21 committee we were just discussing?

22 A. Yes, yes.

23 Q. And turning, then, to 8, this appears to be

1 a memo to Edward Packard, director of
2 elections, Joel Laird and John Merrill,
3 from Will Harrell and Marissa McCall
4 Dodson; right?

5 A. Yes.

6 Q. And below the re line, in the first full
7 paragraph, it says, It appears to be the
8 consensus of the committee that individuals
9 convicted of a disqualifying felony should
10 have their voting rights restored
11 immediately -- excuse me -- voting rights
12 immediately restored upon the completion of
13 his or her sentence.

14 Do you agree there was a consensus
15 among the committee about that?

16 A. No, a hundred percent there was no
17 consensus. That was what there was a lack
18 of. Great discussion, but no consensus.

19 Q. And then the second -- the next sentence
20 says, In addition, the committee seems to
21 agree that balances due to state and local
22 agencies through the court-ordered payment
23 of fines and fees must remain outstanding

1 unless the individuals are indigent but
2 should not prohibit someone from exercising
3 their constitutional right to vote.

4 Do you agree that there was a consensus
5 about that? Take a second to read it.

6 (Witness reviews document.)

7 A. Can I -- can I state this out loud to make
8 sure we agree that this is what this is
9 saying?

10 Q. Yeah. Sure.

11 A. So is this saying that the committee agrees
12 that balances from their legal fees with
13 state and local agencies or is this other
14 debt that they could have accrued?

15 Q. So I can only tell you what the document
16 says, and what it refers to is fines and
17 fees must remain outstanding. So, I mean,
18 based on your knowledge of the discussion
19 of the committee --

20 A. I will put it this way. There was no
21 consensus on any issue that that committee
22 discussed. That committee worked really,
23 really hard to get to some level of

1 compromise, and legislation that we passed
2 is what you see that they got to.

3 Q. And then it appears that the authors of
4 this who are from the ACLU proposed
5 language for a bill. Do you know whether
6 this language was ever considered by the
7 committee?

8 A. It would have been considered.

9 Q. Do you know whether this language was
10 actually discussed at the meeting?

11 MS. MESSICK: Which meeting? The
12 one we've been talking about?

13 MR. STEWART: Yeah.

14 Q. Or any of the three committee meetings,
15 we'll make it.

16 A. I believe I was not at the meeting
17 specifically that it was discussed at. I
18 can't say for sure because I don't know
19 where this was discussed. But based on the
20 dates, there was a meeting before this
21 meeting, and then this meeting would have
22 been the only two meetings I took minutes
23 for. And then this was sent January 13th,

1 which would mean I did not attend that
2 meeting, but I can't say a hundred percent
3 sure.

4 Q. I'll mark -- we're at 9.

5 (Bennett Exhibit 9 was marked for
6 identification.)

7 Q. And then the attachment, which is 10.

8 (Bennett Exhibit 10 was marked for
9 identification.)

10 (Witness reviews document.)

11 Q. And so 9 ends in 211 in the bottom right
12 and appears to be an e-mail from Ed Packard
13 to you asking you to copy the attached
14 document for the committee members. Was
15 that generally part of your
16 responsibilities, to copy documents that
17 came in for the committee members?

18 A. Yeah.

19 Q. Yeah. Do you recall this memo at all, what
20 is -- either the E-mail 9 or the Memo 10?

21 (Witness reviews documents.)

22 A. Yeah, I remember.

23 Q. Okay. On the second page of the memo,

1 which is 10, the page ending in 213 down in
2 the bottom right, if you look in the first
3 full paragraph, there's a statement that
4 says, As the research presented to this
5 committee by Alabama Appleseed shows, the
6 phrase "crime, felony, involving moral
7 turpitude" dates back to the ill-conceived
8 and racially-motivated 1901 Alabama
9 Constitution.

10 Do you recall whether that statement or
11 anything to the effect of that statement
12 was discussed at any of the committee
13 meetings you attended?

14 A. Yes. So in the meeting minutes, one we
15 have -- Exhibit 6.

16 Q. That's 6?

17 A. On the second page, you can see where they
18 were introduced.

19 Q. Where this memo was introduced?

20 A. No. Where Appleseed was introduced to
21 speak.

22 Q. I see. But do you recall discussion
23 specifically of racial motivation behind

1 the phrase "crime or felony involving moral
2 turpitude"?

3 MS. MESSICK: Was the question does
4 he remember discussion of that?

5 MR. STEWART: Yes, at the
6 meeting -- at either of the meetings that
7 he attended.

8 A. Yes.

9 Q. You do? And what was the nature of those
10 discussions?

11 A. There was -- the general thought from
12 people that were kind of introducing that
13 idea was that this law is bad because it
14 was initially created for that purpose;
15 therefore, it is innately bad.

16 Q. Did that argument gain any agreement from
17 the elected officials in the room?

18 A. I think that argument was insignificant at
19 the time because everyone in the room had
20 come to the determination that there
21 probably needed to be some law change and
22 there needed to be something done. That's
23 why the committee was convened. And I

1 think -- I think it was a -- it was heard
2 by the committee members, but I don't think
3 that that was the problem or the solution
4 to the problem at the time.

5 Q. So was there ever a discussion about sort
6 of removing or not utilizing the phrase
7 "felony or crime involving moral turpitude"
8 as the basis for disenfranchisement?

9 A. On the committee? I can't remember if
10 there was.

11 Q. Did you ever have that conversation with
12 anyone in the secretary of state's office
13 outside of the committee?

14 A. Say --

15 Q. So did you ever have a conversation about
16 removing or otherwise eliminating the
17 phrase "crime or felony of moral turpitude"
18 as a basis for disenfranchisement with
19 anyone else in the secretary of state's
20 office outside of the committee meeting
21 context?

22 A. I can't remember specifically, but . . .

23 Q. And just to be complete, do you remember

1 having that conversation with any other
2 elected officials?

3 A. I mean, not specifically.

4 Q. And so did anyone suggest the term "moral
5 turpitude" needed to be changed as a
6 standard because of its racial history?

7 MS. MESSICK: Object to the form.

8 A. Did anyone just generally say that the law
9 should be changed because it was a
10 racially --

11 Q. Yeah. Did you ever hear that outside the
12 context of the writers of this memo?

13 A. Not really, no. No.

14 Q. Do you think these ACLU memos or the
15 Appleseed memos referred to by the ACLU
16 memo played any significant role in the
17 drafting or consideration of HB 282?

18 MS. MESSICK: Object to the form.

19 A. I think they were considered for their
20 merit. I think the Appleseed -- I know the
21 Appleseed group spoke to the committee
22 directly, so that was -- that was
23 definitely considered. I can't speak for

1 every member of the committee or whether
2 they read the memos either, but they were
3 at least given to them.

4 Q. Do you know if any changes to the law were
5 made on the basis of that presentation or
6 these memos?

7 MS. MESSICK: Object to the form.

8 A. I think they were a little behind the
9 curve.

10 Q. Sorry. What do you mean by "behind the
11 curve"?

12 A. The law -- there was an intention to make
13 change or to explore the need to make
14 change and they were coming to say there's
15 a need to make change.

16 Q. I see. But did it change the direction
17 that change was going to take?

18 A. No. I mean, there was not a pre-prepared
19 course of action either, though. The
20 committee was going to discuss and debate
21 these, like I said before, regardless of
22 who presented.

23 Q. So I think we are at 11. I'm going to mark

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 76

1 11 and 12, which is an e-mail and
2 attachment.

3 (Bennett Exhibits 11 and 12 were
4 marked for identification.)

5 Q. So you'll see 11, which ends in 485 on the
6 bottom right, appears to be an e-mail from
7 Ed Packard also to DFW editor among a
8 number of other recipients, and it's dated
9 December 18, 2015. And it says, Please
10 find attached information compiled by
11 Mr. Cliff Walker, chairman of the Alabama
12 Board of Pardons and Paroles.

13 Was Mr. Walker a member of the
14 committee?

15 MS. MESSICK: Object to the form.

16 A. I think so, yes.

17 Q. And do you recall this e-mail or this
18 attachment to it?

19 MS. MESSICK: Object to the form.

20 Q. Excuse me. Do you recall this e-mail and
21 this attachment to it?

22 A. Yeah. This is -- yeah.

23 Q. And so do you know whether Mr. Walker

1 drafted this of his own accord or was it
2 solicited by the committee?

3 A. It's hard to say. I don't know.

4 Q. On the first page of Exhibit 12, which ends
5 at 487 in the bottom right in the memo,
6 there's a current list of crimes involving
7 moral turpitude. Do you know where
8 Mr. Walker got this list?

9 A. No idea.

10 Q. And then the next item says, Voting rights
11 are not lost with the following felony
12 convictions: Possession of a controlled
13 substance -- "possession" is underlined;
14 possession of marijuana first --
15 "possession" is underlined; and felony DUI.

16 Do you have an understanding of why
17 Mr. Walker specifically called these out as
18 crimes that are not involving moral
19 turpitude?

20 MS. MESSICK: Object to the form.

21 A. No, sir.

22 Q. And these aren't the only crimes that --
23 are these the only crimes that don't

1 involve the loss of voting rights?

2 MS. MESSICK: Object to the form.

3 A. Are you --

4 Q. There are other crimes -- excuse me --

5 there are other felonies, felony

6 convictions, that do not involve the loss

7 of voting rights besides these three;

8 right?

9 MS. MESSICK: Object to the form.

10 A. I mean, I don't -- at the time that this

11 document was written?

12 Q. Yeah.

13 A. I don't know the answer to that question

14 because I don't know when this document was

15 written.

16 Q. Well, it was attached to a December 18,

17 2015 e-mail, so let's say as of

18 December 18, 2015. There were other crimes

19 for which -- there were other felony

20 convictions -- excuse me -- for which one

21 would not lose voting rights; correct?

22 A. Yes.

23 Q. What does NWN I mean in the next sentence,

1 if you know?

2 A. I don't know.

3 Q. And then on the next header, criteria for
4 issuance of certificate of eligibility, the
5 third bullet says, Payment of all fines,
6 court costs, fees, and victim restitution
7 to include traffic offenses.

8 What is your understanding of the
9 phrase "to include traffic offenses"?

10 A. Just that statement?

11 Q. Yeah, just to include traffic offenses.

12 A. That fines include traffic offenses.

13 Q. I see. So do you understand this to mean
14 that they would have -- that someone
15 seeking a certificate of eligibility would
16 need to pay fines that were not related to
17 the underlying felony conviction for which
18 they had lost their voting rights?

19 A. This document appears to indicate that as a
20 recommendation.

21 Q. So I want to stick with this document for a
22 second. On the next page, which ends at
23 488 at the bottom right, it says,

1 Recommendations for voting legislature, and
2 it provides for three scenarios. Can you
3 just take a second to read this?

4 (Witness reviews document.)

5 A. Okay.

6 Q. So would you agree that all three of these
7 scenarios provide for automatic restoration
8 of rights except for crimes of moral
9 turpitude?

10 MS. MESSICK: Object to the form.
11 That question doesn't even make sense. You
12 don't lose your voting rights if there's
13 not a crime of moral turpitude. I don't --

14 MR. STEWART: I'm just interpreting
15 the document as written, which says
16 automatic restoration of rights in all
17 three scenarios.

18 MS. MESSICK: Right. But you can't
19 restore rights to somebody who hasn't lost
20 them.

21 MR. STEWART: Right. I mean, I'm
22 just reading the document as written.
23 That's what these scenarios provide for.

1 MS. MESSICK: Okay. Object to the
2 form.

3 MR. STEWART: I understand your
4 statement of current law. Just --

5 MS. MESSICK: Well, no. But the
6 old law was also felonies of moral
7 turpitude or disenfranchising. That's what
8 the Alabama Constitution says.

9 MR. STEWART: I understand. I'm
10 just asking Mr. Bennett about the document
11 in front of us.

12 MS. MESSICK: Okay. And I think
13 you're misstating what it says, so I object
14 to the form.

15 Q. (By Mr. Stewart) Okay. I'll just read the
16 three scenarios, then. Scenario 1:
17 Automatic, no application required,
18 restoration of voting rights to all
19 ineligible felons upon release from
20 sentence. Scenario 2: Voting rights
21 restored automatically to ineligible
22 felons; Scenario 3, voting rights restored
23 automatically to ineligible felons.

1 MS. MESSICK: Object to the form.

2 MR. STEWART: Can you specify the
3 objection? because it's what the document
4 says.

5 A. Can you ask the question again?

6 MS. MESSICK: Hold on. I'm sorry.

7 MS. LANG: Can we go off the record
8 for a moment?

9 MS. MESSICK: Yeah, I think it
10 would actually be helpful if we went off
11 the record.

12 MR. STEWART: Sure.

13 (Off-the-record discussion.)

14 Q. (By Mr. Stewart) Just returning to this
15 document, which I believe was Document 12,
16 do you see there are three scenarios here?

17 A. (Witness nods head.)

18 Q. Would you say that -- would you agree that
19 these scenarios get more restrictive in
20 terms of restoring voting rights as you go
21 from Scenario 1 to Scenario 2 to
22 Scenario 3?

23 MS. MESSICK: Object to the form.

1 A. Yes.

2 Q. And would you say Scenario 3 most
3 currently -- well, it closely maps to what
4 ultimately became HB 282?

5 MS. MESSICK: Object to the form.

6 A. No.

7 Q. No?

8 A. Because I think that we -- I mean, no, this
9 document was not intended to be that. This
10 document was -- if you'll see, there's
11 discussion -- basically, there were
12 discussions of different things that each,
13 like -- so pardons and paroles was one
14 group, then you had a group from the court,
15 then you had a group of legislatures. And
16 basically different groups were asked to
17 return to the next meeting with different
18 documents, and I think that's what this
19 was, was his best attempt to get his
20 understanding of the current law out there
21 and recommendations because the secretary
22 asked him to make those.

23 Q. Okay. I just want to discuss this document

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 84

1 real quick. Do you know who Quin Hillyer
2 is?

3 A. Yes, sir.

4 Q. Who is he?

5 A. A former legislator, I believe, and a
6 journalist, maybe.

7 Q. I see. Do you know why he was asked to
8 join the committee?

9 A. Yeah, I can tell you.

10 (Witness reviews document.)

11 A. Just can remember -- no, I guess I can't.

12 MS. MESSICK: At times you're
13 whispering a little bit. If you'd speak
14 up --

15 THE WITNESS: Sorry.

16 MS. MESSICK: -- for the court
17 reporter's benefit.

18 THE WITNESS: Yes, ma'am.

19 MR. STEWART: Actually, I have to
20 use the restroom. I would request a short
21 break here.

22 MS. MESSICK: Yes.

23 (Short recess.)

1 Q. (By Mr. Stewart) So we were just discussing
2 the committee around -- I forget the full
3 name, but basically around felon
4 disenfranchisement issues from the late
5 2015, early 2016 period. Now, you were
6 working for Secretary Merrill at that
7 point; right?

8 A. Yes.

9 Q. How would you describe Secretary Merrill's
10 involvement with the issues being
11 considered by that committee?

12 A. Are you asking -- can you rephrase the
13 question?

14 Q. Yeah. We'll break it down. Secretary
15 Merrill was a member of the committee;
16 right?

17 A. (Witness nods head.)

18 Q. He led the -- we need a verbal answer.

19 A. Oh. Sorry. Yes.

20 Q. And he led the committee?

21 A. Yes.

22 Q. Were you present with him for any other
23 meetings outside the committee context he

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 86

1 had around felon disenfranchisement issues
2 in that time period?

3 MS. MESSICK: Can you define
4 "meetings"? I think he said there were a
5 lot of --

6 MR. STEWART: Yeah.

7 MS. MESSICK: -- three-person
8 discussions.

9 MR. STEWART: Sure.

10 Q. (By Mr. Stewart) Let's break it down.

11 First, were you involved in any meetings
12 with Secretary Merrill and legislators
13 around that time period outside of these
14 committee meetings?

15 A. Not -- not, like, formal meetings. He --
16 Secretary Merrill is a former legislator,
17 so he would always talk to anybody we saw,
18 but not -- there was no formal sit-down
19 that I recall that related to felon voting.

20 Q. But he was having meetings with -- or was
21 he having meetings with legislators, even
22 if informal, at the time regarding this --
23 regarding felon voting?

1 A. To my knowledge, those conversations were
2 all, like, friendly conversations that you
3 would have as a former colleague. There
4 were not -- there were not specific sit-
5 downs that I remember where he went out of
6 his way to go meet specifically with a
7 member of the committee or not a member of
8 the committee on this issue specifically.

9 Q. Do you remember if there was anyone he was
10 meeting with more often than others?

11 MS. MESSICK: Object to the form.

12 A. You mean legislators?

13 Q. Specifically legislators.

14 A. No.

15 Q. Do you recall any meetings with
16 Representative Faulkner?

17 A. No.

18 Q. Do you recall any -- oh, go ahead. Don't
19 mean to cut you off.

20 A. Not specific, no.

21 Q. Do you recall any meetings with Senator
22 Ward?

23 A. I know around that time he met with Cam

1 Ward, but I don't think it had anything --
2 because Cam Ward was working on prison
3 reform at the time. I think it had more to
4 do with his prison reform legislation than
5 it did with the felon voting issue.

6 Q. Taking a step back, how long have you been
7 working for Secretary Merrill?

8 A. For -- since 2013, since April of 2013.

9 Q. How did you first meet him?

10 A. I met him originally at his basketball camp
11 that he holds in Tuscaloosa. I was nine
12 years old.

13 Q. And did you stay -- I mean, I don't mean
14 to -- I guess when did you first start
15 discussing employment with him?

16 A. So there was a tornado in Tuscaloosa in
17 2011. A friend of mine were working -- a
18 friend of mine and I were working on a
19 project to do some fundraising stuff, and
20 he was somebody that we had seen kind of
21 involved in the -- in the cleanup efforts
22 and was kind of outspoken about all of that
23 stuff. And we knew he lived in Tuscaloosa,

1 so we figured -- and he was supposed to be
2 our representative, so we figured why don't
3 we talk to him. And that led me to working
4 for him for free for two years, pretty
5 much, and then in the office.

6 Q. And so I guess when did you first hear
7 Secretary Merrill sort of start discussing
8 as an interest felon disenfranchisement
9 issues?

10 A. So when I began working for the campaign,
11 he had indicated that there were issues
12 with inconsistencies in the registrars'
13 office, but it was not until our research
14 efforts that we've already talked about
15 kind of showed specifically certain issues,
16 and specifically moral turpitude issue.

17 Q. And just remind me, those research efforts
18 were during the campaign?

19 A. Correct.

20 Q. Moving into his time in office, was there a
21 point where you started having discussions
22 with him about creating a draft bill?

23 A. No. There was -- I was not involved in

1 creating any draft legislation.

2 Q. When did he, to your knowledge, first start
3 discussing creating draft legislation?

4 A. The committee discussed draft legislation.

5 I'm not sure that he wanted to prepare
6 draft legislation. Not with me.

7 Q. Did he propose the idea of legislation at
8 some point, though, even if not kind of
9 in --

10 A. So I --

11 Q. -- legislation form?

12 A. I think -- what we realized in preparing
13 the registrars handbook was that
14 legislation was the only real way to solve
15 the problem.

16 Q. So it was during the campaign that you came
17 to the determination that legislation would
18 be a way to solve the problem?

19 MS. MESSICK: Object to the form.

20 A. We saw legislation as the exclusive way to
21 resolve this issue.

22 Q. And so when he -- when Secretary Merrill
23 first took office, did he task you with any

1 issues around felon enfranchisement?

2 A. Not particularly. My first big project was
3 the Help America Vote Act. There was some
4 problems with the way our office spent that
5 money, so we had to fix a lot of that.

6 Then I moved on to create our online voter
7 registration application. And then after
8 that was when I came back into this fold.

9 Q. Do you recall when he first discussed
10 forming a committee around this issue?

11 A. I think once the idea of legislation was
12 introduced, Secretary Merrill, being a
13 former legislator and a realist, knew that
14 he was going to have dramatic compromise
15 from all sides to get this done.

16 Q. Do you know if there were any legislators
17 he was speaking with at that time around
18 this issue in particular?

19 MS. MESSICK: Object to the form.

20 A. No.

21 Q. During the course of the committee's work,
22 do you recall when draft language for a
23 bill was first introduced?

1 A. I know -- I know that was a goal that was
2 set from the beginning, was legislation.
3 If the committee agrees that legislation is
4 necessary, the committee will draft
5 legislation, but I don't think that
6 occurred in the first meeting. I think
7 there was a lot of discussion. I think the
8 second meeting was where the decision was
9 made to write draft legislation, but I'm
10 not -- I think that's correct.

11 Q. When was the first time you saw a draft
12 piece of legislation?

13 A. At some point after the committee drafted
14 the legislation before it was submitted, we
15 would have reviewed it in the election,
16 like our elections team that reviews a lot
17 of issues. And so that's probably where I
18 saw -- because if you remember, I didn't
19 attend the last meeting of the committee,
20 so I wouldn't have been there for that.

21 Q. Do you know who the primary drafter of the
22 initial draft legislation was?

23 A. No, sir.

1 Q. Did you yourself have any discussions with
2 legislators about the draft legislation?

3 A. No, sir. I did go to a meeting with our
4 attorney that spoke to the -- what is
5 it? -- the legislative Black Caucus about
6 the legislation, but I did not speak
7 specifically to any.

8 Q. Was Secretary Merrill at that meeting?

9 A. Not at that one. He went -- he frequently
10 goes to those meetings, but I don't think
11 he went to that one in particular, which is
12 why I went with Brent.

13 Q. Can you think of any other meetings that
14 Secretary Merrill was at about this draft
15 legislation?

16 A. Not particularly.

17 Q. Do you recall any phone calls he had with
18 legislators on the topic?

19 A. No. No, sir. No.

20 Q. Do you recall any proposals he made about
21 the contents of the draft legislation?

22 A. No. No, sir. I mean, he contributed more
23 in an organizational kind of way to the

1 meeting. It was like, All right, you said
2 that same thing three times, we know how
3 you feel about that, let's bring this
4 conversation back to discussion. That was
5 more of his role. It was not a -- he
6 wasn't writing the legislation.

7 Q. So even outside the committee meetings, did
8 he give any feedback on the content of the
9 legislation to sort of any person?

10 MS. MESSICK: Object to the form.

11 A. So this is -- I asked the secretary about a
12 crime on the list, and he indicated to me
13 that it was important -- like, he felt a
14 certain way, but it was not important how
15 he felt because he was not going to get
16 that bill passed in the legislature if this
17 group of people did not agree on the
18 entirety of its contents. So it was kind
19 of a self-awareness that while he may have
20 an intent and want something, that it's not
21 going to work out if he forces that.

22 Q. And when you describe "this group of
23 people," who do you mean?

1 A. The entirety of the committee.

2 Q. So was his primary focus getting something
3 that the committee would approve?

4 A. No. His primary focus was getting
5 legislation passed that would resolve this
6 problem. But being a legislator and
7 recognizing the way that the legislative
8 process works here in this state, he knew
9 that he would need to get liberal
10 conservative members to agree but also it
11 would not need to be fought by special-
12 interest groups that also have an interest
13 in resolving the issue.

14 Q. Did he have any meetings to try and help
15 the bill get passed?

16 MS. MESSICK: Object to the form.

17 A. Not that I would have been involved in.
18 Well, meeting with the Congressional Black
19 Caucus would have been one.

20 Q. But he wasn't at that one; right?

21 A. Right. But Brent, our legal counsel,
22 handles most of those, the legislation.

23 Q. So I guess, just to tie it up, before the

1 bill was passed, did you see or hear
2 Secretary Merrill provide feedback on the
3 content of the draft bill at all?

4 A. As in saying why is this here or asking
5 something about the way that -- what was
6 listed on the bill?

7 Q. Yes.

8 A. No.

9 Q. So after HB 282 was passed, were you
10 involved in drafting any guidance for
11 election officials regarding HB 282?

12 A. I would have been in a meeting, more than
13 likely, with -- where the e-mail would have
14 been discussed, but I would not have
15 drafted the e-mail or any correspondence to
16 anybody.

17 Q. Sorry. When you refer to the e-mail, what
18 are you --

19 A. Or if an e-mail was sent or if a letter was
20 sent -- I'm not sure which one, but
21 whatever guidance was sent regarding the
22 law change, I would have been in the room
23 but I would not have been the one drafting

1 or sending the legislation.

2 Q. Who would have been preparing such
3 guidance?

4 A. Clay Helms, our elections director.

5 Q. Anyone else?

6 A. Well, staff -- I mean, staff would have
7 contributed; Ed Packard, for instance,
8 would have contributed, and everybody, you
9 know, might have proofread it or different
10 people in our office would have proofread
11 it, but Clay's the one with that authority
12 in our office.

13 Q. And we looked at Exhibit 1, which was the
14 Board of Registrars Handbook that was the
15 later draft of what you had initially
16 drafted. Were you involved with updating
17 that?

18 A. No, sir.

19 Q. Do you know who updated that?

20 A. Yes, sir.

21 Q. Who was it?

22 A. It was the elections division, but most
23 significantly it was a registrar that left

1 the registrars' office to come to work in
2 our office, Denine Richey.

3 Q. And you said Denine was a former registrar?

4 A. Yes.

5 Q. And she -- sorry. Just to be clear. Was
6 the primary drafter or the sole drafter of
7 that updated voter registrar guide?

8 MS. MESSICK: Object to the form.

9 A. I think she was the -- so she would have
10 been the sole -- she would have prepared
11 the document and then it would have been
12 reviewed by our office, but she would have
13 prepared the document.

14 MS. MESSICK: Also, I think you're
15 mis- -- ask him where she works now.

16 Q. Where does Ms. Richey work now?

17 A. She's a registrar.

18 Q. So she has returned to being a registrar.
19 Was she a registrar when she prepared that
20 document or was she -- I'm sorry.

21 A. She was a secretary of state employee when
22 she prepared the document, and she has
23 since returned to being a registrar.

1 Q. Has any --

2 MS. MESSICK: He's going to give
3 the court reporter the correct spelling of
4 her name.

5 MR. STEWART: Oh, great. Thank
6 you.

7 Q. Do you ever receive requests from
8 registrars for guidance about how to
9 administer HB 282?

10 A. Personally, not that I would respond to. I
11 would -- as I indicated previously, I would
12 make sure to tell them that there's --
13 well, now that the law has changed, I would
14 just send them to legal counsel.

15 Q. But do you receive e-mails or phone calls
16 along those lines whether or not you
17 respond to them?

18 A. Very rarely. Very, very rarely. Usually
19 that's just when the loop just gets to me
20 because somebody else missed the call.

21 Q. And what about do you receive any requests
22 for guidance from voters or potential
23 voters about HB 282?

1 A. I have talked to at least one person about
2 that, but we were very quickly able to
3 determine that his crime was not a crime of
4 moral turpitude and so he was just -- I
5 just directed him to go back to the
6 Montgomery County registrars' office and
7 turn the application in.

8 Q. So there's only one circumstance you recall
9 of that occurring?

10 A. (Witness nods head.)

11 Q. So there's no sort of --

12 MR. SINCLAIR: Verbal response,
13 please.

14 Q. Yeah. Sorry.

15 A. Oh, sorry. Yes.

16 MR. STEWART: Thank you.

17 A. Sorry.

18 Q. So there's no recurring issues that you
19 have become aware of with implementing
20 HB 282 since the legislation was passed?

21 A. No, not that I can recall.

22 Q. Do you ever receive or have you ever --
23 strike that.

1 Have you received press inquiries
2 regarding HB 282?

3 A. Definitely.

4 Q. And do you respond to those personally?

5 A. Depends on a lot of things, but mostly, you
6 know, if it's just a small thing, like if
7 somebody were to ask, Hey, is this crime on
8 the new legislation that was just passed, I
9 might say yes, this is how it's listed, or
10 something. If it was something policy-
11 related, generally I would ask the

12 secretary if he wanted to comment. And if
13 he did not, he would either tell me what to
14 say or no, that I already knew what to say.

15 Q. So do you discuss the contents of a comment
16 to the press with the secretary?

17 A. Not always, but generally that's because
18 I'm, at least in that instance, under the
19 impression that I know what he intends to
20 say. Sometimes I'm wrong.

21 Q. I see. So are you elevating what you would
22 consider the most serious issues to the
23 secretary when the press raises an inquiry?

1 MS. MESSICK: Object to the form.

2 A. I wouldn't triage them in that way. I
3 would triage them more in is this a
4 political opinion that my boss is going to
5 have to make that I would be making on his
6 behalf or is this something that is just
7 written in law.

8 Q. We are at 13, so I'm going to mark this as
9 Bennett 13.

10 (Bennett Exhibit 13 was marked for
11 identification.)

12 Q. I just handed you Bennett 13, which is an
13 e-mail that says D024224 in the bottom
14 right. And this appears to be an e-mail
15 from John Merrill to you copying some
16 others from October 11, 2017. Do you
17 recognize this e-mail?

18 A. Uh-huh. I do. Yes.

19 Q. So what do you recall about this e-mail?

20 MS. MESSICK: I'm sorry. Can we
21 have a minute?

22 MR. STEWART: Yeah.

23 MS. MESSICK: Because I assume you

1 mean all the e-mails below.

2 MR. STEWART: Yeah. Take your

3 time. Take your time to read it.

4 Absolutely.

5 (Witness and Ms. Messick review

6 documents.)

7 MS. MESSICK: If he's ready, you

8 can proceed.

9 MR. STEWART: Great.

10 Q. (By Mr. Stewart) So you said you recall

11 this e-mail?

12 A. (Witness nods head.)

13 Q. And who is Connor Sheets?

14 A. He's a reporter at al.com.

15 Q. And al.com is a local newspaper?

16 A. It's -- yeah, it's --

17 Q. A newspaper?

18 A. It's the statewide news.

19 Q. And so looking at the first e-mail in time

20 on this chain, which begins on 24227 on the

21 bottom right, that appears to be an e-mail

22 from Connor to Secretary Merrill. And in

23 the second paragraph of that e-mail, he

1 describes his calls to registrars and says,
2 Many registrars tell me that anyone who
3 committed a crime no longer considered a
4 moral turpitude can go ahead and vote
5 essentially automatically, as you told me,
6 but a couple told me they don't know how
7 the process works. Two have told me they
8 don't adhere to the system yet. And it
9 goes on.

10 Do you recall hearing this from
11 Mr. Sheets? Was this information passed on
12 to you?

13 A. Yes. So the reason I do remember more
14 specifically this is because I was on
15 vacation at the beach at the time and I got
16 a call, because if I had been in the
17 office, I would have been the one to reply
18 to this. But I got a call from the
19 secretary later telling me to read this
20 article on al.com. We were frustrated
21 because we had given that information to
22 that body, the registrars, and it was -- it
23 was just ridiculous.

1 Q. So with whom were you frustrated?

2 A. Really we were frustrated with the
3 registrars, whoever -- whoever it was that
4 had been -- this issue had been discussed
5 because we felt like we had done an
6 adequate job in conveying to them the
7 changes to their responsibilities, how this
8 law affected them, and then it seemed like
9 they were -- it did not make sense to what
10 we knew had happened in the meeting that we
11 had just held with them recently.

12 Q. So what did you do to convey that
13 information to them?

14 A. So we had -- there was -- there's two
15 meetings with the registrars annually.
16 There's one -- I believe there's two.
17 There's one in the beginning of the year,
18 one in the middle part of the year. And
19 basically we conveyed to them this law
20 changed, we handed them the law that had
21 been changed, then there was also follow-up
22 correspondence, I believe, in e-mail --
23 maybe a letter but I think an e-mail --

1 that would have outlined those same topics
2 as well. And then after that time, there
3 would have been the handbook that would
4 have also gone out. Actually, maybe the
5 handbook went out at the meeting. Maybe
6 that's how they got the list of crimes.
7 The handbook either went right before or
8 right after the meeting.

9 Q. Was there a presentation that accompanied
10 that meeting or were you -- retract that.
11 Was there a presentation that accompanied
12 that meeting?

13 MS. MESSICK: Object to the form.

14 A. At presen- -- just generally, like, several
15 people present at these meetings, so
16 probably.

17 Q. So was there someone there who gave a
18 description of the new requirements under
19 HB 282?

20 A. I'm sure that happened, yes.

21 Q. Do you know who it was?

22 A. I can't say for certain, no. It would have
23 either been the secretary -- if it was from

1 our office, it would either have been
2 Secretary Merrill or Brent Beal from our
3 office or Clay Helms. It could have been
4 Clay as well.

5 Q. And when you say "we provided guidance to
6 the registrars," who's the "we" in that
7 sentence?

8 A. Secretary of state's office.

9 Q. And who would have been involved in
10 drafting that guidance?

11 A. The -- would have been Clay Helms, David
12 Brewer, Ed Packard, and Brent Beal, and I
13 would have been in the room as well.

14 Q. Did you ever hear from other sources
15 similar comments like the ones in this
16 second paragraph that they don't adhere to
17 the new system yet?

18 A. No.

19 MS. MESSICK: You're referring to
20 the second paragraph of the first e-mail?

21 MR. STEWART: Of the first-in-time
22 e-mail on 227.

23 MS. MESSICK: And what time period

1 are you asking him about?

2 MR. STEWART: Since HB 282 was
3 passed or went into effect. Let me clarify
4 that.

5 A. So I have never heard this other than in
6 this article.

7 Q. (By Mr. Stewart) Okay.

8 A. In fact, I've had conversations -- I mean,
9 I've had conversations with people that
10 understand the law and were very clear
11 based on that, and most of those
12 conversations came from people being
13 grateful that the law had been changed.

14 Q. And so this -- this paragraph specifically
15 refers to people who had committed a crime
16 no longer considered a crime of moral
17 turpitude. Was there anything done by the
18 secretary of state's office to notify those
19 voters that their rights had been restored?

20 A. Yes.

21 Q. What were --

22 A. Well, not -- not specific to those -- it's
23 not like we sent a mailer to those voters'

1 houses, because we don't actually have any
2 database of those individuals. What we did
3 was we -- and this has been the -- one of
4 the most frustrating things that I've dealt
5 with. What we did was we mounted a media
6 effort, we did interviews, we tried to do
7 interviews, we sent out press releases
8 about that topic. But what I found was
9 interesting is, you can go back and do this
10 as well on a search, there are one or two
11 articles about the passage of that
12 legislation, but six weeks from that time
13 period, six months from that time period,
14 people are killing us for not doing enough
15 to help felons participate in the electoral
16 process. My question is, why didn't you
17 write the article about that originally?
18 Why is the article now about how we haven't
19 done enough when you also are at fault for
20 not publishing any articles --

21 Q. And did your office --

22 A. -- about the passage of that law.

23 Q. Sorry. Sorry I cut you off. Did your

1 office affirmatively reach out to reporters
2 to solicit articles on that topic?

3 A. Yes.

4 Q. What was the scope of those efforts?

5 A. Basically, the statements were this is a
6 new law that has -- that changes a little
7 bit the qualifications to register to vote
8 and it's important to get that information
9 to the public.

10 Q. How many sources would you say you've
11 reached out to if you had to estimate?

12 A. So I would have reached out to the
13 significant -- I'll clarify this, but the
14 significant media in the state. So the
15 media that touched the largest group of
16 people, so folks at al.com, folks at AL
17 Reporter, folks at -- there's several,
18 like, local -- Anniston Star. Well, of
19 course the Associated Press. There is the
20 Decatur Daily, the Lagniappe in Mobile. A
21 multitude of groups.

22 Q. Did you hold a press conference?

23 A. No, not that I remember. No, I don't think

1 so.

2 Q. Did you reach out to any media that you
3 knew to specifically have a black
4 leadership?

5 A. I -- I don't know how you would define
6 that.

7 Q. I guess are you aware of any such media,
8 you know, targeted toward or largely read
9 by an African-American population?

10 A. The news is what I would say is majority
11 read by the African-American population.

12 Q. And by the news, you mean the same sources
13 that you just described?

14 A. (Witness nodes head.)

15 Q. Sorry. When you --

16 A. Yes.

17 Q. When you spoke with these media groups, did
18 you specifically mention the issue of
19 people who had been denied registration for
20 crimes of moral turpitude?

21 A. You lost me. I'm sorry.

22 Q. I'm sorry.

23 A. Go back.

1 Q. Okay. Start over. When you were speaking
2 with the media around this time, did you or
3 did anyone else in the office specifically
4 mention the issue of individuals who had
5 been denied registration before on the
6 basis of a crime of moral turpitude whose
7 crime is not among the list of felonies of
8 moral turpitude in HB 282?

9 MS. MESSICK: Object to the form.

10 A. That's not the way that we would talk about
11 that. We would say that there has been a
12 law that has been passed that has
13 prescribed this list of crimes as crimes
14 that are disqualifying felonies. If you
15 have been denied previously because of a
16 conviction, then you should reapply.

17 Q. You should reapply if you were not -- if
18 your --

19 A. No.

20 Q. -- reason for denial was not on that list?

21 A. There's no reason for us to specify because
22 we would not have that information or would
23 not be in a position to gain that

1 information. So we wouldn't be able to
2 target that information, we wouldn't be
3 able to speak specifically to any of those
4 people. So we would just want to speak to
5 the entirety of the convicted felon
6 population of the state.

7 Q. So your guidance was for every convicted
8 felon to apply to register?

9 MS. MESSICK: Object to the form.

10 A. No. Our guidance was to ensure that we
11 didn't -- we didn't target any specific
12 groups, that we spoke to everybody about
13 the law change, letting them know that if
14 they intended to register to vote, that
15 they should reapply, the law change might
16 have opened that up.

17 Q. So say you have someone who attempted to
18 register to vote but was denied
19 registration on the basis of a crime of
20 moral -- excuse me -- a felony of moral
21 turpitude prior to HB 282. Was there any
22 effort to say specifically to someone
23 experiencing that issue in the media you

1 may now apply to register to vote and there
2 will be no obstacles in your way?

3 MS. MESSICK: Object to the form.

4 A. No. But, again, there's not a way that we
5 can target specifics without -- it makes
6 more sense to target everybody.

7 Q. And then you've read on this same document
8 we were just looking at, which I think is
9 13, Secretary Merrill's response to
10 Mr. Sheets. Was there anything inaccurate
11 you identified in that?

12 A. That's hard to say. Can I read it again?

13 Q. Yeah. Please do.

14 (Witness reviews document.)

15 A. To the best of my ability, that's accurate.

16 Q. I want to hand you what we'll mark as
17 Exhibit 14.

18 (Bennett Exhibit 14 was marked for
19 identification.)

20 Q. So this says 24206 at the bottom right.
21 The last-in-time e-mail was from Brent Beal
22 to Ed Packard and David Brewer on
23 October 19, 2017, copying others. Do you

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 115

1 recognize this e-mail?

2 (Witness reviews document.)

3 A. Yes.

4 Q. And so this e-mail references press reports
5 that suggest some boards may not be fully
6 aware of clarifications to the voting laws;
7 is that right?

8 A. Yes. Sorry. Yes.

9 Q. Are you familiar with such reports?

10 A. I think this is what led to one report.

11 Q. Do you remember any other press reports on
12 that same topic?

13 A. I don't remember there being a lot. I
14 remember this one being the focus.

15 MS. MESSICK: Can I ask you to give
16 me a minute? I'm not familiar with this
17 document.

18 MR. STEWART: Yeah.

19 MS. MESSICK: Do we know who the
20 first e-mail was sent to, if it was sent to
21 anybody?

22 MR. STEWART: I don't. This is the
23 way we received it.

1 (Ms. Messick reviews document.)

2 MR. STEWART: I think there was an
3 inference it was to Barbara McLaurine,
4 because she forwarded it next, in the next-
5 in-time e-mail.

6 MS. LANG: I also believe that
7 there's an inference, based on some other
8 documents that I've seen repeating this
9 e-mail, that it may have been sent to all
10 of the registrars. But, again, this is how
11 it was produced to us, so I can't say for
12 certain, but my best guess is that it was
13 sent to all registrars.

14 MS. MESSICK: Okay.

15 MS. LANG: Mr. Bennett might have
16 more information.

17 MS. MESSICK: Okay. Parts of this
18 are sounding familiar and I've had a chance
19 to review it briefly, so please continue.

20 Q. (By Mr. Stewart) Misty had anticipated
21 where I was going. Do you know who else
22 received this first-in-time e-mail in this
23 chain from Ms. Flores-Ganley?

1 A. I don't know for certain who got this
2 e-mail.

3 Q. So as you can see, as time goes by, this is
4 forwarded from a Barbara McLaurine. Do you
5 know who that is?

6 A. So she's a registrar in Bullock County. I
7 don't know if she still is.

8 Q. And that was to Ed Packard. And then Ed
9 Packard on October 19th at 10:30 forwarded
10 this to David Brewer, copying you, Brent
11 Beal, and you again. And then it says, I'm
12 forwarding this to you -- excuse me. In
13 the second paragraph, it says, I'm
14 forwarding it for your review.

15 Do you recall reviewing this e-mail?

16 A. Yes. We would have -- we would have met on
17 this e-mail.

18 Q. Without revealing the contents of the next
19 privileged e-mail, do you otherwise recall
20 discussions about this e-mail?

21 MS. MESSICK: Without detailing any
22 privileged conversation, even if it's not
23 in this e-mail.

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 118

1 MR. STEWART: Yeah.

2 A. So can you read the question again?

3 Q. Yeah. Do you recall any nonprivileged
4 conversations about this e-mail?

5 A. No.

6 Q. Do you recall any response given by someone
7 in the secretary of state's office to
8 Ms. McLaurine or any other registrar?

9 A. I do not.

10 Q. And then Mr. Packard's e-mail said, She is
11 not inclined to respond unless she is
12 directed to do so by our office. Do you
13 recall anyone directing her to respond?

