

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

Treva Thompson, Timothy Lanier,)	
Pamela King, and Darius Gamble,)	
and Greater Birmingham Ministries,)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	2:16-cv-783-ECM-SMD
)	
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.)	

STATE DEFENDANTS' RESPONSE TO PLAINTIFFS' OBJECTIONS (DOC. 201) TO MAGISTRATE JUDGE DOYLE'S ORDER (DOC. 199) ON LEGISLATORS' MOTION TO QUASH (DOC. 133)

Sen. Cam Ward and Rep. David Faulkner filed a motion to quash subpoenas for testimony and documents directed at them by the Plaintiffs. Doc. 133; doc. 133-1 (subpoena to Rep. Faulkner); doc. 133-2 (subpoena to Sen. Ward). Plaintiffs' opposed, doc. 139; the Legislators replied, doc. 146; and, as authorized by the Court, doc. 136, the State Defendants filed a response, doc. 147. Magistrate Judge Doyle entered an order granting the motion to quash in its entirety, doc. 199, to which Plaintiffs objected, doc. 201. This Court set a deadline of April 20, 2020 for the opposing party to respond, doc. 202, but neither the Plaintiffs' objections nor this order was served on the Legislators' counsel, doc. 207, who subsequently received an extension to file on or by April 28, 2020, doc. 208. The State Defendants offer a response, and do so by the original deadline because they did receive notice.

The State Defendants Support Vigorous Enforcement of the Legislative Privilege.

“The legislative privilege is important.” *In re Hubbard*, 803 F.3d 1298, 1307 (11th Cir. 2015). When a former Governor, the current Governor, and two Members of the Alabama Legislature were subpoenaed, the Eleventh Circuit explained that “[t]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the *proposal, formulation, and passage of legislation.*” *Id.* at 1308 (citations omitted; emphasis added). Moreover, the privilege goes beyond only protecting the legislative process to additionally “protect[] against inquiry . . . into *the motivation for those acts.*” *Id.* at 1310 (*quoting United States v. Brewster*, 408 U.S. 501, 525 (1972)) (emphasis added by the *Hubbard* court; additional citations omitted). Thus, it is a privilege which the State Defendants have an inherent interest in protecting. The Secretary of State, in particular, has an interest in Members of the Legislature not being dissuaded from engaging with him to explore legislative ways to improve the elections process, and the Chair of the Board of Pardons and Paroles has a similar interest with respect to reforms to the pardon and parole processes. The State Defendants agree with Sen. Ward and Rep. Faulkner that the privilege is due to be respected here, docs. 133 & 146, and defer to their forthcoming briefing on the substance of the privilege.

The Information Sought is Not Relevant.

Plaintiffs have erroneously argued for application of a five-point balancing test. Doc. 201 at 8-10. “As to the first factor,” they say “no one disputes the relevance of the information sought.” Doc. 201 at 9. The State Defendants do, in fact, strongly dispute that proposition. And, because it is important not just to the five-point test, but any consideration of whether discovery should be permitted pursuant to Fed. R. Civ. P. 26(b)(1), the State Defendants explain why the information sought is not relevant.

Broadly speaking, Plaintiffs have demanded four categories of information from the Legislators: (1) documents related to Ala. Act No. 2017-378, which lists the felonies that involve moral turpitude for purposes of voting in Alabama; (2) documents relating to felon voting in Alabama; (3) documents related to the 1996 constitutional amendment, codified at Ala. Const. art. VIII, § 177, that reduced the scope of criminal disenfranchisement in Alabama *from* all felonies *to* only those felonies involving moral turpitude; and, (4) documents related to the requirement that felons pay “all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on the disqualifying cases,” in order to be eligible for restoration of voting rights through a Certificate of Eligibility to Register to Vote, Ala. Code § 15-22-36.1(a)(3). Doc. 133-1 at 2-3; doc. 133-2 at 2-3.

During the earlier briefing, the State Defendants’ briefing was very limited, doc. 147, but we did note that we had a dispositive motion pending which we believed to be meritorious, and we encouraged the Court to postpone ruling on the motion to quash until it had determined that “the relevant claims” would proceed. Doc. 147 at 2. In making this argument, the State Defendants noted that Plaintiffs fail to understand *Hunter v. Underwood*, 471 U.S. 222 (1985), which spoke only to Alabama’s 1901 Constitutional Convention—and not to the innocuous (and enfranchising) 1996 constitutional amendment challenged here. Doc. 147 at 2. Then, focusing squarely on one of Plaintiffs’ demands, the State Defendants explained that:

To the extent that the subpoenas “seek documents and testimony . . . about the meaning and scope of Section 177(b) of the Alabama Constitution,” doc. 139 at 1; *see also* doc. 133 at 2, that provision was enacted by the voters of Alabama in June 1996, docs. 43-1 & 43-3. Neither Sen. Ward nor Rep. Faulkner were Members of the Alabama Legislature in 1995 (when the constitutional amendment was proposed) or in 1996 (when it was approved by the voters). Doc. 146 at 21 n. 14; *id.* at 32 n. 24. Plaintiffs effectively admit that these Legislators were actually selected not for any special relationship to (or understanding of) the 1996 constitutional amendment but because of their service on the Secretary of State’s committee two decades later. Doc. 139 at 1, 3-6. It is inappropriate to demand Sen.

Ward and Rep. Faulkner sit for a deposition on “their understanding of the meaning” of the law and which felonies it encompassed, doc. 139 at 11 n. 3. The demand for documents fares no better.

Doc. 147 at 2.

The developments of the past year and a close look at the supplemental complaint, doc. 93, reveal that Plaintiffs routinely demand discovery beyond the scope of Fed. R. Civ. P. 26(b)(1), and that the subpoenas to Sen. Ward and Rep. Faulkner are no exception.

In depositions in September 2018, the Plaintiffs extensively questioned John Bennett, who was then the Secretary of State’s Deputy Chief of Staff and Press Secretary, doc. 146-1, and Ed Packard, Administrator of Elections, doc. 146-2, about their knowledge of the Exploratory Committee’s work.¹ The State Defendants responded by securing two other participants in those committee meetings as witness in this case: Hon. Win Johnson, who had worked for the Administrative Office of Courts, and Hon. Tim Jolley, who had been a Circuit Judge. Mr. Johnson and Judge Jolley were disclosed to the Plaintiffs the same week the Plaintiffs subpoenaed the Sen. Ward and Rep. Faulkner. Plaintiffs deposed Mr. Johnson in July 2019, **Exhibit 1**, and they deposed Judge Jolley the next month, **Exhibit 2**. The combined result is approximately 250 pages of deposition testimony.²

¹ The full name of the relevant committee is the Voter Disenfranchisement and Restoration of Rights Exploratory Committee.