14 A. I do not.

15 Q. And do you know whether or not she
16 responded?

17 A. I do not.

18 Q. Do you know whether in light of this e-mail
19 any guidance was given to registrars around
20 the moral turpitude issue?

21 MS. MESSICK: Object to the form.
22 That's very broad and he's already told you
23 about a lot of guidance.

1 Q. I'm asking just specifically in response to
2 this e-mail did that generate a response to
3 registrars.

4 A. I don't recall us responding to this
5 or . . .

6 Q. So we did discuss some response on the
7 disqualifying conviction issue. Did your
8 office prepare any response on the issue of
9 whether prospective voters are required to
10 pay legal fines and obligations?

11 MS. MESSICK: Object to the form.

12 A. Did our office discuss -- can you -- one
13 more time.

14 Q. So maybe let's go back to the document. So
15 in the first-in-time e-mail, Ms. Flores-
16 Ganley's e-mail, if you look at the top of
17 the page that ends in 208, she makes the
18 statement, The board of registrars should
19 not be inquiring about court date -- court
20 debt. Excuse me. I misspoke. The only
21 relevant question is if applicants were
22 convicted of a CMT and, therefore, lost the
23 right to vote.

1 Did your office provide any guidance to
2 registrars at any point after HB 282 was
3 passed or went into effect about whether
4 individuals were required to pay court debt
5 before registering to vote?

6 MS. MESSICK: Object to the form.

7 A. What I remember is that that would have
8 been a part of how the law change was
9 addressed. So as part of this committee,
10 I'm sure you know, there was the change to
11 the law basically that allowed -- or that
12 changed how the repayment of those fines
13 was to occur and what was included in that,
14 so that would have been a part of the
15 general discussion, that that law changed
16 as well but not insofar as to administer
17 the moral turpitude law, I don't believe.

18 MS. MESSICK: And can we also just
19 be clear on the record the e-mail was sent
20 by Isabel Flores-Ganley, but it appears to
21 be intended to be signed by her and Sam
22 Brooke and Caren Short?

23 MR. STEWART: Thank you.

1 Q. So we are at -- this is Bennett 15 I'm
2 going to hand to you now.

3 (Bennett Exhibit 15 was marked for
4 identification.)

5 Q. Do you recognize this document?

6 (Witness reviews document.)

7 A. Yes.

8 Q. And how did you receive this document?

9 A. You mean like the form of delivery?

10 Q. Was this e-mailed to you or handed to you?

11 Do you know how -- so if you are --

12 A. It was --

13 Q. -- familiar with it, how did you receive
14 it?

15 A. It was both e-mailed and hand-delivered
16 more than likely.

17 Q. I see. And did you read it at the time you
18 received it?

19 A. Yes.

20 Q. Do you recall any response that Secretary
21 Merrill made to the writer of this letter?

22 A. I don't know if we responded. I do know
23 that some of the things they recommended we

1 did do.

2 Q. Which things are those?

3 A. Like, we added, like, crimes to the online
4 application, a link to where you could view
5 those crimes. I believe we also
6 distributed the flyer to the offices.

7 Q. Which flyer is that?

8 A. It says in the second one, We also ask that
9 your office create a flyer to be
10 distributed to registrars, DMV offices, and
11 other state employees.

12 Q. So that's under -- on page 2 of this
13 document under Header 2?

14 A. Yeah.

15 Q. Okay. At the end of this document on
16 page 3 -- I'm sorry. I'm above Header 2,
17 assistance to voters, the full paragraph
18 before that: We also ask that you take
19 steps to ensure registrars send you a
20 report each month that details how many
21 applicants they rejected and how many
22 voters were removed from the voter list
23 because of a disqualifying felony

1 conviction.

2 Did your office take any steps to do
3 so?

4 MS. MESSICK: Object to the form.

5 A. I think that just misinterprets how the
6 system works, really. I think that our
7 system would provide some of that
8 information, the part of the information
9 that we would need it for. There's other
10 aspects of what they're asking to be
11 reported that is not something that's part
12 of our job that we would need.

13 Q. When you refer to "our system," what system
14 are you referring to?

15 A. The voter registration system.

16 Q. I see. And so is that run centrally with
17 the state?

18 A. It's a federal requirement, yeah.

19 Q. Okay. And so this seems to be asking for
20 registrars to send their own reports. Do
21 you agree with that?

22 A. Do I agree with what you just said?

23 Q. Yeah.

1 A. Yeah.

2 Q. Was there ever any request by your office
3 for registrars to send their own reports?

4 A. No, but that's what I'm clarifying, because
5 we maintain that system from the top.

6 There would be nothing that related to what
7 we need to know about what voters have been
8 turned away for a crime of moral turpitude.
9 Like, it's not like we would need to add
10 that report. We can see what we need to
11 see to do our job already and so that would
12 not benefit us.

13 Q. I see. So can you already see all of the
14 same information they're requesting here?

15 MS. MESSICK: Object to the form.

16 A. I don't know that we'd see all of the same
17 information.

18 Q. Is there anything you can specifically
19 identify that is data they are saying
20 should be sent from registrars to you that
21 you can't currently see?

22 A. So the difference is we can see all of the
23 voters, but we don't -- it's not in a, to

1 my knowledge, concise report that
2 details -- that they would want it in to
3 request it. It's not in a -- just a pretty
4 little package report: Here's 15 people in
5 this county that were denied, there's 15
6 people in this county. We can see the
7 individual voters that were denied.

8 Q. Do you think having that first set of
9 information you just described listing who
10 was denied in each county would be helpful
11 to your office in making sure HB 282 was
12 administered correctly?

13 A. No.

14 MS. MESSICK: Object to the form.

15 Q. Why would it not be helpful?

16 A. Because it does not provide any information
17 to our office that would help us assist
18 those people in being registered voters.

19 Q. Would it help you assist registrars in
20 ensuring that they weren't improperly
21 denying registration?

22 MS. MESSICK: Object to the form.

23 A. That information that we would need on that

1 is already available. I can already see
2 the crimes that they're disqualifying
3 people for. I don't need a concise report
4 of -- of that. I can see each one of
5 those.

6 Q. So if they are disqualifying someone for a
7 crime that is not listed in HB 282 or -- as
8 it is codified, they would be able to enter
9 that and you would see that they had done
10 that incorrectly?

11 A. Yes, we can see that. Yes. Now, that
12 doesn't mean that we go through and vet
13 every decision that's made by the
14 registrars either, but . . .

15 Q. Do you take any effort to review that?

16 A. There are -- there are some reviews that
17 take place. And when there's something
18 that we need to -- like this article would
19 make me want to go and review some of the
20 recent decisions made by every registrar.

21 Q. Do you recall that being done in response
22 to this article?

23 A. I think there was a review that took place.

1 I don't know to what end, but I think there
2 was a review.

3 Q. Are there any systematic reviews to look
4 through the data to make sure none of the
5 crimes that are being used as a basis for
6 disqualification are outside the scope of
7 HB 282?

8 A. Not at this point. Can I ask Misty a
9 question real quick?

10 Q. Yes.

11 MS. MESSICK: Quick break.

12 (Off the record.)

13 MS. MESSICK: So as we just
14 discussed off the record, I think there's a
15 need to clarify a little bit. Explain to
16 them what you were focusing on in trying to
17 answer their questions about the AOC.

18 A. So focusing on new registrations and
19 information that's sent over, they're no
20 longer sending over information related to
21 crimes that don't involve moral turpitude
22 to our registrars.

23 Q. Sorry. Who is "they"?

1 A. AOC.

2 Q. AOC is not sending information -- sorry.

3 Can you say that one more time?

4 A. So the crimes that they -- the felony

5 convictions that they send to our

6 registrars no longer include crimes that

7 are not defined as moral turpitude in the

8 HB 282.

9 Q. I see. So AOC doesn't send that to you.

10 What do you receive from county registrars,

11 if anything, about who they are registering

12 and who they are not?

13 A. So we see the entire system from the county

14 registrars.

15 Q. And so just to be clear now, if the county

16 registrar declines to enroll someone --

17 excuse me. Strike that.

18 If the county registrar declines to

19 register someone because they have a felony

20 conviction that is not on the list of

21 felonies and moral turpitude, you'll be

22 able to see that?

23 A. We should. There's -- they should be

1 putting information in the file. There's
2 definitely instances where they don't.

3 MS. MESSICK: Ask him how that
4 information goes in, though.

5 Q. Yeah. How is that information entered?

6 MS. MESSICK: Where it's put.

7 MR. STEWART: That's two different
8 questions, so maybe which one are we trying
9 to clarify?

10 MS. MESSICK: We're trying to get
11 to the point that that information would
12 exist in the notes or the tips, which is
13 why we pulled those for you in discovery
14 with the whole ES&S project.

15 MR. STEWART: Okay.

16 MS. MESSICKS: Tell him that the
17 information is in notes and --

18 A. So if the registrars did put it in the
19 right place, it would be in the notes
20 section of the voter's file.

21 Q. I see. And you knew that?

22 A. Yeah.

23 Q. Okay. Just to return to a couple of quick

1 questions about the documents we had been
2 discussing before the break, to go back to
3 Document 13, or Exhibit 13, Mr. Sheets'
4 first-in-time e-mail on the page that ends
5 in 227, that refers to a couple, and he
6 means registrars in the context, looking at
7 the second full paragraph of the e-mail
8 here. A couple told me they don't know how
9 the process works; two have told me they
10 don't adhere to the new system yet.

11 Was there any effort by the secretary
12 of state's office to identify who those two
13 registrars were who told Mr. Sheets that
14 they don't adhere to the new process?

15 A. I believe so.

16 Q. Do you recall whether there was any effort
17 to discipline those registrars?

18 A. We don't really have disciplinary authority
19 in that capacity.

20 Q. Was there any effort to ask them to resign?

21 A. I'm not a hundred percent sure. I'm not
22 sure.

23 Q. Do you have an inkling either way?

1 MS. MESSICK: Object to the form.

2 A. What's an inkling?

3 Q. If you had to guess now whether it did or
4 did not happen.

5 MR. STEWART: I understand that's
6 objectionable.

7 MS. MESSICK: So object to the
8 form.

9 Q. Do you think it's more likely than not?

10 A. Yes.

11 Q. Was there any effort to identify voters
12 affected by the individuals who stated that
13 they don't adhere to the new system?

14 A. Can you say that one more time?

15 Q. Was there any effort to identify -- I'll
16 restate it as potential voters -- who were
17 affected by the individuals who said they
18 don't adhere to the new system?

19 A. I don't -- that seems impossible to me, but
20 I would say no.

21 Q. Are you aware of whether a Henry County
22 registrar named Mary Ann Swann was ever
23 disciplined?

1 A. I'm not -- so discipline is not something
2 that we would ever do to a registrar.

3 Q. Was there ever a conversation with her
4 about the conduct of her responsibilities?

5 A. Not that I remember specifically about her.

6 Q. Do you recall whether she resigned?

7 A. I don't recall anything about Mary Ann
8 Swann.

9 Q. Do you recall anyone else resigning in
10 the -- in this October 2017 or a month
11 either way time period?

12 MS. MESSICK: You're asking any
13 other registrars?

14 MR. STEWART: Yes.

15 A. I don't remember specifics about anyone
16 resigning around all of that. I just
17 remember it being frustrating.

18 Q. So you don't remember Leigh Reed, Macon --
19 from Macon County either?

20 A. Not specifically.

21 Q. So you said -- did you suggest any effort
22 to find voters who had been affected by
23 these registrars who didn't adhere to the

1 new system?

2 MS. MESSICK: Object to the form.

3 A. Did I recommend?

4 Q. Yeah.

5 A. No.

6 Q. Because, I mean, you said you found it
7 frustrating. What kind of thing do you
8 think would be the appropriate response to
9 that news that registrars don't adhere to
10 the new system?

11 A. I mean, it's frustration from the
12 perspective of I was in the meeting where
13 they were told specifically what had
14 changed about the law, and it is very, very
15 frustrating to hear someone say the exact
16 opposite to a reporter.

17 Q. Do you think it would have been appropriate
18 for the secretary of state's office to act
19 on that frustration?

20 MS. MESSICK: Object to the form.

21 Q. Do you think there's anything the secretary
22 of state's office should have done
23 specifically with respect to these two

1 registrars who told Mr. Sheets they don't
2 follow the new system?

3 A. I think the secretary acted within his
4 authority.

5 Q. And what did he do?

6 A. I don't recall specifically, but I know
7 that he would not have disciplined anyone,
8 for instance.

9 Q. Does he have the authority to force a
10 registrar to resign?

11 A. No.

12 MS. MESSICK: Object to the form.

13 Q. Does he have the authority to request that
14 a registrar resign?

15 A. Don't we all have that authority?

16 Q. Does he have the authority to replace a
17 registrar?

18 MS. MESSICK: Object to the form.

19 A. No.

20 Q. Okay.

21 MR. STEWART: I think that's -- if
22 we want to take a lunch now, we can go off
23 the record.

1 MS. MESSICK: Okay.

2 (Lunch recess.)

3 Q. (By Mr. Stewart) Okay. So we're back on
4 the record after lunch. I did want to
5 clean up one thing. If you just would
6 refer back to Document 4 really quickly,
7 which was the October 30, 2014 memo that
8 you wrote, which says Bennett 1 in the top
9 right.

10 A. This?

11 Q. Yeah. I wanted to ask about the sentence
12 at the end of the first paragraph that
13 beings with, Additionally, we have found
14 some issues related to this disqualifying
15 factor that might change depending on
16 whether the individual was attempting to
17 vote in a local election as opposed to a
18 national election.

19 Do you recall what those issues were?

20 A. Yes. So this was referring to my -- this
21 is a limited understanding from -- when I
22 wrote this. But at the time, it appeared
23 to me that there were not disqualifying

1 felonies for federal voters and that that
2 law -- the law was different, and the Help
3 America Vote Act kind of -- or maybe it was
4 the National Voter Registration Act.

5 Either way, one of those laws, I guess, led
6 me to put that sentence in there.

7 Q. Has your understanding changed since then?

8 A. Well, I think we have -- in my capacity --
9 my capacity has changed and my role has
10 changed, and I've not really thought about
11 it since I wrote that sentence, to be
12 honest with you.

13 Q. Okay. So do you know whether there are
14 differences in how -- make sure I'm
15 phrasing this correctly from the document,
16 but whether there are differences in
17 whether someone is disqualified on the
18 basis of a felony conviction of moral
19 turpitude in national elections versus
20 local elections?

21 A. I don't know. I don't know how to answer
22 that question.

23 Q. Have you had any conversations on that

1 topic since HB 282 has been passed?

2 A. No.

3 Q. We can put that one back aside. I'm going
4 to show you what we'll mark as 16. This
5 will be Bennett 16.

6 (Bennett Exhibit 16 was marked for
7 identification.)

8 Q. And this begins with the number D025000 on
9 the bottom right. It appears to be an
10 e-mail from Clay Helms -- sorry. The last-
11 in-time e-mail appears to be from Clay
12 Helms to several individuals, including
13 you, with the subject line felon notices
14 and it's from October 10, 2017. Do you
15 recognize this e-mail?

16 A. I do.

17 Q. And so I want to refer to the first-in-time
18 e-mail from Clay Helms. Who is Clay Helms?

19 A. He's elections director in our office.

20 Q. I'm sorry. He refers to resuming
21 processing voters who are felons of moral
22 turpitude. What is he talking about there?

23 MS. MESSICK: Object to the form.

1 A. There's a window of time where nobody can
2 be removed or added to the voter -- well,
3 removed from the voter roles around an
4 election, and we were in the midst of the
5 senate special election at that point in
6 time.

7 Q. Okay. And then there's a response --
8 sorry. Do you know who that e-mail went to
9 since it's not reflected on the document?

10 A. It appears to have gone to registrars.

11 Q. And there's a response there from Harry
12 Butler. Do you know who Harry Butler is?

13 A. I do.

14 Q. Who is Harry Butler?

15 A. He's a registrar in Etowah County.

16 Q. And then he says al.com had a couple of
17 interesting articles last week re
18 registration of felons and statements made
19 by Mr. Merrill. Seems like a flip-flop.
20 Do you know what he was referring to by
21 a flip-flop?

22 MS. MESSICK: Object to the form.

23 A. Mr. Butler is a known instigator. He likes

1 to just call with problems. I know you
2 guys talked to Clay and I'm sure Clay had
3 more to share on Mr. Butler. But
4 Mr. Butler is very, very outspoken about
5 things whether he knows what he's talking
6 about or not.

7 Q. So I guess just more tied to this document,
8 did you have an understanding of what
9 specifically he was referring to as a flip-
10 flop?

11 MS. MESSICK: Object to the form.

12 A. No.

13 Q. Then he says, Some of those comments re
14 registrars being trained are such, and then
15 an ellipsis. Did you understand what he
16 was referring to there?

17 A. No.

18 Q. And Mr. Helms, it appears, forwards this
19 e-mail to Mr. Beal, Mr. Brewer, and you.
20 Do you know -- did you take any action on
21 the basis of this e-mail?

22 A. If we did, it would be to make sure that
23 Mr. Butler also understood to the same

1 extent that we felt all the registrars in
2 the state were already under the same
3 understanding, that we reiterated to him
4 the legal requirements for him to perform
5 his job.

6 Q. All right. So this will be Bennett 17 that
7 I'm going to show you.

8 (Bennett Exhibit 17 was marked for
9 identification.)

10 Q. And so what I've handed you is an e-mail.
11 The number at the bottom right is 56687.
12 That appears that the last-in-time e-mail
13 is from David Brewer to Clay Helms, copying
14 you, and the subject line is felon voting
15 issue. This is from August 30, 2017.

16 (Witness reviews document.)

17 A. I remember this.

18 Q. You do remember this? And so I think we
19 discussed Denine Richey before and you said
20 that for part of the time she worked in
21 your office and for part of the time she
22 was a registrar. Do you recall which
23 capacity she was working in at the time of

1 this e-mail?

2 A. Elections analyst.

3 Q. At your office?

4 A. Correct.

5 Q. Okay. And so your first-in-time e-mail
6 from 3:42 p.m. on the 23rd of August, it
7 says, One of the voters I assisted
8 yesterday to ensure that he was able to
9 cast the appropriate ballot contacted me
10 regarding amending his voter registration.

11 What are you referring to when you say
12 "one of the voters I assisted yesterday"?

13 A. So we were asked by Mobile County, or
14 Mobile City, to -- as we are in other
15 elections, local or statewide elections --
16 to just have a presence to make sure that
17 the appropriate processes are followed for
18 everybody. So we had a team of people -- I
19 believe it was six total people -- from our
20 office, broken into groups of two that were
21 present in Mobile on election day. We -- I
22 don't know if you're familiar with election
23 observation, but there's, like, a standard

1 practice and process for that, so we kind
2 of prepared each team member with that and
3 we went to multiple polling locations
4 throughout the day.

5 Q. And so you had asked, it appears, of
6 Ms. Richey about a specific individual
7 named Andre Love.

8 A. Yes.

9 Q. And you asked her to contact him to make
10 sure he has all the forms and he knows the
11 entire process on how to receive a pardon
12 if necessary or if he just needs to
13 resubmit an application; right? And then
14 the next day, Ms. Richey responds to you
15 and states, The crime is a federal crime
16 and they will have to try to do some
17 digging to determine if the crime is
18 disqualifying.

19 What do you understand that to mean?

20 A. Well, can we -- let's step back real quick.
21 With Mr. Love, it was -- so at one of the
22 polling locations, he came in and was not
23 on the voter's list, and he was told to go

1 and vote a provisional ballot. But then
2 when we called -- because I was there
3 telling them this is what you should --
4 this is the process you should do: If
5 somebody doesn't appear on the roll, the
6 first step is send them to this table and
7 call the registrars' office to see if they
8 should be on the rolls. And when we
9 called, we found out that he had a
10 disqualifying felony that was preventing
11 him from being a registered voter and
12 either he missed that in the mail or
13 something happened in the mailing process.
14 And so I told him at that point, We'll
15 figure this out. I can't do it right this
16 second, but tomorrow I will -- and this is
17 tomorrow from that day.

18 From that, though, to answer the
19 question, I understood that the Mobile
20 registrars' office had not encountered this
21 crime before and so they were going to need
22 to see if it had a corresponding state
23 crime.

1 Q. Did you give them any direction on how to
2 see if it had a corresponding state crime?

3 A. No.

4 Q. So what did you understand Ms. Richey to
5 mean by "do some digging"?

6 A. I understood her to mean that they were
7 going to need to do some research and to
8 review the list of federal crimes compared
9 against a list of state crimes.

10 Q. And what do you -- what does one research
11 to determine if the crime is disqualifying
12 if it's a federal crime?

13 A. I don't know the answer to that question.
14 That would be the registrar's decision.

15 Q. So each registrar makes their own decision
16 as to whether a federal crime is a
17 disqualifying crime?

18 A. No. I don't know the answer to that
19 question. I think -- I don't know the
20 answer to that question.

21 Q. You in the next e-mail going forward in
22 time ask Ms. Richey to please either --
23 please call either me or David when you

1 return from lunch.

2 A. Yes.

3 Q. Did that call take place?

4 A. No. There was actually a problem. I
5 was -- there was discipline, I believe,
6 issued to this employee because they had
7 not followed through with what they were
8 supposed to do. I was really irritated by
9 that.

10 Q. I see. So the trail went cold after this
11 e-mail?

12 A. So I was expecting her to follow up and do
13 something with that and there was nothing.

14 Q. So her e-mail, which is the next one going
15 forward in time, although I know it appears
16 to be sent earlier in time than your
17 response just based on the face of the
18 document. This says 11:10:42.

19 A. Yeah, but the date's six days different.

20 Q. You're absolutely right. Great point. So
21 then Ms. Richey says, I received a call
22 from Virginia at the Mobile Board of
23 Registrars office Friday. Her message said

1 that they were trying to determine if Andre
2 Love, interstate transp- -- I'll just state
3 it as in the document -- T-R-A-N-S-P of
4 racketeering has had his civil rights
5 restored.

6 So what did you understand her to mean
7 by having civil rights restored?

8 A. So I understood her really to mean that he
9 had -- he intended and thought that he had
10 followed the necessary processes to have
11 his voting rights restored through the
12 pardons and paroles process and that he was
13 confused as to why he was still not
14 eligible or not qualified to register.

15 Q. So it says, Because his crime is federal
16 and not state, she is waiting for a
17 response. Did you understand it to be a
18 response from federal authorities?

19 A. I did not know.

20 Q. Did you understand it to be a response from
21 state authorities?

22 A. I did not -- I didn't infer who she was
23 talking to. I just knew that the registrar

1 in this instance would have that authority
2 and it would not be my authority to tell
3 them.

4 Q. So is there -- other than a certificate of
5 eligibility to register to vote, or CERV,
6 is there another civil rights restoration
7 process that's required to register to
8 vote?

9 MS. MESSICK: Object to the form.

10 A. I'm not sure.

11 Q. And then I do see from the last-in-time
12 e-mail --

13 A. There it is.

14 Q. -- there's an e-mail from Mr. Brewer to
15 Mr. Bennett that says, You need to handle
16 this with -- excuse me -- Mr. Brewer to
17 Mr. Helms. It says, You need to handle
18 this with John Bennett at this point. It
19 is not progressing with the speed John
20 Bennett needs. What was he referring to
21 there?

22 MS. MESSICK: Object to the form.

23 A. Mr. Love needed an answer to his question

1 and we didn't feel like it was right to
2 leave him hanging. We told him we'd get
3 him an answer and it had been at least six
4 days since we'd last spoken.

5 Q. Ultimately was Mr. Love's conviction found
6 to be disqualifying?

7 A. I don't think I can answer that question
8 accurately. I don't remember.

9 Q. And do you know whether the provisional
10 ballot that he cast that you described in
11 connection with your first e-mail was ever
12 counted?

13 A. It's a possibility that it was counted.
14 However, under his registration status, it
15 would not -- by law should not have been
16 counted.

17 Q. So that -- that ballot, that provisional
18 ballot, should not have been counted?

19 A. Based on his registration status at the
20 time, because he was not registered.

21 Q. And just to be clear, you don't know either
22 way whether it was factually counted at the
23 end of the day?

1 A. I don't know.

2 Q. So earlier you said that there was one
3 instance you could recall of a voter having
4 an issue that was responded to fairly
5 quickly. Was this the incident you were
6 referring to?

7 MS. MESSICK: Object to the form.

8 A. This was -- yeah.

9 Q. This is the same incident?

10 A. I think so.

11 MS. MESSICK: Object to the form.

12 Q. We are at Bennett 18, which is what we'll
13 mark this.

14 (Bennett Exhibit 18 was marked for
15 identification.)

16 Q. So this is an e-mail, D023463 at the bottom
17 right. The last-in-time e-mail is from Eli
18 Hager to Stephanie Vaughn -- or Stephanie
19 Vaught -- probably not saying that
20 correctly -- copying you. Do you recognize
21 this e-mail?

22 A. Yes.

23 Q. And so the earliest e-mail in this chain is

1 from Eli Hager, who says he's a reporter
2 for The Marshall Project and has questions
3 about measures related to voter
4 enfranchisement for former felons. You
5 respond that you are confident that
6 Secretary Merrill would be available to
7 visit with you regarding this law. Would
8 you have discussed that with Secretary
9 Merrill before sending this response?

10 A. No.

11 Q. So did you make a determination that
12 Secretary Merrill would speak with this
13 reporter on your own?

14 A. Secretary Merrill has very clear -- has
15 been very clear with me in that he never
16 wants to not talk to a reporter, and so
17 unless I know that he has either, A,
18 already spoken to that news station in some
19 other capacity or, B, he's told me, I'm not
20 speaking at all on that, then every time he
21 wants to talk to them. Or if it's like a
22 what code section is this question, I might
23 just send that to them.

1 Q. I see. So is there any criteria for which
2 press requests you pass on to Secretary
3 Merrill and which you do not?

4 MS. MESSICK: Object to the form.

5 A. No, there's no formal process or anything
6 like that. It's just most of the time he
7 speaks to them.

8 Q. Would you have discussed Mr. -- Secretary
9 Merrill's responses to Mr. Hager's
10 questions?

11 A. You mean in planning?

12 Q. Excuse me. With Secretary Merrill, would
13 you have substantively discussed these
14 issues in order to answer Mr. Hager's
15 questions with Secretary Merrill?

16 A. No.

17 Q. Is there ever a time when he would not
18 answer questions about felon
19 enfranchisement?

20 A. Not to my knowledge.

21 Q. He never -- among your triage of issues he
22 said he would not speak on, he never said
23 felon voting is an issue that I don't want

1 to talk about?

2 A. Oh, no.

3 MS. MESSICK: Object to the form.

4 MR. STEWART: Can we have five
5 minutes?

6 MS. MESSICK: Of course.

7 (Short recess.)

8 Q. (By Mr. Stewart) So now I'm going to show
9 you what I'll mark as Bennett 19.

10 (Bennett Exhibit 19 was marked for
11 identification.)

12 Q. And this is Document D027848 in the bottom
13 right. The last in time appears to be an
14 e-mail from David Brewer to Ed Packard on
15 October 7, 2016. Do you recognize this
16 e-mail?

17 A. Not in great detail, but I do remember it.

18 Q. Do you recall whether any response was ever
19 made to the writer of this first-in-time
20 e-mail, Beverly Jo Jones?

21 (Witness reviews document.)

22 A. I don't remember.

23 Q. Do you know either way whether she's

1 registered to vote today?

2 A. I do not know.

3 Q. Looking at the October 7, 2016 e-mail from
4 4:42 p.m. that's on the page ending in
5 849 -- I think it's the second page of the
6 document -- that's an e-mail from David
7 Brewer to Ed Packard copying others, and it
8 says, Ed, please inform the secretary of
9 this matter and that we will discuss this
10 together, our team of staff, and report to
11 him thereafter.

12 Do you know why this particular voter's
13 matter was elevated to the secretary?

14 A. This is an issue that there's not --
15 there's not a clear -- it's not like, oh,
16 the registrar is just ignoring my calls or
17 something. There's not a clear switch to
18 make whatever this was resolved and so I
19 think it needed further discussion to see
20 if the secretary wanted us to reach out and
21 address that specifically or if -- or what
22 was the best next step.

23 Q. Were you part of the team of staff that

1 discussed this matter?

2 MS. MESSICK: Object to the form.

3 A. If I was in the office this day, then I
4 would have been in the meeting; but I don't
5 remember a specific discussion about this
6 issue.

7 Q. So do you know either way whether that
8 discussion ever occurred?

9 A. I cannot remember it occurring. That
10 doesn't mean it didn't happen.

11 Q. So then on the second e-mail on the first
12 page, Ed Packard writes to David Brewer,
13 copying others, I have called Secretary
14 Merrill to let him know about Beverly Jo
15 Jones' matter.

16 Did you ever have further conversations
17 with Secretary Merrill regarding this
18 matter?

19 A. No, sir.

20 Q. Do you know whether anyone else did?

21 A. I do not.

22 Q. And then this, I believe, is Bennett 20,
23 which I'll hand to you now.

1 (Bennett Exhibit 20 was marked for
2 identification.)

3 Q. And this has D058201 in the bottom right.

4 The last-in-time e-mail appears to be from
5 David Brewer to Clay Helms on
6 February 10th.

7 MS. MESSICK: And others.

8 MR. STEWART: And others, correct.

9 (Witness reviews document.)

10 Q. Do you recall this e-mail?

11 A. I remember questions like this type of
12 question.

13 Q. This is from February 10, 2017, so this
14 would be before HB 282; right?

15 A. Yes.

16 Q. And so when you say others like this type
17 of question, what are you referring to?

18 A. In -- in just questions that seem like --
19 or that you wonder where this person came
20 to this information, like who told you
21 that? That seems to be -- I mean, it's not
22 in the law, you would not have -- it
23 would -- it just seems weird how you got to

1 that thought. There were occasionally
2 questions like that that would come either
3 from new registrars or, you know, different
4 folks.

5 Q. Did you ever do any followup to ask where
6 they were getting that information from?

7 A. No. No, I didn't.

8 Q. Do you know whether anyone else in the
9 secretary of state's office did?

10 A. It would depend on the time. I mean, it
11 would just depend on the issue that was
12 brought up and all that kind of stuff.

13 Q. Do you know of any specific instances where
14 someone asked for follow-up information
15 from a registrar about where their
16 information was coming from?

17 A. No, I do not.

18 Q. And then --

19 A. Well, you mean like a member of the public
20 or do you mean our office?

21 Q. Someone from your office.

22 A. Oh, I know -- I'm sure that happened in
23 some instances. I couldn't recall

1 specifics. But I know that there are some
2 instances where we would want to know, you
3 know, is that your county attorney telling
4 you that, because listen to your county
5 attorney. But if it's just some attorney
6 or somebody that told you they were an
7 attorney, maybe don't listen to them.

8 Q. But was it typical for your office to defer
9 to the county attorneys on any advice they
10 would give on registration issues?

11 A. It was not our decision to make and so I'm
12 sure at some points there were references
13 to county attorneys, legal counsel.

14 Q. Although Mr. Helms did give an unequivocal
15 answer to this question -- right? -- that
16 more than one felony that is not moral
17 turpitude would not add up; right?

18 A. Right.

19 Q. And he didn't ask whether the sender of
20 this first e-mail, Susan Eason, had gotten
21 this information from her county attorney?

22 A. Correct.

23 Q. So were there some questions on which the

1 secretary of state's office would give
2 definitive advice?

3 A. In every -- in every instance that we could
4 avoid it, we would try to avoid that. I
5 think there are just some instances where
6 we felt like there was clear language in
7 the law that would clarify that.

8 Q. And then in the last-in-time e-mail,
9 Mr. Brewer asks, How are these questions
10 handled when they come in. What is the
11 answer to that question?

12 A. At this point, I don't know what the answer
13 was, but I know now it would go -- Clay --
14 it would all go through Clay at some point.
15 He would more than likely be the final
16 responder unless -- I mean, very rarely
17 would he not be the one responding to a
18 registrar's question.

19 Q. And the second part of Mr. Brewer's
20 question was, Who responds to that
21 requester. Do you know who that was at
22 this time in February 2017, February 10,
23 2017, this e-mail?

1 A. It would have most of the time been Clay
2 Helms. There's a possibility, depending on
3 the answer, that it could have been really
4 on this e-mail chain.

5 Q. And so -- sorry. Didn't mean to cut you
6 off.

7 A. Do I need to list them off?

8 Q. No. That's okay. And what would be the
9 answer today if the question were who
10 responds to a requester such as this?

11 MS. MESSICK: Object to the form.

12 A. It would still be Clay Helms.

13 Q. We'll make this entire packet Bennett 21.

14 (Bennett Exhibit 21 was marked for
15 identification.)

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. What is this?

19 A. This is a large number of excerpts from
20 my -- I guess it's just all the pages from
21 my journals about work.

22 Q. And so we're looking first at the page that
23 says Tuesday, February 27, 2017 on the top.

1 That's 398 at the bottom. And if I turn it
2 to 399, which is the next page, has a NASA
3 sticker on it, it says, Question topics to
4 be avoided, and under that is moral
5 turpitude. What did you mean by question
6 topics to be avoided?

7 (Witness reviews document.)

8 A. Can I take one second to ask Misty a
9 question real quick?

10 Q. Sure.

11 MS. LANG: Is this a privilege
12 question? If not, there is a question on
13 the table.

14 MR. STEWART: I assumed it was
15 privileged. Sorry.

16 MS. MESSICK: Well, I don't know
17 what the question is. I think I know what
18 the question is.

19 Do you have a -- is your question
20 about --

21 MR. SINCLAIR: Answer the question,
22 then, if you can, and then --

23 MS. MESSICK: Yeah, because it's --

1 MR. STEWART: Yeah. I was too
2 quick to --

3 A. What if I --

4 Q. (By Mr. Stewart) If it is a privileged
5 question, you can ask Misty first.

6 A. I don't --

7 THE WITNESS: What do you think?

8 MR. SINCLAIR: No. Don't ask.

9 Answer the question if you can.

10 MS. LANG: Answer the question. If
11 you have a question about a part of your
12 response that might have to do with a
13 conversation you had with a lawyer, you can
14 withhold that part of the response for now
15 and then speak to Misty about it.

16 THE WITNESS: No.

17 MS. LANG: If your question is
18 anything other than a conversation you had
19 with a lawyer --

20 Q. Yeah. Answer first.

21 MS. LANG: -- you should answer
22 that question now.

23 A. Okay. So the answer, I cannot remember

1 what I -- and the question I wanted to ask
2 was just if I could --

3 MR. SINCLAIR: You want to ask a
4 question of counsel; right? Or do you?

5 MS. MESSICK: What Win is saying,
6 you don't have to tell them what you wanted
7 to ask me.

8 MR. STEWART: Right.

9 MS. MESSICK: So your answer --

10 MR. STEWART: Yes.

11 MS. MESSICK: -- that you wanted
12 before we took a quick break is he doesn't
13 remember.

14 A. I don't remember.

15 Q. Then let's go ahead and you can ask the
16 question of counsel now.

17 MR. STEWART: We'll go off the
18 record.

19 (Off the record.)

20 Q. (By Mr. Stewart) Okay. So you had said you
21 don't recall what this referred to.

22 A. Correct.

23 Q. Might it refresh your recollection to see

1 the redacted portions of this document?

2 A. Possibly. I'm not sure.

3 Q. And along those same things, might it
4 refresh your recollection to see other
5 pages from around this same time?

6 A. I was trying to do that, actually, when we
7 were -- when I was trying to answer the
8 question. Appears not, though.

9 Q. Do you have an understanding or do you
10 recall now just what the phrase "question
11 topics to be avoided" referred to?

12 A. Well, so it's in -- it appears to be
13 towards the back of a notebook, which means
14 that it's not something that -- I don't
15 know. I really don't remember.

16 Q. Was anything going on around February 27,
17 2017 where you'd be establishing a list of
18 question topics to avoid?

19 MS. MESSICK: Object to the form.

20 A. No.

21 Q. Do you know whose questions this refers to?

22 A. No. Honestly, it probably refers to my
23 interactions with the media, reserving

1 these questions, this list of things, for
2 Secretary Merrill to speak to.

3 Q. So by "to be avoided," you mean by
4 yourself?

5 A. Yeah.

6 Q. And you think these are topics Secretary
7 Merrill would want to speak to himself?

8 A. Right.

9 Q. Would he have directed you to create this
10 list?

11 A. No.

12 Q. So this is your own ideas about what to
13 avoid?

14 A. Yeah.

15 Q. And why would you want to avoid those
16 topics?

17 A. Those are more political topics. Like we
18 talked about previously, I would defer to
19 him on political-type questions. Things
20 that were, you know, procedural or in the
21 law, it would not be -- I would respond to
22 those questions.

23 Q. And by political you mean related to future

1 policymaking?

2 A. Or past policymaking, why he made a
3 decision to pursue something as well.

4 Q. Looking at the page ending in 0427 down in
5 the bottom right, I can see that the next
6 page --

7 MS. MESSICK: Hold on. He's not
8 with you.

9 Q. Sorry. I apologize.

10 A. There we go.

11 Q. I can see that the next page is dated
12 April 6. I don't have the date for this
13 page. But down in the bottom, it says,
14 ACLU, and then the second bullet is,
15 Statement to registrars from Clay. I think
16 that's regarding steps to be taken. Do you
17 know what that refers to?

18 (Witness reviews document.)

19 A. I think that's related to a list
20 maintenance program and data that we would
21 have gotten from that program, like a voter
22 registration list maintenance program where
23 we would process data. I think that's what

1 that would be related to.

2 Q. Is that specifically related to felon
3 enfranchisement or just a broader list?

4 A. No, it is not really related to felon
5 disenfranchisement. I think that
6 conversation with them, with the ACLU, was
7 about how that process worked, which is why
8 we needed to follow up.

9 Q. And then the next page, June 23, 2017, the
10 next page in this packet, which is dated
11 June 23, 2017, the bullet is, Meeting with
12 ACLU, and then underneath, sub bullets are
13 moral turpitude and restitution. Do you
14 recall who was at that meeting?

15 A. I do not.

16 Q. Do you know whether Secretary Merrill was
17 at that meeting?

18 A. I don't remember.

19 Q. Turning to the next page in this packet,
20 which is July 28th -- it's dated July 28,
21 2017 at the top -- it says in the middle,
22 Moral turpitude editorial, with a question
23 mark in parentheses afterwards. Do you

1 know what that refers to?

2 A. Referring to drafting an editorial about
3 the moral turpitude law.

4 Q. Did you --

5 A. And I believe this may have been in
6 response to the Connor Sheets thing. Let's
7 see.

8 MS. MESSICK: It's Exhibit 13.

9 Q. I think based on the date, this would have
10 been earlier than the Connor Sheets e-mail;
11 right?

12 A. So I'm not sure specifically, then, what it
13 was.

14 MR. STEWART: Sorry.

15 MS. MESSICK: No. Never mind.

16 Q. Did you at some point draft an editorial
17 related to moral turpitude?

18 A. Yes.

19 Q. Was that published?

20 A. I cannot remember.

21 Q. Okay. Looking at the next page, which ends
22 in 448 in the bottom right, in the top left
23 there's a header, election staff meeting.

1 To the right-hand page there's the date

2 July 31, 2017. Other --

3 A. That would apply to both days.

4 Q. That applies to both days?

5 A. Yes.

6 Q. Okay. Thank you. The third bullet point

7 says, Bham jail folks wanting. Is "Bham"

8 Birmingham?

9 A. Yes.

10 Q. And what is that that you're referring to?

11 A. I think this is about the -- I can't -- I

12 don't know. I don't remember.

13 Q. And in the first sub bullet it refers to a

14 process for re-calling formerly

15 disenfranchised. What does that refer to?

16 (No immediate response given.)

17 Q. So can you -- just because I can't read it,

18 can you tell me what that first -- it looks

19 like an initial -- is in this?

20 A. First initial?

21 Q. Looks ES --

22 A. ES&S.

23 Q. I see. And what is ES&S?

1 A. That's our election services vendor,
2 Election Systems & Software.

3 Q. Got it.

4 A. So -- well, I think that this was --

5 MS. MESSICK: Actually, hold on one
6 minute.

7 MR. STEWART: Can he finish his
8 answer?

9 MS. MESSICK: Well, I'm concerned
10 that this actually is related to this very
11 litigation and maybe should have been
12 redacted, so I don't want him to finish
13 without consult -- we might want to re-call
14 this, is what I'm saying.

15 MR. STEWART: I see.

16 MS. MESSICK: So I don't want --

17 MR. STEWART: Can I ask if he got
18 this from a lawyer?

19 MS. MESSICK: Of course.

20 Q. (By Mr. Stewart) Did you receive this
21 information that's reflected here from an
22 attorney?

23 A. This information? More than likely it

1 would have been our staff attorney, Brent
2 Beal.

3 MS. MESSICK: Because the line
4 above talks about a preliminary injunction
5 not being granted, so he would have --

6 MR. STEWART: Right.

7 MS. MESSICK: -- gotten that from a
8 lawyer.

9 MR. STEWART: Well, that also could
10 have come from a business person. Not
11 business in this sense, but another staffer
12 in the office. This is a statement of
13 fact. But if -- we need to have further
14 privileged investigation on this?

15 MS. MESSICK: I think we need to
16 talk for one minute about what this
17 statement is.

18 MR. STEWART: Yeah, just because
19 I'm also unclear about the relationship
20 between that and the next bullet.

21 A. So this is -- keep in mind this is the
22 elections staff meeting, so this is just me
23 taking notes of everything that's --

1 Q. Right.

2 A. -- discussed, so it's not following any
3 form or specific information.

4 MS. MESSICK: Yeah, they're not
5 necessarily all related.

6 MR. STEWART: Okay.

7 MS. MESSICK: I think we need a
8 minute to find out what this statement is,
9 because I think it might be directly
10 derived from this litigation.

11 MR. STEWART: Let's go off the
12 record.

13 (Off the record.)

14 MS. MESSICK: We do think that this
15 is protected by attorney-client privilege,
16 because it was discussion of the litigation
17 with high-level people in the secretary of
18 state's office with counsel. However,
19 we're not going to call it back, so you can
20 proceed with your questioning.

21 MR. STEWART: Okay.

22 Q. (By Mr. Stewart) So we're still on 21, I
23 believe -- still on Exhibit 21, and we're

1 still on the page 150448 in the bottom
2 right. I think the question we had pending
3 was do you recall what this second bullet
4 means, ES&S needs way to have process for
5 re-calling formerly disenfranchised?

6 A. Yes. So would have been a process -- it
7 was a process that we thought would have
8 been helpful to have if we could pull up
9 all former -- like all felons that were in
10 the system that were disenfranchised or had
11 those voting rights taken away, if we could
12 call all of those up and see all of those.
13 And if I remember correctly, ES&S told us
14 it was not possible, it's not been done,
15 which means it's not possible.

16 Q. So that capability does not exist right
17 now?

18 A. Correct.

19 Q. And ES&S told you they would not be able to
20 do that?

21 A. Right. Because we would have done it had
22 it been possible.

23 Q. Okay. Looking at the page that ends in

1 150469 in the bottom right, this refers to
2 a meeting with SPLC. Is that the Southern
3 Poverty Law Center?

4 A. Yes, that's correct.

5 Q. And it says, Poll worker guide, some useful
6 change. Do you recall -- first, could you
7 describe to me what the poll worker guide
8 is?

9 A. Yes. So the poll worker guide is a
10 document that goes -- covers all of the
11 rules, regulations, laws that pertain to
12 the poll workers and how they should
13 administer the elections process on
14 election day.

15 Q. So would that cover any registration issues
16 related to felon enfranchisement?

17 A. No.

18 MS. MESSICK: Well, it might be
19 obvious, but counsel had to sit here and
20 look at the journal and mark not
21 responsive. So you asked him about SPLC
22 and about ACLU. We saw other things that
23 involved them that involved felons, so if I

1 did this, I probably gave it to you out of
2 an abundance of caution. And so that's
3 why --

4 MR. STEWART: Understood.

5 MS. MESSICK: Okay.

6 MR. STEWART: That's why I'm just
7 asking about it, to make sure. I mean,
8 it's here so I want to be certain.

9 MS. MESSICK: Okay. I just don't
10 want you to think that by leaving it I'm
11 representing that it's absolutely relevant
12 and then he's saying that it's not.

13 MR. STEWART: Sure. That's why I'm
14 asking Mr. Bennett.

15 MS. MESSICK: That's fine.

16 Q. (By Mr. Stewart) And then on 150473, this
17 is dated October 19, 2017. There's a box
18 that says moral turpitude with three
19 bullets -- uniformity, AOC sending only MT
20 over, and pardons and paroles counsels on
21 how. Do you recall the context for these
22 statements?

23 A. Yes. So basically we felt as though there

1 had been a uniform -- we were moving
2 towards much more uniformity in that
3 process. AOC, that's confirming that AOC
4 is only sending over the moral turpitude
5 felonies.

6 Q. I'm sorry. And by "sending over," you mean
7 data relating to those felonies?

8 A. Right. So data that the registrars would
9 review when reviewing a potential -- or a
10 registrant.

11 Q. I see. So that's data going to registrars?

12 A. Correct.

13 Q. Okay.

14 A. And then pardons and paroles counsels on
15 how, I think that's related to them
16 assisting, I guess, felons with the process
17 of how to get those rights restored.

18 Q. So this is pardons and paroles counseling
19 individual potential voters?

20 A. Right. Because that was a part of that
21 committee, was to make sure that pardons
22 and paroles covered their end of that by,
23 you know, basically doing a debrief with

1 people as they exited incarceration.

2 Q. And with respect to uniformity, what is

3 that referring to, making uniform?

4 A. The implementation of that term as it

5 relates to a disqualifying factor.

6 Q. I see. Because at this point, October 19,

7 2017, HB 282 would be a uniform list;

8 right?

9 A. Correct.

10 Q. So what more would need to be done to make

11 sure it was uniform?

12 MS. MESSICK: Object to the form.

13 A. Basically ensuring that there was uniform

14 implementation. So if you remember back to

15 the Connor Sheets article, there's

16 questions that are brought up, but if we

17 continued to do what our job is, which is

18 to make sure the registrars have the

19 information they need, we can get to

20 uniformity.

21 Q. And do you recall what was done to ensure

22 such uniformity?

23 A. Yeah. Correspondence, training. At this

1 point, training had taken place. And just
2 constant communication on that issue.

3 Q. How frequent are those trainings?

4 A. Yearly.

5 Q. Are the registrars required to take those
6 trainings?

7 A. No, I don't believe we can require them to
8 attend.

9 Q. So can a registrar who does not take that
10 training continue to perform their job
11 functions?

12 MS. MESSICK: Object to the form.

13 A. Legally?

14 Q. Yes.

15 A. Yes. However, they would be very
16 ineffective in administering the job
17 because part of the training is how to use
18 the system itself, part of this training is
19 the laws and rules and so forth.

20 Q. I'm going to go to 150481, which is dated
21 October 31, 2017. It says, Pardons and
22 paroles not sending full list of felonies
23 involving moral turpitude. What is that

1 referring to?

2 A. So that was an issue that was reported that
3 all of the crimes were not coming over. If
4 I remember correctly, it was like an IT
5 issue, that they had not done something
6 right in the processing.

7 Q. So this is a technical issue?

8 A. Yeah.

9 Q. And so that was -- that was an issue of
10 underreporting items that were
11 disqualifying felonies?

12 A. So I believe that the list did not -- was
13 not inclusive of all of the crimes that
14 were included on the legislation, if that
15 makes sense.

16 Q. So the list that was going to registrars at
17 that point was not including all the
18 crimes?

19 A. Right. So AOC sends over --

20 MS. MESSICK: Stop. This says
21 pardons and paroles, not AOC.

22 THE WITNESS: I'm sorry. I'm --

23 MS. MESSICK: This is something

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 179

1 else.

2 MR. STEWART: Okay.

3 MS. MESSICK: Unless I'm confused.

4 Q. (By Mr. Stewart) What's your understanding,
5 Mr. Bennett?

6 A. My understanding is that pardons and
7 paroles sends information related to felons
8 that have been convicted of crimes and
9 they're only going to send over the ones
10 related to moral turpitude. And at this
11 point, they weren't sending that full list.
12 Now, it may have been that I meant AOC in
13 who was sending it over, but whoever I'm
14 referring to was not sending the full list
15 of felony convictions that just involved
16 moral turpitude.

17 Q. Got it. On the next page, 150487, next
18 page in this packet, dated November 8,
19 2017, there's a note about Representative
20 Laura Hall and what appears to be a phone
21 number, and then how many disenfranchised
22 people in Hall area it says under that
23 bullet point. Do you recall ever

1 responding to that?

2 A. I do not remember, because I don't know
3 that we can show that. We don't have
4 access to that information, so I would
5 have -- that may have been when I found
6 that out, but I wouldn't have been able to
7 tell her anything.

8 Q. And then looking at 150498, November 28,
9 2017 is a reference to Kira -- it's either
10 Lemer or Lerner --

11 A. Lerner.

12 Q. -- I think Lerner -- Think Progress. Why
13 is this such a huge storm. What does that
14 note mean?

15 A. So Kira is another frustration for me.
16 Kira continued to misquote and misrepresent
17 the secretary's thoughts and opinions on
18 this and many other issues, and Kira,
19 though, in this instant -- instance -- was
20 again more than likely asking us about
21 felony disenfranchisement, but I don't know
22 what specifically "storm" was.

23 Q. Do you recall anything that would be

1 characterized as a huge storm around that
2 time?

3 A. Well, so this was right before the senate
4 special election. I can't remember.

5 Q. Do you recall any follow-up conversations
6 with Ms. Lerner on this issue?

7 A. Ms. Lerner is -- has reached a point where
8 she has published enough articles that her
9 direct misquotes/misquotations of the
10 secretary, that we try to avoid interacting
11 with her, so I have not had very much
12 interaction with her other than telling her
13 we're probably not going to answer her
14 questions.

15 Q. I see. So you wouldn't have had any
16 substantive response to Ms. Lerner here?

17 A. At this time, it's hard to say.

18 Q. Okay.

19 A. The secretary would have talked to her.

20 Q. The secretary -- anticipated my next
21 question. Did the secretary speak with her
22 in response to this?

23 A. It would have been -- he would have talked

1 to her. I would have gotten, like,
2 background from her and then he would have
3 responded.

4 Q. Okay.

5 A. Called her back.

6 Q. Looking at 150658, this is towards the end,
7 the top right is dated August 13, 2018.
8 The bottom left page under Monday but all
9 the way at the bottom says, Release on
10 previously-incarcerated peoples. What does
11 that refer to?

12 A. I can't remember.

13 Q. Then the next page, 150678, is dated
14 September 11, 2018, and there's a note here
15 that says, Ed Packard, jail inmates. What
16 does that refer to?

17 A. Something in regards to -- something that
18 needed to be sent to the prisons for
19 documentation or something like that. I
20 don't know any -- I don't remember
21 specifics. It's also -- obviously I meant
22 a different word because it's kind of
23 redundant.

1 Q. Jail inmates you mean?

2 A. Right. But it's a request for documents or
3 something that Ed would have brought up in
4 this meeting.

5 Q. So this was a document request
6 specifically?

7 A. I believe so.

8 Q. And then turning next to the final page in
9 this packet, 150679.

10 A. Yes.

11 Q. The right side is dated September 12. This
12 says Wednesday. And then it says, Voter
13 registration. One-third split on map
14 felonies. I believe that's one-third,
15 perhaps one three.

16 A. Yes. That's right.

17 Q. What does that refer to?

18 A. So that's the -- that's my notes on how I'm
19 supposed to make alterations to the draft
20 form that we are trying to amend. We've
21 stopped right now, but we're attempting to
22 amend that form.

23 Q. So this refers to the voter registration

1 form?

2 A. Correct.

3 Q. Okay.

4 MR. STEWART: That is the last of
5 my questions.

6 MS. MESSICK: Okay. Thank you.

7 Q. (By Mr. Stewart) Thank you, Mr. Bennett.

8 MR. SINCLAIR: Off the record to
9 consult for a minute or go straight ahead?

10 MS. MESSICK: Sure. It'd probably
11 be more efficient if we take a quick break.

12 MR. STEWART: Sure.

13 (Short recess.)

14 EXAMINATION

15 BY MS. MESSICK:

16 Q. Mr. Bennett, I want to ask you just a few
17 questions. You started working with
18 Secretary Merrill when he was
19 Representative Merrill in April of 2013; is
20 that right?

21 A. Yes, ma'am.

22 Q. And at that time, that was in a volunteer
23 capacity?

1 A. Yes, ma'am.

2 Q. And that continued through the election in
3 November of 2014?

4 A. Yes, ma'am.

5 Q. And then were you involved in the
6 transition to the secretary of state's
7 office through January of 2015?

8 A. Yes, ma'am.

9 Q. In January of 2015 when Secretary Merrill
10 took office, were you also -- did you also
11 become an employee of the state?

12 A. Yes, ma'am.

13 Q. Were you full time or part time at that
14 point?

15 A. Part time.

16 Q. Did you ever take a leave of absence from
17 the job?

18 A. Yes, ma'am.

19 Q. Okay. Do you remember when that was?

20 A. It was just for a month period of time. I
21 had to finish a couple of credit hours at
22 school so I had to study abroad.

23 Q. Okay.

1 A. I was gone for the month of July.

2 Q. Of 2015?

3 A. Yes, ma'am.

4 Q. Okay. And I believe you said that you then
5 graduated in about August of 2015?

6 A. Correct.

7 Q. And at that point you went into full-time
8 work with the secretary of state's office?

9 A. Correct.

10 Q. How many members of the boards of
11 registrars are there in the state of
12 Alabama?

13 A. There are 201.

14 Q. And how many are there in most counties?

15 A. There are three.

16 Q. And are there any exceptions to that rule?

17 A. Yes. There are one or two counties that
18 have four, and then there's -- Jefferson
19 County has one.

20 Q. Thank you. Do you recognize the phone
21 number (334)328-2787?

22 A. That is the phone number that Secretary
23 Merrill gives to every single Alabamian.

1 Q. Can anyone call him at any time with an
2 election-law question?

3 A. Hundred percent, yes, ma'am.

4 Q. And will he answer their question or direct
5 somebody in the office to answer that
6 question?

7 A. Yes, ma'am. Every time.

8 Q. Did Secretary Merrill choose the members of
9 the voter disenfranchisement and
10 restoration of voting rights exploratory
11 committee?

12 A. Yes, ma'am.

13 Q. Do you know if he had any goals or criteria
14 in selecting the members?

15 A. He did. He wanted the group to be as
16 politically diverse as well as racially
17 diverse as he could -- he could get it
18 accomplished.

19 Q. Was he also trying to get some variety in
20 terms of rural versus urban?

21 A. Yes.

22 Q. What is the race of Senator Linda Coleman?

23 A. She's African-American.

1 Q. What is the race of Kenneth Glasgow?

2 A. African-American.

3 Q. What is the race of Cliff Walker?

4 A. African-American.

5 Q. Were there other members of the committee
6 who were African-American?

7 A. Yes.

8 Q. Who were they?

9 A. Representative Chris England, and I think
10 David Faulkner is also African-American.
11 I'm not sure.

12 Q. Okay. And Alabama Appleseed and the ACLU
13 both have representatives on this
14 committee?

15 A. They both addressed the committee.
16 Appleseed did not have, that I recall, a
17 representative on the committee.

18 Q. Okay. ACLU did have a representative on
19 the committee?

20 A. I believe so, yes, ma'am. Yes.

21 Q. What does secretary -- what is or are
22 Secretary Merrill's overriding goals with
23 respect to elections in Alabama?

1 A. The central goal is to make it easy to vote
2 and hard to cheat, and what that means is
3 that we have to make the registration
4 process and the voting process as
5 accessible to every Alabamian that should
6 have access to that system as possible as
7 easy and user-friendly as possible.

8 Q. What have you personally been involved in
9 to help meet that goal?

10 A. I created the online voter registration
11 system; I created the app, the phone app,
12 for Android and iOS devices. I would like
13 to point out that that's been responsible
14 for registering nearly 600,000 people --
15 at this point, it would be more -- which is
16 very exciting.

17 Q. How many people have registered to vote in
18 Alabama since Secretary Merrill took
19 office?

20 A. It's more than a million now.

21 Q. When -- so there's long been a voter
22 registration form on the secretary of
23 state's website; right?

1 A. Correct.

2 Q. When you say the online form, you're not
3 just talking about printing out a PDF that
4 somebody can mail in?

5 A. Correct. So this is -- the entire form is
6 form-fillable online. When you click
7 "submit," it is taken through the system
8 and then is sent to the registrars' office
9 for the county in which you should be
10 registered to vote in and then they process
11 it as if they got a paper form.

12 Q. Was there any new law passed that required
13 Secretary Merrill to create that online
14 form?

15 A. No, ma'am. That was his -- that was a goal
16 before we got there. We actually -- the
17 office could do that since 2009, had gotten
18 permission from the attorney general's
19 office, but they had not gotten it done.

20 Q. Is it your understanding or your belief
21 based on your involvement in Secretary
22 Merrill's exploratory committee that the
23 issue of whether fines, fees, restitution

1 and the like should be repaid was much more
2 contentious than the question of which
3 felonies should be on the list of crimes --

4 A. That's correct.

5 Q. -- involving moral turpitude?

6 A. That's correct.

7 Q. Ask you to look again at Exhibit 12, which
8 is a document that Cliff Walker submitted
9 with respect to that committee.

10 Mr. Stewart asked you about the
11 parenthetical to include traffic offenses,
12 and I believe you said that you -- that you
13 understood that statement to be part of a
14 recommendation by Mr. Walker. Do you
15 remember that testimony?

16 A. Yes, ma'am.

17 Q. Does it make sense that -- I get that we're
18 trying to read the mind of somebody who's
19 not here, but they asked you about it so I
20 need to follow up. Does it make --

21 MR. STEWART: I'm just going to
22 object to that statement.

23 Q. Does that make sense that that would be a

1 recommendation when pages 2 and 3 are
2 clearly recommendations?

3 A. It does not make sense.

4 Q. Does the beginning of Document 12 refer to
5 the current law?

6 A. It was -- it would appear that it's an
7 attempt to, yes.

8 Q. And do you know if the current list of
9 crimes involving moral turpitude that are
10 listed there are the crimes that prevent a
11 person from being eligible for certificate
12 of eligibility to register to vote?

13 A. Yes.

14 Q. Thank you. You've been in prison lately?

15 A. I have, actually.

16 Q. Tell me about it.

17 A. I went with our attorney Brent Beal to
18 speak to a group of -- it was a couple --
19 two groups of incarcerated individuals to
20 tell them about registering to vote, that
21 they had not lost that access and that they
22 should in most cases or -- they have not
23 lost that access in most cases and should

1 register to vote and participate because
2 they can vote in absentee ballot and
3 continue to be a contributing member of
4 society.

5 Q. Do you remember which facility that was?

6 A. I -- I don't remember the name of it.

7 Q. Was that in the last couple of months?

8 A. It was. It was right at the beginning of
9 August.

10 Q. Thank you. I want to talk to you for a few
11 minutes about the voter registration
12 system. Is there -- to your knowledge, is
13 there a field of the voter registration
14 system where registrars are required to
15 write the name of a disqualifying felony?

16 A. Not specifically.

17 Q. Are there -- is there a place for notes
18 where registrars may or may not do that?

19 A. Yes.

20 Q. Is it also possible for registrars to scan
21 documents that might concern disqualifying
22 felonies into the voter registration
23 system?

1 A. Yes, ma'am.

2 Q. You mentioned earlier that the voter
3 registration system is run top down from
4 the secretary of state's office.

5 A. Yes, ma'am.

6 Q. But it's the voter registrars in the
7 counties who make determinations about who
8 can vote?

9 A. Correct. Yes, ma'am.

10 Q. Is there -- and there --

11 A. Or who can register.

12 Q. Right. Who can register. And are you
13 aware of any report that a member of the
14 board of registrars can run from the voter
15 registration system that the secretary of
16 state's office cannot also run?

17 A. No, ma'am.

18 Q. Is it your understanding that when the
19 Administrative Office of Courts sends over
20 new felony convictions to the boards of
21 registrars that they are only sending over
22 those convictions that are for felonies
23 involving moral turpitude as defined by the

1 2017 legislation?

2 A. Yes, ma'am.

3 Q. You mentioned you helped a voter named

4 Andre Love?

5 A. Yes, ma'am.

6 Q. What is his race?

7 A. African-American.

8 Q. I ask you to look at the Exhibit 2, which

9 is the October 2014 version of a Board of

10 Registrars Handbook. Who are the -- are

11 the contributing members listed at the

12 bottom of the first page members of the

13 boards of registrars?

14 A. Yes, ma'am.

15 Q. Were they selected to assist Secretary

16 Merrill in learning about and assisting the

17 registrars through this handbook?

18 A. Yes, ma'am.

19 Q. Do you know how they were selected?

20 A. Secretary decided we needed members from

21 big counties, small counties -- or rural

22 and city -- and African-American and white

23 registrars.

1 Q. And are all -- did he get what he wanted?

2 Did he get representatives of rural and

3 urban and black and white?

4 A. Yes, ma'am.

5 Q. Those are all the questions I have.

6 Mr. Stewart may or may not have a few more.

7 EXAMINATION

8 BY MR. STEWART:

9 Q. I do just have a few more. Ms. Messick
10 asked you about the exploratory committee
11 that we discussed earlier as well; right?

12 A. Yes, sir.

13 Q. Do you know whether that committee or any
14 subset of it ever came up with a proposed
15 list of disqualifying felonies?

16 A. I think that committee wrote the
17 legislation, so I would assume so.

18 Q. So was the list of the -- of disqualifying
19 felonies proposed by that committee the one
20 that was ultimately placed in the
21 legislative draft of HB 282?

22 A. I know that the legislation -- the
23 committee wrote the final version of the

1 legislation.

2 Q. Sorry. When you say "the committee," who
3 specifically wrote that final version?

4 A. It was the -- it was a committee that met
5 to write legislation and . . .

6 Q. Do you know whether there was ever at any
7 point a list of disqualifying felonies
8 proposed by the committee that is different
9 from the list that ultimately ended up in
10 the final version of HB 282?

11 A. Not to my knowledge.

12 Q. Earlier Ms. Messick asked you about how
13 many individuals had registered to vote
14 since Secretary Merrill came into office.
15 How many individuals who were before 2017
16 told they had a disqualifying felony but
17 whose disqualifying felony does not appear
18 in HB 282 has since registered to vote?

19 A. That's -- there's no way to make that
20 determination.

21 Q. And the secretary of state's office has
22 taken no action to try and make that
23 determination?

1 A. If that determination could have been made,
2 the secretary of state's office would have
3 been able to give me an answer to that
4 question. There's no way to determine a
5 group of people that did not have an
6 interaction with the state office that were
7 told no.

8 Q. Are there records from before 2017 of who
9 was told they had a disqualifying felony
10 conviction?

11 A. Not to my knowledge. Well, there's --
12 there's whatever the registrar may or may
13 not have put in the voter file, but beyond
14 that, I don't have any knowledge of
15 anything.

16 Q. So some registrars may have voter files
17 from before 2017 that reflect the felony
18 for which they were not registering an
19 individual?

20 MS. MESSICK: Object to the form.

21 A. Well, it's not like the registrars
22 themselves would have it. It's in the
23 voter registration system if it exists.

1 Q. But those records may exist?

2 A. Correct.

3 Q. Was any effort made to look at those
4 records and determine how many individuals
5 had been disqualified on the basis of a
6 felony that is not one of the felonies
7 listed in HB 282?

8 MS. MESSICK: Object to the form.

9 A. I don't remember any.

10 Q. And was any effort made to contact
11 individuals who were disqualified on the
12 basis of a felony that is not one of the
13 felonies listed in HB 282?

14 MS. MESSICK: Not only do I object
15 to the form, but I want it on the record
16 that that has reached an abusive level.
17 That was discussed extensively earlier. He
18 has told you he does not believe it can be
19 done.

20 You can tell him again.

21 Q. You may answer.

22 A. It can't be done.

23 Q. Thank you. That's all my questions.

JOHN CALVIN BENNETT, JR., 9/20/2018

Page 200

1 MS. MESSICK: All right.

2 MS. LANG: Can we leave it open for
3 just a moment?

4 MR. STEWART: Yeah. So I can take
5 a quick break.

6 MS. LANG: I apologize.

7 (Off the record.)

8 Q. (By Mr. Stewart) This is just a quick
9 clarifying question on how the system
10 works. So you had said now, I think, that
11 if someone -- when the list of -- when the
12 list is sent over to a registrar, it won't
13 reflect felonies that are not on the list
14 of crimes of moral turpitude -- it won't
15 create a match.

16 A. If the crime -- if the person -- so if I'm
17 the voter and I've submitted my application
18 and I have a crime of moral turpitude, my
19 crime should have been submitted to that
20 registrars' office. But if my crime -- I
21 have a felony conviction that was not moral
22 turpitude, it should not have been
23 submitted to that office.

1 Q. Let me clarify. If I'm a first-time
2 registrant today and I have a crime -- I
3 have a felony conviction from 2014, sort of
4 before HB 282, would that -- and it's not
5 currently -- it's not on the list of
6 felonies of moral turpitude, would it still
7 create a match because it was pre 2017?

8 A. I don't think so.

9 Q. Okay. I'm sorry. You also mentioned that
10 you brought or discussed with current
11 people who are incarcerated obtaining
12 absentee ballots. What are the procedures
13 for obtaining an absentee ballot if you are
14 currently incarcerated?

15 A. It's the same as if you're living in a
16 house, somewhere you -- except you have to
17 go through your PO -- or is it CO?
18 Corrections officer -- yeah, CO to get the
19 proper application but then you would
20 submit -- so you could submit a paper
21 request or you could get the application
22 from a CO and then submit that to the
23 registrars' office.

1 Q. So are there paper request forms available?

2 A. There's supposed to be, yeah.

3 Q. Or it can be requested of the CO, a request
4 form?

5 A. From a corrections officer. That's just
6 the person that I think they would talk to
7 there.

8 Q. And is there any sort of program -- leaving
9 aside your visits, is there any sort of
10 program within the prison to make folks --
11 let them know that either these paper
12 request forms are available or they can
13 request them from their CO?

14 A. Well, we've worked with, I think, pardons
15 and paroles and corrections to put certain
16 things in the prison posters that indicate
17 what can be done, how you can vote, how you
18 can register, and that kind of thing.

19 Q. Okay. Thank you.

20 MR. STEWART: That's it.

21 (The deposition of John Calvin
22 Bennett, Jr., concluded at
23 3:46 p.m. on September 20, 2018.)

1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA)
3)
4 ELMORE COUNTY)

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6 I do hereby certify that the above and
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13 witness.

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15 I further certify that I am neither of
16 counsel, nor any relation to the parties to
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20 I further certify that I am duly
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A			
a.m	act	158:2	32:10 33:17
1:23	13:3,4 16:13 34:12,14	advocacy	Alabamian
ability	34:17,21 40:5 91:3	61:3 62:20	186:23 189:5
12:12,20 20:4,6 47:9	133:18 136:3,4	affect	alcohol
114:15	acted	12:11,19	12:11
able	134:3	affirmatively	allowed
9:15,16 45:7 64:23	action	110:1	18:15 19:1 58:2
100:2 113:1,3 126:8	1:8 25:16,17 75:19	affirmed	120:11
128:22 141:8 172:19	139:20 197:22	8:6	alterations
180:6 198:3	203:12	African-American	183:19
abroad	activities	111:9,11 187:23 188:2	alternative
185:22	25:12	188:4,6,10 195:7,22	49:6
absence	activity	agencies	ambiguous
185:16	39:1	67:22 68:13	44:15,18,22 45:7,11
absentee	add	agency	amend
193:2 201:12,13	11:20 33:6 63:6 124:9	43:12,15	57:3 183:20,22
absolutely	157:17	ago	amending
103:4 145:20 174:11	added	10:7,8 44:12	141:10
abundance	26:23 27:1 122:3	agree	amendments
174:2	138:2	34:17 67:14,21 68:4,8	56:18,20 57:1,12
abusive	addition	80:6 82:18 94:17	America
199:16	67:20	95:10 123:21,22	16:12 91:3 136:3
access	Additionally	agreed	analysis
180:4 189:6 192:21,23	135:13	3:2,18	17:8
accessible	address	agreement	analyst
189:5	153:21	59:23 72:16	141:2
accompanied	addressed	agrees	ancillary
106:9,11	120:9 188:15	68:11 92:3	53:9
accomplished	adequate	ahead	Andre
187:18	105:6	87:18 104:4 162:15	142:7 146:1 195:4
accord	adhere	184:9	Android
77:1	104:8 107:16 130:10	al	189:12
ACCR	130:14 131:13,18	1:5,11 110:16	Ann
203:16,21	132:23 133:9	al.com	131:22 132:7
accrued	administer	103:14,15 104:20	Anniston
68:14	99:9 120:16 173:13	110:16 138:16	110:18
accurate	administered	Alabama	anniversary
50:8,16,18 51:7	125:12	1:2,19,22 2:14,15,19	15:6
114:15	administering	2:21 3:9 6:6 7:3	annually
accurately	177:16	13:13 19:21 33:23	105:15
148:8	Administrative	35:11,16 36:8,16	answer
ACLU	194:19	46:2 51:7 71:5,8	9:6 11:14 12:3,12,20
69:4 74:14,15 165:14	advancing	76:11 81:8 186:12	14:2 16:8,9 18:9
166:6,12 173:22	65:1	188:12,23 189:18	22:11,12,15,20,23
188:12,18	advice	203:2,15,21	29:9,23 31:10 33:2
	25:4,14 37:2 157:9	Alabama-specific	34:5 36:9 40:2 42:16

49:7 50:13 51:3 52:19 53:4 78:13 85:18 127:17 136:21 143:18 144:13,18,20 147:23 148:3,7 151:14,18 157:15 158:11,12 159:3,9 160:21 161:9,10,20 161:21,23 162:9 163:7 169:8 181:13 187:4,5 198:3 199:21 answered 40:7 answers 9:17 10:18 58:22 203:7 anticipated 116:20 181:20 anybody 86:17 96:16 115:21 anywise 203:12 AOC 127:17 128:1,2,9 174:19 175:3,3 178:19,21 179:12 apologize 165:9 200:6 app 189:11,11 appeal 19:1,3,4,5 21:11 appear 143:5 192:6 197:17 APPEARANCES 2:1 appeared 25:20 46:4 135:22 appears 29:13 41:8 56:10 65:19 66:23 67:7 69:3 70:12 76:6 79:19 102:14 103:21 120:20 137:9,11 138:10 139:18 140:12 142:5 145:15	152:13 155:4 163:8 163:12 179:20 Appleseed 71:5,20 74:15,20,21 188:12,16 applicants 119:21 122:21 application 20:21 21:5 37:22 38:6 50:6 81:17 91:7 100:7 122:4 142:13 200:17 201:19,21 applies 168:4 apply 18:18 31:3 113:8 114:1 168:3 appropriate 133:8,17 141:9,17 approve 95:3 April 14:22 15:19 88:8 165:12 184:19 arbitrary 47:9,11,15 58:3 area 179:22 argument 62:19 72:16,18 article 104:20 108:6 109:17 109:18 126:18,22 176:15 articles 109:11,20 110:2 138:17 181:8 articulate 48:3 aside 137:3 202:9 asked 10:19 14:8 16:8 23:15 24:1 29:14 36:14 40:3,7 42:4 47:4 83:16,22 84:7 94:11	141:13 142:5,9 156:14 173:21 191:10,19 196:10 197:12 asking 9:14 37:1 48:17 51:1 60:6 63:20 66:13 70:13 81:10 85:12 96:4 108:1 119:1 123:10,19 132:12 174:7,14 180:20 asks 30:5 158:9 aspect 44:19 62:4,8 64:1 65:8 aspects 123:10 assist 125:17,19 195:15 assistance 122:17 assisted 141:7,12 assisting 175:16 195:16 Associated 110:19 association 42:19 43:1,8 assume 8:19 58:17 102:23 196:17 assumed 160:14 assumption 49:15 attach 55:2 attached 57:8 70:13 76:10 78:16 attachment 42:9 54:9 65:14 70:7 76:2,18,21 attempt 48:2 83:19 192:7	attempted 113:17 attempting 135:16 183:21 attend 70:1 92:19 177:8 attended 53:15 71:13 72:7 attorney 1:18 2:13 8:20 11:1,7 93:4 157:3,5,5,7,21 169:22 170:1 190:18 192:17 attorney-client 171:15 attorneys 24:2 157:9,13 August 13:13 140:15 141:6 182:7 186:5 193:9 authorities 146:18,21 authority 20:4 21:22 23:23 97:11 130:18 134:4,9 134:13,15,16 147:1,2 authors 69:3 automatic 80:7,16 81:17 automatically 81:21,23 104:5 available 126:1 150:6 202:1,12 Avenue 1:19 2:4,14,20 avoid 158:4,4 163:18 164:13 164:15 181:10 avoided 160:4,6 163:11 164:3 aware 25:3 38:17 39:1,6 100:19 111:7 115:6 131:21 194:13

B			
B	88:10	116:15 121:1,3 135:8	194:14 195:9 203:15
150:19	beach	137:5,6 140:6,8	boards
back	104:15	147:15,18,20 149:12	115:5 186:10 194:20
14:12 32:3 37:8,15,17	Beal	149:14 152:9,10	195:13
44:5 48:22 49:20	107:2,12 114:21	154:22 155:1 159:13	body
53:16 60:14 63:16,17	117:11 139:19 170:2	159:14 174:14 179:5	21:21 23:22 43:2 44:2
71:7 88:6 91:8 94:4	192:17	184:7,16 202:22	45:15 58:12,14
100:5 109:9 111:23	bear	Bennett's	104:22
119:14 130:2 135:3,6	35:1	7:7	book
137:3 142:20 163:13	began	best	46:3
171:19 176:14 182:5	57:18 60:16 89:10	9:23 11:14 16:18 48:2	boss
background	beginning	83:19 114:15 116:12	102:4
13:10 182:2	34:8 44:17 46:12 58:7	153:22	bottom
bad	65:20 92:2 105:17	better	26:14 27:10 29:12
72:13,15	192:4 193:8	10:5 11:19 50:4	34:8 35:19 41:7,7
balances	begins	Beverly	51:17 56:9 59:9
67:21 68:12	41:6 103:20 137:8	152:20 154:14	61:22 65:18 70:11
ballot	behalf	beyond	71:2 76:6 77:5 79:23
141:9 143:1 148:10,17	1:17 102:6	39:15 198:13	102:13 103:21
148:18 193:2 201:13	beings	Bham	114:20 137:9 140:11
ballots	135:13	168:7,7	149:16 152:12 155:3
201:12	belief	big	160:1 165:5,13
Barbara	190:20	91:2 195:21	167:22 172:1 173:1
116:3 117:4	believe	biggest	182:8,9 195:12
barred	26:3 33:15 35:17	62:10 63:9	box
49:4	39:14 47:23 48:13,20	bill	174:17
barrier	56:7 57:11 60:13	69:5 89:22 91:23	break
62:22	65:10 69:16 82:15	94:16 95:15 96:1,3,6	10:22 11:4 18:13
based	84:5 105:16,22 116:6	Birmingham	46:15,20 47:22 84:21
5:19,22 39:23 60:23	120:17 122:5 130:15	168:8	85:14 86:10 127:11
68:18 69:19 108:11	141:19 145:5 154:22	bit	130:2 162:12 184:11
116:7 145:17 148:19	167:5 171:23 177:7	13:10 23:7 84:13	200:5
167:9 190:21	178:12 183:7,14	110:7 127:15	breaking
bases	186:4 188:20 191:12	black	51:23
18:14	199:18	93:5 95:18 111:3	Brent
basically	benefit	196:3	93:12 95:21 107:2,12
9:5 15:3 47:7 83:11,16	84:17 124:12	blanked	114:21 117:10 170:1
85:3 105:19 110:5	Bennett	55:12	192:17
120:11 174:23	1:15 3:4 8:5,11 26:7,8	BLOCK	Brewer
175:23 176:13	27:5,6,11 28:9,10	2:4	55:4,20,23 57:13
basis	34:6,9 40:21,22,23	board	107:12 114:22
73:8,18 75:5 112:6	41:9 42:9,12 44:6	5:6,8 26:12 27:13	117:10 139:19
113:19 127:5 136:18	46:21 47:22 52:21	28:16 29:5 41:21	140:13 147:14,16
139:21 199:5,12	54:5,6,8,11 65:12,16	42:18 43:8,19 47:2	152:14 153:7 154:12
basketball	70:5,8 76:3 81:10	48:15 76:12 97:14	155:5 158:9
	102:9,10,12 114:18	119:18 145:22	Brewer's

158:19	13:6 99:20 104:16,18	203:12	characterized
bribery	139:1 143:7 144:23	caution	181:1
23:2	145:3,21 171:19	174:2	chart
Bridgette	172:12 187:1	Center	30:8
1:20 3:7 203:19	called	2:8 173:3	cheat
brief	77:17 143:2,9 154:13	centering	189:2
57:19	182:5	63:5	chief
briefly	calling	central	16:4 31:19 55:21
116:19	37:1	189:1	chisement
bring	calls	centrally	6:6
94:3	93:17 99:15 104:1	123:16	choose
broad	153:16	certain	187:8
118:22	Calvin	29:1,8 63:23 89:15	Chris
broader	1:15 3:4 8:5 41:9	94:14 106:22 116:12	188:9
166:3	202:21	117:1 174:8 202:15	chronologically
broken	Cam	certificate	14:14
141:20	87:23 88:2	79:4,15 147:4 192:11	circulated
Brooke	camp	203:1	31:8,18
120:22	88:10	Certified	circumstance
brought	campaign	203:15,20	100:8
156:12 176:16 183:3	2:8 14:13 15:8,15,18	certify	circumstances
201:10	15:20 17:7,13,15	203:6,11,14	10:17
Brown	25:18,23 28:10 31:14	CERV	citizenship
41:4	40:17 47:3 50:9,10	147:5	30:18 32:16
build	89:10,18 90:16	chain	city
25:18	capability	103:20 116:23 149:23	141:14 195:22
built	172:16	159:4	civil
29:7	capacity	chairman	1:8 3:6,17 4:1 146:4,7
bullet	1:11 130:19 136:8,9	76:11	147:6
35:18 79:5 165:14	140:23 150:19	chance	clarification
166:11 168:6,13	184:23	54:13 116:18	7:6 44:4
170:20 172:3 179:23	Capitol	change	clarifications
bullets	2:19	72:21 75:13,14,15,16	6:15 115:6
166:12 174:19	care	75:17 96:22 113:13	clarified
Bullock	12:17	113:15 120:8,10	45:20
117:6	Caren	135:15 173:6	clarify
business	120:22	changed	11:17 12:3 25:10 37:8
16:11 17:17 170:10,11	case	74:5,9 99:13 105:20	42:15 46:21 108:3
Butler	3:20,21 46:7 58:12	105:21 108:13	110:13 127:15 129:9
138:12,12,14,23 139:3	cases	120:12,15 133:14	158:7 201:1
139:4,23	192:22,23	136:7,9,10	clarifying
	cast	changes	6:5 124:4 200:9
	141:9 148:10	5:12 42:13 75:4 105:7	Clay
calendar	Caucus	110:6	97:4 107:3,4,11
7:8	93:5 95:19	channels	137:10,11,18,18
call	cause	21:12	139:2,2 140:13 155:5

158:13,14 159:1,12 165:15 Clay's 97:11 clean 27:19 135:5 cleanup 88:21 clear 8:19 11:6 20:20 27:17 27:21 32:2 51:17 52:1,12,14 98:5 108:10 120:19 128:15 148:21 150:14,15 153:15,17 158:6 cleared 45:14 clearer 14:10 clearly 49:22 192:2 clerks 62:15 click 190:6 Cliff 76:11 188:3 191:8 closely 83:3 CMT 119:22 code 19:21 45:18,19,20 46:1,2,3 150:22 codified 126:8 cold 145:10 Coleman 187:22 colleague 87:3 come 12:23 32:22 34:20 40:8,13 45:8,17	48:15 49:20 59:22 72:20 98:1 156:2 158:10 170:10 comes 11:21 coming 8:13 19:19 25:4 75:14 156:16 178:3 Comittee 5:19 commencing 1:23 comment 28:22 101:12,15 comments 107:15 139:13 commission 3:10 203:22 Commissioner 203:20 committed 35:23 36:4,8 38:2,10 104:3 108:15 committee 5:14,16,18,22 6:8 33:4 53:20,22 54:1,23 57:2,20 58:4,5 61:13 66:21 67:8,15,20 68:11,19,21,22 69:7 69:14 70:14,17 71:5 71:12 72:23 73:2,9 73:13,20 74:21 75:1 75:20 76:14 77:2 84:8 85:2,11,15,20 85:23 86:14 87:7,8 90:4 91:10 92:3,4,13 92:19 94:7 95:1,3 120:9 175:21 187:11 188:5,14,15,17,19 190:22 191:9 196:10 196:13,16,19,23 197:2,4,8 committee's 91:21 communication 177:2	community 29:20 compared 144:8 competing 60:1 compiled 76:10 complete 10:18 73:23 completely 11:13 completion 67:12 complimentary 31:20 compromise 69:1 91:14 computer-aided 203:8 concern 49:15 193:21 concerned 169:9 concise 125:1 126:3 concluded 202:22 conduct 29:19 132:4 conference 110:22 confident 150:5 confirming 175:3 confused 146:13 179:3 Congressional 95:18 connection 148:11 Connor 103:13,22 167:6,10 176:15 consensus	5:19,22 60:9 67:8,14 67:17,18 68:4,21 conservative 95:10 consider 101:22 consideration 56:18,23 57:12 74:17 considered 29:19 66:20 69:6,8 74:19,23 85:11 104:3 108:16 considering 57:2 consistent 40:10,15 constant 177:2 constitute 36:1 38:3,11 Constitution 71:9 81:8 constitutional 68:3 consult 169:13 184:9 contact 142:9 199:10 contacted 141:9 content 36:11 94:8 96:3 contentious 59:19 62:9 191:2 contents 27:23 93:21 94:18 101:15 117:18 context 9:3 64:6 73:21 74:12 85:23 130:6 174:21 continue 34:21 116:19 177:10 193:3 continued 6:1 7:1 15:10 176:17 180:16 185:2

contradicts 11:18	copy 26:3 55:3,4 66:5 70:13 70:16	22:18,19 39:3,10 186:14,17 194:7 195:21,21	created 26:16 48:19 60:18 72:14 189:10,11
contrary 29:20	copying 102:15 114:23 117:10 140:13 149:20 153:7 154:13	country 30:20 32:18 35:22 36:6 38:1	creating 89:22 90:1,3
contributed 93:22 97:7,8	corner 27:9,18	county 20:11,12 23:3,5 38:22 39:21,22 100:6 117:6 125:5,6,10 128:10,13 128:15,18 131:21 132:19 138:15 141:13 157:3,4,9,13 157:21 186:19 190:9 203:3	credit 185:21
contributing 28:16 193:3 195:11	correct 8:21 15:12 23:11,12 25:1 32:5,6 34:11,14 45:13 58:15 78:21 89:19 92:10 99:3 141:4 155:8 157:22 162:22 172:18 173:4 175:12 176:9 184:2 186:6,9 190:1,5 191:4,6 194:9 199:2 203:8	couple 6:12 48:7 104:6 129:23 130:5,8 138:16 185:21 192:18 193:7	crime 18:18,22,22 19:8,16 19:18 21:6,10,14,19 22:9,10,21 23:14 24:13,14,18,19 25:6 25:15 33:18 34:2 35:20 36:4,15 37:22 38:14 39:12 45:20 64:13,18,23 65:5 71:6 72:1 73:7,17 80:13 94:12 100:3,3 101:7 104:3 108:15 108:16 112:6,7 113:19 124:8 126:7 142:15,15,17 143:21 143:23 144:2,11,12 144:16,17 146:15 200:16,18,19,20 201:2
controlled 77:12	corrections 201:18 202:5,15	course 10:23 46:16 75:19 91:21 110:19 152:6 169:19	crimes 6:10 18:21 19:15,18 19:19 30:16,17 31:5 32:4,15,22 33:6,10 34:10 35:14 36:8,16 39:14 48:20 53:3,7 58:8,9,17 59:4 60:3 60:11 77:6,18,22,23 78:4,18 80:8 106:6 111:20 112:13,13 122:3,5 126:2 127:5 127:21 128:4,6 144:8 144:9 178:3,13,18 179:8 191:3 192:9,10 200:14
convened 72:23	correctly 125:12 136:15 149:20 172:13 178:4	court 1:1 6:14 8:1 10:12 37:17 62:4,8,17 63:15,17 64:1 79:6 83:14 84:16 99:3 119:19,19 120:4 203:15,15,20	
conversation 9:4 47:8 59:12 64:12 73:11,15 74:1 94:4 117:22 132:3 161:13 161:18 166:6	correspondence 21:8 96:15 105:22 176:23	court-ordered 67:22	
conversations 87:1,2 108:8,9,12 118:4 136:23 154:16 181:5	corresponding 143:22 144:2	courts 62:14,18 194:19	
convey 105:12	costs 62:4,8,17 64:1 79:6	cover 173:15	
conveyed 105:19	cough 12:10	covered 175:22	
conveying 105:6	counsel 3:3,19 95:21 99:14 157:13 162:4,16 171:18 173:19 203:11	covers 173:10	
convicted 18:4 19:17 20:14 23:1 49:7,16 51:3 67:9 113:5,7 119:22 179:8	counseling 175:18	create 32:20,23 40:9,14 53:6 58:8 91:6 122:9 164:9 190:13 200:15 201:7	
conviction 30:19 32:17 38:8,10 39:11,19 49:5 50:3 79:17 112:16 119:7 123:1 128:20 136:18 148:5 198:10 200:21 201:3	counsels 174:20 175:14		
convictions 51:19 52:14,17 59:3 77:12 78:6,20 128:5 179:15 194:20,22	counted 148:12,13,16,18,22		
coordination 53:13	counties		
copies 66:3			