² That testimony, like the testimony of Bennett and Packard, makes clear that the purpose of the Exploratory Committee was to draft legislation that could pass the Legislature. *See e.g.*, Bennett depo., doc. 146-1 at 91:21-92:10 (legislation was the Secretary’s goal for the committee); *id.* at 95:4-13; Packard depo., doc. 146-2 at 189:23-190:2 (“The goal of the committee was to come up with a bill that would pass the [L]egislature.”); Johnson depo., Exh. 1 at 82:20-21 (explaining that “the whole point was to lead [to] legislation.”); Jolley depo., Exh. 2 at 31:21-32:32 (legislation was discussed as a purpose of the Exploratory Committee at the first meeting). Plaintiffs are willfully blind to the facts when they wrench a single quotation from the Packard deposition to argue that the committee was actually about policy and just happened to produce legislation, *see e.g.*, 201 at 1, 3, 4. Sen. Ward and Rep. Faulkner previously addressed Plaintiffs’ misrepresentation at length in their reply brief. Doc. 146 at 4-6, 9-10, 13-15.

Not satisfied, the Plaintiffs have recently noticed the deposition of Secretary of State Merrill and propounded written discovery. Both of these projects are on-going.³ Pertinent here, Plaintiffs have indicated a desire to depose Secretary Merrill on “[h]is personal leadership, experience, intent and communications related to drafts of HB 282 and the exploratory committee,” “[h]is understanding of the purpose of Alabama’s felony disenfranchisement scheme,” and “[h]is determination that HB 282 applies retroactively.” **Exhibit 3.** The first of these topics is plainly asking about the work of the Exploratory Committee and perhaps other legislative work related to the legislation (HB 282) that became Ala. Act No. 2017-378. The second topic is similar to Plaintiffs’ demands that they be able to depose Sen. Ward and Rep. Faulkner about matters that pre-date them and as to which there is no reason to believe have any special knowledge, unless it is tied up in their work on Ala. Act No. 2017-378. Similarly, the third topic makes no sense—as it is a frivolous question about how to interpret State law—but to the extent the Secretary has relevant knowledge, it is likely tied up, at least partially, in his work on Ala. Act No. 2017-378.

Furthering their focus on Ala. Act No. 2017-378 and the work of the Exploratory Committee, Plaintiffs also propounded interrogatories to Secretary Merrill. **Exhibit 4.** Pertinent here, they demand that he:

³ The parties are still negotiating a resolution to the Plaintiffs’ demand to depose the Secretary in light of his status as a high-ranking government official, which seriously limits his availability for deposition, *see e.g., Greater Birmingham Ministries v. Merrill*, 321 F.R.D. 406 (N.D. Ala. 2017), and Plaintiffs’ desire to depose the Secretary on topics protected by legislative privilege. The Secretary has not responded to the interrogatories yet, after Plaintiffs agreed to an extension in light of the COVID-19 pandemic.

INTERROGATORY NO. 5

Identify each person involved—and their role—in proposing, drafting, revising, or finalizing of the bill YOU proposed to the Legislature to define felonies “involving moral turpitude,” which ultimately was enacted as HB 282 (*sic*⁴).

INTERROGATORY NO. 6^[5]

Identify each legislator or other public official that YOU consulted with, the date of those consultation(s), and the nature of your consultation(s) about the bill YOU proposed to the Legislature to define felonies “involving moral turpitude,” which ultimately was enacted as HB 282 (*sic*).

...

INTERROGATORY NO. 7

Identify the reason why YOUR office excluded bribery, public corruption, and voter fraud from YOUR draft bill defining felonies “involving moral turpitude.”

...

INTERROGATORY NO. 14

Describe in detail the process by which, and reasons why, YOU determined that HB 282 applies retroactively to those with felony convictions pre-dating the passage of HB 282 and all individuals you consulted in making that determination and their role in the process.

Exh. 4 at 7-8, 9-10 (spacing altered). Another interrogatory, demands that the Secretary “[i]dentify all research or analysis [his] office conducted with respect to the potential racial impact of the chosen felony convictions included in [his] draft bill defining felonies “involving moral turpitude.” Exh. 4 at 8 (Interrogatory No. 8). This interrogatory may be looking for information about impact, but since it is focused on what was known when the legislation was drafted, it is also heavily focused on intent.

⁴ Obviously, House Bills are not the final enactment. House Bill 282 of the 2017 Legislative Session became Ala. Act No. 2017-378.

⁵ There are two interrogatories labeled no. 6. This is the first.

With all of these discovery demands, and Plaintiffs’ assertion in their briefing that “the [L]egislature’s intent is a central issue in the case,” doc. 201 at 10, and that they must be able to ferret out “an intentionally discriminatory purpose,” *id.*, one could be forgiven for believing that they challenge Ala. Act No. 2017-378 as intentionally discriminatory. The fact is, however, that they do not. As a result, the discovery is aimed at proving a non-existent claim, and, therefore, is not relevant.

Counts 1 and 2 are the only remaining Counts that concern race at all. The original complaint alleges that the 1996 constitutional amendment, now codified at Ala. Const. art. VIII, § 177, violates the Fourteenth and Fifteenth Amendment. Doc. 1 at ¶¶ 166, 168. Sometime after Ala. Act No. 2017-378 was enacted, Plaintiffs filed a supplemental complaint, doc. 93, in which they added allegations concerning the new law, which is codified at Ala. Code § 17-3-30.1. As to Count 1, the supplemental complaint alleges:

46. The passage of Section 17-3-30.1—which only implements Section 177(b) of the Alabama Constitution and does not independently disenfranchise individuals—does not affect *Plaintiffs’ allegations that Section 177(b) of the Alabama Constitution* was passed and maintained with racially discriminatory intent in violation of the Equal Protection Clause of the Fourteenth Amendment.