6:10 17:9,10 18:6 19:12 26:15 50:20 77:6 81:4 83:20 192:5,8 201:10 currently 50:15 83:3 124:21 201:5,14 curve 75:9,11 cut 87:19 109:23 159:5	6:6 D028485-D028486 6:9 D028487-D028489 6:11 D056687-D-056691 6:21 D058201 155:3 D058201-D058202 7:6 D064884-D064885 5:11 D064886-D064888 5:12 D150398-D150679 7:8 Daily 110:20 Danielle 2:7 8:12 data 124:19 127:4 165:20 165:23 175:7,8,11 database 18:20 109:2 date 119:19 165:12 167:9 168:1 date's 145:19 dated 76:8 165:11 166:10,20 174:17 177:20 179:18 182:7,13 183:11 dates 69:20 71:7 David 55:4,20,23 57:13 107:11 114:22 117:10 140:13 144:23 152:14 153:6 154:12 155:5 188:10 day 141:21 142:4,14	143:17 148:23 154:3 173:14 days 13:1 145:19 148:4 168:3,4 DC 2:5,9 dealt 109:4 debate 59:13,16 62:10 64:10 64:20 75:20 debrief 175:23 debt 6:14 64:11,13,16,17 68:14 119:20 120:4 Decatur 110:20 December 41:3 56:10 76:9 78:16 78:18 decide 22:20 decided 195:20 deciding 21:14 decision 19:2,5,7 20:1,3,5 21:12,23 23:22 61:19 92:8 126:13 144:14 144:15 157:11 165:3 decisions 126:20 declines 128:16,18 Defendants 1:12 2:12 defer 157:8 164:18 define 60:2,23 86:3 111:5 defined 35:20 37:23 58:9 59:14 128:7 194:23	definitely 74:23 101:3 129:2 definition 13:3 29:22 30:2 31:4 45:2 46:9 61:6 definitions 45:22 definitive 158:2 degree 13:14 39:15 delivery 121:9 denial 112:20 denied 111:19 112:5,15 113:18 125:5,7,10 Denine 98:2,3 140:19 denying 125:21 department 48:11 depend 156:10,11 depending 135:15 159:2 Depends 101:5 deposed 8:14 deposition 1:15 3:4,6,15,20 9:14 202:21 depth 29:10 deputy 16:4 derived 35:12 171:10 describe 18:6 19:12 21:3 26:2 54:18 85:9 94:22 173:7 described
D			
D000152-D000217 5:7 D021793-D021808 5:8 D023463 149:16 D023544-D023546 6:17 D024206-D024209 6:15 D024224 102:13 D024224-D024228 6:13 D025000 137:8 D025000-D025001 6:19 D027848 152:12 D027848-D027852 7:4 D027919 5:14 D027920-D027922 5:17 D028099-D028100 5:20 D028101-D028103 5:23 D028211 6:3 D028212-D028216			

111:13 125:9 148:10 describes 104:1 describing 53:17 description 106:18 desperate 47:12 detail 152:17 detailing 117:21 details 122:20 125:2 determination 19:16 37:10 39:4,10 47:10 72:20 90:17 150:11 197:20,23 198:1 determinations 47:16 194:7 determine 21:18 36:3,14 100:3 142:17 144:11 146:1 198:4 199:4 determined 61:13 determining 17:21 37:21 38:9,14 devices 189:12 Dexter 2:20 DFW 76:7 DFWeditor@aol.com 65:21 difference 43:3 124:22 differences 136:14,16 different 17:18 22:18,19 29:6 39:3 47:5 60:23 65:23 83:12,16,17	97:9 129:7 136:2 145:19 156:3 182:22 197:8 differently 22:22 digging 142:17 144:5 direct 181:9 187:4 directed 100:5 118:12 164:9 directing 118:13 direction 75:16 144:1 directly 74:22 171:9 director 67:1 97:4 137:19 disagreement 62:3 disciplinary 130:18 discipline 130:17 132:1 145:5 disciplined 131:23 134:7 discovery 129:13 discretion 22:1 discretionary 22:2 discuss 75:20 83:23 101:15 119:6,12 153:9 discussed 40:18 68:22 69:10,17 69:19 71:12 90:4 91:9 96:14 105:4 127:14 140:19 150:8 151:8,13 154:1 171:2 196:11 199:17 201:10 discussing 54:22 60:7 66:21 85:1	88:15 89:7 90:3 130:2 discussion 57:19 59:3,15,21 62:1 62:12 64:20 67:18 68:18 71:22 72:4 73:5 82:13 83:11 92:7 94:4 120:15 153:19 154:5,8 171:16 discussions 72:10 83:12 86:8 89:21 93:1 117:20 Disenfran- 6:5 disenfranchised 35:15 36:17 168:15 172:5,10 179:21 disenfranchisement 5:14,15 18:7 50:17 73:8,18 85:4 86:1 89:8 166:5 180:21 187:9 Disenfranchisement/ 6:8 disenfranchising 81:7 disqualification 127:6 disqualified 136:17 199:5,11 disqualifying 38:14 39:12 67:9 112:14 119:7 122:23 126:2,6 135:14,23 142:18 143:10 144:11,17 148:6 176:5 178:11 193:15 193:21 196:15,18 197:7,16,17 198:9 distinguish 15:14 distributed 122:6,10 DISTRICT 1:1,2	diverse 187:16,17 division 1:3 16:10 55:6 97:22 divisions 16:12 dlang@campaignle... 2:10 DMV 122:10 DO21793 27:10 doctor's 12:17 document 6:3 12:3 25:22 26:2,12 27:8,11 28:13 29:12 29:18 30:10,21 31:12 31:15,17 33:22 34:9 41:15 44:6,9,11,14 46:10 47:21 56:8,12 56:21 59:12 61:21 68:6,15 70:10,14 78:11,14 79:19,21 80:4,15,22 81:10 82:3,15,15 83:9,10 83:23 84:10 98:11,13 98:20,22 114:7,14 115:2,17 116:1 119:14 121:5,6,8 122:13,15 130:3 135:6 136:15 138:9 139:7 140:16 145:18 146:3 152:12,21 153:6 155:9 159:16 160:7 163:1 165:18 173:10 183:5 191:8 192:4 documentation 182:19 documented 49:23 documents 17:7 70:16,21 83:18 103:6 116:8 130:1 183:2 193:21

Dodson 67:4 doing 11:10 15:3 17:8 109:14 175:23 Don 41:20 42:1,17 DOOO152 26:14 downs 87:5 draft 28:13 30:12 31:15 35:7 89:22 90:1,3,4,6 91:22 92:4,9,11,22 93:2,14,21 96:3 97:15 167:16 183:19 196:21 drafted 40:9,14 50:10 77:1 92:13 96:15 97:16 drafter 92:21 98:6,6 drafting 35:4 40:4 44:11 74:17 96:10,23 107:10 167:2 dramatic 91:14 driving 15:2 drug 12:10 due 67:21 DUI 77:15 duly 8:6 203:14 duties 17:14 E E 2:3 E-207	2:20 e-mail 5:9,13,18 6:3,7,12,14 6:18,20,22 7:3,5 41:2 41:3,5,10,12,14,17 42:1,10 54:10,14,18 54:21 57:9,10 65:19 66:6,6,15,16 70:12 70:20 76:1,6,17,20 78:17 96:13,15,17,19 102:13,14,17,19 103:11,19,21,23 105:22,23 107:20,22 114:21 115:1,4,20 116:5,9,22 117:2,15 117:17,19,20,23 118:4,10,18 119:2,15 119:16 120:19 130:4 130:7 137:10,11,15 137:18 138:8 139:19 139:21 140:10,12 141:1,5 144:21 145:11,14 147:12,14 148:11 149:16,17,21 149:23 152:14,16,20 153:3,6 154:11 155:4 155:10 157:20 158:8 158:23 159:4 167:10 e-mailed 121:10,15 e-mails 99:15 103:1 earlier 26:18 41:5,5 42:16 46:22 145:16 149:2 167:10 194:2 196:11 197:12 199:17 earliest 149:23 earliest-in-time 41:14 early 15:20 50:9 54:2 85:5 Eason 157:20 easy	189:1,7 Ed 55:3,4,5,22 56:4 65:19 70:12 76:7 97:7 107:12 114:22 117:8 117:8 152:14 153:7,8 154:12 182:15 183:3 editor 76:7 editorial 166:22 167:2,16 education 13:11 Edward 67:1 effect 71:11 108:3 120:3 efficient 184:11 effort 25:3,9,11 31:2 33:5 47:23 53:6,10 109:6 113:22 126:15 130:11,16,20 131:11 131:15 132:21 199:3 199:10 efforts 88:21 89:14,17 110:4 either 3:22 70:20 72:6 75:2 75:19 101:13 106:7 106:23 107:1 126:14 130:23 132:11,19 136:5 143:12 144:22 144:23 148:21 150:17 152:23 154:7 156:2 180:9 202:11 elected 72:17 74:2 election 58:6 92:15 96:11 135:17,18 138:4,5 141:21,22 167:23 169:1,2 173:14 181:4 185:2 election-	17:11 election-law 187:2 election-related 16:16 17:11 elections 16:11 17:19 55:6,18 67:2 92:16 97:4,22 136:19,20 137:19 141:2,15,15 170:22 173:13 188:23 electoral 109:15 elevated 153:13 elevating 101:21 Eli 149:17 150:1 eligibility 79:4,15 147:5 192:12 eligible 17:22 21:9 146:14 192:11 eliminate 58:5 eliminating 73:16 ellipsis 139:15 ELMORE 203:3 Emily 41:3 employee 98:21 145:6 185:11 employees 122:11 employment 15:17,22 88:15 empowered 21:22 encountered 143:20 encourager 50:5

endeavor 39:8	16:21 110:11	26:8 27:6 54:6,11	44:13 59:13 64:21
ended 15:20 61:7 197:9	et 1:5,11	65:12,16 70:5,8	140:1
ends 29:13 51:16 61:21 65:18 70:11 76:5 77:4 79:22 119:17 130:4 167:21 172:23	Etowah 138:15	71:15 77:4 97:13 102:10 114:17,18 121:3 130:3 137:6 140:8 149:14 152:10 155:1 159:14 167:8 171:23 191:7 195:8	F
enfranchisement 91:1 150:4 151:19 166:3 173:16	Evans 2:18	Exhibits 5:5 40:23 76:3	face 145:17
England 188:9	event 15:5	exist 129:12 172:16 199:1	facility 193:5
enroll 128:16	Eventually 19:23	exists 198:23	fact 108:8 170:13
ensure 113:10 122:19 141:8 176:21	evidence 3:15	exited 176:1	factor 135:15 176:5
ensuring 125:20 176:13	evidenced 203:16	expecting 145:12	facts 10:16
enter 126:8	exact 133:15	experience 47:1	factually 53:5 148:22
entered 129:5	exactly 33:12	experiencing 113:23	Fairbanks 2:12
entire 128:13 142:11 159:13 190:5	EXAMINATION 5:3 8:9 184:14 196:7	experts 61:1	fairly 149:4
entirety 94:18 95:1 113:5	example 28:20	Expires 203:21,22	familiar 17:1,4,6,20 18:2 115:9 115:16 116:18 121:13 141:22
entitled 42:12	exceptions 186:16	Explain 127:15	familiarize 41:13
entry 32:8	excerpts 7:7 159:19	exploratory 5:16 187:10 190:22 196:10	Faulkner 87:16 188:10
ES 168:21	exciting 189:16	express 16:18	fault 109:19
ES&S 129:14 168:22,23 172:4,13,19	exclusive 35:14 90:20	expressing 63:23 64:5	February 155:6,13 158:22,22 159:23 163:16
Esquire 2:3,7,12,13,18	excuse 54:21 55:3 67:11 76:20 78:4,20 113:20 117:12 119:20 128:17 147:16 151:12	Exposure 45:15	federal 3:5,17,23 32:11,12,12 32:14 33:7,13,14 36:15 38:7,9 39:11 39:19 123:18 136:1 142:15 144:8,12,16 146:15,18
essentially 104:5	exercising 68:2	extended 28:18	feedback 94:8 96:2
establishing 163:17	Exhibit 5:6,7,9,11,13,15,17,20 6:2,2,4,7,9,11,13,16 6:18,20,22 7:2,2,5,7	Extensive 62:1	feel 61:17 94:3 148:1
estimate		extensively 199:17	fees 62:4,7 64:1 67:23
		extent	

68:12,17 79:6 190:23 fell 36:15 felon 6:16,18,20 17:22 18:7 18:15 20:15 35:15 49:16 50:17 53:18 85:3 86:1,19,23 88:5 89:8 91:1 113:5,8 137:13 140:14 151:18,23 166:2,4 173:16 felonies 30:6,8 48:9 52:2 58:18 59:1,5 60:11,17 61:8 61:11 78:5 81:6 112:7,14 128:21 136:1 175:5,7 177:22 178:11 183:14 191:3 193:22 194:22 196:15,19 197:7 199:6,13 200:13 201:6 felons 7:4 17:2 18:4 81:19,22 81:23 109:15 137:21 138:18 150:4 172:9 173:23 175:16 179:7 felony 6:5 20:22 23:2 30:19 49:5,7 50:3 51:3,18 52:14,17 67:9 71:6 72:1 73:7,17 77:11 77:15 78:5,19 79:17 113:20 122:23 128:4 128:19 136:18 143:10 157:16 179:15 180:21 193:15 194:20 197:16,17 198:9,17 199:6,12 200:21 201:3 felt 47:13 62:16 94:13,15 105:5 140:1 158:6 174:23	field 41:10 193:13 fields 61:2 fifth 29:11 Fifty 16:22 figure 60:20 143:15 figured 89:1,2 file 129:1,20 198:13 files 198:16 filings 17:17 final 27:19 30:21 31:12,14 57:4 158:15 183:8 196:23 197:3,10 finance 15:8 find 12:7 76:10 132:22 171:8 finding 10:16 fine 11:1,6 59:6 174:15 finer 62:3,7 64:1 67:23 68:16 79:5,12,16 119:10 120:12 190:23 finish 11:2,9 169:7,12 185:21 first 8:6 13:23 14:21 15:2 19:8 23:20 41:6 44:14 50:13 53:1 56:7,11 57:17 59:11 67:6 71:2 77:4,14 86:11 88:9,14 89:6	90:2,23 91:2,9,23 92:6,11 103:19 107:20 115:20 125:8 135:12 143:6 148:11 154:11 157:20 159:22 161:5,20 168:13,18,20 173:6 195:12 first-in-time 107:21 116:22 119:15 130:4 137:17 141:5 152:19 first-time 201:1 five 11:15 152:4 fix 48:1 91:5 fixed 47:19 flesh 29:8 flip- 139:9 flip-flop 138:19,21 flop 139:10 Flores- 119:15 Flores-Ganley 116:23 120:20 flyer 122:6,7,9 focus 95:2,4 115:14 focusing 127:16,18 fold 91:8 folks 110:16,16,17 156:4 168:7 202:10 follow 134:2 145:12 166:8 191:20	follow-up 105:21 156:14 181:5 followed 62:2 141:17 145:7 146:10 following 8:18 15:21 77:11 171:2 203:16 follows 8:8 followup 156:5 force 134:9 forces 94:21 foregoing 203:6,8 forget 85:2 form 3:12 8:23 14:1 16:20 18:8 19:10 20:7 22:4 31:7,12,13,14 33:8 35:5,9 37:7 38:18 39:5,13 49:13,19 51:11,12,21 52:4,5 60:5,19 61:12 63:19 64:9 65:2 74:7,18 75:7 76:15,19 77:20 78:2,9 80:10 81:2,14 82:1,23 83:5 87:11 90:11,19 91:19 94:10 95:16 98:8 102:1 106:13 112:9 113:9 114:3 118:21 119:11 120:6 121:9 123:4 124:15 125:14,22 131:1,8 133:2,20 134:12,18 137:23 138:22 139:11 147:9 147:22 149:7,11 151:4 152:3 154:2 159:11 163:19 171:3 176:12 177:12 183:20,22 184:1

189:22 190:2,5,11,14 198:20 199:8,15 202:4 form-fillable 190:6 formal 86:15,18 151:5 formality 3:10 former 27:3 84:5 86:16 87:3 91:13 98:3 150:4 172:9 formerly 168:14 172:5 forming 91:10 forms 142:10 202:1,12 forth 177:19 forward 47:3 52:23,23 144:21 145:15 forwarded 116:4 117:4,9 forwarding 117:12,14 forwards 139:18 fought 95:11 found 30:9 33:6,13 109:8 133:6 135:13 143:9 148:5 180:5 four 186:18 Fourth 6:7 frame 53:23 fraud 39:20 free 89:4	frequent 177:3 frequently 29:14 93:9 Friday 145:23 friend 88:17,18 friendly 87:2 front 26:13 28:7 81:11 frustrated 104:20 105:1,2 frustrating 109:4 132:17 133:7,15 frustration 133:11,19 180:15 full 10:18 49:2 51:15 58:8 60:2,10,17 67:6 71:3 85:2 122:17 130:7 177:22 179:11,14 185:13 full-time 13:20 14:7 186:7 fully 29:8 115:5 function 62:18 functions 177:11 fundraising 88:19 further 3:18 45:4 153:19 154:16 170:13 203:11,14 future 164:23 G gain 72:16 112:23 gaining 30:18 32:16	Ganley's 119:16 general 1:18 2:13 53:23 54:20 72:11 120:15 general's 190:18 generally 58:1 70:15 74:8 101:11,17 106:14 generate 119:2 getting 24:5 95:2,4 156:6 give 11:14 13:10 36:18 46:20 94:8 99:2 115:15 144:1 157:10 157:14 158:1 198:3 given 25:14 66:2 75:3 104:21 118:6,19 168:16 203:9 gives 186:23 Glasgow 188:1 go 8:16 15:3 37:8 82:7,20 87:6,18 93:3 100:5 104:4 109:9 111:23 119:14 126:12,19 130:2 134:22 142:23 158:13,14 162:15,17 165:10 171:11 177:20 184:9 201:17 goal 92:1 189:1,9 190:15 goals 187:13 188:22 goes 13:2 41:8 93:10 104:9 117:3 129:4 173:10 going 9:5 26:7 40:21 57:11 58:17 59:4 61:11	75:17,20,23 91:14 94:15,21 99:2 102:4 102:8 116:21 121:2 137:3 140:7 143:21 144:7,21 145:14 152:8 163:16 171:19 175:11 177:20 178:16 179:9 181:13 191:21 good 8:11 28:23 29:21 50:15 gotten 157:20 165:21 170:7 182:1 190:17,19 governing 17:1 government 43:14 governor 48:21 graduated 13:13 186:5 graduation 13:19,23 14:5 15:11 grand 64:16 grant 16:13 granted 170:5 grateful 108:13 great 9:21 10:7,22 11:6 12:2 12:7 13:9 67:18 99:5 103:9 145:20 152:17 ground 8:17 group 58:2 60:15 64:3 74:21 83:14,14,15 94:17,22 110:15 187:15 192:18 198:5 groups 29:4 61:3 62:20 83:16

95:12 110:21 111:17 113:12 141:20 192:19 guess 13:11 16:15 48:17 54:20 60:8 84:11 88:14 89:6 95:23 111:7 116:12 131:3 136:5 139:7 159:20 175:16 guidance 23:13 24:1 25:21 28:19 33:17,23 36:10 36:17 37:6 39:1,8 47:13 58:11,13 96:10 96:21 97:3 99:8,22 107:5,10 113:7,10 118:19,23 120:1 guide 34:1 98:7 173:5,7,9 guys 139:2	handle 147:15,17 handled 158:10 handles 95:22 hanging 148:2 happen 9:5 131:4 154:10 happened 29:3 105:10 106:20 143:13 156:22 happens 11:19 12:4 hard 68:23 77:3 114:12 181:17 189:2 Harrell 67:3 Harry 138:11,12,14 HB 13:1,6 19:22 20:1 21:13,20 22:7,17 23:11 24:23 25:7 32:20 33:1 34:11,12 34:18,20 38:12 40:16 50:11 61:8 74:17 83:4 96:9,11 99:9,23 100:20 101:2 106:19 108:2 112:8 113:21 120:2 125:11 126:7 127:7 128:8 137:1 155:14 176:7 196:21 197:10,18 199:7,13 201:4 head 22:13 82:17 85:17 100:10 103:12 111:14 header 79:3 122:13,16 167:23 hear 22:14 74:11 89:6 96:1 107:14 133:15	heard 63:10 73:1 108:5 hearing 104:10 held 105:11 Helms 97:4 107:3,11 137:10 137:12,18,18 139:18 140:13 147:17 155:5 157:14 159:2,12 help 16:12 42:22 91:3 95:14 109:15 125:17 125:19 136:2 189:9 helped 15:4 27:3 195:3 helpful 35:1 44:4 82:10 125:10,15 172:8 helps 12:3 Henry 131:21 hereto 3:23 Hey 101:7 high-level 171:17 Hillyer 84:1 history 74:6 hold 65:22 82:6 110:22 165:7 169:5 holds 88:11 hometown 15:6 honest 57:11 136:12 honestly 66:17 163:22 honesty	29:21 hours 11:16 185:21 house 201:16 houses 109:1 huge 180:13 181:1 Hugh 2:18 hugh.evans@sos.ala... 2:21 hundred 33:2 67:16 70:2 130:21 187:3
H			I
H 1:10 42:11 Hager 149:18 150:1 Hager's 151:9,14 half 61:20 Hall 179:20,22 hand 114:16 121:2 154:23 hand-delivered 121:15 handbook 5:6,8 26:4,5,10,13 27:14 33:12 42:3 90:13 97:14 106:3,5 106:7 195:10,17 handed 26:12 102:12 105:20 121:10 140:10			idea 63:8,10 72:13 77:9 90:7 91:11 ideas 164:12 identification 26:9 27:7 41:1 54:7,12 65:13,17 70:6,9 76:4 102:11 114:19 121:4 137:7 140:9 149:15 152:11 155:2 159:15 identified 42:17 114:11 identify 124:19 130:12 131:11 131:15 ignoring 153:16 III 2:18 ill-conceived 71:7 immediate 5:18,21 168:16 immediately 67:11,12 immigration 32:14 33:14

impetus 57:20,22	89:12	129:17 155:20 156:6	83:9 113:14 120:21
implementation 176:4,14	incorrectly 126:10	156:14,16 157:21	146:9
implementing 100:19	incur 64:16	169:21,23 171:3	intends 101:19
import 62:12	incurred 64:14	176:19 179:7 180:4	intent 49:11 94:20
important 9:17 15:14 94:13,14 110:8	INDEX 5:1 6:1 7:1	initial 18:16 26:6 64:13,18 64:22 92:22 168:19 168:20	intention 75:12
impossible 131:19	indicate 79:19 202:16	initially 17:6 72:14 97:15	interact 16:14
impression 101:19	indicated 19:17 89:11 94:12 99:11	injunction 170:4	interacting 181:10
improperly 125:20	indigent 68:1	inkling 130:23 131:2	interaction 18:16 181:12 198:6
Improving 6:5	individual 39:19 125:7 135:16 142:6 175:19 198:19	inmates 182:15 183:1	interactions 163:23
in-time 116:5 137:11	individuals 67:8 68:1 109:2 112:4 120:4 131:12,17 137:12 192:19 197:13,15 199:4,11	innately 72:15	interest 89:8 95:12,12
inability 44:20	ineffective 177:16	inquiries 101:1	interested 10:15 203:12
inaccurate 114:10	ineligible 81:19,21,23	inquiring 119:19	interesting 109:9 138:17
inauguration 15:21	infer 146:22	inquiry 101:23	international 13:15
incarcerated 63:7 64:17 192:19 201:11,14	inference 116:3,7	insert 29:22	interpret 39:23
incarceration 176:1	Info 6:8	insignificant 72:18	interpretation 29:17 40:10,15 48:23
incident 149:5,9	inform 153:8	insofar 120:16	interpreting 80:14
inclined 118:11	informal 86:22	instance 19:8 26:17 28:20 97:7 101:18 134:8 147:1 149:3 158:3 180:19	interstate 146:2
include 79:7,9,11,12 128:6 191:11	information 24:4 29:3 36:13 76:10 104:11,21 105:13 110:8 112:22 113:1,2 116:16 123:8,8 124:14,17 125:9,16 125:23 127:19,20 128:2 129:1,4,5,11	instances 62:16 129:2 156:13,23 157:2 158:5	interviews 109:6,7
included 120:13 178:14		instant 180:19	introduced 3:21 71:18,19,20 91:12,23
including 137:12 178:17		instigator 138:23	introducing 72:12
inclusive 178:13		instruction 9:4	investigation 170:14
inconsistencies		instructions 8:20	involve 60:11 78:1,6 127:21
		intended	involved 21:1 48:9 86:11 88:21 89:23 95:17 96:10

97:16 107:9 173:23 173:23 179:15 185:5 189:8 involvement 40:4 85:10 190:21 involving 6:10 21:7 30:6 33:11 34:10 71:6 72:1 73:7 77:6,18 177:23 191:5 192:9 194:23 iOS 189:12 irritated 145:8 Isabel 120:20 issuance 79:4 issue 5:10 6:21 44:16 46:11 46:12 58:12 59:19 61:15 62:11 68:21 87:8 88:5 89:16 90:21 91:10,18 95:13 105:4 111:18 112:4 113:23 118:20 119:7 119:8 140:15 149:4 151:23 153:14 154:6 156:11 177:2 178:2,5 178:7,9 181:6 190:23 issued 25:21 145:6 issues 29:1,9 85:4,10 86:1 89:9,11,15 91:1 92:17 100:18 101:22 135:14,19 151:14,21 157:10 173:15 180:18 It'd 184:10 item 77:10 items 178:10	J J 2:13 jail 168:7 182:15 183:1 January 15:21 16:1 69:23 185:7,9 Jean 41:4 Jefferson 186:18 JENNER 2:4 Jo 152:20 154:14 job 15:13 16:3,16,23 105:6 123:12 124:11 140:5 176:17 177:10 177:16 185:17 jobs 13:16 Joel 67:2 John 1:10,15 3:4 7:7 8:5 28:8,9,10 41:9 42:11 42:12 67:2 102:15 147:18,19 202:21 Johnson 61:23 join 84:8 Jones 152:20 Jones' 154:15 journal 173:20 journalist 84:6 journals 159:21 Jr 1:15 3:5 8:5 202:22	judges 62:15,16 judicial 21:22 July 166:20,20 168:2 186:1 June 166:9,11 jurisdiction 35:23 36:4,7 38:2 justice 29:20 K K 2:8 keep 170:21 Kenneth 188:1 killing 109:14 kind 9:11 11:17 15:8 18:11 28:14,14,15 31:1,3 45:7 47:4 50:9 51:23 53:9 59:22 62:22 63:1 72:12 88:20,22 89:15 90:8 93:23 94:18 133:7 136:3 142:1 156:12 182:22 202:18 Kira 180:9,15,16,18 knew 88:23 91:13 95:8 101:14 105:10 111:3 129:21 146:23 know 9:11 10:3 11:20 12:5 17:15 19:2,4 22:5,11 22:12,15,23 23:21 29:2,8 30:1,22 31:10 31:17,19,21,22 32:1 33:2 34:5,19,22 35:7 35:10 36:5,9 37:20	39:18 40:2 42:7 43:5 43:10 48:11,14 52:12 52:19,21 53:4,13,15 55:8,15 61:7 62:13 64:16 69:5,9,18 74:20 75:4 76:23 77:3,7 78:13,14 79:1 79:2 84:1,7 87:23 91:16 92:1,1,21 94:2 97:9,19 101:6,19 104:6 106:21 111:5,8 113:13 115:19 116:21 117:1,5,7 118:15,18 120:10 121:11,22,22 124:7 124:16 127:1 130:8 134:6 136:13,21,21 138:8,12,20 139:1,20 141:22 144:13,18,19 145:15 146:19 148:9 148:21 149:1 150:17 152:23 153:2,12 154:7,14,20 156:3,8 156:13,22 157:1,2,3 158:12,13,21 160:16 160:17 163:15,21 164:20 165:17 166:16 167:1 168:12 175:23 180:2,21 182:20 187:13 192:8 195:19 196:13,22 197:6 202:11 knowledge 24:11,15 25:2 68:18 87:1 90:2 125:1 151:20 193:12 197:11 198:11,14 known 138:23 knows 139:5 142:10 L lack 67:17 Lagniappe

110:20	148:15 150:7 155:22	84:5 86:16 91:13 95:6	link
Laird	158:7 164:21 167:3	legislators	122:4
67:2	173:3 190:12 192:5	86:12,21 87:12,13	list
Lang	law-related	91:16 93:2,18	7:3 19:15,18,19 29:13
2:7 8:13 82:7 116:6,15	17:12	legislature	30:12,16,17 31:8,22
160:11 161:10,17,21	laws	80:1 94:16	32:4,19,20,22 33:1,6
200:2,6	17:1,5,10 35:20,21	legislatures	33:10,16 34:7,11
language	37:23 115:6 136:5	83:15	35:4,7,11,14 36:16
5:21 69:5,6,9 91:22	173:11 177:19	Leigh	39:14 48:8,12,20
158:6	lawyer	132:18	52:14 53:2 58:8 60:3
large	36:21 37:3 161:13,19	Lemer	60:10,10,17,21 61:8
1:22 3:9 18:12 159:19	169:18 170:8	180:10	61:11,18,19 77:6,8
203:21	leadership	Lerner	94:12 106:6 112:7,13
largely	111:4	180:10,11,12 181:6,7	112:20 122:22
111:8	learning	181:16	128:20 142:23 144:8
larger	195:16	let's	144:9 159:7 163:17
44:2 45:15	leave	14:16 18:13 27:5	164:1,10 165:19,22
largest	148:2 185:16 200:2	52:21 78:17 86:10	166:3 176:7 177:22
110:15	leaving	94:3 119:14 142:20	178:12,16 179:11,14
last-	174:10 202:8	162:15 167:6 171:11	191:3 192:8 196:15
137:10	led	letter	196:18 197:7,9
last-in-time	85:18,20 89:3 115:10	6:16 29:1 96:19	200:11,12,13 201:5
41:2 114:21 140:12	136:5	105:23 121:21	listed
147:11 149:17 155:4	left	letters	28:17 36:2,5 38:4 53:7
158:8	27:9,18 42:10 97:23	28:21	96:6 101:9 126:7
late	167:22 182:8	letting	192:10 195:11 199:7
85:4	legal	46:19 113:13	199:13
lately	2:8 29:17 37:2,5 45:1	level	listen
192:14	45:22 46:9 68:12	68:23 199:16	157:4,7
Laura	95:21 99:14 119:10	liberal	listing
179:20	140:4 157:13	95:9	125:9
law	legally	licensed	lists
6:10,15 17:17 21:16	44:15,18,22 177:13	203:15	51:18
21:17 23:9,21 32:12	legislation	light	litigation
32:12,14 33:7,14,14	53:2,7 69:1 88:4 90:1	118:18	169:11 171:10,16
33:23 35:11 45:5,15	90:3,4,6,7,11,14,17	likes	little
45:16 46:7 48:18	90:20 91:11 92:2,3,5	138:23	13:10 75:8 84:13
50:8,16 51:8 58:6	92:9,12,14,22 93:2,6	limited	110:6 125:4 127:15
72:13,21 74:8 75:4	93:15,21 94:6,9 95:5	135:21	lived
75:12 81:4,6 83:20	95:22 97:1 100:20	Linda	88:23
96:22 99:13 102:7	101:8 109:12 178:14	187:22	living
105:8,19,20 108:10	195:1 196:17,22	line	201:15
108:13 109:22 110:6	197:1,5	11:2 49:3 67:6 137:13	local
112:12 113:13,15	legislative	140:14 170:3	67:21 68:13 103:15
120:8,11,15,17	93:5 95:7 196:21	lines	110:18 135:17
133:14 136:2,2	legislator	99:16	136:20 141:15

locations 142:3,22	142:7,21 146:2 147:23 195:4	mark 26:7 27:5 40:21 52:21 65:11,15 70:4 75:23 102:8 114:16 137:4 149:13 152:9 166:23 173:20	means 10:17 27:18 130:6 163:13 172:4,15 189:2 203:7
long 16:9 17:16 53:19 88:6 189:21	Love's 148:5		
longer 63:13 104:3 108:16 127:20 128:6	lunch 134:22 135:2,4 145:1		meant 52:9 179:12 182:21
longest 62:11	M	marked 26:8 27:6 41:1 54:6,11 65:12,16 70:5,8 76:4 102:10 114:18 121:3 137:6 140:8 149:14 152:10 155:1 159:14	measures 150:3
look 21:18 35:18 42:8 61:20 63:2 66:14 71:2 119:16 127:3 173:20 191:7 195:8 199:3	ma'am 84:18 184:21 185:1,4 185:8,12,18 186:3 187:3,7,12 188:20 190:15 191:16 194:1 194:5,9,17 195:2,5 195:14,18 196:4	Marsal 41:4	media 16:14 109:5 110:14,15 111:2,7,17 112:2 113:23 163:23
looked 97:13	Mac 28:5	Marshall 150:2	medication 12:10
looking 10:18 56:17 103:19 114:8 130:6 153:3 159:22 165:4 167:21 172:23 180:8 182:6	Macon 132:18,19	Mary 131:22 132:7	medicine 12:10
looks 168:18,21	mail 21:8 143:12 190:4	match 200:15 201:7	meet 87:6 88:9 189:9
loop 99:19	mailer 108:23	matter 10:17 11:8 153:9,13 154:1,15,18	meeting 30:8 46:13 53:12,13 54:1 56:3,6,10,11 57:14,18,21,23 60:16 69:10,11,16,20,21,21 70:2 71:14 72:6 73:20 83:17 87:10 92:6,8,19 93:3,8 94:1 95:18 96:12 105:10 106:5,8,10,12 133:12 154:4 166:11,14,17 167:23 170:22 173:2 183:4
loosely 17:6	mailing 143:13	McCall 67:3	meetings 53:16 54:22,23 56:1,3 69:14,22 71:13 72:6 85:23 86:4,11,14,15 86:20,21 87:15,21 93:10,13 94:7 95:14 105:15 106:15
lose 78:21 80:12	maintain 20:3 124:5	McLaurine 116:3 117:4 118:8	member 24:6 75:1 76:13 85:15 87:7,7 142:2 156:19 193:3 194:13
loss 65:4 78:1,6	maintenance 165:20,22	mean 22:5 25:10 27:22 42:7 42:18 44:12,21 52:7 52:15 58:4,18 59:4 60:20 64:15,19 66:17 68:17 70:1 74:3 75:10,18 78:10,23 79:13 80:21 83:8 87:12,19 88:13,13 93:22 94:23 97:6 103:1 108:8 111:12 121:9 126:12 133:6 133:11 142:19 144:5 144:6 146:6,8 151:11 154:10 155:21 156:10,19,20 158:16 159:5 160:5 164:3,23 174:7 175:6 180:14 183:1	members 28:16 29:5 70:14,17 73:2 95:10 186:10 187:8,14 188:5
lost 40:12 77:11 79:18 80:19 111:21 119:22 192:21,23	majority 111:10		
lot 24:10 26:23 29:3 30:22 58:17 59:21 60:7 86:5 91:5 92:7 92:16 101:5 115:13 118:23	making 19:7,14,15 53:13,14 102:5 125:11 176:3		
loud 68:7	manage 16:9,12		
Love	manner 3:22		
	map 183:13		
	maps 83:3		
	marijuana 77:14		
	Marissa 67:3		

195:11,12,20 memo 5:18,21 6:4 66:3 67:1 70:19,20,23 71:19 74:12,16 77:5 135:7 memory 12:19 55:11 memos 74:14,15 75:2,6 mention 111:18 112:4 mentioned 194:2 195:3 201:9 mentions 45:4 merit 74:20 Merrill 1:10 14:18 15:11 16:1 28:8 31:21 42:11 57:18 67:2 85:6,15 86:12,16 88:7 89:7 90:22 91:12 93:8,14 96:2 102:15 103:22 107:2 121:21 138:19 150:6,9,12,14 151:3 151:12,15 154:14,17 164:2,7 166:16 184:18,19 185:9 186:23 187:8 189:18 190:13 195:16 197:14 Merrill's 85:9 114:9 151:9 188:22 190:22 message 145:23 Messick 2:12 5:4 8:3,23 14:1,6 14:12 16:20 18:8 19:10 20:7 22:4 31:7 31:13 33:8 34:17 35:5,9 37:7 38:18 39:5,13 40:7 43:7,10 43:13,17 46:14,17,19 49:13 50:21 51:1	52:5 57:4 58:16,20 59:2,10 60:5,19 61:12 63:15,19 64:9 65:2,22 66:2,5,9,13 69:11 72:3 74:7,18 75:7 76:15,19 77:20 78:2,9 80:10,18 81:1 81:5,12 82:1,6,9,23 83:5 84:12,16,22 86:3,7 87:11 90:19 91:19 94:10 95:16 98:8,14 99:2 102:1 102:20,23 103:5,7 106:13 107:19,23 112:9 113:9 114:3 115:15,19 116:1,14 116:17 117:21 118:21 119:11 120:6 120:18 123:4 124:15 125:14,22 127:11,13 129:3,6,10 131:1,7 132:12 133:2,20 134:12,18 135:1 137:23 138:22 139:11 147:9,22 149:7,11 151:4 152:3 152:6 154:2 155:7 159:11 160:16,23 162:5,9,11 163:19 165:7 167:8,15 169:5 169:9,16,19 170:3,7 170:15 171:4,7,14 173:18 174:5,9,15 176:12 177:12 178:20,23 179:3 184:6,10,15 196:9 197:12 198:20 199:8 199:14 200:1 MESSICS 129:16 met 28:17 60:22 87:23 88:10 117:16 197:4 Michael 2:3 mid	54:3 middle 1:2 11:3,10 63:1 105:18 166:21 midst 138:4 Mike 8:12 42:14 58:16 Milligan 41:20 42:1 million 189:20 mind 167:15 170:21 191:18 mine 88:17,18 minor 13:15 15:3 minute 102:21 115:16 169:6 170:16 171:8 184:9 minutes 10:7 11:15 53:12 55:2 55:22 56:1,3,6 57:5 57:14 69:22 71:14 152:5 193:11 mis- 98:15 misdeemeanors 58:21 misinterprets 123:5 misquote 180:16 misquotes/misquota... 181:9 misrepresent 180:16 missed 99:20 143:12 misspoke 119:20 misstating 81:13 mistake 54:19	Misty 2:12 116:20 127:8 160:8 161:5,15 misunderstands 50:22 Mitchell 1:20 3:7 9:15 203:19 mmessick@ago.stat... 2:16 Mobile 110:20 141:13,14,21 143:19 145:22 moment 42:15 82:8 200:3 moments 10:8 Monday 182:8 monetary 62:22 money 16:13 91:5 Montgomery 1:19 2:15,21 100:6 month 122:20 132:10 185:20 186:1 months 109:13 193:7 moral 5:10,12 6:10 7:5 13:3 18:19,23 19:9 21:7 21:10,14,19 22:10,21 23:14 24:14,19 25:6 25:15 29:17 30:6,23 31:4 32:13,14 33:11 33:18 34:2,10 40:11 40:16 42:12 44:18 45:1,5,21,22 46:1,7 47:7 48:9 53:3,7 58:9 59:13 60:3,11 60:17 61:6 71:6 72:1 73:7,17 74:4 77:7,18 80:8,13 81:6 89:16 100:4 104:4 108:16 111:20 112:6,8

113:20,20 118:20 120:17 124:8 127:21 128:7,21 136:18 137:21 157:16 160:4 166:13,22 167:3,17 174:18 175:4 177:23 179:10,16 191:5 192:9 194:23 200:14 200:18,21 201:6 morals 29:21 morning 8:11,14 motivation 71:23 mounted 109:5 move 12:8 moved 13:20 14:6 15:17,19 91:6 moving 47:2 49:2 52:23,23 89:20 175:1 mstewart@jenner.c... 2:6 MT 174:19 multiple 142:3 multitude 16:10 110:21	135:18 136:4,19 nature 25:9,10 72:9 nearly 189:14 necessarily 171:5 necessary 92:4 142:12 146:10 need 3:13 10:22 20:23 47:12,12 75:13,15 79:16 85:18 95:9,11 123:9,12 124:7,9,10 125:23 126:3,18 127:15 143:21 144:7 147:15,17 159:7 170:13,15 171:7 176:10,19 191:20 needed 7:6 15:3,4 25:20 47:19 59:21 61:18 62:17 72:21,22 74:5 147:23 153:19 166:8 182:18 195:20 needs 142:12 147:20 172:4 negative 49:20 negativity 49:18 neither 203:11 never 46:2 108:5 150:15 151:21,22 167:15 new 2:4 101:8 106:18 107:17 110:6 127:18 130:10,14 131:13,18 133:1,10 134:2 156:3 190:12 194:20 news 103:18 111:10,12 133:9 150:18 newspaper	103:15,17 next- 116:4 nine 88:11 nod 9:11 nodes 111:14 nods 82:17 85:17 100:10 103:12 nonprivileged 118:3 normal 11:13 NORTHERN 1:3 Notary 1:21 3:8 note 179:19 180:14 182:14 notebook 163:13 notes 129:12,17,19 170:23 183:18 193:17 notice 1:16 noticed 47:19 notices 6:19 137:13 notify 108:18 November 179:18 180:8 185:3 number 27:9,18,22 64:3 65:20 76:8 137:8 140:11 159:19 179:21 186:21,22 203:16 numbers 28:3 NW 2:4,8	NWNI 78:23 O oath 10:8,11 object 8:23 9:1 14:1 16:20 18:8 19:10 20:7 22:4 31:7,13 33:8 35:5,9 37:7 38:18 39:5,13 49:13 52:5 60:5,19 61:12 63:19 64:9 65:2 74:7,18 75:7 76:15,19 77:20 78:2 78:9 80:10 81:1,13 82:1,23 83:5 87:11 90:19 91:19 94:10 95:16 98:8 102:1 106:13 112:9 113:9 114:3 118:21 119:11 120:6 123:4 124:15 125:14,22 131:1,7 133:2,20 134:12,18 137:23 138:22 139:11 147:9,22 149:7,11 151:4 152:3 154:2 159:11 163:19 176:12 177:12 191:22 198:20 199:8 199:14 objection 82:3 objectionable 131:6 objections 3:11,12 objective 58:7,10 60:22 objectives 57:21 obligations 119:10 observation 141:23 obstacles
N name 8:12 53:20,21 85:3 99:4 193:6,15 203:16 named 15:7 131:22 142:7 195:3 names 13:2 NASA 160:2 national			

114:2 obtaining 201:11,13 obvious 173:19 obviously 182:21 occasionally 156:1 occur 14:21 120:13 occurred 92:6 154:8 occurring 100:9 154:9 October 26:21 102:16 114:23 117:9 132:10 135:7 137:14 152:15 153:3 174:17 176:6 177:21 195:9 Off-the-record 82:13 offenses 36:1 38:3,11 79:7,9,11 79:12 191:11 offer 49:6 offered 3:15 offers 48:8 office 1:17 2:13,19 13:21,22 14:5 16:2 17:16 18:17 19:6 23:11 24:12,18,21 25:5,13 25:17 27:2 31:16 37:1 45:9 47:6 49:10 51:6,21 52:7,8,10 55:7,16 73:12,20 89:5,13,20 90:23 91:4 97:10,12 98:1,2 98:12 100:6 104:17 107:1,3,8 108:18 109:21 110:1 112:3	118:7,12 119:8,12 120:1 122:9 123:2 124:2 125:11,17 130:12 133:18,22 137:19 140:21 141:3 141:20 143:7,20 145:23 154:3 156:9 156:20,21 157:8 158:1 170:12 171:18 185:7,10 186:8 187:5 189:19 190:8,17,19 194:4,16,19 197:14 197:21 198:2,6 200:20,23 201:23 officer 201:18 202:5 offices 52:13 122:6,10 official 1:10 49:9 51:4 55:8 officially 43:6 officials 72:17 74:2 96:11 oh 66:6 85:19 87:18 99:5 100:15 152:2 153:15 156:22 okay 8:16 9:8 12:17 15:10 16:6 20:18 21:3 22:2 23:1 24:16 25:3 26:2 26:18,22 28:7 41:16 41:20 44:10 52:7 55:22 56:8,15 65:10 66:6,10,13 70:23 80:5 81:1,12,15 83:23 108:7 112:1 116:14,17 122:15 123:19 129:15,23 134:20 135:1,3 136:13 138:7 141:5 159:8 161:23 162:20 167:21 168:6 171:6 171:21 172:23 174:5 174:9 175:13 179:2	181:18 182:4 184:3,6 185:19,23 186:4 188:12,18 201:9 202:19 old 81:6 88:12 omits 7:3 once 64:13 91:11 one-third 183:13,14 ones 107:15 179:9 online 91:6 122:3 189:10 190:2,6,13 open 200:2 opened 46:3 113:16 opinion 102:4 opinions 180:17 opportunity 46:21 47:15 opposed 42:21 61:7 135:17 opposite 62:20 133:16 order 151:14 organizational 93:23 original 26:16,20 27:13 63:3 originally 88:10 109:17 outlined 106:1 outside 45:5 73:13,20 74:11 85:23 86:13 94:7 127:6 outspoken	88:22 139:4 outstanding 67:23 68:17 overriding 188:22 overview 50:18 P p.m 141:6 153:4 202:23 package 125:4 Packard 55:4,5,23 65:19 67:1 70:12 76:7 97:7 107:12 114:22 117:8 117:9 152:14 153:7 154:12 182:15 Packard's 118:10 packet 159:13 166:10,19 179:18 183:9 Packward 55:3 page 5:3,5 6:2 7:2 29:11 30:11 32:5 33:10 34:8,9 35:18 41:7 48:6,7 49:3 51:15,16 57:6 59:9,10,11,11 61:21 70:23 71:1,17 77:4 79:22 119:17 122:12,16 130:4 153:4,5 154:12 159:22 160:2 165:4,6 165:11,13 166:9,10 166:19 167:21 168:1 172:1,23 179:17,18 182:8,13 183:8 195:12 pages 28:4 30:9 38:4 159:20 163:5 192:1 paid

64:11,13,15,15 paper 190:11 201:20 202:1 202:11 paragraph 44:14 49:2 51:16 52:16 62:1 67:7 71:3 103:23 107:16,20 108:14 117:13 122:17 130:7 135:12 pardon 48:10,21 49:9 51:5 142:11 pardons 48:8,16,19 76:12 83:13 146:12 174:20 175:14,18,21 177:21 178:21 179:6 202:14 parent's 15:5 parentheses 166:23 parenthetical 191:11 parole 49:10 51:5 paroles 48:19 76:12 83:13 146:12 174:20 175:14,18,22 177:22 178:21 179:7 202:15 paroles' 48:16 part 14:7 16:23 47:23 49:22,23 53:6,9 57:13 63:2 64:18,22 65:5 70:15 105:18 120:8,9,14 123:8,11 140:20,21 153:23 158:19 161:11,14 175:20 177:17,18 185:13,15 191:13 participate 109:15 193:1 participating	62:23 particular 22:9 36:15 42:22 61:2 61:3 63:11 91:18 93:11 153:12 particularly 66:17 91:2 93:16 parties 3:3,20 59:22 203:11 Parts 116:17 party 3:22 38:13 pass 151:2 passage 109:11,22 passed 21:20 23:11 69:1 94:16 95:5,15 96:1,9 100:20 101:8 104:11 108:3 112:12 120:3 137:1 190:12 pay 62:17 79:16 119:10 120:4 payment 67:22 79:5 PDF 190:3 penalties 63:6 pending 172:2 people 18:21 24:10 43:22 50:5 53:14 58:2 60:7 61:1 62:6,14,22 63:1 63:23 64:4 65:1 72:12 94:17,23 97:10 106:15 108:9,12,15 109:14 110:16 111:19 113:4 125:4,6 125:18 126:3 141:18 141:19 171:17 176:1 179:22 189:14,17	198:5 201:11 peoples 182:10 percent 16:22 33:2 67:16 70:2 130:21 187:3 percentage 16:17,21 perfect 9:13,22 perform 140:4 177:10 period 28:18 85:5 86:2,13 107:23 109:13,13 132:11 185:20 permanently 51:19 52:2,17,18 permission 190:18 permitted 23:4,6 39:21,22 person 19:17 20:17 32:3 94:9 100:1 155:19 170:10 192:11 200:16 202:6 personally 30:13,22 40:9,14 99:10 101:4 189:8 perspective 133:12 pertain 17:15 173:11 phone 93:17 99:15 179:20 186:20,22 189:11 phrase 10:1 40:10,15 51:2 60:8 71:6 72:1 73:6 73:17 79:9 163:10 phrasing 136:15 piece 48:18 92:12 place 47:14 53:14 126:17,23	129:19 145:3 177:1 193:17 placed 52:3,13 196:20 placeholder 31:1 placing 51:20 Plaintiffs 1:6,17 2:3 plan 40:9,14,20 planning 151:11 played 74:16 please 37:16 44:8 76:9 100:13 114:13 116:19 144:22,23 153:8 plugged 46:6 plural 38:19 PO 201:17 point 14:17,19 15:13 46:8 50:15 52:10 60:4,9 61:4,10 85:7 89:21 90:8 92:13 120:2 127:8 129:11 138:5 143:14 145:20 147:18 158:12,14 167:16 168:6 176:6 177:1 178:17 179:11 179:23 181:7 185:14 186:7 189:13,15 197:7 points 157:12 policy- 101:10 policymaking 165:1,2

political 13:14 102:4 164:17,23	prepared 25:22 28:8,9 34:3,4 42:11,11 60:21 98:10 98:13,19,22 142:2	88:2,4 192:14 202:10 202:16	137:21 178:6
political-type 164:19		prisons 182:18	produced 116:11
politically 187:16	preparing 17:7 42:2 90:12 97:2	privilege 11:8 160:11 171:15	program 165:20,21,22 202:8,10
poll 173:5,7,9,12	prescribed 112:13	privileged 9:1 117:19,22 160:15 161:4 170:14	Progress 180:12
polling 142:3,22	presen- 106:14	probably 14:13 24:9 52:9 72:21 92:17 106:16 149:19 163:22 174:1 181:13 184:10	progressing 147:19
population 111:9,11 113:6	presence 62:2 141:16	probation 49:9 51:5	prohibit 68:2
portion 16:15 45:19	present 2:18 49:8 51:4 85:22 106:15 141:21	problem 47:18 48:3 73:3,4 90:15,18 95:6 145:4	project 88:19 91:2 129:14 150:2
portions 163:1	presentation 75:5 106:9,11	problems 91:4 139:1	projects 16:10
position 13:23 112:23	presented 71:4 75:22	procedural 164:20	proofread 97:9,10
possession 77:12,13,14,15	presents 20:21 37:21 38:6	procedurally 9:9	proper 21:12 201:19
possibility 50:1 148:13 159:2	president 41:21 42:17 43:18	procedure 3:6,17 4:1 20:20	proponents 63:11
possible 22:7,7,17 23:3,8 39:20 44:20 58:6 61:4 172:14,15,22 189:6,7 193:20	press 16:5,13 101:1,16,23 109:7 110:19,22 115:4,11 151:2	procedures 8:21 17:21 18:2 201:12	proposal 5:12 27:9,17,22 42:13 49:12 50:12
Possibly 163:2	pretty 89:4 125:3	proceed 103:8 171:20	proposals 27:23 93:20
posters 202:16	prevent 30:17 32:15 192:10	process 17:17 19:3,4 21:1,4 49:23 50:1 58:1 95:8 104:7 109:16 130:9 130:14 142:1,11 143:4,13 146:12 147:7 151:5 165:23 166:7 168:14 172:4,6 172:7 173:13 175:3 175:16 189:4,4 190:10	propose 90:7
potential 99:22 131:16 175:9,19	preventing 143:10	processing 141:17 146:10	proposed 5:9,21 69:4 196:14,19 197:8
Poverty 173:3	previously 99:11 112:15 164:18		prospective 24:6,22 119:9
practice 34:23 142:1	previously-incarcer... 182:10		protected 171:15
pre 21:13 201:7	primarily 28:13		provide 58:11 80:7,23 96:2 120:1 123:7 125:16
pre-prepared 75:18	primary 92:21 95:2,4 98:6		provided 3:16,23 29:4 57:14 107:5
preliminary 170:4	printing 190:3		provides 80:2
prepare 15:4 29:6 40:20 90:5 119:8	prior 24:23 113:21		provision 40:1,5
	prison		

provisional 143:1 148:9,17	22:16,20,23 23:17,19 24:5,16 30:1,5 31:10 33:3,21 34:5 36:9,22 37:13,18 38:5 39:6 40:2 48:17 50:13,14 50:22 51:6 52:19 53:4 56:22 60:13,16 63:18 72:3 78:13 80:11 82:5 85:13 109:16 118:2 119:21 127:9 136:22 143:19 144:13,19,20 147:23 148:7 150:22 155:12 155:17 157:15 158:11,18,20 159:9 160:3,5,9,12,12,17 160:18,19,21 161:5,9 161:10,11,17,22 162:1,4,16 163:8,10 163:18 166:22 172:2 181:21 187:2,4,6 191:2 198:4 200:9	quotations 51:10	44:7 84:1 90:14 127:9 142:20 160:9
public 1:21 3:8 24:6 110:9 156:19		R	realist 91:13
published 167:19 181:8		R	Realistically 15:20
publishing 109:20		race 187:22 188:1,3 195:6	reality 20:8
pull 172:8		racial 71:23 74:6	realize 46:6
pulled 129:13		racially 74:10 187:16	realized 90:12
punished 63:13		racially-motivated 71:8	really 47:6 64:10 68:22,23 74:13 105:2 123:6 130:18 135:6 136:10 145:8 146:8 159:3 163:15 166:4
punishment 62:5,8 64:2,8,22 65:5		racketeering 146:4	reapply 112:16,17 113:15
purpose 3:16 38:19 58:5 72:14		raises 101:23	reason 10:2 49:5 64:5 104:13 112:20,21
pursuant 1:16 3:5		rarely 99:18,18 158:16	recall 24:5 30:2 32:7 36:11 37:19 40:19 41:23 44:6,11 49:11 53:1 57:1,22 59:14,18 66:16 70:19 71:10,22 76:17,20 86:19 87:15 87:18,21 91:9,22 93:17,20 100:8,21 102:19 103:10 104:10 117:15,19 118:3,6,13 119:4 121:20 126:21 130:16 132:6,7,9 134:6 135:19 140:22 149:3 152:18 155:10 156:23 162:21 163:10 166:14 172:3 173:6 174:21 176:21 179:23 180:23 181:5 188:16
pursue 165:3		re-call 169:13	receive 21:8 23:13 48:10,21
put 32:4 49:19 68:20 129:6,18 136:6 137:3 198:13 202:15	questioning 171:20	re-calling 168:14 172:5	
puts 23:22	questions 3:11,12 6:12 9:14,16 10:19,23 11:2 12:13 29:9,14,16 42:23 127:17 129:8 130:1 150:2 151:10,15,18 155:11,18 156:2 157:23 158:9 163:21 164:1,19,22 176:16 181:14 184:5,17 196:5 199:23 203:7	re-enfranchisement 53:19	
putting 51:2,11 62:21 129:1		reach 110:1 111:2 153:20	
Q		reached 110:11,12 181:7 199:16	
qualification 30:9		read 8:4 37:15 44:7,16 45:23 54:13 63:16 68:5 75:2 80:3 81:15 103:3 104:19 111:8 111:11 114:7,12 118:2 121:17 168:17 191:18	
qualifications 110:7		reading 50:7 80:22	
qualified 7:3 146:14	quick 44:7 46:14 84:1 127:9 127:11 129:23 142:20 160:9 161:2 162:12 184:11 200:5 200:8	reads 37:17 63:17	
qualify 30:6	quickly 42:8 52:20 100:2 135:6 149:5	ready 103:7	
qualifying 44:19	Quin 84:1	real	
question 6:22 9:23 10:5 11:9 12:4 17:23 22:6,11			

48:22 99:7,15,21 100:22 121:8,13 128:10 142:11 169:20 received 18:22 23:18 31:19,21 101:1 115:23 116:22 121:18 145:21 recess 46:18 84:23 135:2 152:7 184:13 recipients 65:20 76:8 recognize 27:11 41:12,17 54:16 102:17 115:1 121:5 137:15 149:20 152:15 159:16 186:20 recognizing 95:7 recollection 11:19 162:23 163:4 recommend 133:3 recommendation 79:20 191:14 192:1 recommendations 6:5 80:1 83:21 192:2 recommended 121:23 record 9:15,16 26:11 82:7,11 120:19 127:12,14 134:23 135:4 162:18 162:19 171:12,13 184:8 199:15 200:7 records 198:8 199:1,4 recurring 100:18 redacted 163:1 169:12 redundant 182:23 Reed	132:18 refer 13:1 34:21 36:22 41:4 56:19,19 96:17 123:13 135:6 137:17 168:15 182:11,16 183:17 192:4 reference 180:9 references 115:4 157:12 referred 28:11 74:15 162:21 163:11 referring 26:11 27:14 44:5 107:19 123:14 135:20 138:20 139:9 139:16 141:11 147:20 149:6 155:17 167:2 168:10 176:3 178:1 179:14 refers 68:16 108:15 130:5 137:20 163:21,22 165:17 167:1 168:13 173:1 183:23 reflect 33:12 198:17 200:13 reflected 138:9 169:21 reflects 34:11,13 reform 88:3,4 refresh 162:23 163:4 regarding 32:13,14 57:19 86:22 86:23 96:11,21 101:2 141:10 150:7 154:17 165:16 regardless 75:21 regards 182:17	register 17:2 18:15 20:16 21:9 23:4,6 24:8 37:22 38:7 39:21,22 44:21 50:2 58:3 110:7 113:8,14,18 114:1 128:19 146:14 147:5 147:7 192:12 193:1 194:11,12 202:18 registered 125:18 143:11 148:20 153:1 189:17 190:10 197:13,18 registering 6:14 62:23 120:5 128:11 189:14 192:20 198:18 registrant 51:20 52:3,18 175:10 201:2 registrant's 44:20 registrar 18:19 19:7 20:6 21:18 24:13 26:4,5 34:1 36:3 38:17,21 97:23 98:3,7,17,18,19,23 117:6 118:8 126:20 128:16,18 131:22 132:2 134:10,14,17 138:15 140:22 144:15 146:23 153:16 156:15 177:9 198:12 200:12 registrar's 144:14 158:18 registrars 5:6,8 18:20 19:14 20:3 20:8,9,10,13,16,23 21:21 22:3,8,18,19 25:5 26:10,13 27:3 27:13 28:22 31:9,22 38:16,22 39:3,9,23 41:22 42:18 43:8,20 46:13 47:2,10,17 48:4 58:14 90:13	97:14 99:8 104:1,2 104:22 105:3,15 107:6 116:10,13 118:19 119:3,18 120:2 122:10,19 123:20 124:3,20 125:19 126:14 127:22 128:6,10,14 129:18 130:6,13,17 132:13,23 133:9 134:1 138:10 139:14 140:1 145:23 156:3 165:15 175:8,11 176:18 177:5 178:16 186:11 193:14,18,20 194:6,14,21 195:10 195:13,17,23 198:16 198:21 registrars' 18:17 19:6 47:6 52:10 52:13 89:12 98:1 100:6 143:7,20 190:8 200:20 201:23 registration 49:4 51:21 52:3 91:7 111:19 112:5 113:19 123:15 125:21 136:4 138:18 141:10 148:14,19 157:10 165:22 173:15 183:13,23 189:3,10 189:22 193:11,13,22 194:3,15 198:23 registrations 127:18 regulations 173:11 reiterated 140:3 rejected 122:21 relate 54:21 64:19 related 17:18 44:17 79:16 86:19 101:11 124:6

127:20 135:14 150:3 164:23 165:19 166:1 166:2,4 167:17 169:10 171:5 173:16 175:15 179:7,10 relates 52:16 176:5 relating 175:7 relation 203:11 relations 13:15 relationship 170:19 release 81:19 182:9 releases 16:13 109:7 relevant 119:21 174:11 remain 67:23 68:17 remember 11:16 23:15 29:23 36:12,13 41:18 53:20 54:2,4 55:12,18 56:5 56:14 65:9 70:22 72:4 73:9,22,23 84:11 87:5,9 92:18 104:13 110:23 115:11,13,14 120:7 132:5,15,17,18 140:17,18 148:8 152:17,22 154:5,9 155:11 161:23 162:13,14 163:15 166:18 167:20 168:12 172:13 176:14 178:4 180:2 181:4 182:12,20 185:19 191:15 193:5 193:6 199:9 remind 24:3 89:17 removal	49:3 remove 20:14 33:6 51:19 52:2 52:18 removed 18:4 122:22 138:2,3 removing 73:6,16 repaid 191:1 repayment 120:12 repeat 33:20 39:6 40:12 repeating 116:8 rephrase 17:23 85:12 replace 134:16 reply 104:17 report 115:10 122:20 124:10 125:1,4 126:3 153:10 194:13 reported 123:11 178:2 reporter 1:20 3:8 6:23 8:1 37:17 63:16,17 99:3 103:14 110:17 133:16 150:1,13,16 203:15,20 reporter's 84:17 203:1 reporters 110:1 Reporting 203:15 reports 115:4,9,11 123:20 124:3 representative 28:9 87:16 89:2 179:19 184:19 188:9	188:17,18 representatives 61:2 188:13 196:2 representing 3:3,19 174:11 represents 203:8 request 84:20 124:2 125:3 134:13 183:2,5 201:21 202:1,3,12,13 requested 202:3 requester 158:21 159:10 requesting 124:14 requests 23:13 99:7,21 151:2 require 177:7 required 49:8 51:4 81:17 119:9 120:4 147:7 177:5 190:12 193:14 requirement 123:18 requirements 106:18 140:4 requires 23:21 research 25:23 45:3 47:5 71:4 89:13,17 144:7,10 research-related 17:14 reserved 3:14 reserving 163:23 resign 130:20 134:10,14 resigned 132:6 resigning 132:9,16	Resolution 5:10 resolve 90:21 95:5 resolved 153:18 resolving 95:13 respect 133:23 176:2 188:23 191:9 respond 29:18 99:10,17 101:4 118:11,13 150:5 164:21 responded 23:16 118:16 121:22 149:4 182:3 responder 158:16 responding 119:4 158:17 180:1 responds 29:19 142:14 158:20 159:10 response 30:7 100:12 114:9 118:6 119:1,2,6,8 121:20 126:21 133:8 138:7,11 145:17 146:17,18,20 150:9 152:18 161:12,14 167:6 168:16 181:16 181:22 responses 151:9 responsibilities 15:1 16:6,23 17:12 35:3 70:16 105:7 132:4 responsible 37:20 38:13 189:13 responsive 173:21 restate 131:16

restitution 79:6 166:13 190:23	115:2 116:1 121:6 126:16 127:3 140:16	81:22 82:20 108:19 146:4,7,11 147:6	26:12,20 27:9,10 28:8 35:19 42:10 46:10
restoration 5:16,19,22 6:8 80:7,16 81:18 147:6 187:10	152:21 155:9 160:7 165:18	172:11 175:17 187:10	48:8 51:17 56:18,23 57:18 62:1 67:7,20 68:16 71:4 76:9
restore 80:19	Richey 98:2,16 140:19 142:6 142:14 144:4,22 145:21	road 15:7	77:10 79:5,23 80:15 81:8,13 82:4 102:13 104:1 114:20 117:11 117:13 122:8 135:8 138:16 139:13 141:7 145:18,21 146:15 147:15,17 150:1 153:8 159:23 160:3 165:13 166:21 168:7 173:5 174:18 177:21 178:20 179:22 182:9 182:15 183:12,12
restored 18:3 63:12 64:7 67:10 67:12 81:21,22 108:19 146:5,7,11 175:17	ridiculous 104:23	role 16:7 53:11 55:8 74:16 94:5 136:9	scan 193:20
restoring 82:20	right 8:11 9:19 11:4,11,21 11:23 12:5 14:11 24:22 26:14 27:10,20 27:20 29:12,14 31:12 34:8 35:19 41:7 42:8 43:9,21,23 47:21 51:10,17 54:8 55:14 61:22 64:2 65:10,18 67:4 68:3 70:11 71:2 76:6 77:5 78:8 79:23 80:18,21 85:7,16 94:1 95:20,21 102:14 103:21 106:7,8 114:20 115:7 119:23 129:19 135:9 137:9 140:6,11 142:13 143:15 145:20 148:1 149:17 152:13 155:3 155:14 157:15,17,18 162:4,8 164:8 165:5 167:11,22 170:6 171:1 172:2,16,21 173:1 175:8,20 176:8 178:6,19 181:3 182:7 183:2,11,16,21 184:20 189:23 193:8 194:12 196:11 200:1	roles 138:3	Scenario 81:16,20,22 82:21,21 82:22 83:2
restrictive 82:19		roll 143:5	scenarios 80:2,7,17,23 81:16 82:16,19
restroom 84:20		rolls 143:8	school 185:22
resubmit 142:13		room 59:20 60:2 62:7 65:7 72:17,19 96:22 107:13	science 13:14
result 203:12		Round 6:7	scope 110:4 127:6
resuming 137:20		rule 186:16	search 109:10
retract 106:10		rules 3:5,17,23 8:17 173:11 177:19	second 41:13 50:14 51:17 55:10 56:11 57:6 61:20 67:19 68:5 70:23 71:17 79:22 80:3 92:8 103:23 107:16,20 117:13 122:8 130:7 143:16 153:5 154:11 158:19 160:8 165:14 172:3
return 83:17 129:23 145:1		ruling 3:14	secretary 1:11 2:19 13:21,22 14:4,18,19 15:11
returned 98:18,23		run 123:16 194:3,14,16	
returning 82:14		rural 187:20 195:21 196:2	
revealing 9:3 117:18		S	
review 18:21 103:5 116:19 117:14 126:15,19,23 127:2 144:8 175:9	right-hand 168:1	Sam 120:21	
reviewed 31:23 92:15 98:12	rights 5:16 6:8 18:3 20:14 48:22 63:12 64:7 65:5 67:10,11 77:10 78:1,7,21 79:18 80:8 80:12,16,19 81:18,20	save 28:5	
reviewing 19:15 117:15 175:9		saw 86:17 90:20 92:11,18 173:22	
reviews 41:15 44:9 56:12,21 68:6 70:10,21 80:4 84:10 92:16 114:14		saying 37:9,11 58:16 68:9,11 96:4 124:19 149:19 162:5 169:14 174:12	
		says	

16:1,5 17:8,9,10 23:10 24:12,17,20 25:5,13,17 27:2 31:15,21 47:4,7,18 48:3 51:22 52:8 55:7 55:15 57:18 61:17 73:12,19 83:21 85:6 85:9,14 86:12,16 88:7 89:7 90:22 91:12 93:8,14 94:11 96:2 98:21 101:12,16 101:23 103:22 104:19 106:23 107:2 107:8 108:18 114:9 118:7 121:20 130:11 133:18,21 134:3 150:6,8,12,14 151:2 151:8,12,15 153:8,13 153:20 154:13,17 156:9 158:1 164:2,6 166:16 171:17 181:10,19,20,21 184:18 185:6,9 186:8 186:22 187:8 188:21 188:22 189:18,22 190:13,21 194:4,15 195:15,20 197:14,21 198:2 secretary's 180:17 section 46:1 56:17 129:20 150:22 sections 29:6 see 11:3 12:7 26:20 27:17 28:7 31:2 32:19 33:5 36:22 37:5 38:20 39:17 40:21 41:23 42:4 45:10 47:20 56:13 57:5 59:8 60:1 69:2 71:17,22 75:16 76:5 79:13 82:16 83:10 84:7 96:1 101:21 117:3 121:17	123:16 124:10,11,13 124:13,16,21,22 125:6 126:1,4,9,11 128:9,13,22 129:21 143:7,22 144:2 145:10 147:11 151:1 153:19 162:23 163:4 165:5,11 167:7 168:23 169:15 172:12 175:11 176:6 181:15 seeing 36:12 seeking 79:15 seen 36:10 37:5 88:20 116:8 selected 195:15,19 selecting 187:14 self-awareness 94:19 senate 138:5 181:3 Senator 87:21 187:22 send 99:14 122:19 123:20 124:3 128:5,9 143:6 150:23 179:9 sender 157:19 sending 41:18 97:1 127:20 128:2 150:9 174:19 175:4,6 177:22 179:11,13,14 194:21 sends 178:19 179:7 194:19 sense 14:13 52:11 80:11 105:9 114:6 170:11 178:15 191:17,23 192:3	sent 29:7 41:23 55:22 69:23 96:19,20,21 108:23 109:7 115:20 115:20 116:9,13 120:19 124:20 127:19 145:16 182:18 190:8 200:12 sentence 51:10 57:17 63:3,7 67:13,19 78:23 81:20 107:7 135:11 136:6 136:11 sentenced 64:14 separate 23:5 27:23 39:10 September 1:22 182:14 183:11 202:23 serious 101:22 services 16:11 169:1 serving 64:21 set 29:6 31:1 60:15 92:2 125:8 seventy-five 16:22 shakes 22:13 share 139:3 Sheets 103:13 104:11 114:10 130:13 134:1 167:6 167:10 176:15 Sheets' 130:3 short 16:8 46:18 84:20,23 120:22 152:7 184:13 Shorthand 1:20 3:8	show 52:20 137:4 140:7 152:8 180:3 showed 49:21 89:15 showing 62:2 shows 71:5 sick 12:15 side 183:11 sides 91:15 sign 8:4 20:9,13 signed 120:21 significance 57:15 significant 63:4 74:16 110:13,14 significantly 97:23 signifies 27:16 similar 107:15 Sinclair 2:13 9:6 42:14,21 43:11,15,21 44:1 100:12 160:21 161:8 162:3 184:8 single 186:23 sir 8:15 9:20 10:6,10,14 10:21 11:5,12 12:1,6 12:14,16,18,21 13:8 22:15 24:15 27:12,15 28:12 29:15 30:4 35:6,8,13 38:23 40:6 41:11 77:21 84:3 92:23 93:3,19,22 97:18,20 154:19

196:12	127:23 128:2 137:10	124:18 132:5,20	standards
sit	137:20 138:8 159:5	133:13,23 134:6	29:20
173:19	160:15 165:9 167:14	139:9 153:21 166:2	Star
sit-	175:6 178:22 197:2	167:12 180:22 183:6	110:18
87:4	201:9	193:16 197:3	start
sit-down	sort	specifics	14:11 54:3 88:14 89:7
86:18	73:5 89:7 94:9 100:11	24:10 114:5 132:15	90:2 112:1
six	201:3 202:8,9	157:1 182:21	started
109:12,13 141:19	sounding	specify	8:17 13:9 14:9,17
145:19 148:3	116:18	82:2 112:21	89:21 184:17
sixty	source	spectrum	starting
16:22	33:19 35:10 39:2	62:21	13:11
skip	48:12	speculate	state
52:22	sources	63:20	1:11,21 2:14,19,19 3:9
small	21:17 45:16 107:14	speculating	15:18,22 18:16 28:8
64:3 101:6 195:21	110:10 111:12	63:22	35:22 36:1,6 38:1,3
society	Southern	speculation	38:10 39:11 43:4,7
64:11 193:4	173:2	23:7	43:11 45:5,15,16
Software	speak	speed	47:13 49:9 51:5 65:4
169:2	8:6 9:11,18 24:2 71:21	147:19	67:21 68:7,13 95:8
sole	74:23 84:13 93:6	spelling	98:21 110:14 113:6
23:22 98:6,10	113:3,4 150:12	99:3	122:11 123:17 140:2
solicit	151:22 161:15 164:2	spent	143:22 144:2,9 146:2
110:2	164:7 181:21 192:18	91:4	146:16,21 185:11
solicited	speaking	SPLC	186:11 198:6 203:2
77:2	91:17 112:1 150:20	6:16 173:2,21	203:20
solution	speaks	split	state's
73:3	151:7	183:13	13:21,22 14:5 23:10
solve	special	spoke	24:12,17,20 25:5,13
90:14,18	138:5 181:4	37:3 74:21 93:4	25:17 27:2 51:22
somebody	special-	111:17 113:12	52:8 55:7,15 73:12
80:19 88:20 99:20	95:11	spoken	73:19 107:8 108:18
101:7 143:5 157:6	specific	148:4 150:18	118:7 130:12 133:18
187:5 190:4 191:18	18:10 33:23 37:2	staff	133:22 156:9 158:1
somewhat	43:19 58:12 60:20	16:4 27:1 28:10 31:19	171:18 185:6 186:8
49:15	62:14 87:4,20 108:22	55:21 97:6,6 153:10	189:23 194:4,16
sorry	113:11 142:6 154:5	153:23 167:23 170:1	197:21 198:2
9:1 13:17 14:10 21:17	156:13 171:3	170:22	state-level
22:12 30:15 40:3	specifically	staffer	43:2
42:20 55:9,13,19	23:16 36:12 53:18	15:15,18 170:11	stated
59:11 60:14 66:12	54:2 56:16 58:10,21	stages	65:7 131:12
75:10 82:6 84:15	69:17 71:23 73:22	25:23	statement
85:19 96:17 98:5,20	74:3 77:17 87:6,8,13	standard	23:20 50:8,16 51:7,18
100:14,15,17 102:20	89:15,16 93:7 104:14	39:14 74:6 141:23	52:1,12 61:5,23 71:3
109:23,23 111:15,21	108:14 111:3,18	standardize	71:10,11 79:10 81:4
111:22 115:8 122:16	112:3 113:3,22 119:1	25:4,14 39:2,9	119:18 165:15

170:12,17 171:8 191:13,22 statements 110:5 138:18 174:22 states 1:1 30:19 32:17 35:21 37:23 49:4 142:15 statewide 103:18 141:15 stating 62:7 station 150:18 status 148:14,19 statutory 5:21 48:18 stay 88:13 stenotype 203:7 step 32:2 53:16 88:6 142:20 143:6 153:22 Stephanie 149:18,18 steps 122:19 123:2 165:16 Stewart 2:3 5:3,4 8:10,12 9:8 14:15 34:19 37:15 38:20 43:1,9,16,19 43:23 44:3,5 46:16 47:1,20 50:23 51:9 58:19,23 59:6,8 66:7 66:10,15 69:13 72:5 80:14,21 81:3,9,15 82:2,12,14 84:19 85:1 86:6,9,10 99:5 100:16 102:22 103:2 103:9,10 107:21 108:2,7 115:18,22 116:2,20 118:1 120:23 129:7,15 131:5 132:14 134:21 135:3 152:4,8 155:8	160:14 161:1,4 162:8 162:10,17,20 167:14 169:7,15,17,20 170:6 170:9,18 171:6,11,21 171:22 174:4,6,13,16 179:2,4 184:4,7,12 191:10,21 196:6,8 200:4,8 202:20 stick 79:21 sticker 160:3 stipulated 3:2,18 stipulation 1:16 stipulations 3:1 8:2 Stop 178:20 stopped 183:21 storm 180:13,22 181:1 straight 184:9 strange 57:5 Street 2:8 strike 13:17 100:23 128:17 study 185:22 stuff 9:12 15:9 26:23 88:19 88:23 156:12 sub 166:12 168:13 subject 137:13 140:14 submit 50:5 190:7 201:20,20 201:22 submitted 92:14 191:8 200:17,19	200:23 subsection 36:2 subset 196:14 substance 77:13 substantive 181:16 substantively 151:13 suggest 74:4 115:5 132:21 suggestion 53:2 Suite 2:5,9,20 Supervisor 55:18 supposed 9:16 55:11 89:1 145:8 183:19 202:2 sure 8:19 9:10 15:16 16:19 18:13 25:12 37:3 38:5 41:18 53:13,14 58:19 66:11 68:8,10 69:18 70:3 82:12 86:9 90:5 96:20 99:12 106:20 120:10 125:11 127:4 130:21 130:22 136:14 139:2 139:22 141:16 142:10 147:10 156:22 157:12 160:10 163:2 167:12 174:7,13 175:21 176:11,18 184:10,12 188:11 surrounding 49:18 Susan 157:20 Swann 131:22 132:8 switch	153:17 sworn 8:6 syrup 12:10 system 18:6 19:12 104:8 107:17 123:6,7,13,13 123:15 124:5 128:13 130:10 131:13,18 133:1,10 134:2 172:10 177:18 189:6 189:11 190:7 193:12 193:14,23 194:3,15 198:23 200:9 systematic 127:3 Systems 169:2 T T-R-A-N-S-P 146:3 table 143:6 160:13 take 10:12 32:2 41:12 42:15 46:14,20 53:16 55:23 68:5 75:17 80:3 103:2,3 122:18 123:2 126:15,17 134:22 139:20 145:3 160:8 177:5,9 184:11 185:16 200:4 taken 1:16 3:5,7 25:16,18 165:16 172:11 177:1 190:7 197:22 203:6 talk 9:18 11:7 86:17 89:3 112:10 150:16,21 152:1 170:16 193:10 202:6 talked 9:1 24:10 48:6 89:14 100:1 139:2 164:18

181:19,23 talking 13:5,7 18:11 43:22 44:1 47:21 53:18 58:21 69:12 137:22 139:5 146:23 190:3 talks 170:4 target 113:2,11 114:5,6 targeted 111:8 task 90:23 tasked 38:8 team 42:2 60:22 92:16 141:18 142:2 153:10 153:23 teams 22:18 technical 178:7 tell 10:9 11:1 24:9,12,18 24:21 36:20 37:4,9 37:12 46:23 68:15 84:9 99:12 101:13 104:2 129:16 147:2 162:6 168:18 180:7 192:16,20 199:20 telling 37:11 104:19 143:3 157:3 181:12 template 28:4 57:13 ten 11:15 64:16 term 44:15,18,21,23 74:4 176:4 terms 53:23 54:20 82:20 187:20 territory	35:22 36:6 38:1 test 55:11 testified 8:8 testifying 10:12 testimony 46:22 191:15 203:9 Thank 8:13 44:3 46:17,19 51:9 59:6 99:5 100:16 120:23 168:6 184:6,7 186:20 192:14 193:10 199:23 202:19 theoretically 23:8 thereto 203:7 they'd 18:21 thing 10:15 12:23 13:5 18:12 46:10 59:3 94:2 101:6 133:7 135:5 167:6 202:18 things 15:4 17:9,18 28:18 48:7 57:5 66:1 83:12 101:5 109:4 121:23 122:2 139:5 163:3 164:1,19 173:22 202:16 think 12:2,23 13:2,3 23:8 25:16 29:11 41:6 42:22 43:4 48:5 50:11,15,19,21 52:16 57:15 58:10 61:13,15 66:4,7 72:18 73:1,1,2 74:14,19,20 75:8,23 76:16 81:12 82:9 83:8,18 86:4 88:1,3 90:12 91:11 92:5,6,7 92:10 93:10,13 98:9	98:14 105:23 110:23 114:8 115:10 116:2 123:5,6 125:8 126:23 127:1,14 131:9 133:8 133:17,21 134:3,21 136:8 140:18 144:19 148:7 149:10 153:5 153:19 158:5 160:17 161:7 164:6 165:15 165:19,23 166:5 167:9 168:11 169:4 170:15 171:7,9,14 172:2 174:10 175:15 180:12,12 188:9 196:16 200:10 201:8 202:6,14 third 79:5 168:6 THOMPSON 1:5 thought 45:11 64:6 72:11 136:10 146:9 156:1 172:7 thoughts 180:17 three 20:12 22:8 38:22 43:22 56:2 69:14 78:7 80:2,6,17 81:16 82:16 94:2 174:18 183:15 186:15 three-person 86:7 tie 95:23 tied 139:7 time 3:13,14 14:8 15:1,23 27:4 28:5,18 30:23 33:19 34:2,4 40:8,13 40:19,22 41:6 44:23 45:6,12,23 46:4 48:13,14,22 50:18 51:12 53:1,22,23	55:9 62:11 72:19 73:4 78:10 86:2,13 86:22 87:23 88:3 89:20 91:17 92:11 103:3,3,19 104:15 106:2 107:23 109:12 109:13 112:2 117:3 119:13 121:17 128:3 131:14 132:11 135:22 138:1,6 140:20,21,23 144:22 145:15,16 148:20 150:20 151:6,17 152:13 156:10 158:22 159:1 163:5 181:2,17 184:22 185:13,13,15,20 187:1,7 times 84:12 94:2 tips 129:12 title 15:13 16:4 today 9:5 10:13 12:13,15 19:11 20:5 35:16 52:1,6 153:1 159:9 201:2 told 104:5,6,7 118:22 130:8,9,13 133:13 134:1 142:23 143:14 148:2 150:19 155:20 157:6 172:13,19 197:16 198:7,9 199:18 tomorrow 143:16,17 top 27:8,18 42:10 119:16 124:5 135:8 159:23 166:21 167:22 182:7 194:3 topic 24:7 93:18 109:8