47. Upon information and belief, Section 17-3-30.1 does not cure, but rather maintains, the racially discriminatory *impact* of Section 177(b).

Doc. 93 at ¶¶ 46-47 (emphasis added). That is, the discriminatory intent claim is squarely focused on the 1996 constitutional amendment, and the Plaintiffs merely allege that Ala. Act No. 2017-378 does not cure what they allege to be a “racially discriminatory *impact*.” *Id.* at ¶ 47. There is no claim in Count 1 that Ala. Act No. 2017-378 itself was passed with racially discriminatory impact. Count 2 is similar.⁶

⁶ As to Count 2, the supplemental complaint alleges:

As Magistrate Judge Doyle apparently recognized, doc. 199 at 2, the only place where the intent in passing to Ala. Act No. 2017-378 is raised in is Plaintiffs’ allegations of punitive intent. There is no racial Count aimed at Ala. Act No. 2017-378, and thus no reason to pierce the legislative privilege in the interest of ferreting it out.⁷ While Plaintiffs argued that *ex post facto* claims open a door to inquire of Legislators, *see* doc. 201 at 11 n.2, Sen. Ward and Rep. Faulkner are correct that this argument is meritless, doc. 146 at 29-32.

Plaintiffs also try to justify their demands based on their wealth discrimination claim in Count 13. They argue that this case is distinguishable from *Hubbard* because the Eleventh Circuit’s recent decision in *Jones v. DeSantis*, 950 F.3d 795 (11th Cir. 2020), compels a ruling in their favor, meaning their claims are not frivolous as in *Hubbard*. Doc. 201 at 7-8. *Jones* was wrongly decided and, *hopefully*, will be corrected following a final judgment in that case. But, even assuming it remains the law in the Eleventh Circuit, and even pretending that it compels a ruling in favor of Plaintiffs Thompson and Gamble irrespective of any different facts at play,

50. The passage of Section 17-3-30.1—which only implements Section 177(b) of the Alabama Constitution and does not independently disenfranchise individuals—does not affect *Plaintiffs’ allegations that Section 177(b) violates the Fifteenth Amendment to the U.S. Constitution* because it purposely denied and abridges Plaintiffs’ and other minority voters’ right to register and vote on account of race or previous condition of servitude.

51. Upon information and belief, Section 17-3-30.1 does not cure, but rather maintains, the racially discriminatory *impact* of Section 177(b).

Doc. 93 at ¶¶ 50-51 (emphasis added).

⁷ Additionally, as the State Defendants pointed out in their prior filing, alleging that one is seeking evidence of racially discriminatory intent—heinous as it is—does not justify piercing the legislative privilege as there is no way to ensure that only legislators with “an intentionally discriminatory purpose” will ever be subpoenaed or that the compelled production and testimony would be limited to those “legislative secrets.” Doc. 147 at 3 (*quoting* doc. 139 at 10); *see also* doc. 201 at 10 (Plaintiffs argue: “There is no cognizable interest in protecting legislators’ ability to express an intentionally discriminatory purpose in enacting future legislation. Such unconstitutional motives are surely not the type of legislative secrets that the legislative privilege seeks to protect.”).

Plaintiffs acknowledge *Jones* only goes to Count 13, “their Fourteenth Amendment wealth discrimination claim,” doc. 201 at 8. That Count is not about race at all, and certainly not about racially discriminatory intent. In analyzing the preliminary injunction, the Eleventh Circuit applied strict scrutiny which required consideration of *State interests*, *Jones*, 950 F.3d at 825, 826-27, but that is a far cry from justifying invasion of the legislative privilege to try to uncover actual legislative intent.

Thus, neither Count 13 nor *Jones* justify Plaintiffs demand for testimony and documents about the revision to the Certificate of Eligibility to Register to Vote process that was also a subject before the Exploratory Committee.⁸ And, it should go without saying, but the existence of Count 13, does nothing to justify discovery demands aimed at other claims, particularly non-existent ones. Thus, the final category of information demanded from the Legislators is no more appropriate than the others.

Finally, Plaintiffs may argue that they are entitled to delve into the four categories of information demanded in their subpoenas in furtherance of proving racially intentional discrimination in the passage of the 1996 constitutional amendment, as challenged in Counts 1 and 2. We have two responses. First, we recognize that the *Hunter v. Underwood* Court considered present day impact, 471 U.S. 222, 227, 233 (1985), but that case is distinguishable because the 1901 constitutional provision under attack there was still operating without any substantive

⁸ The subpoenas seek “All documents and communications in your possession, custody, or control created or revised on or after January 1, 2016, that relate in any way to Section 15-22-36.1(a)(3) of the Alabama Code.” Doc. 133-1 at 3; doc. 133-2 at 3. Section 15-22-36.1 is the codification of the Certificate of Eligibility to Register to Vote process, and subsection (a)(3) concerns the requirement that felons have “paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on the disqualifying cases.” Ala. Code § 15-22-36.1(a)(3). Prior to Ala. Act No. 2016-387, this statute had required payment of all fines, court costs, fees, and victim restitution that a felon owed in order for the felon to be eligible for a Certificate. Ala. Act No. 2003-415 at page 7 (according to the numbers at the bottom of the page).

revisions (or, at least, none worth mentioning in the Court’s decision). Here, Plaintiffs challenge a 1996 constitutional amendment which reduced the scope of criminal disenfranchisement in Alabama *from* all felonies *to* felonies involving moral turpitude. *Compare* ALA. CONST. art. VIII, § 182 (now repealed) *with* ALA. CONST. art. VIII, § 177 (codifying Amendment 579, which repealed, *inter alia*, § 182 to the 1901 Constitution). But, in the more than two decades since that law was enacted, there have been multiple changes to revise Alabama’s system of felon disenfranchisement. A new restoration process—the Certificate of Eligibility to Register to Vote—was enacted in 2003 and then revised in 2016, *see* Ala. Act No. 2003-415; Ala. Act No. 2016-387; Ala. Code § 15-22-36.1 (codifying the 2003 and 2016 Acts), and then the scope of disenfranchising felonies was further limited with the passage of Ala. Act No. 2017-378, which is underinclusive in listing felonies of moral turpitude for voting purposes, *see* Ala. Code § 17-30-30.1 (codifying Ala. Act No. 2017-378, as amended)⁹. While these developments should have encouraged caution before filing (or continuing) the litigation, Plaintiffs have responded by simply trying to discover information about all of these developments. But the better view is that what these different actors did a decade and two decades after the passage of the 1996 constitutional amendment does not speak to the intent of the 1995 Legislature or the 1996 electorate.¹⁰

⁹ For example, former Plaintiff Giles was convicted of stalking, which the State Defendants would expect a court to find involves moral turpitude as that phrase was used at common law, *see* doc. 43 at 49, but which is not included in Ala. Act No. 2017-378, *see* doc. 95 at 1-2.