110:2 115:12 137:1 topics 106:1 160:3,6 163:11 163:18 164:6,16,17 tornado 88:16 total 62:20 141:19 totally 21:23 touched 110:15 traffic 79:7,9,11,12 191:11 trail 145:10 trained 139:14 training 176:23 177:1,10,17,18 trainings 177:3,6 transcribed 203:7 transcript 203:6,9 transcription 203:8 transition 185:6 transitioned 15:22,23 transp- 146:2 TREVA 1:5 triage 102:2,3 151:21 trial 3:21 tried 40:19 109:6 true 203:8 truth 8:7,7,8 10:9	try 9:21 10:4 95:14 142:16 158:4 181:10 197:22 trying 127:16 129:8,10 146:1 163:6,7 183:20 187:19 191:18 Tuesday 159:23 turn 21:5 28:21 30:10 34:7 56:8 100:7 160:1 turned 124:8 turning 34:6 59:12 66:23 166:19 183:8 turpitude 5:10,12 6:10 7:6 13:3 18:19,23 19:9 21:7 21:10,15,19 22:10,21 23:14 24:14,19 25:7 25:15 29:17 30:7,23 31:4 32:13,15 33:11 33:18 34:2,10 40:11 40:16 42:13 44:19 45:1,5,21,23 46:1,7 47:7 48:10 53:3,8 58:9 59:14 60:3,12 60:18 61:6 71:7 72:2 73:7,17 74:5 77:7,19 80:9,13 81:7 89:16 100:4 104:4 108:17 111:20 112:6,8 113:21 118:20 120:17 124:8 127:21 128:7,21 136:19 137:22 157:17 160:5 166:13,22 167:3,17 174:18 175:4 177:23 179:10,16 191:5 192:9 194:23 200:14 200:18,22 201:6 Tuscaloosa 88:11,16,23	two 11:15 13:1 20:8,8,10 20:13,16,23 29:5 56:3,5,7 65:23 66:3 69:22 89:4 104:7 105:14,16 109:10 129:7 130:9,12 133:23 141:20 186:17 192:19 type 30:20 32:18 155:11,16 typical 157:8 typos 27:15 U Uh-huh 102:18 ultimately 31:8 32:19,23 61:7 83:4 148:5 196:20 197:9 unanimous 22:9 unclear 10:1 170:19 undergo 31:2 underlined 77:13,15 underlying 79:17 underneath 61:22 166:12 underreporting 178:10 understand 10:3,4,9,11,20 12:12 13:4 35:2 38:5,21 43:2 44:23 45:4,8 46:8 58:23 79:13 81:3,9 108:10 131:5 139:15 142:19 144:4 146:6,17,20 understanding	18:14 31:3 45:10,14 49:1 50:8 77:16 79:8 83:20 135:21 136:7 139:8 140:3 163:9 179:4,6 190:20 194:18 understood 44:3 45:2 139:23 143:19 144:6 146:8 174:4 191:13 undertake 33:5 undertaken 25:12 unequivocal 157:14 uniform 25:21 28:19,23 47:12 58:11,13 61:18,19 175:1 176:3,7,11,13 uniformity 174:19 175:2 176:2,20 176:22 unit 48:8 United 1:1 30:18 32:17 35:21 37:23 University 13:12 updated 97:19 98:7 updates 28:5 updating 97:16 urban 187:20 196:3 use 34:20 44:15 84:20 177:17 useful 173:5 user-friendly 189:7 Usual

8:1	volunteer	187:10 189:4	132:11 136:5 148:22
Usually	184:22	vs	152:23 154:7 172:4
99:18	vote	1:8	182:9 197:19 198:4
utilizing	6:14 16:12 17:2,22		we'll
73:6	19:1 20:17,21 21:10	W	9:6 11:1,3,21 14:15
	23:4,6 50:2 58:3		58:23 69:15 85:14
V	64:23 68:3 91:3	waiting	114:16 137:4 143:14
vacation	104:4 110:7 113:14	146:16	149:12 159:13
104:15	113:18 114:1 119:23	Walker	162:17
variety	120:5 135:17 136:3	76:11,13,23 77:8,17	we're
187:19	143:1 147:5,8 153:1	188:3 191:8,14	10:15,18 11:9 34:6
Vaughn	189:1,17 190:10	want	51:11 65:10 70:4
149:18	192:12,20 193:1,2	8:16 11:20 34:7 41:4	129:10 135:3 159:22
Vaught	194:8 197:13,18	48:7 50:13 52:20	171:19,22,23 181:13
149:19	202:17	66:10 79:21 83:23	183:21 191:17
vendor	voter	94:20 113:4 114:16	we've
169:1	5:13,15 6:21 24:7,16	125:2 126:19 134:22	40:18 69:12 89:14
verbal	24:21,22 37:21 38:6	135:4 137:17 151:23	183:20 202:14
85:18 100:12	91:6 98:7 122:22	157:2 162:3 164:7,15	website
version	123:15 136:4 138:2,3	169:12,13,16 174:8	48:16 51:22 189:23
26:6,15,16,18 27:19	141:10 143:11 149:3	174:10 184:16	wedding
28:3 31:23 33:12	150:3 165:21 183:12	193:10 199:15	15:5
195:9 196:23 197:3	183:23 187:9 189:10	wanted	Wednesday
197:10	189:21 193:11,13,22	23:23 61:14 90:5	183:12
versus	194:2,6,14 195:3	101:12 135:11	week
136:19 187:20	198:13,16,23 200:17	153:20 162:1,6,11	138:17
vet	voter's	187:15 196:1	weeks
126:12	129:20 142:23 153:12	wanting	109:12
victim	voters	168:7	weird
79:6	7:3 99:22,23 108:19	wants	155:23
view	119:9 122:17,22	150:16,21	went
63:11,23 65:1,1 122:4	124:7,23 125:7,18	Ward	13:12 29:1 32:20 63:4
views	131:11,16 132:22	87:22 88:1,2	64:12 82:10 87:5
60:1	136:1 137:21 141:7	Washington	93:9,11,12 106:5,7
Virginia	141:12 175:19	1:18 2:5,9,14	108:3 120:3 138:8
145:22	voters'	wasn't	142:3 145:10 186:7
visa	108:23	30:21 94:6 95:20	192:17
30:18 32:16	voting	way	weren't
visit	5:16 6:17 18:3 20:14	10:1 12:22 13:7 14:16	125:20 179:11
150:7	49:5 63:12 64:7 65:4	16:18 21:2 39:2,9,23	whispering
visits	67:10,11 77:10 78:1	51:12,14 58:3 60:8	84:13
202:9	78:7,21 79:18 80:1	61:15 64:12 68:20	white
voiced	80:12 81:18,20,22	87:6 90:14,18,20	195:22 196:3
44:17 46:11	82:20 86:19,23 88:5	91:4 93:23 94:14	Wikipedia
voicing	115:6 140:14 146:11	95:7 96:5 102:2	30:14,15,16 32:4,8
46:12	151:23 172:11	112:10 114:2,4	33:7,13
		115:23 130:23	

Win 61:23 162:5	200:10	78:12 79:11 82:9	1/31/18
window 138:1	world 21:13	84:9 85:14 86:6	6:22
Winfield 2:13	worried 49:19	100:14 102:22 103:2	10
withdraw 22:6	wouldn't 21:1 36:20 92:20	103:16 114:13	6:4 70:7,8,20 71:1
withdrawn 42:5	102:2 113:1,2 180:6	115:18 118:1,3	137:14 155:13
withhold 161:14	181:15	122:14 123:18,23	158:22
witness 22:13 41:15 42:20	write 16:13 30:13 92:9	124:1 129:5,22 133:4	10/10/17
43:5 44:9 56:12,21	109:17 193:15 197:5	135:11 145:19 149:8	6:18
65:23 66:4,12 68:6	writer 121:21 152:19	160:23 161:1,20	10/11/17
70:10,21 80:4 82:17	writers 74:12	164:5,14 170:18	6:12
84:10,15,18 85:17	writes 154:12	171:4 176:23 178:8	10/19/17
100:10 103:5,12	writing 94:6	200:4 201:18 202:2	6:14
111:14 114:14 115:2	written 50:19 78:11,15 80:15	year 105:17,18	10/7/16
121:6 140:16 152:21	80:22 102:7	Yearly 177:4	7:3
155:9 160:7 161:7,16	wrong 101:20	years 44:12 88:12 89:4	10:30
165:18 178:22 203:9	wrote 135:8,22 136:11	yesterday 141:8,12	117:9
wonder 155:19	wsinclair@ago.state... 2:16	York 2:4	102
word 46:5,6 182:22		Z	6:11
work 13:20 14:7,18 15:8,10		0	1099
16:10 21:4 40:17			2:4
50:12 51:13 66:20	X		10th
91:21 94:21 98:1,16	Y		155:6
159:21 186:8			11
worked 14:7 23:10 68:22	y'all 45:17	1	6:7 75:23 76:1,3,5
140:20 166:7 202:14	yeah 9:3,13 14:15,16 19:12	5:6 26:7,8 34:6,9 48:6	102:16 182:14
worker 173:5,7,9	19:23,23 26:20 27:20	59:11 81:16 82:21	11:10:42
workers 173:12	28:4 33:22 34:13,16	97:13 135:8	145:18
working 85:6 88:2,7,17,18 89:3	34:19 37:14 44:12	1/13/16 5:21	114
89:10 140:23 184:17	46:16 47:4 50:23	1/14/16 5:13	6:13
works 55:6,15 95:8 98:15	52:16 56:23 57:7	1/15/16 5:18	12
104:7 123:6 130:9	58:1 64:4,10 66:15	1/19/16 6:3	6:9 76:1,3 77:4 82:15
	68:10 69:13 70:18,19	1/22/18 6:16	183:11 191:7 192:4
	70:22 74:11 76:22,22		12/15/21
			203:22
			12/18/15
			6:4,7
			12/2/14
			5:9
			12/21/15
			5:16
			121
			6:16
			13
			6:11 102:8,9,10,12
			114:9 130:3,3 167:8
			182:7

137	173	26:21 33:11 41:3	23rd
6:18	34:8	135:7 185:3 195:9	141:6
13th	174	201:3	24
69:23	35:19	2015	26:21
14	18	13:13 16:1 54:3 76:9	24206
6:13 114:17,18	6:22 76:9 78:16,18	78:17,18 85:5 185:7	114:20
140	149:12,14	185:9 186:2,5	24227
6:20	184	2016	103:20
1400	5:4	85:5 152:15 153:3	26
2:9	19	2017	5:6
1411	7:2 16:1 114:23 152:9	102:16 114:23 132:10	27
2:8	152:10 174:17 176:6	137:14 140:15	5:7 159:23 163:16
149	1901	155:13 158:22,23	28
6:22	71:8	159:23 163:17 166:9	166:20 180:8
15	196	166:11,21 168:2	282
6:16 121:1,3 125:4,5	5:4	174:17 176:7 177:21	13:1,6 19:22 20:1
15-22-36.1	19th	179:19 180:9 195:1	21:13,20 22:7,17
6:10	117:9	197:15 198:8,17	23:11 24:23 25:7
150448		201:7	32:20 34:11,12,18,20
172:1	2	2017-378	38:12 40:16 50:11
150469	2	13:4 34:12,14,21 40:5	61:8 74:17 83:4 96:9
173:1	5:7 27:5,6,11 41:3	2018	96:11 99:9,23 100:20
150473	48:7 61:21 81:20	1:22 182:7,14 202:23	101:2 106:19 108:2
174:16	82:21 122:12,13,16	202.637.6329	112:8 113:21 120:2
150481	192:1 195:8	2:6	125:11 126:7 127:7
177:20	2/10/17	202.736.2200	128:8 137:1 155:14
150487	7:5	2:10	176:7 196:21 197:10
179:17	2:16-cv-783ECM-S...	208	197:18 199:7,13
150498	1:8	119:17	201:4
180:8	20	21	282's
150658	1:22 7:5 154:22 155:1	7:7 34:9 38:4 159:13	33:1
182:6	202:23	159:14 171:22,23	28th
150678	20001	211	166:20
182:13	2:5	70:11	
150679	20005	213	3
183:9	2:9	71:1	3
152	2009	21st	5:9 6:3 40:21,23 41:2
7:2	190:17	56:10	81:22 82:22 83:2
155	201	22	122:16 192:1
7:5	186:13	35:18 38:4	3.0
159	2011	227	27:9,16,18
7:7	88:17	107:22 130:5	3:42
16	2013	23	141:6
6:18 137:4,5,6	14:22 15:19 88:8,8	166:9,11	3:46
17	184:19	231	202:23
6:20 140:6,8	2014	203:21	30

JOHN CALVIN BENNETT, JR., 9/20/2018

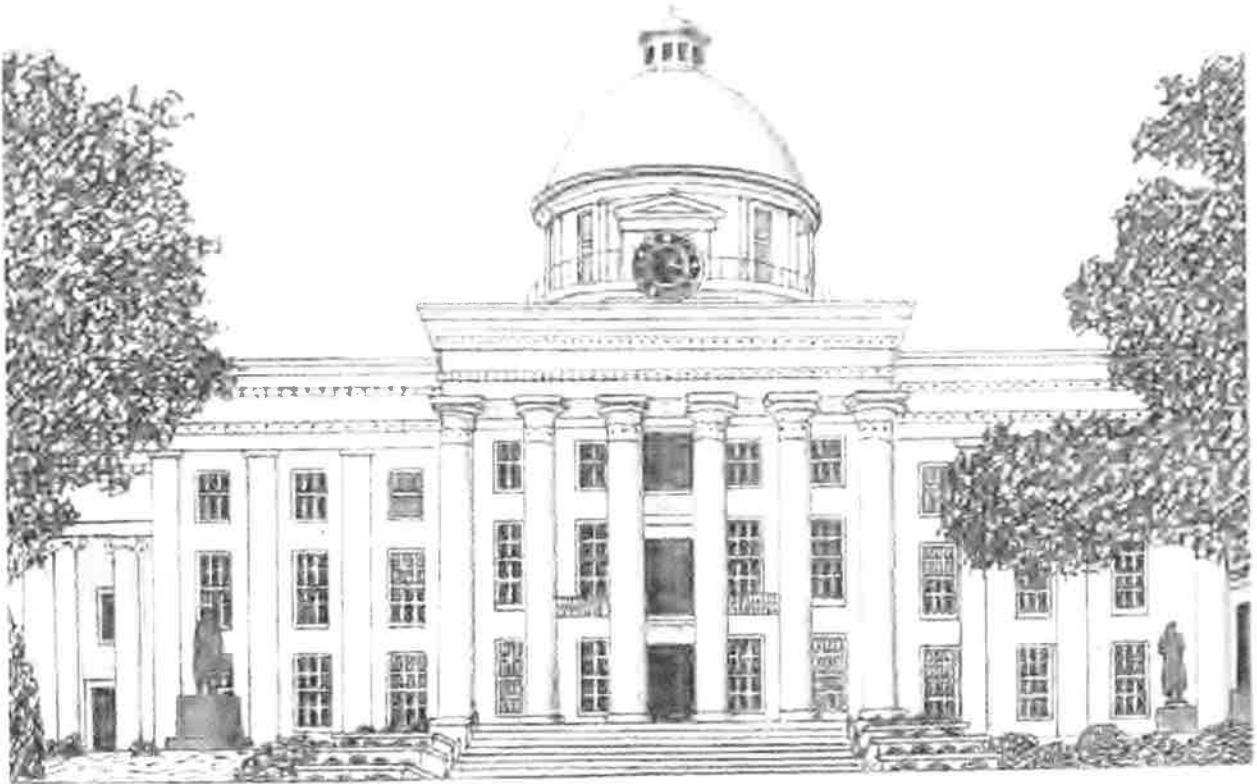
Page 35

135:7 140:15	71:15,16 165:12	921	
31	600	61:21	
168:2 177:21	2:20	97	
334)328-2787	600,000	29:13	
186:21	189:14		
334.353.9110	65		
2:15	5:17,20		
36130			
2:15,21	7		
398	7		
160:1	5:17 30:9 65:10,11,12		
399	65:18 66:14 152:15		
160:2	153:3		
4	70		
4	6:2,4		
5:11 40:22,23 42:9	76		
44:6 47:22 135:6	6:7,9		
4:42	8		
153:4	8		
40	5:3,20 65:15,16 66:23		
5:9,11	179:18		
448	8/30/17		
167:22	6:20		
485	801		
76:5	30:11		
487	849		
77:5	153:5		
488	884		
79:23	41:7		
5	885		
5	41:8		
5:13 52:21 54:5,6	888		
501	51:16		
1:18 2:14	9		
50th	9		
15:5	6:2 70:4,5,11,20		
54	9/30/19		
5:13,15	203:21		
56687	9:17		
140:11	1:23		
6	900		
6	2:5		
5:15 30:9 54:8,11 56:8	920		
	56:9 59:11		

EXHIBIT 8

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS



STATE - ALABAMA
CAPITOL - MONTGOMERY

F. Kohli 10-11

Board of Registrars Handbook

Prepared for: John Merrill, Secretary of Staff

Prepared by: John Bennett, Assistant to the Chief of State

May 14, 2015

Contributing Board Members:

- Pat Clark, Bibb County
- Carol Hill, Shelby County
- Lynda Hairston, Madison County
- Adonis Bailey, Morgan County
- Patsy Clark, Baldwin County
- Sammy Glover, Covington County
- George Noblin, Montgomery County
- Wilma Cephus, Hale County
- Don Milligan (Board Chair), Marshall County

EXHIBIT 20

Clay Helms

9/18/2018

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

BASIC DEFINITIONS

Qualifications

The Board of Registrars in each county consists of three "reputable and suitable" electors of the county. Each registrar must be a qualified elector and a resident of the county, must have a high school diploma or the equivalent, and must possess the minimum computer and map reading skills necessary to function in the office. Members are appointed by a state board of appointment composed of the Governor, the State Auditor, and the Commissioner of Agriculture and Industries.

Registrars serve four year terms from the date of appointment unless removed for cause by the Secretary of State. An exception to this is when a board vacancy occurs during a term, in which case the appointee will serve the remainder of the original term.

Chairperson

The appointing board will name one of the registrars to serve as chairperson (§17-3-2). Generally, the chairperson has no more authority than any other registrar and cannot unilaterally exercise the authority of the board (212 Atty. Gen. Op. 114). However, the chairperson is authorized to preside over official business meetings and to purchase necessary office equipment and hire necessary help for the board, with concurrence of the County Commission.

Duties

The most important task of the Board of Registrars is voter registration. Registrars must decide whether to accept or reject a voter application, assign a registered voter to the proper precinct, maintain and update the voter file, maintain records of the office, certify alphabetical lists of registered voters for polling places, provide proof of registration to voters, and notify registration officials in other states when a voter transfers to Alabama. Registrars are authorized to take applications and examine, under oath of affirmation, all applicants and to take testimony concerning applicant's qualifications related to voting. Registrars are authorized to administer the oaths to be taken by applicants.

Applications may be taken by an individual registrar, but it takes a quorum, consisting of a majority of the Board of Registrars, to consider any official business, and a majority of the board must approve any official action, such as approving individual voter registrations or issuing a denial of an applicant's registration.

A registrar working alone can perform many duties, including taking applications, updating forms, and answering questions.

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

Work Day

The law does not specify the number of hours a board member must work, but the registrars should take into consideration the hours the courthouse is open for business and the hours that county employees must work when claiming compensation for a "working day" (A.G. No. 2004-112). A registrar must work a reasonable amount of time and a sufficient number of hours to justify the compensation. The law sets the maximum number of days an individual registrar can work, and a schedule by county is included in the Alabama Elections Handbook, Ch. 16, Pg. 266.

College Visits

The Alabama Elections Code requires registrars spend at least one full working day, during the school year, on campus assisting and encouraging students to register to vote. This is required for all state funded schools and community colleges with 500+ students. Registrars are required to give the school 12 days notice of the date, time, and location that they will register voters.

Photo Voter ID

Beginning with the June 3, 2014 primary election each Alabama voter is required to have a valid form of photo identification at the polls in order to vote. If the voter does not have one of the approved forms of ID they may receive a free Alabama photo voter ID card from, the Secretary of State's office, the Board of Registrars offices in each county, or mobile locations determined by the Secretary of State's office. Additionally, voters may acquire a free non-drivers ID card from the Department of Public Safety, in the event that they do not have a valid photo ID. Each office should have copies of and be familiar with the information contained in the [Alabama Photo Voter ID Guide](#).

Election Day and Post-Election Day

The Board of Registrars has specific duties in relation to election day office coverage and activity, and also to post-election day activity. These include office coverage during polling hours, along with phone availability to poll workers, and the receipt and processing of provisional ballots after the election.

Voter Lists

The board publishes the list of names to be removed from the voter lists in a 4-year cycle. The list was last published in December 2012, and the next list will be posted December of 2016. This list is comprised of the names of registrants who did not return address confirmation notice, or whose notice was returned undeliverable, and who did not vote in at least one election during the period of two federal election cycles or otherwise update their information.

Voting Precincts

The board plays a limited role in developing voting precincts, as these decisions are made by the County Commission. The board may provide statistics on numbers of voters affected by proposed changes and will send voter notices when precinct changes are adopted by the Commission.

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

REGISTRAR REFERENCE TOOLS & RESOURCES

Websites:

[Secretary of State](#)
[Alabama Votes](#)

Secretary of State Phone:

1-800-274-VOTE or 334-242-7210

John Merrill, Secretary of State
Barbie Sawyer, Executive Assistant
Ed Packard, Director of Elections
Clay Helms, Supervisor of Voter Registration
Hon. Jean Brown, Chief Legal Advisor
David Brewer, Chief of Staff
Brent Beal, Attorney
Will Sutton, Attorney
Brandon Walters, Election Analyst
Deonna Thompson, Elections Specialist
Michael Ciamarra, Elections Analyst
Thomas Austin, Elections Analyst

334-242-7200, [Email John Merrill](#)
334-242-7223, [Email Barbie Sawyer](#)
334-242-4845, [Email Ed Packard](#)
334-353-7177, [Email Clay Helms](#)
334-242-7202, [Email Jean Brown](#)
334-242-7207, [Email David Brewer](#)
334-353-7857, [Email Brent Beal](#)
334-242-4337, [Email Will Sutton](#)
334-353-7150, [Email Brandon Walters](#)
334-242-7212, [Email Deonna Thompson](#)
334-353-7903, [Email Michael Ciamarra](#)
334-353-7854, [Email Thomas Austin](#)

Secretary of State Links:

[Code of Alabama, 1975](#)
[Title 17, Code of Alabama, Election Laws.](#)
[Chapter 3, Voter Registration](#)
[Chapter 4, Registration Lists](#)
[Chapter 10, Provisional Voting](#)

Official Attorney General Opinions:

[2004-171](#) - BOR/Supervisor of Voter Registration
[2004-124](#) - BOR/Probate Judge
[2004-112](#) - BOR/Hours of Work
[2011-044](#) - BOR/Compensation-Holidays-Weather
[95-00289](#) - Notary Public
[2006-042](#) - BOR/Citizenship
[2009-002](#) - BOR/Citizenship
[2005-106](#) - BOR/Probate Judge – Mental Health
[2005-124](#) - BOR/Voter Registration Public Records
[2014-005](#) - BOR/Education-Travel-Expenses
[2007-092](#) - BOR/Travel-Expenses-Days Worked
[2010-033](#) - BOR/Travel-Expenses-Overruled 2007-092 to extent of conflict
[2010-026](#) - BOR/Compensation/Expenses/Holidays/Working Days
[2011-089](#) - BOR/Per Diem

Other election resources include the local Judge of Probate and the Federal Election Commission, www.fec.gov, 1-800-424-9530.

Photo Voter ID implementation includes a third party vendor, Police & Sheriffs Press, Inc.

PASP support information is available at 1-800-707-3080, www.pasp365.com

They are available for technical information, equipment, procedures or function, and status of IDs.

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

FREQUENTLY ASKED QUESTIONS

Office Practices:

Q: How many days do we work each year?

A: A full breakdown of county by county information can be found on pg. 266 of the Alabama Election Handbook

Q: What are the qualifications to become a registrar?

A: Pg. 259 of the Alabama Election Handbook

Q: What travel related expenses should be reported for compensation?

A: Pg. 262 paragraph 2 of the Alabama Election Handbook

Voter Registration:

Q: How do you determine if someone is qualified to register/vote?

A: Pg. 39-42 in the Alabama Election Handbook, and again on pg. 102-103, 205-206, 270-274.

Q: How do you determine if someone is unable or disqualified from voting?

A: Pg. 273 of the Alabama Election Handbook offers a direct response to this question, but a more broad interpretation of all of the information involved begins on pg. 270 subsection B.

Q: What is the legal interpretation of moral turpitude?

A: "Conduct that is considered contrary to community standards of justice, honesty, or good morals." A list of some qualifying felonies can be found on page 6 and 7 of this document.

Q: What felonies qualify as involving moral turpitude?

A: A chart of the felonies that meet this qualification can be found on pages 6 and 7 of this document. A broad response to this question can be found on pg. 275 of the Alabama Election Handbook.

Q: How do we confirm that someone has died and should be removed from the list?

A: *The Secretary of State's office will supply this information to each county registrars office.*

Q: What happens if a judge declares someone "mentally incompetent"?

A: Pg. 273 of the Alabama Election Handbook.

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

ELECTION DAY PROCEDURES

Ballots and Poll Lists

Regular Ballot Voted When:

- Name appears on poll list with no abbreviations.
- If an inactive voter on the list updates their information at the polls, and continues to reside within the same precinct.
- If a voter shows up at a polling location but his name was mistakenly left off the poll list, you can authorize the poll worker over the phone to let the voter cast a regular ballot.
- If this situation occurs the poll worker must have the voter complete an update form, and check the **Verification** box. The poll worker must also fill out the back section that denotes who authorized the person to cast a ballot. The poll worker must not write the name of the voter on the poll list. The update form is the official record that the person voted!

Provisional Ballot Voted When:

- Voter is not on poll list because they moved within the county but did not update before the 14 day cut-off.
- Voter has no valid photo voter ID and cannot be positively identified by two election officials.
- Voter requested an absentee ballot (ABS) but did not use it.
- Voter challenges decision to not let them vote a regular ballot.
- An inspector challenges a voter.
- The registration status of the person attempting to vote cannot be determined.
- A Federal or state court order extends the time for voting.
- Anyone can vote a provisional ballot. The Board of Registrars determines whether or not it will count.

Deceased Voters:

If a deceased person is identified on a poll list by a family member or close neighbor, this person may put the deceased person's name on an "Update Form," give any information they have on the person, write "Deceased" and sign the form. This will authorize the BOR to remove the person's record from any future voting lists.

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

POST-ELECTION ACTIVITIES

Week One

1. Review provisional ballots and mark if counted or not (do this day after election).
 - Update voter information from update forms as you go through each one (instead of after making determinations). Open each registrant's record, click on **Provisional** on the toolbar, choose the correct election, click **Insert** on the toolbar, and then mark the status and reason.
 - For counted or not counted provisional ballot determination statements/ reasons use the ES&S generated list:

***Provisional Ballot Status Reasons generated by ES&S**

• Absentee Ballot not returned (ABSB)	• No/missing identification (NOID)
• Ballot not mailed or hand-delivered (DELV)	• Not reg. at time of election (NRTE)
• Challenge of voter upheld (06)	• Not registered in County (01)
• Check with local registrars office (07)	• Not registered in State (NOTR)
• Check with local registrars office (08)	• Refutes reg. (03)
• Disqualifying felony conviction (FELY)	• Registered in other county (RGOC)
• I.D. (04)	• Status (02)
• Insufficient documentation (DOCU)	• Updated to correct precinct (UPDT)
• Mentally incompetent in court (MENT)	• Voted by absentee (05)
• Missing ID provided (ID02)	• Voted in wrong district (WDIS)
• Mistakenly left off list (RGDT)	• Voted in wrong precinct (WPCT)
• No signature on provisional ballot (SIGN)	• Voted more than 1 provisional ballot (V2PB)
• No signatures on roster (NSOR)	
• No witness (NOW)	

- After that, create a list of names from ES&S of Provisional Ballots:
 - Go to Module, Elections, View Provisional Ballots
 - Double click on the election
 - Click search from Secondary Toolbar
 - Click "print preview" then print copy
 - Compare to PB3s. Double check that all have been entered correctly.
2. Post voter credit from poll lists from each precinct by scanning barcodes. Go to MODULE>ELECTIONS>POST VOTING CREDIT. Choose election, then choose "Scan Barcodes"and scan.
 3. Post voter credit manually from "Verification" forms that you have verified on back of the form that the registrant should vote a regular ballot. There should be just a few of these. Open registrant's record; go to "Voting History" tab; click "Insert" on lower right side; add information; save.
 4. For a challenged voter, send notice to the voter of the challenge and explain how the voter may respond to the challenge.
-

Proposal Number: 3.0

5. After 4:30 pm on the Friday after the election, begin review of absentee provisional ballots as well as any ballots made provisional because of lack of proper ID.
6. DO NOT GO THROUGH "UPDATE VOTING HISTORY" until you are absolutely sure all methods of posting voter credit have been completed: barcode scanning, entering provisional ballots, entering absentee provisional ballots and manual posting from backs of Verification/Update forms .(Needs to be done before canvassing day so as to resolve any conflicts in report given).
7. Go to: MODULE>ELECTIONS>UPDATE VOTING HISTORY. Choose election, and click "Submit" on secondary toolbar. This may take a while, depending on voter turnout. Click on "Jobs" to check status; when 100% complete, go to Print List and check for a "Voting Credits Conflicts Report". All conflicts must be resolved so that that only one method of voting shows a "Y" (yes). Update Voting History must be run multiple times until all conflicts are resolved.
8. To view final list of all who voted, go to Reports>Elections>Final Voting Turnout Report. Click on election and hit submit. Go to Jobs. When 100%, go to print list to view roster.
9. Return poll lists, binders, and extra materials to Probate Judge after final report is run.
10. ~~Write letters to any registrants that Inspector challenges to inform if vote counted or not.~~
11. Update forms turned in that are not transfers can be done (as time permits) before canvassing. They must be scanned and taped to card-stock before or after entering to aid in filing. All voter registration forms (VRF's) turned in after the cut-off date should be done following canvassing due to transfers.

Week Two

1. Tuesday NOON – Final results must be turned in to the Canvassing Board. Turn in PB3s and PB4s as well as a copy of final report.
 2. After canvassing, begin entering all VRFs sent in after cut-off.
-

Proposal Number: 3.0

CRIMES INVOLVING MORAL TURPITUDE

Crimes Involving Moral Turpitude

Fraud:

- Making false representation
- Knowledge of such false representation by the perpetrator
- Reliance on the representation by the person defrauded
- An intent to defraud
- The actual act of committing fraud

Evil Intent:

- Arson
- Blackmail
- Burglary
- Embezzlement
- Extortion
- False pretenses
- Forgery
- Fraud
- Larceny (grand or petty)
- Malicious destruction of property
- Knowingly receiving stolen goods
- Robbery
- Theft (when it involves the intention of permanent taking)
- Transporting stolen property (with guilty knowledge)

- Bribery
- Counterfeiting
- Fraud against revenue or other government functions
- Mail fraud
- Perjury
- Harboring a fugitive from justice (with guilty knowledge)
- Tax evasion (willful)

Crimes NOT Involving Moral Turpitude

- Damaging private property (where intent to damage not required)
- Breaking and entering (requiring no specific or implicit intent to commit a crime involving moral turpitude)
- Passing bad checks (where intent to defraud not required)
- Possessing stolen property (if guilty knowledge is not essential)
- Joy riding (where the intention to take permanently not required)
- Juvenile delinquency
- Trespassing

- Black market violations
- Breach of the peace
- Carrying a concealed weapon
- Desertion from the Armed Forces
- Disorderly conduct
- Drunk or reckless driving
- Driving while license suspended or revoked
- Drunkenness
- Escape from prison
- Failure to report for military induction
- False statements (not amounting to perjury or involving fraud)
- Firearm violations
- Gambling violations
- Immigration violations
- Liquor violations
- Loan sharking
- Lottery violations
- Minor traffic violations
- possessing burglar tools (without intent to commit burglary)
- Smuggling and customs violations (where intent to commit fraud is absent)
- Tax evasion (without intent to defraud)
- Vagrancy

Proposal Number: 3.0

Crimes Involving Moral Turpitude

- Abandonment of a minor child
- Adultery**
- Assault (two categories which involve moral turpitude):
 - Assault with intent to kill, commit rape, commit robbery, or commit serious harm
 - Assault with a dangerous or deadly weapon
- Bigamy
- Paternity fraud
- Contributing to the delinquency of a minor
- Gross indecency
- Incest (if the result of an improper sexual relationship)
- Kidnapping
- Lewdness (behavior that is morally impure in a sexual sense)
- Manslaughter:
 - Voluntary
 - Involuntary
- Mayhem
- Murder
- Pandering
- Prostitution
- Rape (including "statutory rape" by virtue of the victim's age)
- An attempt to commit a crime deemed to involve moral turpitude
- Aiding and abetting in the commission of a crime deemed to involve moral turpitude
- Being an accessory (before or after the fact) in the commission of a crime deemed to involve moral turpitude
- Taking part in a conspiracy (or attempting to take part in a conspiracy) to commit a crime involving moral turpitude where the attempted crime would not itself constitute moral turpitude.

Crimes NOT Involving Moral Turpitude

- Assault (simple) (any assault which does not require an evil intent or depraved motive, although it may involve the use of a weapon, which is neither dangerous nor deadly)
- Bastardy (the offense of begetting a bastard child)
- Creating or maintaining a nuisance (where knowledge that premises were used for prostitution is not necessary)
- Incest (when a result of marital status prohibited by law)
- Involuntary manslaughter (when killing is not the result of recklessness)
- Libel
- Mailing an obscene letter
- Mann Act violations (where coercion is not present)
- Riot
- Suicide (attempted)

N/A

EXHIBIT 9

State of Alabama Mail-In Voter Registration FormNVRA-2
2019.03.20

FOR USE BY U.S. CITIZENS ONLY ♦ FILL IN ALL BOXES ON THIS FORM ♦ PLEASE USE INK ♦ PRINT LEGIBLY

You can use this form to:

- ▶ Register to vote in Alabama.
- ▶ Update your voter registration record, if you have changed your name or address.

Deadline for submitting application:

Voter registration and updating of voter records is closed during the 14 days prior to each election in Alabama.

To register to vote in the State of Alabama, you must:

- ▶ Be a citizen of the United States.
- ▶ Live in Alabama.
- ▶ Be at least 18 years of age on or before election day.
- ▶ Not have been convicted of a disqualifying felony, or if you have been convicted, you must have had your civil rights restored.
- ▶ Not have been declared "mentally incompetent" by a court.

ID requested: You may send with this application a copy of valid photo identification. You will be required to present valid photo identification when you vote at your polling place or by absentee ballot, unless exempted by law. For more information, go to www.AlabamaVoterID.com or call the Elections Division: 800-274-8683.

① Are you a citizen of the United States of America?	☐ Yes ☐ No	ATTENTION! If you answer "No" to either of these questions, do not complete this application.
② Will you be 18 years of age on or before election day?	☐ Yes ☐ No	

③ Print Your Name: First _____ Middle _____ Last _____ Suffix _____	Alabama Driver's License or Non-Driver ID Number: STATE NUMBER
④ Print Maiden Name / Former Name (if reporting a change of name) First _____ Middle _____ Last _____ Suffix _____	IF YOU HAVE NO ALABAMA DRIVER'S LICENSE OR ALABAMA NON-DRIVER ID NUMBER Last four digits of Social Security number:
⑤ Date of Birth (mm/dd/yyyy) ⑥ Primary Telephone ⑦ Email Address 	
☐ I do not have an Alabama driver's license or Alabama non-driver ID or a Social Security number.	

Addresses	Current	⑧ Address where you live: (Do not use post office box)	Home Address (include apartment or other unit number if applicable)	City	State	ZIP
	Old	Address where you receive your mail:	Mailing Address, if different from Home Address	City	State	ZIP
	Address where you were last registered to vote: (Do not use post office box)	Former Address	City	County	State	ZIP

⑨ Sex (check one) ☐ Female ☐ Male	⑪ Place of Birth City _____ County _____ State _____ Country _____
⑩ Race (check one) ☐ White ☐ Black ☐ Asian ☐ American Indian ☐ Hispanic ☐ Other	⑫ Map / Diagram If your home has no street number or name, please draw a map of where your house is located. Please include roads and landmarks.
	⑬ Did you receive assistance? If you are unable to sign your name, who helped you fill out this application? Give name, address, and phone number (phone number is optional).

REGISTRARS USE ONLY DATE ☐ APPROVED ☐ DENIED _____ (mm/dd/yyyy) County Pct _____ City Pct _____ Board member _____ Board member _____ Board member _____	Voter Declaration - Read and Sign Under Penalty of Perjury ▶ I am a U.S. citizen ▶ I live in the State of Alabama ▶ I will be at least 18 years of age on or before election day ▶ I am not barred from voting by reason of a disqualifying felony conviction (The list of disqualifying felonies is available on the Secretary of State's web site at: sos.alabama.gov/mtfelonies) ▶ I have not been judged "mentally incompetent" in a court of law I solemnly swear or affirm to support and defend the constitution of the United States and the State of Alabama and further disavow any belief or affiliation with any group which advocates the overthrow of the governments of the United States or the State of Alabama by unlawful means and that the information contained herein is true, so help me God. YOUR SIGNATURE _____ DATE (mm/dd/yyyy) _____ If you falsely sign this statement, you can be convicted and imprisoned for up to five years.

The decision to register to vote is yours. If you decide to register to vote, the office at which you are submitting this application will remain confidential and will be used only for voter registration purposes. If you decline to register to vote, your decision will remain confidential and will be used only for voter registration purposes.



John H. Merrill - Secretary of State Questions? Call the Elections Division at 1-800-274-8683 or 334-242-7210

AUTAUGA COUNTY PO Box 680036 Prattville 36068-0036 (334) 358-6740	CHILTON COUNTY PO Box 640 Clanton 35046-0640 (205) 755-3820	CRENSHAW COUNTY PO Box 328 Luverne 36049-0328 (334) 335-6568 x251 (334) 335-6568 x252 (334) 335-6568 x253	FRANKLIN COUNTY PO Box 70 Russellville 35653-0070 (256) 332-8849	LAWRENCE COUNTY 14451 Market Street Ste 340 Moulton 35650 (256) 974-2460 (256) 974-2461	MONROE COUNTY PO Box 972 Monroeville 36461-0972 (251) 743-4107 x141	SUMTER COUNTY PO Box 783 Livingston 35470-0783 (205) 652-7902
BALDWIN COUNTY PO Box 1507 Bay Minette 36507-1507 (251) 937-0305	CHOCTAW COUNTY 117 S Mulberry Ave Ste 1 Butler 36904-0132 (205) 459-2531	CULLMAN COUNTY 500 2nd Ave SW Rm 112 Cullman 35055-4135 (256) 775-4750 (256) 755-4697	GENEVA COUNTY PO Box 430 Geneva 36340-0430 (334) 684-5655	LEE COUNTY PO Box 1530 Opelika 36803-1530 (334) 737-3635	MONTGOMERY COUNTY PO Box 1667 Montgomery 36102-1667 (334) 832-1215	TALLADEGA COUNTY PO Box 6170 Talladega 35161-6170 (256) 761-2131 (256) 761-2132
BARBOUR COUNTY 303 E Broad St Rm 108 Eufaula 36027 (334) 687-1585	CLARKE COUNTY PO Box 10 Grove Hill 36451-0010 (251) 275-3062	DALE COUNTY PO Box 1101 Ozark 36361-1101 (334) 774-9038	GREENE COUNTY PO Box 224 Decatur 35462-0224 (205) 372-9669	LIMESTONE COUNTY 100 Clinton St S Ste E Athens 35611-2665 (256) 233-6405	MORGAN COUNTY PO Box 668 Decatur 35602-0668 (256) 351-4660 (256) 351-4663	TALLAPOOSA COUNTY 125 N Broadnax St Rm 20 Dadeville 36853-1371 (256) 825-1081
BIBB COUNTY 8 Court Square W Centreville 35042 (205) 926-3102	CLAY COUNTY PO Box 446 Ashland 36251-0446 (256) 354-7815	DALLAS COUNTY PO Box 987 Selma 36702-0987 (334) 874-2534	HALE COUNTY 905-D Centerville St Greensboro 36744-1536 (334) 624-4672	LOWNDES COUNTY PO Box 311 Hayneville 36040-0311 (334) 548-2389 (334) 548-2080	PERRY COUNTY PO Box 555 Marion 36756-0555 (334) 683-2218 x5	TUSCALOOSA COUNTY 2501 7th St Ste 200 Tuscaloosa 35401-1801 (205) 349-3870 x415
BLOUNT COUNTY 220 Second Ave E Rm B-5 Oneonta 35121 (205) 625-4182	CLEBURNE COUNTY 120 Vickery St Rm 103 Heflin 36264-1166 (256) 463-5299	DEKALB COUNTY 111 Grand Ave SW Ste 105 Fort Payne 35967 (256) 845-8598	HENRY COUNTY 101 Court Square Ste K Abbeville 36310-2135 (334) 585-6080	MACON COUNTY 101 E Rosa Parks Ave Ste 100 Tuskegee 36083-1735 (334) 724-2617	PICKENS COUNTY PO Box 173 Carrollton 35447-0173 (205) 367-2074	WALKER COUNTY PO Box 1472 Jasper 35502-1472 (205) 384-7279
BULLOCK COUNTY 217 Prairie St N Rm 101 Union Springs 36089-1659 (334) 738-5372	COFFEE COUNTY 6 County Complex New Brockton 36351-9791 (334) 894-5347	ELMORE COUNTY 100 E Commerce St Rm 205 Wetumpka 36092-2746 (334) 567-1150 (334) 567-1197	HOUSTON COUNTY PO Box 6406 Dothan 36302-6406 (334) 677-4776	MADISON COUNTY 819 Cook Avenue NW Ste 150 Huntsville 35801-5983 (256) 532-3510	PIKE COUNTY 120 W Church St Rm B2 Troy 36081-1913 (334) 566-1757 (334) 566-6449	WASHINGTON COUNTY PO Box 1224 Chatom 36518-1224 (251) 847-3255
BUTLER COUNTY 700 Court Sq Rm 8 Greenville 36037-2308 (334) 382-5685 (334) 382-6829	COLBERT COUNTY 201 N Main St Tuscumbia 35674-2095 (256) 386-8535	ESCAMBIA COUNTY PO Box 557 Brewton 36427-0557 (251) 867-0243 (251) 867-0312	JEFFERSON COUNTY 716 R Arrington Jr Blvd N Ste A-410 Birmingham 35203-0115 (205) 325-5550	MARENGO COUNTY PO Box 480715 Linden 36748-0715 (334) 295-2249 (334) 295-2086	RANDOLPH COUNTY PO Box 215 Wedowee 36278-0215 (256) 357-2138	WILCOX COUNTY PO Box 661 Camden 36726-0661 (334) 682-9753
CALHOUN COUNTY 1702 Noble St Ste 113 Anniston 36201-3889 (256) 241-2930	CONECUH COUNTY 111 Court St Rm 102 Evergreen 36401 (251) 578-7024	ETOWAH COUNTY 800 Forrest Ave Ste 206 Gadsden 35901-3651 (256) 549-5384	LAMAR COUNTY PO Box 338 Vernon 35592-0338 (205) 695-6348 (205) 695-9197	MARION COUNTY PO Box 964 Hamilton 35570-0964 (205) 921-3625	RUSSELL COUNTY PO Box 700 Phenix City 36868-0700 (334) 298-1443 (334) 448-1508	WINSTON COUNTY PO Box 459 Double Springs 35553-0459 (205) 489-3966
CHAMBERS COUNTY 18 Alabama Ave E Rm 101 Lafayette 36862 (334) 864-4313	COOSA COUNTY PO Box 218 Rockford 35136-0218 (256) 377-2418	FAYETTE COUNTY 103 First Ave NW Ste 4 Fayette 35555-2627 (205) 932-5432	LAUDERDALE COUNTY PO Box 1059 Florence 35631-1059 (256) 760-5840 (256) 760-5841	MARSHALL COUNTY 424 Blount Ave Ste 106A Guntersville 35976-1122 (256) 571-7740	SHELBY COUNTY PO Box 1642 Columbiana 35051-1642 (205) 669-3913	SECRETARY OF STATE ELECTIONS DIVISION PO Box 5616 Montgomery 36103 (334) 242-7210 (800) 274-8683
CHEROKEE COUNTY 260 Cedar Bluff Rd Ste 106 Centre 35960-1403 (256) 927-5336	COVINGTON COUNTY 228 Hillcrest Dr Andalusia 36420-2570 (334) 428-2685			MOBILE COUNTY 151 Government St Ste 165 Mobile 36602 (251) 574-8586 (251) 574-8587	ST. CLAIR COUNTY 1815 Cogswell Ave Ste B-25 Pell City 35125 (205) 338-3954	

YOUR ADDRESS:

PUT
FIRST
CLASS
STAMP
HERE

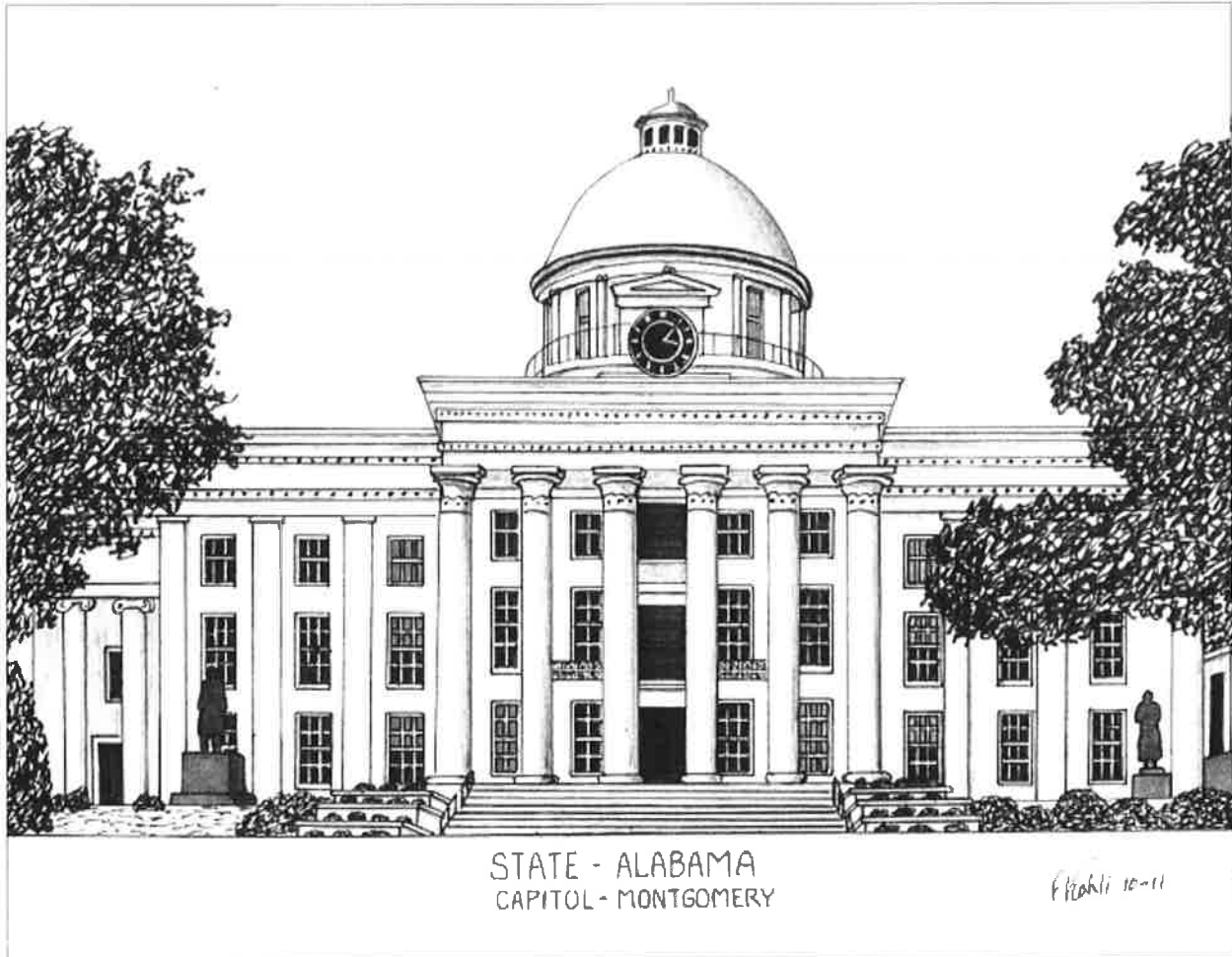
MAIL TO:

BOARD OF REGISTRARS

EXHIBIT 7

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS



Board of Registrars Handbook

Prepared for: John Merrill, State Representative

Prepared by: John Bennett, Campaign Staff

October 24, 2014

Contributing Board Members:

- Pat Clark, Bibb County
- Carol Hill, Shelby County
- Lynda Hairston, Madison County
- Adonis Bailey, Morgan County

- Patsy Clark, Baldwin County
- Sammy Glover, Covington County
- George Noblin, Montgomery County
- Wilma Cephus, Hale County
- Don Milligan (Board Chair), Marshall County

EXHIBIT 2
JOHN BENNETT
9/20/2018

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

BASIC DEFINITIONS

Qualifications

The Board of Registrars in each county consists of three "reputable and suitable" electors of the county. Each registrar must be a qualified elector and a resident of the county, must have a high school diploma or the equivalent, and must possess the minimum computer and map reading skills necessary to function in the office. Members are appointed by a state board of appointment composed of the Governor, the State Auditor, and the Commissioner of Agriculture and Industries.

Registrars serve four year terms from the date of appointment unless removed for cause by the Secretary of State. An exception to this is when a board vacancy occurs during a term, in which case the appointee will serve the remainder of the original term.

Chairperson

The appointing board will name one of the registrars to serve as chairperson (§17-3-2). Generally, the chairperson has no more authority than any other registrar and cannot unilaterally exercise the authority of the board (212 Ala. Gen. Op. 114). However, the chairperson is authorized to preside over official business meetings and to purchase necessary office equipment and hire necessary help for the board, with concurrence of the County Commission.

Duties

The most important task of the Board of Registrars is voter registration. Registrars must decide whether to accept or reject a voter application, assign a registered voter to the proper precinct, maintain and update the voter file, maintain records of the office, certify alphabetical lists of registered voters for polling places, provide proof of registration to voters, and notify registration officials in other states. Registrars are authorized to take applications and administer oaths to residents.

Applications may be taken by an individual registrar, but it takes a quorum, consisting of a majority of the Board of Registrars, to consider any official business, and a majority of the board has to approve any official action, such as approving individual voter registrations or issuing a denial of a voter's registration.

A registrar working alone can perform many duties, including taking applications, updating forms, and answering questions.

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

Work Day

The law does not specify the number of hours a board member must work, but the registrars should take into consideration the hours the courthouse is open for business and the hours that county employees must work when claiming compensation for a "working day" (A.G. No. 2004-112).

The law sets the maximum number of days an individual registrar can work, and a schedule by county is included in the Alabama Elections Handbook, Ch. 16, Pg. 266.

College Visits

The Alabama Elections Code requires registrars spend at least one full working day, during the school year, on campus assisting and encouraging students to register to vote. This is required for all state funded schools and community colleges with 500+ students. Registrars are required to give the school 12 days notice of the date, time, and location that they will register voters.

Photo Voter ID

Beginning with the June 3, 2014 primary election each Alabama voter is required to have a specific type of photo identification at the polls in order to vote. If the voter does not have one of the approved forms of ID they may receive a free Alabama photo ID card from, the Secretary of State's office, the Board of Registrars offices in each county, or mobile locations determined by the Secretary of State's office. Additionally, voters may acquire a free non-drivers license from the Department of Public Safety, in the event that they do not have a valid photo ID. Each office should have copies of and be familiar with the information contained in the Alabama Photo Voter ID Guide

Election Day and Post Election Day

The Board of Registrars has specific duties in relation to election day office coverage and activity, and also to post election day activity. These include office coverage during polling hours, along with phone availability to poll workers, and the receipt and processing of provisional ballots after the election.

Voter Lists

The board publishes the list of names to be removed from the voter lists in a 4-year cycle. The list was last published in December of 2012, and the next list will be posted December of 2016. These are the names of registrants who did not return address confirmation notice, or whose notice was returned undeliverable, and who did not vote in at least one election during the period of two federal election cycles or otherwise update their information.

Voting Precincts

The board plays a limited role in developing voting precincts, as these decisions are made by the County Commission. The board may provide statistics on numbers of voters affected by proposed changes and will send voter notices when precinct changes are adopted by the Commission.

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

REGISTRAR REFERENCE TOOLS & RESOURCES

Websites:

[Secretary of State](#)

[Alabama Votes](#)

Secretary of State Phone: 1-800-274-VOTE or 334-242-7210

Jim Bennett, Secretary of State	334-242-7200, Email Jim Bennett
Ed Packard, Director of Elections	334-242-4845, Email Ed Packard
Clay Helms, Supervisor of Voter Registration	334-353-7177, Email Clay Helms
Hon. Jean Brown, SOS Chief Legal Advisor	334-242-7202, Email Jean Brown
Emily Marsal, Deputy Secretary of State	334-242-7476, Email Emily Marsal
Adam Thompson, Deputy Chief of Staff	334-353-7818, Email Adam Thompson
Will Sutton, Elections Attorney	334-242-4337, Email Will Sutton
Brandon Walters, Election Analyst	334-353-7150, Email Brandon Walters
Deonna Thompson, Elections	334-242-7212, Email Deonna Thompson

Secretary of State Links:

[Code of Alabama, 1975](#)

[Title 17, Code of Alabama, Election Laws.](#)

[Chapter 3, Voter Registration](#)

[Chapter 4, Registration Lists](#)

[Chapter 10, Provisional Voting](#)

Official Attorney General Opinions:

[2004-171](#) – BOR/Supervisor of Voter Registration

[2004-124](#) –BOR/Probate Judge

[2004-112](#) –BOR/Hours of Work

[2011-044](#) –BOR/Compensation-Holidays-Weather

[95-00289](#) –Notary Public

[2006-042](#) –BOR/Citizenship

[2009-002](#) –BOR/Citizenship

[2005-106](#) –BOR/Probate Judge – Mental Health

[2005-124](#) – BOR/Voter Registration Public Records

[2014-005](#) -BOR/Education-Travel-Expenses

[2007-092](#) -BOR/Travel-Expenses-Days Worked

[2010-033](#) -BOR/Travel-Expenses-Overruled 2007-092 to extent of conflict

[2010-026](#) – BOR/Compensation/Expenses/Holidays/Working Days

[2011-089](#) -BOR/Per Diem

Other election resources include the local Judge of Probate and the Federal Election Commission, www.fec.gov, 1-800-424-9530.

Photo Voter ID implementation includes a third party vendor, Police & Sheriffs Press, Inc.

PASP support information is available at 1-800-707-3080, www.pasp365.com

They are available for technical information, equipment, procedures or function, and status of IDs.

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

FREQUENTLY ASKED QUESTIONS

Office Practices:

Q: How many days do we work each year?

A: A full breakdown of county by county information can be found on pg. 266 of the Alabama Election Handbook

Q: What are the qualifications to become a registrar?

A: Pg. 259 of the Alabama Election Handbook

Q: What travel related expenses should be reported for compensation?

A: Pg. 262 paragraph 2 of the Alabama Election Handbook

Voter Registration:

Q: How do you determine if someone is qualified to register/vote?

A: Pg. 39-42 in the Alabama Election Handbook, and again on pg. 102-103, 205-206, 270-274.

Q: How do you determine if someone is unable or disqualified from voting?

A: Pg. 273 of the Alabama Election Handbook offers a direct response to this question, but a more broad interpretation of all of the information involved begins on pg. 270 subsection B.

Q: What is the legal interpretation of moral turpitude?

A: "Conduct that is considered contrary to community standards of justice, honesty, or good morals." A list of some qualifying felonies can be found on page 6 and 7 of this document.

Q: What felonies qualify as involving moral turpitude?

A: A chart of the felonies that meet this qualification can be found on page 6 and 7 of this document. A broad response to this question can be found on pg. 275 of the Alabama Election Handbook.

Q: How do we confirm that someone has died and should be removed from the list?

A: *The Secretary of State's office will supply this information to each county registrars office.*

Q: What happens if a judge declares someone "mentally incompetent"?

A: Pg. 273 of the Alabama Election Handbook.

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

ELECTION DAY PROCEDURES

Ballots and Poll Lists

Regular Ballot Voted When:

- Name appears on poll list with no abbreviations.
- If an inactive voter on the list updates their information at the polls, and continues to reside within the same precinct.
- If a voter shows up at a polling location but his name was mistakenly left off the poll list, you can authorize the poll worker over the phone to let the voter cast a regular ballot.
- If this situation occurs the poll worker must have the voter complete an update form, and check the **Verification** box. The poll worker must also fill out the back section that denotes who authorized the person to cast a ballot. The poll worker must not write the name of the voter on the poll list. The update form is the official record that the person voted!

Provisional Ballot Voted When:

- Voter is not on poll list because they moved within the county but did not update before the 14 day cut-off.
- Voter has no authorized photo ID and cannot be identified by two election officials.
- Voter requested an absentee ballot (ABS) but did not use it.
- Voter challenges decision to not let them vote a regular ballot.
- An inspector challenges a voter.
- The registration status of the person attempting to vote cannot be determined.
- A Federal or state court order extends the time for voting.
- Anyone can vote a provisional ballot. The Board of Registrars determines whether or not it will count.

Deceased Voters:

If a deceased person is identified on a poll list by a family member or close neighbor, this person may put the deceased person's name on an "Update Form," give any information

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

they have on the person, write "Deceased" and sign the form. This will authorize the BOR to remove the person's record from any future voting lists.

POST ELECTION ACTIVITIES

Week One

1. Review provisional ballots and mark if counted or not (do this day after election).
 - ∞ Update voter information from update forms as we go through each one (instead of after making determinations). Open each registrant's record, click on **Provisional** on the toolbar, choose the correct election, click **Insert** on the toolbar, and then mark the status and reason.
 - ∞ For counted or not counted provisional ballot determination statements/ reasons use the ES&S generated list:

***Provisional Ballot Status Reasons generated by ES&S**

∞ Absentee Ballot not returned (ABSB)	∞ No/missing identification (NOID)
∞ Ballot not mailed or hand-delivered (DELV)	∞ Not reg. at time of election (NRTE)
∞ Challenge of voter upheld (06)	∞ Not registered in County (01)
∞ Check with local registrars office (07)	∞ Not registered in State (NOTR)
∞ Check with local registrars office (08)	∞ Refutes reg. (03)
∞ Disqualifying felony conviction (FELY)	∞ Registered in other county (RGOC)
∞ I.D. (04)	∞ Status (02)
∞ Insufficient documentation (DOCU)	∞ Updated to correct precinct (UPDT)
∞ Mentally incompetent in court (MENT)	∞ Voted by absentee (05)
∞ Missing ID provided (ID02)	∞ Voted in wrong district (WDIS)
∞ Mistakenly left off list (RGDT)	∞ Voted in wrong precinct (WPCT)
∞ No signature on provisional ballot (SIGN)	∞ Voted more than 1 provisional ballot (V2PB)
∞ No signatures on roster (NSOR)	
∞ No witness (NOW)	

- ∞ After that, create a list of names from ES&S of Provisional Ballots:
 - Go to Module, Elections, View Provisional Ballots
 - Double click on the election
 - Click search from Secondary Toolbar
 - Click "print preview" then print copy
 - Compare to PB3s. Double check that all have been entered correctly.
2. Post voter credit from poll lists from each precinct by scanning barcodes. Go to MODULE>ELECTIONS>POST VOTING CREDIT. Choose election, then choose "Scan Barcodes" and scan.
 3. Post voter credit manually from "Verification" forms that we verified on back of the form that the registrant should vote a regular ballot. Should be just a few of these. Open registrant's record; go to "Voting History" tab; click "Insert" on lower right side; add information; save.
-

Proposal Number: 3.0

ALABAMA BOARD OF REGISTRARS

5. After 4:30 pm on the Friday after the election, review absentee provisional ballots as well as any regular provisional ballots done because of lack of proper ID.
6. DO NOT GO THROUGH "UPDATE VOTING HISTORY" until you are absolutely sure all methods of posting voter credit has been completed: barcode scanning, entering provisional ballots, entering absentee provisional ballots and manual posting from backs of Verification/Update forms .(Needs to be done before canvassing day so as to resolve any conflicts in report given).
7. Go to: MODULE>ELECTIONS>UPDATE VOTING HISTORY. Choose election, and click "Submit" on secondary toolbar. This may take a while, depending on voter turnout. Click on "Jobs" to check status; when 100% complete, go to Print List and check for a "Voting Credits Conflicts Report". All conflicts must be resolved so that that only one method of voting shows a "Y" (yes). Update Voting History must be run multiple times until all conflicts are resolved.
8. To view final list of all who voted, go to Reports>Elections>Final Voting Turnout Report. Click on election and hit submit. Go to Jobs. When 100%, go to print list to view roster.
9. Return poll lists, binders, and extra materials to Probate after final report is run.
10. Write letters to any registrants that Inspector challenges to inform if vote counted or not.
11. Update forms turned in that are not transfers can be done (as time permits) before canvassing. They must be scanned and taped to card-stock before or after entering. All voter registration forms (VRF's) turned in after the cut-off date should be done following canvassing due to transfers.

Week Two

1. Tuesday NOON – Meet with Canvassing Board on Tuesday following Election Day to give final results of provisional ballots. Turn in PB3s and PB4s as well as a copy of final report.
2. After canvassing, begin entering all VRFs sent in after cut-off.

Proposal Number: 3.0

CRIMES INVOLVING MORAL TURPITUDE

Crimes Involving Moral Turpitude

- Bribery
 - Counterfeiting
 - Fraud against revenue or other government functions
 - Mail fraud
 - Perjury
 - Harboring a fugitive from justice (with guilty knowledge)
 - Tax evasion (willful)
-
- Abandonment of a minor child
 - Adultery**
 - Assault (two categories which involve moral turpitude):
 - Assault with intent to kill, commit rape, commit robbery, or commit serious harm
 - Assault with a dangerous or deadly weapon
 - Bigamy
 - Paternity fraud
 - Contributing to the delinquency of a minor
 - Gross indecency
 - Incest (if the result of an improper sexual relationship)
 - Kidnapping
 - Lewdness (behavior that is morally impure in a sexual sense)
 - Manslaughter:
 - Voluntary
 - Involuntary
 - Mayhem
 - Murder
 - Pandering
 - Prostitution
 - Rape (including "statutory rape" by virtue of the victim's age)
-
- An attempt to commit a crime deemed to involve moral turpitude
 - Aiding and abetting in the commission of a crime deemed to involve moral turpitude
 - Being an accessory (before or after the fact) in the commission of a crime deemed to involve moral turpitude
 - Taking part in a conspiracy (or attempting to take part in a conspiracy) to commit a crime involving moral turpitude where the attempted crime would not itself constitute moral turpitude.

Crimes NOT Involving Moral Turpitude

- Black market violations
 - Breach of the peace
 - Carrying a concealed weapon
 - Desertion from the Armed Forces
 - Disorderly conduct
 - Drunk or reckless driving
 - Driving while license suspended or revoked
 - Drunkenness
 - Escape from prison
 - Failure to report for military induction
 - False statements (not amounting to perjury or involving fraud)
 - Firearm violations
 - Gambling violations
 - Immigration violations
 - Liquor violations
 - Loan sharking
 - Lottery violations
 - Minor traffic violations
 - possessing burglar tools (without intent to commit burglary)
 - Smuggling and customs violations (where intent to commit fraud is absent)
 - Tax evasion (without intent to defraud)
 - Vagrancy
-
- Assault (simple) (any assault which does not require an evil intent or depraved motive, although it may involve the use of a weapon, which is neither dangerous nor deadly)
 - Bastardy (the offense of begetting a bastard child)
 - Creating or maintaining a nuisance (where knowledge that premises were used for prostitution is not necessary)
 - Incest (when a result of marital status prohibited by law)
 - Involuntary manslaughter (when killing is not the result of recklessness)
 - Libel
 - Mailing an obscene letter
 - Mann Act violations (where coercion is not present)
 - Riot
 - Suicide (attempted)

N/A

Proposal Number: 3.0

TEMPLATE LETTERS

The following section includes templates of letters used to inform voters either that there is a problem with their registration status or that they are being temporarily removed from the list due to a felony conviction or other offense.

Proposal Number: 3.0

September 03, 2014

[REDACTED]
Huntsville, AL 35805

Dear [REDACTED]

Your application for voter registration has been denied for the following reason:

Disqualifying Felony Conviction

If your rights have been restored, please send us a copy of your restoration papers so that we may approve your application. If you believe the Board is in error, please discuss this matter with the Board or you may appeal this decision within 30 days by filing an appeal with the probate judge (§17-3-55). The denial of your application for registration does not prevent you from applying at some future date.

You may call this office at the above number if you have any questions.

Sincerely,

Proposal Number: 3.0



BOARD OF REGISTRARS
Frank (Butch) Ellis
Community Service Building
108 West College Street, Suite 100
Columbiana, AL 35051

BOARD MEMBERS
Carol Hill, Chairman
Kristy Brown
Kelli Moore

Heidee Vansant, Chief Clerk
Post Office Box 1642
Columbiana, AL 35051
Phone (205) 669-3913
Fax (205) 669-3986

October 17, 2014
Sam SXXXX
XXX Hill Rd
No Town, AL 35555

Dear Mr. XXX,

We recently received a Voter Registration Application/Update form from you. Review of the application indicates you do not qualify for registration in Shelby County due to the following reason:

- ∞ Criminal conviction involving moral turpitude in Houston County, AL:
 - o CC0000 001112300 – 1/25/1999 Possession of Forged Instrument 2nd degree

If your voting rights have been restored by the Alabama Board of Pardons and Paroles, please provide official documentation of the restoration to the Board of Registrars within 30 days of the date of this letter so we can register you as an eligible voter. To apply for pardon, please contact The Alabama Board of Pardons and Paroles at (334)242-8700 or (334)242-8730. Additional information is available on their website (www.pardons.state.al.us).

If you have any questions, please call our office.

Sincerely,

Carol Hill, Chairman
Shelby County Board of Registrars

SHELBY COUNTY!

The fastest Growing 

Proposal Number: 3.0



BOARD OF REGISTRARS

Frank (Butch) Ellis
Community Service Building
108 West College Street, Suite 100
Columbiana, AL 35051

BOARD MEMBERS
Carol Hill, Chairman
Angela Beasley
Emily Gravitt

Heidee Vansant, Chief Clerk
Post Office Box 1642
Columbiana, AL 35051
Phone (205) 669-3913
Fax (205) 669-3986

FINAL NOTICE

October 17, 2014

Carol Smith
PO Box XXX
Chelsea, AL 35043

Dear Ms. Smith,

Your Voter Registration form was received in our office on September 15, 2014, with omissions. We attempted to contact you by phone regarding this as well as by mail. A **completed** voter registration form is required to register or make updates. Since we have had no response from you, we regret to inform you that this is our final attempt to obtain the information needed to register/update you to vote. If we do not receive this within 10 days, your application will be denied.

You may submit a completed voter registration form at any time. To obtain a form, please visit your county library, a license office branch, our office in Columbiana, or go online to www.shelbyal.com (voter information) to download a form.

Should you have any questions, please do not hesitate to contact our office at 205-669-3913. All voters must be registered 10 days prior to an election in order to vote.

Sincerely,

Carol Hill, Chairman
Shelby County Board of Registrars

SHELBY COUNTY!

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Proposal Number: 3.0



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Columbiana, AL 35051
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Fax (205) 669-3986

September 15, 2014

Carol Smith
PO Box XXX
Chelsea, AL 35043

Dear Ms. Smith,

Your Voter Registration form was received in our office on September 15, 2014 with omissions. We have attempted to contact you by phone regarding this as well as by mail. A **completed** voter registration form is required to register. If we do not receive this within 10 days, your application cannot be completed. I am enclosing a copy of your registration form with the areas highlighted that we need you to complete and return to us. Also, it cannot be a faxed copy as we must have your original signature.

Should you have any questions, please do not hesitate to contact our office at 205-669-3913. All voters must be registered 14 days prior to an election in order to vote. Thank you.

Sincerely,

Carol Hill, Chairman
Shelby County Board of Registrars

SHELBY COUNTY!

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Proposal Number: 3.0



BOARD OF REGISTRARS

Frank (Butch) Ellis
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Heidee Vansant, Chief Clerk
Post Office Box 1642
Columbiana, AL 35051
Phone (205) 669-3913
Fax (205) 669-3986

DENIED NOTICE

October 15, 2014

Carol Smith
PO Box XXX
Chelsea, AL 35043

Dear Ms. Smith,

Your Voter Registration Form was received in our office on September 15, 2014, with omissions. **The State of Alabama requires a completed application in order to register to vote.** Because we have had no response from you since our recent attempts to contact you, we regret to inform you that your application to register/update has been denied. You may submit a new completed form at any time. Forms can be obtained at any county library, license office, our office, or online at www.shelbyal.com.

Should you have any questions, please do not hesitate to contact our office at 205-669-3913.

Sincerely,

Carol Hill, Chairman
Shelby County Registrar

SHELBY COUNTY!

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Proposal Number: 3.0

Lynda C. Hairston, Chairman

Nan Guyette, Board Member

Kathy Linden, Board Member

Enclosure

LH/bm

EXHIBIT 10



ADMINISTRATIVE OFFICE OF COURTS

300 Dexter Avenue
Montgomery, Alabama 36104-3741
(334) 954-5000

Sue Bell Cobb
Chief Justice

Callie T. Dietz
Administrative Director of Courts

November 8, 2007

Kenneth D. Wallis, II, Esquire
Chief Legal Counsel
Office of the Governor
State Capitol, Suite NB-05
Montgomery, AL 36130

Re: U.S. v. State of Alabama and Beth Chapman
Case No. 2:06-cv-392-WKW (U.S.D.Ct., M.D. Ala.)

Dear Mr. Wallis:

You requested that the Administrative Office of Courts determine and provide you with a list of the felonies "involving moral turpitude," the conviction of which would disqualify and disenfranchise state citizens of their right to vote under Amendment 579 to the Alabama Constitution.

Prior to making those determinations for this office, I researched and reviewed the history and case law interpreting and defining the meaning of the phrase, "involving moral turpitude," and the history and case law involving the right to vote.

I herewith report to you the results of this research and provide you with the determinations and the listing of offenses that you requested.

EXHIBIT 4
ED PACKARD
9/19/2018

Kenneth D. Wallis, II, Esquire
November 8, 2007
Page Two

a.

Alabama case law interpreting the meaning of "involving moral turpitude"

The phrase, "involving moral turpitude," is ambiguous, elastic, and subjective. It can cover virtually any criminal offense that a person employing this vague and imprecise standard wants it to cover. It contains an inherent bias in favor of inclusion: the "higher" one's moral standards are, the greater the number of offenses included.

The Supreme Court noted this phrase's lack of definition, its imprecision and the requirement of interpretation to divine its scope in *Hunter v. Underwood*,¹ 471 U.S. 222 at 226 (1985):

This latter phrase [crime involving moral turpitude] is not defined, but was subsequently interpreted by the Alabama Supreme Court to mean an act that is "immoral in itself, regardless of the fact whether it is punishable by law. The doing of the act itself, and not its prohibition by statute fixes, the moral turpitude." *Pippin v. State*, 197 Ala. 613, 73 So. 340, 342 (1916)

¹ In *Hunter v. Underwood*, the United States Supreme Court held that the employment of this phrase, "crime involving moral turpitude," in Section 182 of the 1901 Alabama Constitution, was "motivated by a desire to discriminate against blacks on account of race," 471 U.S. at 224, and that when this standard was used as a basis for disqualifying citizens of the right to vote, it violated the Equal Protection Clause of the Fourteenth Amendment.

In light of this, it is difficult to understand the decision made in the mid-1990s to reintroduce, via Amendment 579 to the Alabama Constitution, the phrase, "involving moral turpitude," as a basis for again disqualifying or disenfranchising Alabama citizens of their right to vote. Nevertheless, this was the phrase used in Amendment 579, which, upon its adoption, resurrected this ill-defined set of criminal convictions as the basis for disenfranchising Alabama citizens of their right to vote. (We note that the phrase was modified in the Amendment to restrict the disenfranchising offenses to "felonies" involving moral turpitude rather than "crimes" involving moral turpitude.)

The use of this standard is suspect. While an Equal Protection claim alleging disenfranchisement of minority voters, such as that brought in *Hunter v. Underwood*, requires proof of discriminatory intent, a claim brought under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, does not. Section 2 of that Act requires only racially discriminatory effect or results, e.g., *Bush v. Vera*, 517 U.S. 952, 976 (1995), "In 1982, Congress amended the VRA by changing the language of § 2(a) and adding § 2(b), which provides a "results" test for violation of § 2(a)" and *Nipper v. Smith*, 39 F.3d 1494, 1509-10 (11th Cir. 1994), holding that Section 2 "outlaws election practices that result in racial discrimination." (underlining supplied)

Kenneth D. Wallis, II, Esquire
November 8, 2007
Page Three

Similarly, the Eleventh Circuit also recognized the lack of any definition of this standard and its extremely subjective nature in that Court's opinion below, Underwood v. Hunter, 730 F.2d 614 at 616 (1984):

The [Alabama] attorney general in opinion has acknowledged that classification of presently unaddressed offenses the "will turn upon the moral standards of the judges who decide the question."

This problem of the "classification of presently unaddressed offenses" remains extant, *i.e.*, the inability to readily determine which felonies "involve moral turpitude" and which do not persists. One need look no further than Opinion 2005-092 of the Attorney General of Alabama issued in 2005 or Chapman v. Gooden, 2007 Ala. LEXIS 98, decided less than six months ago, to appreciate the difficulty, subjectivity, ambiguity of the standard and the lack of objective criteria for these determinations.

In identifying the particular Alabama felonies which have been held in an Alabama appellate court opinion to "involve moral turpitude," our office has relied upon the case law research performed by Mr. Scott Rouse of your office which he kindly provided to me two weeks ago.

Most of the cases cited and relied upon by Mr. Rouse did not involve the issue of voter disqualification, but rather involved issues of the admissibility of evidence of a party or witness's conviction of a crime as impeachment evidence under §12-21-162(b),² or a person's disqualification to serve as a juror under §12-16-60, both of which statutes also use the phrase "involving moral turpitude" as their respective defining criteria.

² On January 1, 1996, the Alabama Supreme Court adopted the Alabama Rules of Evidence. As noted by the Advisory Committee Notes to the Rules, "The preexisting Alabama statutory provision authorizing impeachment by evidence showing conviction for a crime involving moral turpitude, Ala. Code 1975, §12-21-162(b), has been superseded by Rule 609." Rule 609 of those Rules has governed the admissibility of criminal convictions for impeachment purposes since January 1, 1996. Rule 609 does not employ a "moral turpitude" standard.

In adopting the Alabama Rules of Evidence, the Alabama Supreme Court thereby eliminated, at least in this context, the interpretive problems inherent in the "involving moral turpitude" standard. This has decreased the number of cases in which an Alabama appellate court has had the opportunity to further address the issue of what crimes or felonies "involve moral turpitude."

Kenneth D. Wallis, II, Esquire
November 8, 2007
Page Four

Alabama cases in which the determination of whether a crime involved moral turpitude was made for the purpose of determining a citizen's right to vote – as opposed to impeachment purposes or the purpose of assessing the competency of a juror in a civil or criminal case – are almost non-existent. In compiling the list of felony offenses you requested, I have assumed, but do not opine, that the standard is the same for all three of these different purposes.

b.

The Right to Vote

From the earliest days of this nation's history and even in its pre-history, the right to vote has been understood and recognized to be of primal importance and among the greatest and most fundamental rights of its citizens.

Alexander Hamilton, one of the principal architects of the Constitution and the author of the majority of the Federalist Papers, stated as follows about the right to vote, its place in securing the rights of citizens, and more importantly for purposes of the present inquiry, the extreme circumspection and care that should be exercised in "divesting any citizen of that right":

A share in the sovereignty of the State, which is exercised by the citizens at large in voting at the elections, is one of the most important rights of the subject, and in a republic ought to stand foremost in the estimation of the law. It is that right by which we exist, as a free people, and it will certainly therefore never be admitted that less ceremony ought to be used in divesting any citizen of that right than in depriving him of his property. Such a doctrine would ill suit the principles of the Revolution which taught the inhabitants of this country to risk their lives and fortunes in asserting their liberty, or, in other words, their right to a share in the government. Let me caution against precedents which may in their consequences render our title to this great privilege precarious.³ (underlining supplied)

³ Alexander Hamilton, The Papers of Alexander Hamilton, Harold C. Syrett, ed. (New York, Columbia University Press, 1962), Vol. III, pp. 544-545.

Kenneth D. Wallis, II, Esquire
November 8, 2007
Page Five

Similar expressions of the fundamental importance of the right to vote in our system of government may be found throughout the opinions of the United States Supreme Court in the nineteenth and twentieth century, *e.g.*, *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886):

[T]he political franchise of voting is . . . regarded as a fundamental political right, because [it is] preservative of all rights.

Fortson v. Morris, 385 U.S. 231, 250 (1966) (*Fortas, dissenting*):

A vote is . . . the sacred and most important instrument of democracy and of freedom.

Burdick v. Takushi, 504 U.S. 428, 433 (1992):

It is beyond cavil that “voting is of the most fundamental significance under our constitutional structure.” *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 59 L. Ed. 2d 230, 99 S. Ct. 983 (1979).

Burson v. Freeman, 504 U.S. 191, 214 (1992) (*Kennedy, concurring*):

Voting is one of the most fundamental and cherished liberties in our democratic system of government.

When this body of law, emphasizing the centrality and preeminence of the right to vote under the Constitution, is set alongside the ambiguous, ill-defined “involving moral turpitude” standard and its dubious, ignoble usage and history, the need for the care and circumspection cautioned by Hamilton in “divesting any citizen of that right” is patent.

Observing this caution, the Administrative Office of Courts is unwilling to extend the disenfranchisements of Alabama citizens of their right to vote beyond those citizens convicted of felony offenses which an Alabama appellate court opinion, a state statute or an opinion of the Alabama Attorney General has specifically by name determined to involve moral turpitude. To again quote Alexander Hamilton, this office declines to establish any “precedents which may in their consequences render our title to this great privilege precarious.”



Kenneth D. Wallis, II, Esquire
November 8, 2007
Page Six

Using these three sources – Alabama case law,⁴ state statutes⁵ and Attorney General's opinions⁶ – we have compiled a list of Alabama felonies that have been identified by one of these sources to “involve moral turpitude.” I attach that list.

If you have any questions about these matters, please call or write me.

With kindest regards, I remain

Very truly yours,



Griffin Sikes, Jr.
Director, Legal Division

/GSjr

xc: Hon. Sue Bell Cobb, Chief Justice
Ms. Callie T. Dietz, Administrative Director of Courts
Hon. John William English, Jr., Probate Judge, Lee County
Winfield J. Sinclair, Esquire
Algert S. Agricola, Esquire
J. Dormand Walker, Jr., Esquire
Michael W. Robinson, Esquire
Robert D. Popper, Esquire
Scott L. Rouse, Esquire
Ms. Shannon M. Curtis
Robert L. McCurley, Jr., Esquire

⁴ In identifying the particular Alabama felonies which have been held in an Alabama appellate court opinion to “involve moral turpitude,” as previously stated, our office has used and relied upon the case law research provided by Mr. Scott Rouse of your office which he kindly provided to me two weeks ago.

⁵ The only statute addressing this issue that was cited to me by Mr. Rouse and the only such statute revealed in our research was §15-22-36.1, 1975, which provides a listing of felonies involving moral turpitude, the conviction of which will preclude an individual from applying to have his or her civil and political rights restored.

⁶ Opinion 2005-092 is the only such Attorney's General Opinion addressing this issue that was supplied or cited to me by Mr. Rouse.