¹⁰ The Supreme Court has explained: “The legislative or administrative history may be highly relevant, especially where there are contemporary statements *by members of the decisionmaking body*, minutes of *its* meetings, or reports. In some extraordinary instances the members might be called to the stand at trial to testify concerning the purpose of the official action, *although even then such testimony frequently will be barred by privilege.*” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (citations and footnote omitted; emphasis added). Here, we have different decisionmakers.

Secondly, Plaintiffs are fond of saying that Counts 1 and 2 require a totality of the circumstances analysis. *See e.g.*, doc. 205 at 10-11 n. 6. The State Defendants do not believe that a totality of the circumstances analysis is an invitation to an endless series of fishing expeditions. Fed. R. Civ. P. 26(b)(1) still applies, and it demands that the Legislators' motion to quash be granted (and thus that the Magistrate Judge's Order be upheld).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on April 17, 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 the following: Armand Derfner (aderfner@derfneraltman.com); Danielle Lang (dlang@campaignlegalcenter.org); James U. Blacksher (jblacksher@ns.sympatico.ca); Jessica Ring Amunson (jamunson@jenner.com); J. Gerald Herbert (gherbert@campaignlegalcenter.org); J. Mitch McGuire (jmcguire@mandabusinesslaw.com); Mark P. Gaber (mgaber@campaignlegalcenter.org); Michael E. Stewart (mstewart@jenner.com); Jason P. Hipp (jhipp@jenner.com); Jennifer J. Yun (jyun@jenner.com); Molly Danahy (mdanahy@campaignlegal.org); Christopher W. Weller (cww@chlaw.com); and, Marc James Ayers (mayers@bradley.com).

s/Misty S. Fairbanks Messick
Of Counsel



Deposition of:
Win Johnson

July 10, 2019

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

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

TREVA THOMPSON, et al.

Plaintiffs,

vs.

CIVIL ACTION NO.

2:16:783-ECM-SMD

STATE OF ALABAMA, et al

Defendants.

* * * * *

DEPOSITION OF WIN JOHNSON, taken pursuant to
stipulation and agreement before Kristie
Pearson, Certified Court Reporter and
Commissioner for the State of Alabama at
Large, in the Offices of the Alabama Attorney
General's Office, 501 Washington Avenue,
Montgomery, Alabama, on July 10, 2019,
commencing at approximately 3:05 p.m.

* * * * *

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 MS. DANIELLE LANG, ESQ.</p> <p>5 Campaign Legal Center</p> <p>6 1411 K Street NW, Suite 1400</p> <p>7 Washington, DC 2005</p> <p>8 Phone: 202-856-7911</p> <p>9 Email: DLang@campaignlegalcenter.org</p> <p>10</p> <p>11 MS. MOLLY ELIZABETH DANAHY, ESQ.</p> <p>12 Campaign Legal Center</p> <p>13 1101 14th NW - Site 400</p> <p>14 Washington, DC 20005</p> <p>15 Phone: 202-736-2200</p> <p>16 Email: MDanahy@campaignlegal.org</p> <p>17</p> <p>18 FOR THE DEFENDANT:</p> <p>19 MS. MISTY S. FAIRBANKS MESSICK, ESQ.</p> <p>20 MR. WINFIELD J. SINCLAIR, ESQ.</p> <p>21 Office of the Attorney General</p> <p>22 501 Washington Avenue</p> <p>23 Montgomery, AL 36104</p>	<p style="text-align: right;">Page 4</p> <p>1 STIPULATIONS</p> <p>2 It is hereby stipulated and agreed by</p> <p>3 and between counsel representing the parties</p> <p>4 that the deposition of:</p> <p>5 WIN JOHNSON</p> <p>6 Is taken pursuant to the Federal Rules of</p> <p>7 Civil Procedure and that said deposition may</p> <p>8 be taken before Kristie Pearson, Certified</p> <p>9 Court Reporter and Commissioner for the State</p> <p>10 of Alabama at Large, without formality of a</p> <p>11 commission; that objections to questions</p> <p>12 other than objections as to the form of the</p> <p>13 question need not be made at this time, but</p> <p>14 may be reserved for a ruling at such time as</p> <p>15 the said deposition may be offered in</p> <p>16 evidence or used for any other purpose by</p> <p>17 either party provided for by the Statute.</p> <p>18 It is further stipulated and agreed by</p> <p>19 and between counsel representing the parties</p> <p>20 in this case that the filing of said</p> <p>21 deposition is hereby waived and may be</p> <p>22 introduced at the trial of this case or used</p> <p>23 in any other manner by either party hereto</p>
<p style="text-align: right;">Page 3</p> <p>1 Phone: (334)353-8674</p> <p>2 Fax: (334)353-8400</p> <p>3 Email: MMessick@ago.state.al.us</p> <p>4 Email: WSinclair@ago.state.al.us</p> <p>5</p> <p>6</p> <p>7 INDEX</p> <p>8 EXAMINATION OF WITNESS</p> <p>9 BY MS. DANAHY.....5, 131</p> <p>10 BY MS. MESSICK.....124</p> <p>11</p> <p>12 EXHIBITS</p> <p>13 PLAINTIFF'S EXHIBIT</p> <p>14 Exhibit 1....Committee Minutes.....33</p> <p>15 Exhibit 2....12/09/15 Memo.....52</p> <p>16 Exhibit 3....01/13/16 Memo.....87</p> <p>17 Exhibit 4....Email.....89</p> <p>18 Exhibit 5....Emails.....112</p> <p>19 Exhibit 6....Emails.....112</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 5</p> <p>1 provided for by the Statute regardless of the</p> <p>2 waiving of the filing of the same.</p> <p>3 It is further stipulated and agreed by</p> <p>4 and between the parties hereto and the</p> <p>5 witness that the signature of the witness to</p> <p>6 this deposition is hereby waived.</p> <p>7 * * * * *</p> <p>8 WIN JOHNSON</p> <p>9 The witness, after having first been</p> <p>10 duly sworn to speak the truth, the whole</p> <p>11 truth, and nothing but the truth, testified</p> <p>12 as follows:</p> <p>13 EXAMINATION</p> <p>14 BY MS. DANAHY:</p> <p>15 Q. Good afternoon, Mr. Johnson. We've met, but</p> <p>16 can you please state your name for the</p> <p>17 record?</p> <p>18 A. Winthrop Edward Johnson, but I go Win</p> <p>19 Johnson.</p> <p>20 Q. My name is Molly Danahy and I'm an attorney</p> <p>21 for the Plaintiffs in this case.</p> <p>22 Have you been deposed before,</p> <p>23 Mr. Johnson?</p>

<p style="text-align: right;">Page 6</p> <p>1 A. Yes.</p> <p>2 Q. And about how many times would you say?</p> <p>3 A. I only remember once. It was a long time</p> <p>4 ago.</p> <p>5 Q. And was that also in a civil case?</p> <p>6 A. Yeah.</p> <p>7 Q. During the deposition I'll be asking</p> <p>8 questions and the court reporter has to be</p> <p>9 able to hear what we're saying and record my</p> <p>10 questions and your answers. So it's</p> <p>11 important that we not speak over each other.</p> <p>12 Is that okay?</p> <p>13 A. Fine with me.</p> <p>14 Q. And just try and let me finish my question</p> <p>15 before answering and I'll do my best to not</p> <p>16 interrupt your answers as well.</p> <p>17 And then it's also important -- I see</p> <p>18 that you're nodding -- to give verbal</p> <p>19 answers.</p> <p>20 A. Yes, it is.</p> <p>21 Q. So please make sure that you answer yes or</p> <p>22 no rather than using head shakes or uh-huh</p> <p>23 or huh-hu or things of that nature. Okay?</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. SINCLAIR: I started without you.</p> <p>2 Just preliminaries.</p> <p>3 MS. MESSICK: Okay.</p> <p>4 MR. SINCLAIR: Usual stipulations?</p> <p>5 MS. DANAHY: Yes.</p> <p>6 Q. As I was saying, Ms. Messick may object to a</p> <p>7 question that I ask you. If she does that,</p> <p>8 unless she instructs you not to answer, you</p> <p>9 should go ahead and answer the question once</p> <p>10 she's made the objection on the record.</p> <p>11 A. Okay.</p> <p>12 Q. Now, Mr. Johnson, are you taking any</p> <p>13 medications that would impact your ability</p> <p>14 to answer me truthfully today?</p> <p>15 A. No.</p> <p>16 Q. And is there any other reason you wouldn't</p> <p>17 be able to answer my questions truthful</p> <p>18 today?</p> <p>19 A. No.</p> <p>20 Q. Mr. Johnson, can you please describe your</p> <p>21 educational background for me.</p> <p>22 A. Could you be more specific?</p> <p>23 Q. Sure. Where did you go to college?</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Okay.</p> <p>2 Q. And then if I ask you a question and you</p> <p>3 don't understand, please feel free to ask me</p> <p>4 to clarify and I will do my best to do that.</p> <p>5 Okay?</p> <p>6 A. Okay.</p> <p>7 Q. And unless you tell me otherwise, I'm going</p> <p>8 to assume that you understand the question</p> <p>9 that I've asked you. Okay?</p> <p>10 A. Okay.</p> <p>11 Q. We can take breaks if you need one whenever</p> <p>12 you want. All I ask is that you finish</p> <p>13 answering the question that I pose before we</p> <p>14 go to a break. All right?</p> <p>15 A. That's all right.</p> <p>16 Q. And then Ms. Messick may --</p> <p>17 MS. DANAHY: Should we take a break?</p> <p>18 (Whereupon Ms. Messick entered the</p> <p>19 deposition room.)</p> <p>20 Q. Ms. Messick may object to questions that I'm</p> <p>21 asking you.</p> <p>22 MS. MESSICK: I'm sorry. Did you start</p> <p>23 without me?</p>	<p style="text-align: right;">Page 9</p> <p>1 A. University of Alabama. I got an</p> <p>2 undergraduate degree in English, premed,</p> <p>3 minor in German, and then went to law school</p> <p>4 at the University of Alabama, graduated from</p> <p>5 there in 1987 the bottom of my class.</p> <p>6 Q. And how are you currently employed?</p> <p>7 A. I am self employed.</p> <p>8 Q. And how long have you been self employed?</p> <p>9 A. It's hard to say because I've had part-time</p> <p>10 work mixed with self employment, but I'll</p> <p>11 just say for now, approximately a year and a</p> <p>12 half.</p> <p>13 Q. Okay. And what kind of part-time work do</p> <p>14 you do?</p> <p>15 A. Well, I don't do any part-time work now, but</p> <p>16 back a year ago I did. I worked for a</p> <p>17 company that tried to get government</p> <p>18 contracts. Mainly it was a metal supply</p> <p>19 business. And I was helping them with their</p> <p>20 legal contract work, seeking opportunities</p> <p>21 with the federal government, drafting bids,</p> <p>22 bid documents for the company, things like</p> <p>23 that.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. And do you have a solo practice, then, that</p> <p>2 you --</p> <p>3 A. Oh, yeah. That was another thing I did.</p> <p>4 But it was very part time, so I quit doing</p> <p>5 it.</p> <p>6 Q. All right. And what would you describe as</p> <p>7 your current job duties to yourself as your</p> <p>8 own employer?</p> <p>9 A. Well, I drive Uber and Lyft. I give people</p> <p>10 rides.</p> <p>11 Q. Okay. Do you do any legal work currently?</p> <p>12 A. Not now, but, I mean, if somebody wanted to,</p> <p>13 I could. I'm licensed here in Alabama. If</p> <p>14 anything comes along I'd like to do, I'll do</p> <p>15 that.</p> <p>16 Q. And do you do any volunteer work currently</p> <p>17 or anything like that?</p> <p>18 A. Yeah, a little bit. Church. Not much. I</p> <p>19 can.</p> <p>20 Q. Prior to the period where you were self</p> <p>21 employed or doing part-time work, what was</p> <p>22 your last employment?</p> <p>23 A. I was with The Foundation For Moral Law as a</p>	<p style="text-align: right;">Page 12</p> <p>1 derives from?</p> <p>2 A. Well, it depends on who you ask, doesn't it?</p> <p>3 Q. In your opinion, though.</p> <p>4 A. In my opinion?</p> <p>5 Q. Uh-huh (positive response).</p> <p>6 A. Well, okay. I'll list as many as I know.</p> <p>7 Q. Okay.</p> <p>8 A. There are philosophical bases. There are</p> <p>9 natural bases as in people look at the</p> <p>10 natural world and say we can see law there,</p> <p>11 or morality. Utilitarian purposes. There's</p> <p>12 the utilitarian school that says if morality</p> <p>13 advances the -- I guess the most benefit for</p> <p>14 the most people, then that's a moral thing.</p> <p>15 I mean, there's so many sources, it's hard</p> <p>16 to list them.</p> <p>17 Q. Sure. No. That's fair.</p> <p>18 And then prior to your employment with</p> <p>19 The Foundation For Moral Law, where were you</p> <p>20 employed?</p> <p>21 A. Well, I was working on my own trying to</p> <p>22 figure out what I wanted to do with my life,</p> <p>23 so I'm going to just say I wasn't -- I was</p>
<p style="text-align: right;">Page 11</p> <p>1 staff counsel from April 2017 until about</p> <p>2 October or November '17. So only about six</p> <p>3 months.</p> <p>4 Q. And can you tell me a little bit about what</p> <p>5 The Foundation For Moral Law is and what it</p> <p>6 does?</p> <p>7 A. It represents people for religious liberty</p> <p>8 purposes and seeks to advance what they</p> <p>9 consider to be the moral foundation of the</p> <p>10 country, moral law.</p> <p>11 Q. How would you define moral law?</p> <p>12 A. How would I define moral law?</p> <p>13 Q. Uh-huh (positive response).</p> <p>14 A. For the foundation or for myself?</p> <p>15 Q. Both if you don't mind.</p> <p>16 A. I'd rather not speak for the foundation</p> <p>17 since I'm not employed there anymore. I</p> <p>18 guess I can speak for myself. It's the law</p> <p>19 that's not necessarily governed by the</p> <p>20 statute, constitution, case law. It's</p> <p>21 something outside of the official government</p> <p>22 sources of law, I guess you would say.</p> <p>23 Q. And where would you say that moral law</p>	<p style="text-align: right;">Page 13</p> <p>1 kind of employed. I was working on stuff</p> <p>2 that I thought might lead to employment,</p> <p>3 either self employment or other. But it</p> <p>4 really didn't pan out like I wanted.</p> <p>5 Q. And was that during the period when you</p> <p>6 had --</p> <p>7 A. That was from November of '16 until April of</p> <p>8 '17. So I was just enjoying not having to</p> <p>9 answer to anybody. Doing my own thing.</p> <p>10 Playing around with all kinds of ideas.</p> <p>11 Q. Sure. We're just going to keep working</p> <p>12 backwards here. So prior to that period</p> <p>13 that started November 2016, how were you</p> <p>14 employed?</p> <p>15 A. I worked as the director of the Legal</p> <p>16 Division of the Alabama Administrative</p> <p>17 Office of Courts.</p> <p>18 Q. And how long were you in that position?</p> <p>19 A. From January 2013 to November 3, 2016, so</p> <p>20 three years, ten months.