Alabama felony offenses which have been declared or determined
by an Alabama appellate court, a state statute or an Attorney General's opinion
to "involve moral turpitude"

Code	Code section	Class	Category	Common Name
HOMI	014-314-	A	PE	MURDER (OLD CODE)
CM01	13A-005-040(A)(1)	U	PE	MURDER CAPITAL-KIDNAP
CM10	13A-005-040(A)(10)	U	PE	MURDER CAPITAL-TWO OR MORE PER
CM11	13A-005-040(A)(11)	U	PE	MURDER CAPITAL-PUBLIC OFFICIAL
CM12	13A-005-040(A)(12)	U	PE	MURDER CAPITAL-AIRPLANE HIJACK
CM13	13A-005-040(A)(13)	U	PE	MURDER CAPITAL-20YR PRIOR CON
CM14	13A-005-040(A)(14)	U	PE	MURDER CAPITAL-WITNESS
CM15	13A-005-040(A)(15)	U	PE	MURDER CAPITAL-UNDER 14 YEARS
CM16	13A-005-040(A)(16)	U	PE	MURDER CAPITAL-DWELL FR OUTSID
CM17	13A-005-040(A)(17)	U	PE	MURDER CAPITAL-VEH FR OUTSIDE
CM18	13A-005-040(A)(18)	U	PE	MURDER CAPITAL-FIRED FROM VEHI
CM02	13A-005-040(A)(2)	U	PE	MURDER CAPITAL-ROBBERY
CM03	13A-005-040(A)(3)	U	PE	MURDER CAPITAL-RAPE/SODOMY
CM04	13A-005-040(A)(4)	U	PE	MURDER CAPITAL-BURGLARY
CM05	13A-005-040(A)(5)	U	PE	MURDER CAPITAL-LAW OFF/GUARD
CM06	13A-005-040(A)(6)	U	PE	MURDER CAPITAL-LIFE SENTENCE
CM07	13A-005-040(A)(7)	U	PE	MURDER CAPITAL-FOR HIRE
CM08	13A-005-040(A)(8)	U	PE	MURDER CAPITAL-SEXUAL ABUSE
CM09	13A-005-040(A)(9)	U	PE	MURDER CAPITAL-ARSON
MURD	13A-006-002	A	PE	MURDER
MURR	13A-006-002(A)(2)	A	PE	MURDER-RECKLESS/VEHICLE
FMUR	13A-006-002(A)(3)	A	PE	FELONY MURDER
MANS	13A-006-003	B	PE	MANSLAUGHTER
JJI1	13A-006-020	B	PE	ASSAULT 1ST DEGREE
ASL1	13A-006-020(A)5	B	PE	ASSAULT 1ST DEGREE (LIQUOR)
ASS2	13A-006-021	C	PE	ASSAULT 2ND DEGREE
RAP1	13A-006-061	A	SX	RAPE 1ST DEGREE
RAP2	13A-006-062	B	SX	RAPE 2ND DEGREE
SOD1	13A-006-063	A	SX	SODOMY 1ST DEGREE
SOD2	13A-006-064	B	SX	SODOMY 2ND DEGREE
STSA	13A-006-065.1	A	SX	SEXUAL TORTURE/ABUSE
SXA1	13A-006-066	C	SX	SEXUAL ABUSE 1ST
SX2F	13A-006-067	C	SX	SEXUAL ABUSE 2ND DEGREE
ECHI	13A-006-069	C	SX	ENTICING CHILD TO ENTER
SX12	13A-006-069.1	B	PE	SEX ABUSE-CHILD LESS 12 YOA
SCBC	13A-006-110	B	PE	SOLICITATION OF CHILD BY COMPU
BUR1	13A-007-005	A	PR	BURGLARY 1ST DEGREE
BUR2	13A-007-006	B	PR	BURGLARY 2ND DEGREE
BUR3	13A-007-007	C	PR	BURGLARY 3RD DEGREE
TFT1	13A-008-003	B	PR	TOP1- SHOP LIFTING
TOD1	13A-008-003	B	PR	THEFT BY DECEPT 1ST
TOP1	13A-008-003	B	PR	THEFT OF PROP 1ST
TPC1	13A-008-003	B	PR	THEFT 1ST DEG - CHARITABLE ORG
TFT2	13A-008-004	C	PR	TOP2- SHOP LIFTING
TOD2	13A-008-004	C	PR	THEFT/DECEPTION 2ND
TOP2	13A-008-004	C	PR	THEFT OF PROP 2ND
TPC2	13A-008-004	C	PR	THEFT 2ND DEG - CHARITABLE ORG
TLP1	13A-008-007	B	PR	THEFT LOST PRY 1ST
TLP2	13A-008-008	C	PR	THEFT LOST PRY 2ND
TTTS	13A-008-010.4	C	PR	THEFT TRADE SECRET/TRADMARK

VIDE	13A-008-010.4	C	PR	THEFT TRADE SECRET/TRADMARK
ROB1	13A-008-041	A	PE	ROBBERY 1ST
ROB2	13A-008-042	B	PE	ROBBERY 2ND
ROB3	13A-008-043	C	PE	ROBBERY 3RD
FOR1	13A-009-002	B	PR	FORGERY 1ST
FOR2	13A-009-003	C	PR	FORGERY 2ND
TREA	13A-011-002	A	GP	TREASON
MIOB	13A-012-191	B	SX	PORN OBSCENE MATTER DISPLAY MI
POBM	13A-012-192(A)	B	SX	PORN INTENT TO DISTRIBUTE
PMIO	13A-012-192(B)	C	SX	PORN POSS MATERIAL MINORS
MIPR	13A-012-196	A	SX	PORN PARENT/MINORS IN SEX
POMA	13A-012-197	A	SX	PORN-PRODUCING W/MINORS
PSMF	13A-012-200.2(1)	C	SX	OBSCENE MATERIAL-DIST/POSS
PISF	13A-012-200.2(2)	C	SX	OBSCENE MATERIAL-DIST/POSS WHO
PISP	13A-012-200.2(3)	C	SX	OBSCENE MATERIAL-PRODUCE
UDCS	13A-012-211	B	DR	UNLAW DISTRIB/FURN CONT SUBST
VSCO	13A-012-211	B	DR	SALE COCAINE
VSMA	13A-012-211	B	DR	SALE MARIJUANA
VAPF	13A-012-213	C	DR	POSS MARIJUANA 1ST
BIGA	13A-013-001	C	PE	BIGAMY
INCE	13A-013-003	C	PR	INCEST

End of List

MEMORANDUM

TO: Chief Justice Sue Bell Cobb

FROM: Griffin Sikes, Jr., Legal Director, AOC 

XC: Jean Brown, Chief Counsel, Sec'y of State's Office
Ed Packard, Supervisor of Voter Registration, Sec'y of State's Office

DATE: September 24, 2008

SUBJECT: Misuse of AOC data by ES&S to wrongfully disqualify Alabama voters

Information regarding criminal convictions in the state which has been provided by the AOC from our electronic databases to Election Systems and Software, Inc. (ES&S)¹ has been and is currently being misused to wrongfully disqualify or disenfranchise Alabama citizens from their right to vote and/or their right to register to vote.

Over the last several months, I have been contacted by several circuit clerks who have reported that the boards of registrars in their counties were disqualifying voters or persons applying to vote based on information supplied to them by ES&S about convictions of crimes (sometimes misdemeanors) other than felonies involving moral turpitude.²

¹ Electronic Systems and Software, Inc. is a national voting system management company headquartered in Omaha, Nebraska. The State of Alabama contracted with ES&S to assist the state in meeting the requirements of the "Help America Vote Act of 2002" (HAVA), codified at 42 U.S.C. 15301 to 15545.

HAVA, among other things, requires that all states establish a central, statewide, computerized, voter registration system which:

- a. contains the name and address of every legally registered voter in the state;
- b. serves as the single, official system for maintaining this voter list;
- c. can be immediately accessed by local election officials to electronically add or remove voters;
- d. complies with the provisions the National Voter Registration Act governing the removal of voters from this list and must be coordinated with other state agency databases to facilitate the removal of deceased persons and other persons ineligible to vote under state law from the voter list or registry;
- e. shall be maintained and supported by the Chief Election Officer of the state;
- and
- f. shall assure that eligible voters are not wrongfully removed from voting lists.

² The history in this state of the use of the phrase, "involving moral turpitude," is an ugly and troubled one. The phrase, "persons convicted of a crime involving moral

EXHIBIT 7

ED PACKARD

9/19/2018

You will recall that at the end of last year Mr. Ken Wallis, the Governor's Chief Counsel, requested that the AOC review and approve the Governor's office's listing of felonies involving moral turpitude that had been compiled by a law student intern in his office and Scott Rouse, an attorney in his office.

In response to this request, I wrote Mr. Wallis the attached letter dated November 8, 2007.

The circumstance that prompted Mr. Wallis' request that our office review and approve his office's list of these disqualifying convictions was the appointment in early 2007 of Governor Riley by the U.S. District Court for the Middle District of Alabama as a "Special Master" in *U.S. v. State of Alabama*, Case No. 2:06-cv-392-WKW, U.S. D.Ct., M.D.Ala. which charged the Governor with overseeing Alabama's compliance with HAVA.

This appointment of the Governor by the federal court divested the Secretary of State of what would have normally been the Secretary's responsibilities in overseeing the implementation of the state's electronic voting system by ES&S and placed these responsibilities in the Governor's Office.

Mr. Wallis believed that the Governor's obligations as Special Master included making a determination of what felonies involved moral turpitude. After Mr. Wallis' office made their determination and provided that list of felonies to ES&S in early 2007, it is my understanding that the Secretary of State then requested/insisted that it be the AOC, and not the Governor's Office, that made the determination of what felonies involved moral turpitude. Mr. Wallis acceded to the Secretary's request and asked the AOC to approve the list of felonies involving moral turpitude that his office had previously compiled. My letter dated November 8, 2007, followed.

turpitude," was used in Section 182 of the 1901 Alabama Constitution as a basis for disqualifying such persons from voting in Alabama.

However, in *Hunter v. Underwood*, 471 U.S. 222 (1985) the United States Supreme Court held that the employment of this phrase – "crime involving moral turpitude" – in the Alabama Constitution was "motivated by a desire to discriminate against blacks on account of race," 471 U.S. at 224, and that when this standard was used as a basis for disqualifying citizens of the right to vote, it violated the Equal Protection Clause of the Fourteenth Amendment.

Subsequently, in the mid-1990s, Amendment 579 to the Alabama Constitution was ratified. This Amendment resurrected a portion of this phrase by modifying it from "crimes involving moral turpitude" to "felonies involving moral turpitude," as a basis for again disqualifying or disenfranchising Alabama citizens of their right to vote.

Since the mid-1990s, this phrase remained the law in Alabama although the meaning, scope and breadth of the phrase have remained ill-defined and ambiguous. It was this lack of definition and ambiguity that lead to the request by Mr. Wallis that the AOC provide a listing of the felonies that involved moral turpitude.

The difference between the Governor's office's list of felonies that he or his office believed to involve moral turpitude and the list of felonies contained in my November eighth letter that we here at the AOC determined from our research to involve moral turpitude was substantial.

Of the approximately 575 felonies existing under Alabama law, Mr. Wallis' office's list included approximately 480 felony offenses that they believed would involve moral turpitude.

As stated in my November 8, 2007 letter, our office only found approximately 70 felonies that had been held or determined by an Alabama statute, appellate court opinion or attorney general's opinion to involve moral turpitude.

In light of the preeminent importance of the right to vote in our country and also the relatively recent history of voting rights strife, including voter and voter registrant intimidation and violence, in our state, I determined that our office would not be a party to depriving any citizen of their right to vote based on speculation about what an appellate court of this state or the legislature *might* decide about whether other felonies, which they had not heretofore addressed, "involved moral turpitude."

It was my understanding that, based on the Secretary of State's insistence, the AOC's list would be used to determine what felony conviction information would be provided to the Boards of Registrars for the purpose of determining voters' eligibility to vote and voter applicants' eligibility to register to vote.

It had also been my understanding, based on a number of conversations at the end of last year and the first of this year with Mr. Wallis, that beginning this spring, the only information regarding criminal convictions that was being provided to the Boards of Registrars in the state were the convictions of the 70 felonies listed at the end of my November eighth letter and that it was only convictions of these felonies contained on this AOC list that the Boards of Registrars were using to disqualify voters or voter applicants.

On Thursday, September 4, 2008, I met with Mr. Wallis, Ms. Brown and Ed Packard, who is the Secretary of State's Supervisor of Voter Registration, at Ms. Brown's office in the Capitol to discuss an unrelated issue (the possibility of an inadvertent disclosure by ES&S of personal information, including social security numbers, of a number of persons who had been convicted of criminal offenses). Ms. Shannon Curtis, the representative of ES&S who has had principal responsibility for the state's electronic voter project and its compliance with HAVA, was included in the discussion by conference call.

At the end of this meeting, because the issue of what convictions were being supplied to boards of registrars had recently been raised with me by another clerk, at the prompting of Ms. Brown, I again asked about this. Mr. Wallis and Ms. Curtis again assured Ms. Brown, Mr. Packard and me that the only information regarding criminal

convictions that was being provided to the Boards of Registrars by ES&S were the convictions of the felonies on the AOC list and that this had been the case since the spring of 2008.

However, last Wednesday, September 17, 2008, I received a call from Mr. J. D. Snoddy, the Circuit Clerk of Winston County that was similar to those I have been receiving throughout the last several months. Mr. Snoddy told me of a complaint/report that had been made to him by a person who had been convicted of a criminal offense that Mr. Snoddy did not know the code section for, but that consisted, as Mr. Snoddy described it, of "having more beer in their car than the law allowed." This person reported to Mr. Snoddy that the Winston County Board of Registrars would not allow him or her to be registered to vote because this "too much beer in the car" conviction was one that involved moral turpitude.

In questioning Mr. Snoddy further, I asked how the Board of Registrar was in possession of the information that this particular person had been convicted of this crime. He said the Board of Registrars received periodic reports or notifications of criminal convictions from somebody they called "Election Central" and that it had been discovered after receiving this person's name in such a report.

I asked Mr. Snoddy if he could obtain from his Board of Registrars a copy of the latest one of these reports or notifications and send it to me. He did. I attach a copy of it.

The form is dated 9/16/2008 – only two days prior to my conversation with Mr. Snoddy – and is titled, "Weekly Felon Check." Oddly, while the document lists 11 convictions and the names and addresses of the persons convicted, their dates of birth, the last 4 digits of their social security number, the conviction dates, as well as other information, there is no information about what the criminal offenses were that these persons were convicted of.

I asked Jill Hawthorne in AOC's IT Division to check our records and provide me with the criminal offenses involved in these 11 convictions. She sent me a print-out, a copy of which I attach, showing for each of these 11 convictions, the offenses, the case number, the date the information was sent to ES&S, and the source or basis for including these convictions as convictions that involved moral turpitude.

Regarding the latter item, in every instance, the basis for inclusion of these 11 convictions as one involving moral turpitude and the basis for these persons' being disqualified to vote was the "Governor's List."

This, despite that fact that we have been repeatedly assured that ES&S was not and had not been since early 2008 providing convictions of offenses from the Governor's list to the Boards of Registrars to disqualify voters or voter applicants.

Of these 11 convictions on ES&S's Weekly Felon Check, only 3 are definitely convictions involving moral turpitude according to the AOC list.

Regarding the identification of the offenses involved in these 11 convictions, I began with the 4 letter/number code for the offenses referenced on the Weekly Felon Check. I researched these codes, found the Alabama Code sections involved and sorted these 11 convictions into three categories, according to the AOC's list of felonies involving moral turpitude, as follows:

- (a) Felonies involving moral turpitude
- (b) Felonies not involving moral turpitude and
- (c) Undetermined.

(a) Felonies involving moral turpitude

Barnes	ROB3	Robbery, 3rd Degree	§ 13A-8-43
Cummings	ASS1	Assault, 1st Degree	§ 13A-6-20
Hilton	BUR3	Burglary, 3rd Degree	§ 13A-7-7

(b) Felonies not involving moral turpitude

Cummings	IMPO	Impersonating a Peace Officer	§ 13A-10-11
Hendon	VPCO	Unlawful Possession of Cocaine	§ 13A-12-212
Hendon	PREC	Unlawful Mfg., Cont. Subst., 2nd	§ 13A-12-217
Hunter	VDR1	Possession of Drug Paraphernalia	§ 13A-12-260
Lancaster	VPCO	Unlawful Possession of Cocaine	§ 13A-12-212
Smith	ARS2	Arson, Second Degree	§ 13A-7-42

(c) Undetermined

Bowman	UDCS	Unlawful Dist. Contr. Subst.	§ 13A-12-211, 12, 13
Hendon	UDCS	Unlawful Dist. Contr. Subst.	§ 13A-12-211, 12, 13

Regarding these undetermined convictions, the code, "UDCS," covers several drug offenses, or degrees of drug offenses, some of which are felonies involving moral turpitude and some of which are not. Without going to the particular individual's court file, it is not possible to determine whether these two convictions are for felonies that involve moral turpitude.

Additionally, there was one other conviction listed on the 9/16/2008 "Weekly Felon Check" from ES&S that bears a special mention.

Gobble	TOP2	Theft of Property, 2nd Degree	§ 13A-8-4

Theft of Property in the second degree is a felony involving moral turpitude. However, the letter "A" in the "ChargeDispositionID" column indicates that this conviction was for Attempted Theft of Property, Second Degree, which is a

misdemeanor. Further, the letter "D" contained in the "Status" column is an instruction from AOC to ES&S to delete this conviction from the list.

However, with regard to this conviction, despite AOC's instruction to ES&S to delete it, ES&S nevertheless included this conviction in its report.

Last Thursday afternoon, September 18, 2008, I called and met with Ms. Brown and Mr. Packard to go over this information and these documents. Ms. Brown's and Mr. Packard's recollections of the representations made by Mr. Wallis and Ms. Curtis at our prior September fourth meeting were the same as mine. I then sent Mr. Wallis the attached e-mail informing him of concerns that the information previously provided appeared to be inaccurate and asking to meet with him on Friday, the nineteenth.

By the morning of Tuesday, September 23, 2008, when I had received no response, I called Mr. Wallis' office and asked that he call me about this matter. Mr. Wallis promptly returned my call that morning.

Mr. Wallis acknowledged in our conversation that the information that he and Ms. Curtis provided to us during our September fourth meeting was not accurate; that apparently ES&S was still providing information about convictions of offenses that were on the Governor's list, which he referred to as the "big list," but were not on the AOC list.

I asked what needed to be done to correct this. Mr. Wallis said that the "big list" was "in the system" and that taking it out would be "very expensive."

I asked under whose control and at whose direction ES&S and Ms. Curtis now act subsequent to the Governor's being relieved of duties as a Special Master in the HAVA litigation by the federal court last week. He stated that ES&S and Ms. Curtis now report directly to and are subject to the control and direction of the Secretary of State.

I also asked Mr. Wallis about the lack of identification on the ES&S's Weekly Felon Check of the offenses for which convictions were being reported. Mr. Wallis told me that this was being worked on; that "around the end of October" ES&S will put the "crime conviction codes into system" and these codes will thereafter begin to appear on these reports.

The "end of October" is, of course, within a week or so of the 2008 general election. Any such changes made in the content of the information being supplied by ES&S to state boards of registrars at that time will likely have little effect on voter registration and/or disqualification for the November fourth general election.

END OF MEMO

Confidential Information

Processed: 09/18/2008 9:05 AM
Printed: 09/18/2008 9:05 AMWINSTON County
Agency Match Review Report
Weekly Felon Check Batch Date: 9/16/2008

Name	Address	Jurisdiction	DOB	DL or ID #	SSN
BARNES, [REDACTED] SP [REDACTED] BAR S [REDACTED]	[REDACTED]	WINSTON FRANKLIN	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
Court Case Number: CC200800018400 Court of Conviction:		Date of Conviction: 12/04/2008		Date of Release:	
HEINZMAN, [REDACTED] SP [REDACTED] SCHMAN [REDACTED]	[REDACTED]	WINSTON FRANKLIN	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
Court Case Number: DC199500041800 Court of Conviction:		Date of Conviction: 02/14/2000		Date of Release:	
CUMMINGS, [REDACTED] SP [REDACTED] CUMMINGS [REDACTED]	[REDACTED]	WINSTON FRANKLIN WINSTON	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]
Court Case Number: CC199300007100 Court of Conviction:		Date of Conviction: 09/24/1993		Date of Release:	
Court Case Number: DC199500032200 Court of Conviction:		Date of Conviction: 08/02/1995		Date of Release:	
GOODE, [REDACTED] SP [REDACTED] GOBLE [REDACTED]	[REDACTED]	WINSTON CULLMAN	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
Court Case Number: CC200000017500 Court of Conviction:		Date of Conviction: 05/22/2000		Date of Release:	
HENDON, [REDACTED] SP [REDACTED] HENDON [REDACTED] SP [REDACTED] HENDON [REDACTED]	[REDACTED]	WINSTON WALKER WINSTON	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]
Court Case Number: CC200200009800 Court of Conviction:		Date of Conviction: 08/27/2002		Date of Release:	
Court Case Number: CC200400020800 Court of Conviction:		Date of Conviction: 05/10/2004		Date of Release:	
HILTON, [REDACTED] SP [REDACTED] HILTON [REDACTED]	[REDACTED]	WINSTON WALKER	[REDACTED] [REDACTED]	4444774 [REDACTED]	[REDACTED] [REDACTED]
Court Case Number: CC199400054200 Court of Conviction:		Date of Conviction: 10/25/1995		Date of Release:	
HUNTER, [REDACTED] SP [REDACTED] HUNTER [REDACTED]	[REDACTED]	WINSTON MARION	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
Court Case Number: CC200300020700 Court of Conviction:		Date of Conviction: 02/09/2004		Date of Release:	
LANCASTER, [REDACTED] SP [REDACTED] LANCASTER [REDACTED]	[REDACTED]	WINSTON WINSTON	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
Court Case Number: CC199800006000 Court of Conviction:		Date of Conviction: 11/03/1997		Date of Release:	
LEE, [REDACTED] SP [REDACTED] LEE [REDACTED]	[REDACTED]	WINSTON WALKER	[REDACTED] [REDACTED]	AL6024848 [REDACTED]	[REDACTED] [REDACTED]
Court Case Number: CC199800013800 Court of Conviction:		Date of Conviction: 06/15/2000		Date of Release:	
MCNAMARA, [REDACTED] SP [REDACTED] MCNAMARA [REDACTED]	[REDACTED]	WINSTON CULLMAN	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
Court Case Number: CC200300008100 Court of Conviction:		Date of Conviction: 02/27/2003		Date of Release:	
SMITH, [REDACTED] SP [REDACTED] SMITH [REDACTED]	[REDACTED]	WINSTON WINSTON	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]

Confidential Information

Query

Casenumbr	LastName	FirstName	MiddleName	DOB	SSN	ChargeDisp	ChargeDispID	ESSSentDate	ListFrom	Status
3300CC200600018400	BARNES					ROB3	C	10/4/2007	Governor	U
4900DC199900041600	BOWMAN					UDCS		8/28/2007	Governor	U
3300CC199300007100	CUMMINGS					ASS1		10/4/2007	Governor	U
6700DC199500032200	CUMMINGS					IMPO		10/4/2007	Governor	U
2500CC200000017500	GOBBLE					TOP2	A	9/18/2007	Governor	D
6700CC200200009800	HENDON					VPCO		11/9/2007	Governor	N
6400CC200400020900	HENDON					PREC		8/28/2007	Governor	N
6700CC200200009800	HENDON					UDCS		8/28/2007	Governor	U
6400CC199400054200	HILTON					BUR3		10/4/2007	Governor	U
4900CC200300020700	HUNTER					VDR1		10/4/2007	Governor	N
6700CC199600005000	LANCASTER					VPCO		10/4/2007	Governor	U
6700CC199500012500	SMITH					ARS2		10/4/2007	Governor	U

MEMORANDUM

TO: All Circuit Clerks
All Probate Judges
All Sheriffs

FROM: Callie Dietz, Administrative Director of Courts
Griffin Sikes, Jr., Legal Director, AOC 

DATE: September 30, 2008

SUBJECT: Use of AOC data to erroneously disqualify voters and voter applicants

We have recently learned that information about criminal convictions in our state provided by the AOC from our electronic databases to Election Systems and Software, Inc. (ES&S)¹ has been and is currently being used to erroneously disqualify or disenfranchise Alabama citizens of their right to vote and/or their right to register to vote.

During 2007 and 2008, ES&S has been regularly using AOC data to generate and provide reports, including documents called "Weekly Felony Checks," to the boards of registrars reporting the names and other identifying information of persons convicted of certain criminal offenses for the purpose of determining voters' or voter registrants' right to vote or register to vote.

¹ Electronic Systems and Software, Inc. is a national voting system management company headquartered in Omaha, Nebraska. The State of Alabama contracted with ES&S in 2007 to assist the state in meeting the requirements of the "Help America Vote Act of 2002" (HAVA), codified at 42 U.S.C. 15301 to 15545.

HAVA, among other things, requires that all states establish a central, statewide, computerized, voter registration system which:

- a. contains the name and address of every legally registered voter in the state;
- b. serves as the single, official system for maintaining this voter list;
- c. can be immediately accessed by local election officials to electronically add or remove voters;
- d. complies with the provisions the National Voter Registration Act governing the removal of voters from this list and must be coordinated with other state agency databases to facilitate the removal of deceased persons and other persons ineligible to vote under state law from the voter list or registry;
- e. shall be maintained and supported by the Chief Election Officer of the state; and
- f. shall assure that eligible voters are not wrongfully removed from voting lists.

EXHIBIT 8

ED PACKARD

9/19/2018

In recent months, several circuit clerks and others have reported to the AOC that the boards of registrars in their counties had disqualified voters or persons applying to vote based on these reports from ES&S about criminal convictions that do not constitute a proper or lawful basis for disqualification of the voter or voter registrant.

At the bottom of this problem is the issue of what felony convictions disqualify a person from voting under Alabama law.

Under Amendment 579 to the Alabama Constitution, persons who have been convicted of a “felony involving moral turpitude” are disqualified from voting. However, the phrase, “felony involving moral turpitude,”² is ill-defined and ambiguous. Neither the Legislature nor the appellate courts of this state have stated or provided a definitive listing of the felonies which “involve moral turpitude.”

This memo is intended to (a) assist you with inquiries from your board of registrars about whether any particular voter or person applying to register to vote in your county is or is not disqualified to vote as a result of their previously having been convicted of a felony; and (b) also, and perhaps more importantly, to assist you and your board or registrars in identifying any persons who during the past 18 months have been wrongfully denied their right to vote or their right to register to vote and notifying such persons that, contrary to what they may have been previously told, if otherwise qualified, they are eligible and entitled to vote in the coming November 4, 2008 general election.

In order to understand how and why ES&S has provided incorrect information to the boards of registrars, it is useful to review some of the history of the implementation of the state’s electronic voting system.

² The history in this state of the use of the phrase, “involving moral turpitude,” is instructive. The phrase, “persons convicted of a crime involving moral turpitude,” was used in Section 182 of the 1901 Alabama Constitution as a basis for disqualifying such persons from voting in Alabama. However, in *Hunter v. Underwood*, 471 U.S. 222 (1985) the United States Supreme Court held that the employment of this phrase – “crime involving moral turpitude” – in the Alabama Constitution was “motivated by a desire to discriminate against blacks on account of race,” 471 U.S. at 224, and that when this standard was used as a basis for disqualifying citizens of the right to vote, it violated the Equal Protection Clause of the Fourteenth Amendment.

Subsequently, in the mid-1990s, Amendment 579 to the Alabama Constitution was ratified. This Amendment resurrected a portion of this phrase by modifying it from “crimes involving moral turpitude” to “felonies involving moral turpitude,” as a basis for again disqualifying or disenfranchising Alabama citizens of their right to vote.

Since the mid-1990s, this phrase remained the law in Alabama although the meaning, scope and breadth of the phrase have remained ill-defined and ambiguous.

In the spring of 2007, Governor Riley, having been previously appointed as Special Master by the federal court in *U.S. v. State of Alabama*, Case No. 2:06-cv-392-WKW, U.S. D.Ct., M.D.Ala., was charged with assisting the court in overseeing the State's compliance with HAVA.

This appointment of the Governor by the federal court divested the Secretary of State of what would have normally been the Secretary's responsibilities in overseeing the implementation of the state's electronic voting system by ES&S and placed these responsibilities in the Governor's Office.

As a part of setting up the electronic voting system required by HAVA, the Governor needed a listing of the felonies that involved moral turpitude under Alabama law in order to specify which felony convictions should be supplied by ES&S to the boards of registrars.

Determining what the law is or interpreting law is, of course, a duty entrusted to the judicial branch of government. However, in the first half of 2007, at the direction of Mr. Ken Wallis, the Governor's Chief Legal Advisor, the Governor's Office, a part of the executive branch of government, developed a list of felonies that he or his office believed to "involve moral turpitude" and provided this list ("the Governor's list") to ES&S.

However, after the Governor's Office made its determination of these felonies and provided it to ES&S, the Secretary of State then insisted that it be the judicial branch and not the Governor's Office that made the determinations of what felonies involved moral turpitude.

Mr. Wallis then asked the AOC, which is a part of the judicial branch of government, to approve the Governor's list of felonies involving moral turpitude previously compiled by that office.

The Legal Director for the AOC, Griffin Sikes, disagreed with the list of felonies involving moral turpitude supplied to ES&S by the Governor's Office. The attached letter, dated November 8, 2007, was sent by Mr. Sikes in response to Mr. Wallis' request. Appended to the end of this letter is a listing of the felonies determined by the AOC to have previously been declared by an appellate court, the Legislature or an Attorney General's opinion to involve moral turpitude.

The difference between the list of felonies that Mr. Wallis or his office believed to involve moral turpitude and the list of felonies involving moral turpitude contained in the AOC's letter of November eighth letter is substantial.

Of the approximately 575 felonies existing under Alabama law, Mr. Wallis' office's list included approximately 480 felony offenses that he or that office's attorneys believed would involve moral turpitude.

However, the AOC Legal Division found only approximately 70 felonies that had been held or determined by an Alabama statute, appellate court opinion or Attorney General's opinion to involve moral turpitude. Again, the list of these 70 felonies is appended to Mr. Sikes' November 8, 2008 letter.

The AOC's approach to this issue was and is that unless there is affirmative legal authority for disqualifying a voter or voter registrant, every citizen has the right to vote.

Based on the representations made by the Governor's Legal Counsel and ES&S, the Secretary of State's office and the AOC believed that only convictions of the felonies on the AOC's list were being provided to the boards of registrars by ES&S for the purpose of determining voters' eligibility to vote and voter applicants' eligibility to register to vote.

As late as the first week in September, 2008, Ms. Brown and Mr. Sikes were again reassured by Mr. Wallis and Ms. Curtis that the *only* criminal convictions that were being provided by ES&S to the boards of registrars throughout the state were the convictions for the 70 felonies on the AOC list; and that it was *only* these felonies that the boards of registrars were using to disqualify voters or voter applicants.

We now know that these repeated assurances were not accurate. Within the last week, we have received information, which Mr. Wallis has confirmed, that these assurances were "in error." Contrary to these assurances, ES&S is currently and has been for the past year or more providing information to the boards of registrars about criminal convictions from the Governor's list in documents titled, "Weekly Felon Checks,"³ and that the boards of registrars were and are incorrectly using these convictions to disqualify voters or voter applicants from voting.

Last week, the Governor was released by the federal judge as Special Master in the federal law suit and the responsibility for administering the state's voting system and laws was returned to the Secretary of State.

Yesterday, we met and conferred with Ms. Jean Brown, the Chief Counsel for the Secretary of State, and Mr. Adam Thompson, the State HAVA Director for the Secretary of State's Office, regarding these issues and concerns.

³ While these "Weekly Felon Checks" list the names and addresses of the persons convicted, their dates of birth, the last 4 digits of their social security numbers, the conviction dates, as well as other information, they do not identify the felony that was involved in the conviction.

We have been recently advised that "around the end of October" ES&S will put the "crime conviction codes into system" and these codes will thereafter begin to appear on these reports.

Both Ms. Brown and Mr. Thompson expressed their commitment to correcting any erroneous information regarding felonies involving moral turpitude being provided by ES&S; and in fact, have already contacted ES&S regarding getting this accomplished.

Further, they are undertaking to work with ES&S on an expedited basis to identify any persons who since the inception of the electronic voting system's implementation may have been incorrectly told that they are ineligible to vote or removed from the voter rolls or incorrectly denied their right to register to vote; and to immediately notify such persons that, if these denials were in error, that they are eligible to vote, or to register to vote, as the case may be.

We look forward in the next week to working with Ms. Brown and Mr. Thompson and others in the Secretary of State's office to ensure that every citizen who is qualified to register and vote is allowed to do so.

END OF MEMO

From: "Brown, Jean"
Sent: 9/25/2008 3:37:25 PM -0500
To: 'bethchapman@bellsouth.net'; "Thompson, Adam"
<Adam.Thompson@sos.alabama.gov>; "Thompson, Emily"
<Emily.Thompson@sos.alabama.gov>
Subject: FW: ES&S dissemination of felony conviction information to the
boards of registrars
Attachments: Misuse of AOC data.memo&attachments.24SEPT2008.pdf

Attorney Client Privilege

Jean Brown

Chief Legal Advisor

Secretary of State Beth Chapman

(334) 242-7202

From: Brown, Jean
Sent: Thursday, September 25, 2008 3:35 PM
To: 'Sinclair, Win'
Subject: FW: ES&S dissemination of felony conviction information to the boards of registrars

Attorney Client Privilege

Jean Brown

Chief Legal Advisor

Secretary of State Beth Chapman

(334) 242-7202

From: Griffin Sikes [mailto:griffin.sikes@alacourt.gov]
Sent: Thursday, September 25, 2008 11:59 AM
To: Brown, Jean; Packard, Ed
Cc: Cobb, Sue B.; Faye McCall
Subject: ES&S dissemination of felony conviction information to the boards of registrars

Jean and Ed:

EXHIBIT 9
ED PACKARD
9/19/2018

I returned Jean's call this morning and left a message. I spoke with Ken Wallis yesterday. Here is the memo I sent to the Chief Justice about this matter. I would like to talk with you after you have had a chance to review it.

Although you are likely to already have seen them, I also append a couple of editorials from some of the newspapers that have been calling me about this issue. While the tenor of these editorials seemed to be directly in line with the views you (Jean) expressed to me when I was at your office last week, I did not want to speak with them until after I had a chance to talk with you. This may be something that the Secretary needs to discuss with the Chief Justice.

I will be in my office for most of today, but I am out tomorrow.

Voting rights clash

Monday, September 22, 2008

Huntsville Times

The state appears destined for a new fight in federal court

The state of Alabama is headed to court again. The issue is whether state prison inmates (as well as people convicted of crimes but no longer in custody) can register and vote.

Last week, state Corrections Commissioner Richard Allen stopped a voter registration drive being conducted in state prisons. The Associated Press reported that Allen acted "under pressure from the Alabama Republican Party," mainly from party Chairman Mike Hubbard, who complained that the registration drive could lead to voter fraud.

In stopping the drive, Allen said the effort was not doing anything the inmates could not do themselves by contacting the secretary of state's office for a registration postcard. Allen noted, though, that state law prohibits state-owned property from being used to promote or advance candidates for election. What candidates? He didn't say.

State law holds that a person convicted of a crime of moral turpitude loses the right to vote. But the law on what constitutes moral turpitude is vague, and those interpreting the law have left more holes than substance in their definitions.

Thus, anyone convicted of a serious crime in Alabama is, more or less, denied the vote unless that person applies for and receives a restoration of voting rights.

Critics contend the restoration should be automatic in cases where moral turpitude is not involved. Attorney General Troy King disagrees. He opposes automatic restoration. In fact, in a recent commentary in The Times, King said he would like to see a constitutional amendment banning anyone convicted of a felony from voting, period.

The American Civil Liberties Union was already planning a lawsuit before Allen's action last

week, but this latest development may become part of that case.

You can agree or disagree with the idea that people convicted of crimes shouldn't be allowed to vote. But no one should overlook the fact that the state's hopelessly confused policies and actions are ripe for judicial intervention. And Alabama has had too much of that over the years.

By John Ehinger, for the editorial board.

Voting laws need to be clarified

Tuscaloosa News Sunday, September 21, 2008.

It was predictable, perhaps, that Alabama Corrections Commissioner Richard Allen would bow to Republican pressure to stop cooperating with a drive to register some felons to vote.

However, Allen's turnaround on the issue argues that the courts or the Legislature — or both — need to clarify the state's voting laws and policies.

Allen initially gave his consent to a drive to register inmates as voters so they can cast absentee ballots from state prisons. Attorneys general have said absentee voting by inmates is permissible if they are not serving time for a crime of 'moral turpitude.'

The problem is that state law does not define such crimes. According to the attorney general's office, offenses like murder, rape and robbery are included, but people who have committed other felonies, like marijuana possession or drunken driving, can still vote.

A group led by Dothan minister Kenneth Glasgow, a former convict, began registering inmates in state prisons last week. It concentrated mostly on people convicted of drug possession.

Although Glasgow is a Democrat, he said the registration was nonpartisan.

However, it turns out that he is the half-brother of a noted Democratic activist, the Rev. Al Sharpton.

The Alabama Republican Party asked Allen to halt the program. State GOP Chairman Mike Hubbard said he was concerned about possible voter fraud.

Allen said people conducting the registration drive 'were not doing anything for the inmates that they could not do for themselves by simply contacting the Secretary of State's office for the voter registration postcard.' But he decided to stop the drive because a section of state code prohibits using state-owned property to promote or advance candidates for election.

That's pretty thin. There was no evidence that any candidate was being backed by the drive.

We don't propose giving inmates more rights than they're entitled to legally. But political pressure shouldn't dictate how the law is applied, either.

Griffin Sikes, Jr.

Director, Legal Division

Administrative Office of Courts

334.954.5052

From: "Foster, Robin (BOR)" <STATEOFALABAMA/FIRST ADMINISTRATIVE GROUP/RECIPIENTS/ROBIN.FOSTER>
Sent: 10/14/2008 8:19:31 AM -0500
To: "Packard, Ed" <STATEOFALABAMA/FIRST ADMINISTRATIVE GROUP/RECIPIENTS/ED.PACKARD>
Subject: RE: Important Message from Secretary Chapman
Restored.

From: Packard, Ed
Sent: Mon 10/13/2008 9:06 AM
To: Foster, Robin (BOR)
Subject: RE: Important Message from Secretary Chapman

I guess what's unclear to me is this ... Are you removing or restoring voters based on decisions made by the probation/parole office, in effect, letting them decide who would be removed or restored?

Thanks.

--Ed

Ed Packard

Supervisor of Voter Registration

Office of the Secretary of State

State of Alabama

Voice: 334-242-4845

Fax: 334-242-2444

From: Foster, Robin (BOR)
Sent: Friday, October 10, 2008 12:10 PM
To: Packard, Ed
Subject: RE: Important Message from Secretary Chapman

Ed,

No they only respond to our inquiries. Which are based on voters request.

EXHIBIT 10
ED PACKARD
9/19/2018

Robin

From: Packard, Ed
Sent: Thu 10/9/2008 9:49 PM
To: Foster, Robin (BOR)
Subject: RE: Important Message from Secretary Chapman

Robin ...

So I'm sure I understand, are you saying that the local probation/parole office is telling you when a person has a lost their voting rights and then your office removes voters based on that info?

Thanks!

--Ed

Ed Packard

Supervisor of Voter Registration

Office of the Secretary of State

State of Alabama

Voice: 334-242-4845

Fax: 334-242-2444

From: Foster, Robin (BOR)
Sent: Tuesday, October 07, 2008 4:03 PM
To: Packard, Ed
Subject: RE: Important Message from Secretary Chapman

Ed,

A suggestion on this problem. We have formed a working relationship with our local probation/parole office they are more than willing to check each person and let us know if they lost their voting rights and if they have been restored.

Robin

From: Packard, Ed
Sent: Tue 10/7/2008 10:21 AM
To: BOR -- All Counties
Cc: Beth Chapman; Brown, Jean; Thompson, Emily; Thompson, Adam
Subject: Important Message from Secretary Chapman

TO: All Members of the Boards of Registrars

FROM: Secretary of State Beth Chapman

DATE: October 7, 2008

My staff and I have only had possession of the voter registration system for thirteen business days and like many of you, we have been working nights and weekends to ensure a successful election.

I wanted to send an additional memo regarding the discussions that continue to occur as a result of the felon voting procedures.

Because by law you are judicial officers and are required to determine whether a person is qualified or disqualified to vote, I wanted to issue this memo to reiterate the appropriate process.

If a person has been convicted of a felony offense, first use Attorney General's Opinion 2005-092 (attached) to determine whether a felony conviction involves moral turpitude or not. If you are uncertain, seek legal advice from your local District Attorney, county attorney or my legal counsel, Jean Brown.

During the development of the statewide computerized voter registration system, my legal counsel and I urged the Governor's staff and ES&S to be sure that the system was compliant with federal and state law. The federal court has held that the system is compliant with federal law. We are currently reviewing issues of state law.

Your duty as a judicial officer is to determine in the first instance whether a person is qualified to register and vote. It is our goal to do everything possible to comply with the law. Make the best, most sound decision you can and seek assistance through the above-referenced legal counsel if you have any questions as to whether a felony conviction is a disqualifying felony.

As you know, if a person who wishes to vote believes that your decision as a judicial officer is incorrect and that he is qualified to vote under Alabama law, the would-be voter has the right to inform you that he believes your decision is erroneous. Moreover, a person who believes that he has wrongfully been denied the right to register to vote or has been wrongfully removed from the voter list is entitled to appeal the board of registrars' decision to the probate court, then the circuit court, with a final appeal to the Alabama Supreme Court.

Moreover, it has always been our instruction that voter registrars must know the specific felony conviction in question before they can proceed to decide whether the conviction is one involving moral turpitude.

So far, having only had the system for thirteen business days, we are striving to do all within our power to assist you. If there are additional problems we need to be made aware of, please call me or a member of my staff to assist you.

Thank you for the invaluable service you provide. We only have twenty-one more business days before Election Day. Working together, we can have the largest, most successful election Alabama has ever experienced.

From: "Packard, Ed"
Sent: 10/17/2008 8:34:10 AM -0500
To: [REDACTED]
Subject: RE: register to vote

I'm not sure about that one. We have rulings on marijuana, but for hydrocodone I need to refer you to the State Board of Pardons and Paroles, the agency that is involved with restoring voting rights. They should be able to tell you whether you lost your voting rights and need to have them restored.

You can reach that office at 334-242-8700.

Let me know if you need additional assistance.

--Ed

Ed Packard

Supervisor of Voter Registration

Office of the Secretary of State

State of Alabama

Voice: 334-242-4845

Fax: 334-242-2444

From: [REDACTED]
Sent: Friday, October 17, 2008 8:22 AM
To: Packard, Ed
Subject: RE: register to vote

hydrocodone,, cough syrup of all things

--- On **Fri, 10/17/08, Packard, Ed** <Ed.Packard@sos.alabama.gov> wrote:

From: Packard, Ed <Ed.Packard@sos.alabama.gov>
Subject: RE: register to vote
To: [REDACTED]

EXHIBIT 11
ED PACKARD
9/19/2018

Confidential Information

Date: Friday, October 17, 2008, 8:09 AM

What type of drug or controlled substance?

--Ed

Ed Packard

Supervisor of Voter Registration

Office of the Secretary of State

State of Alabama

Voice: 334-242-4845

Fax: 334-242-2444

From: [REDACTED]
Sent: Friday, October 17, 2008 8:03 AM
To: Packard, Ed
Subject: RE: register to vote

Possession just plain possession no distribution class c felony

--- On **Fri, 10/17/08, Packard, Ed** <Ed.Packard@sos..alabama.gov> wrote:

From: Packard, Ed <Ed..Packard@sos.alabama.gov>
Subject: RE: register to vote
To: [REDACTED]
Date: Friday, October 17, 2008, 7:54 AM

[REDACTED] ...

Was the conviction for simple possession or for possession with intent to distribute?

--Ed

Ed Packard

Supervisor of Voter Registration

Office of the Secretary of State

State of Alabama

Voice: 334-242-4845

Fax: 334-242-2444

From: [REDACTED]
Sent: Friday, October 17, 2008 6:03 AM
To: Packard, Ed
Subject: register to vote

Ed I have had a previous felony for possession of a controlled substance. Can I register to vote? I know that Riley was trying to disenfranchise ALL felons at one time this year, (clutch those pearls and act surprised !! a Republican Governor trying to keep a bunch of democrat voting felons from voting !!!)

What do I do. The crime was just possession.

Do You Yahoo!?
Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>

Do You Yahoo!?
Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>

Do You Yahoo!?
Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>