</p> <p>21 Q. And what were your job duties generally</p> <p>22 while you were at the Administrative Office</p> <p>23 of Courts?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. It was numerous, but the main thing I think 2 y'all would be interested in is I assisted 3 the director who was charged, as well as the 4 entire organization was charged, with 5 liaising with the legislature and the 6 executive branch to make sure that the legal 7 system of Alabama, the court system in 8 particular, was not injured. I can't 9 remember the official constitutional and 10 statutory wording. Basically to protect the 11 laws of Alabama from the system being 12 undermined, as well as to ensure that the 13 courts have enough budget, sufficient 14 budget, things like that. 15 Q. Sure. What kind of things were you charged 16 with, what -- with preventing from 17 undermining with? What were the sources 18 that you needed to protect the judicial 19 system from? 20 A. Nothing in particular. As a lawyer, I was 21 expected to understand that there are 22 certain things you don't want to go wrong. 23 Like if legislature did something insane</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Sure. What sorts of written products did? 2 You create in the course of your work at 3 Alabama Office of Courts? 4 A. Legal memos, rules, of course different 5 departments, analyses of contracts. 6 Anything that required a written legal 7 opinion that the AOC needed. 8 Q. Did you also create emails? 9 A. Oh, yeah. 10 Q. Handwritten memos or Word documents, any of 11 those? 12 A. Yes. 13 Q. And then you were served a subpoena to be 14 here today; is that right? 15 A. Yes. 16 Q. And that subpoena asked for certain 17 documents. Did you bring those with you? 18 A. I did not, because I don't have any. 19 Q. You do not have any. Can you tell me what 20 process happened to -- that you went through 21 to collect documents or search for any 22 documents that might have been responsive to 23 this subpoena?</p>
<p style="text-align: right;">Page 15</p> <p>1 like do away with right to trial by jury -- 2 just to state an extreme example -- 3 obviously, we would step in and say, whoa, 4 that's crazy. Don't do that. 5 Q. Can you think of an example during your time 6 there that may be a little less hypothetical 7 or extreme of -- 8 A. Oh, my goodness. Now you're asking for a 9 lot of memory and work here. Well, the 10 budget was a continuing battle. The court 11 system of Alabama was dependent entirely on 12 the legislature's beneficence. Even though 13 there's a Constitution provision that says 14 that they are supposed to be -- the courts 15 are supposed to be fully and adequately 16 funded, it's always been a battle for as 17 long as I've been associated with the legal 18 system of Alabama. The courts don't get 19 funded as much as they would like and need. 20 So that could lead to a real problem if the 21 courts aren't fully funded. That's the most 22 prominent example that was always an issue 23 for us.</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Well, I did check my computer just to make 2 sure. I already knew there was nothing 3 there. 4 Q. And was that your personal computer? 5 A. Well, I just had storage devices that I had. 6 Yeah, it was my personal computer. 7 Q. But those are personal rather than 8 government issued? 9 A. Correct. 10 Q. And did you have those personal storage and 11 computer -- Were those in your -- Were those 12 the computer that you were using in your 13 personal life during the time you were in 14 the Governor -- or in the Administrative 15 Office of the Courts? 16 A. Actually not. I got a new computer since 17 then. I rarely use my personal computer for 18 work product. It might be something I did 19 at home -- 20 Q. Sure. 21 A. -- on a rare occasion just because I didn't 22 want to go to the office at night. 23 Q. When you did work at home on your personal</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 computer, would you then transfer whatever</p> <p>2 that work was to a government -- to your</p> <p>3 work-issued laptop or --</p> <p>4 A. If needed, yes.</p> <p>5 Q. -- something like that? So it wouldn't</p> <p>6 exist still on your laptop today is what</p> <p>7 you're saying?</p> <p>8 A. Oh, I'm not saying that.</p> <p>9 Q. Or your computer?</p> <p>10 A. No. There are some things still.</p> <p>11 Q. From your time --</p> <p>12 A. From the time at AOC, yeah.</p> <p>13 Q. But they were not relevant to this --</p> <p>14 A. Correct. Nothing relevant to this.</p> <p>15 Q. When you were working at the Administrative</p> <p>16 Office of Courts, did you have a government</p> <p>17 issued e-mail that you used?</p> <p>18 A. Yes.</p> <p>19 Q. And did you also have a personal e-mail at</p> <p>20 that time --</p> <p>21 A. Yes.</p> <p>22 Q. -- that was not government issued?</p> <p>23 Did you ever use that personal e-mail</p>	<p style="text-align: right;">Page 20</p> <p>1 like that from your time with the</p> <p>2 Administrative Office?</p> <p>3 A. If I did -- I don't remember doing that --</p> <p>4 it was long ago thrown away.</p> <p>5 Q. And did you look for anything like that on</p> <p>6 your personal --</p> <p>7 A. Yes. I didn't find anything relevant to</p> <p>8 this case.</p> <p>9 Q. Are you familiar with the topic of the</p> <p>10 litigation that we're all here for today?</p> <p>11 A. A little.</p> <p>12 Q. In your own words, can you describe what the</p> <p>13 litigation is about?</p> <p>14 A. There is an assertion that in drafting the</p> <p>15 legislation -- This would only be part of</p> <p>16 the litigation that I know about.</p> <p>17 Legislation defining crimes that would be</p> <p>18 considered in the list of moral turpitude</p> <p>19 type crimes. There was a discriminatory</p> <p>20 purpose, effect, something like that.</p> <p>21 That's the best I can do.</p> <p>22 Q. Do you do any work on felony</p> <p>23 disenfranchisement issues in your current --</p>
<p style="text-align: right;">Page 19</p> <p>1 for work?</p> <p>2 A. I believe so, yeah.</p> <p>3 Q. And in the course of looking for documents</p> <p>4 in response to the subpoena, did you look at</p> <p>5 your personal e-mail as well?</p> <p>6 A. No.</p> <p>7 Q. Do you think that maybe you could do that?</p> <p>8 A. I could if you are asking me to.</p> <p>9 Q. I am asking you to, yes.</p> <p>10 A. But I'll say this. I don't think anything</p> <p>11 relevant to this case is on it. But I will</p> <p>12 check.</p> <p>13 Q. That would -- We would appreciate that.</p> <p>14 And then I assume this is the case.</p> <p>15 But you don't have access to your government</p> <p>16 issued e-mail anymore or anything?</p> <p>17 A. No. It was shut off automatically by our IT</p> <p>18 people before I had a chance to barely look</p> <p>19 at it --</p> <p>20 Q. That sounds about right.</p> <p>21 A. -- as I was shown the door.</p> <p>22 Q. Other than electronic documents, did you</p> <p>23 retain any hard copy documents or anything</p>	<p style="text-align: right;">Page 21</p> <p>1 in your current life, I suppose?</p> <p>2 A. No, I don't.</p> <p>3 Q. No, you do not.</p> <p>4 Can you tell me why you left the</p> <p>5 Administrative Office of Courts?</p> <p>6 A. I didn't leave. I was told to leave.</p> <p>7 Q. And why was that?</p> <p>8 MS. MESSICK: Object to the form.</p> <p>9 A. Well, I was asked to go up and see the</p> <p>10 acting chief justice, Lyn Stuart, and I</p> <p>11 thought I would be talking to her about</p> <p>12 different legal issues that the chief</p> <p>13 justice would be interested in like process</p> <p>14 of impeachment of the Governor. That was at</p> <p>15 stake at that time. And I had been keeping</p> <p>16 track of the committees that dealt with</p> <p>17 that. So I thought, well, maybe she wants</p> <p>18 to talk about that, because I had been</p> <p>19 sending her emails about what I had found at</p> <p>20 these committee meetings.</p> <p>21 And I showed up in her office and there</p> <p>22 was another justice sitting there, Jim Main.</p> <p>23 I sat down and we joked about -- I forget</p>

<p style="text-align: right;">Page 22</p> <p>1 what we joked about. I think I had a beard 2 or something at the time. We were joking 3 about that. And then she said she couldn't 4 work with me and I was to leave. No 5 explanation. But fifteen minutes before my 6 appointment, my boss was told the same 7 thing. 8 Q. And who was your boss at that time? 9 A. At that time, Rich Hobson. 10 Q. Rich Hobson. 11 You were at The Foundation for Moral 12 Law you said for six months; is that 13 correct? 14 A. Yes. 15 Q. Why did you leave the foundation? 16 A. Lack of funding. 17 Q. Sure. 18 A. It's a small operation. 19 Q. Okay. And is that foundation still open, to 20 your knowledge -- 21 A. Yes. 22 Q. -- and operating? 23 Can you explain to me in your own words</p>	<p style="text-align: right;">Page 24</p> <p>1 crimes, if you were able to obtain a full 2 pardon, you would regain the right to vote? 3 A. I believe so, yeah. 4 Q. I just wanted to clarify for the record. 5 Can you again explain to me in your own 6 words why you're here today? 7 A. Well, because I was legal director of the 8 AOC and I worked on a committee that 9 Secretary of State Merrill had set up. I 10 wasn't really a member. I went on behalf of 11 my boss, Rich Hobson, and I participated and 12 attended the meetings. I was dealing with 13 the disenfranchisement of felons under the 14 laws of Alabama based on the legislation 15 that was being drafted and proposed to list 16 moral turpitude crimes. 17 Q. And you've been noticed as a witness in this 18 case by the defendant; is that correct? 19 A. I believe so. 20 Q. And is your understanding of why you're here 21 today based on your conversation with the 22 defendants or defense counsel or how did you 23 come to that understanding?</p>
<p style="text-align: right;">Page 23</p> <p>1 how the current system of felony 2 disenfranchisement works in Alabama? 3 A. Again, my memory. I haven't kept up with 4 that until recently looking at the materials 5 I was sent. 6 A person convicted of a particularly -- 7 a disqualifying disenfranchising felony, has 8 to serve their time and then also has to pay 9 their initial, upon conviction, court fees, 10 costs, fines, and then they are allowed -- 11 some -- some, not all -- are allowed to then 12 petition the Board of Pardons and Paroles 13 for reinstatement of their rights as a 14 citizen of Alabama, which includes voting 15 rights. 16 However, some -- I think those were 17 based on the constitutional portion. I 18 could be wrong there -- they can never -- 19 Like, I think, there are some crimes that 20 you can't even petition for that. You lost 21 your voting rights forever. I couldn't list 22 those, though, for you. 23 Q. And is it your understanding that for those</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Yes. Conversation with defense counsel and 2 the subpoena. 3 Q. And who was it that first reached out to you 4 about this case? 5 A. Ms. Messick. 6 Q. And are you represented by the State 7 Attorney General's Office in this matter? 8 A. I don't believe so. 9 Q. When did you first speak with Ms. Messick? 10 A. I don't know. It was months ago. When -- I 11 don't know. It was months ago. It was this 12 year though, I believe. 13 Q. And how many conversations would you say 14 you've had with defense counsel prior to 15 today -- 16 A. Two. 17 Q. -- about this matter? 18 A. You mean except for the request that I delay 19 my deposition today? Really two. 20 Q. And can you describe the conversation that 21 you had with Ms. Messick when she first 22 reached out to you? 23 A. Just explaining the general outline --</p>

7 (Pages 22 - 25)

<p style="text-align: right;">Page 26</p> <p>1 Basically what I've explained to you, about</p> <p>2 me and about the case. She probably -- I</p> <p>3 can't remember everything that was said.</p> <p>4 But it was just about the general nature of</p> <p>5 the case, my involvement with the committee,</p> <p>6 the Secretary of State Merrill set up and</p> <p>7 that I would probably -- probably, not</p> <p>8 necessarily -- absolutely be a witness.</p> <p>9 Q. And you had a second conversation you said</p> <p>10 with Ms. Messick or --</p> <p>11 A. Once the deposition -- Yeah, I got told</p> <p>12 there would be a deposition.</p> <p>13 Q. And did you have any substantive</p> <p>14 conversation about your testimony or what</p> <p>15 facts?</p> <p>16 A. No. Told to tell the truth.</p> <p>17 Q. And did you get a sense from Ms. Messick of</p> <p>18 what defendant's goals were for your</p> <p>19 testimony or --</p> <p>20 A. Defendant's --</p> <p>21 Q. -- what they wanted you to establish?</p> <p>22 A. No.</p> <p>23 Q. And then were you provided with documents to</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And when were you first made aware of the</p> <p>2 existence of the Exploratory Committee?</p> <p>3 A. I can't give you a date, but it was when</p> <p>4 Dr. Hobson, the director, was notified about</p> <p>5 it. I think he mentioned to me that he</p> <p>6 would like me to go. He's pretty busy. And</p> <p>7 I happen to be a lawyer, since it was about</p> <p>8 drafting some legislation dealing with</p> <p>9 crimes involving moral turpitude.</p> <p>10 Q. Did you have any criminal law background</p> <p>11 before?</p> <p>12 A. Yes.</p> <p>13 Q. Can you kind of describe your background in</p> <p>14 criminal law?</p> <p>15 A. I was an Air Force JAG, active duty for six</p> <p>16 years, and at that time, a Reservist Air</p> <p>17 Force JAG for about 27 years. And, of</p> <p>18 course, court-martials involve criminal law.</p> <p>19 I did that during my active duty time. And</p> <p>20 then we have what's called nonjudicial</p> <p>21 punishment, which doesn't involve going to</p> <p>22 court. It is a form of disciplinary action</p> <p>23 that involves violations of the Uniform Code</p>
<p style="text-align: right;">Page 27</p> <p>1 review in preparation for your deposition?</p> <p>2 A. Yes.</p> <p>3 Q. And can we get a copy of those?</p> <p>4 And did you, in fact, review those</p> <p>5 documents in preparation for today?</p> <p>6 A. Yes.</p> <p>7 Q. Did you do any other work to prepare for</p> <p>8 your deposition?</p> <p>9 A. No.</p> <p>10 Q. Did you have any other conversations with</p> <p>11 defense counsel or defendants in this case,</p> <p>12 whether to prepare for this deposition or</p> <p>13 generally, about the matters in this</p> <p>14 litigation?</p> <p>15 A. No.</p> <p>16 Q. You mentioned that you served on a committee</p> <p>17 related to felony disenfranchisement. Are</p> <p>18 you referring to the Voter</p> <p>19 Disenfranchisement and Restoration of Voting</p> <p>20 Rights Exploratory Committee?</p> <p>21 A. That sounds like the full name.</p> <p>22 Q. Does that sound about right?</p> <p>23 A. Close enough.</p>	<p style="text-align: right;">Page 29</p> <p>1 of Military Justice, which is criminal.</p> <p>2 So for 28 years I was involved in criminal</p> <p>3 law in the Air Force.</p> <p>4 I also did some brief representations</p> <p>5 of defendants a couple of times in my life</p> <p>6 as a lawyer here in Alabama. So my civilian</p> <p>7 criminal law experience is brief or small,</p> <p>8 but it does exist.</p> <p>9 Q. And I believe you testified that you were</p> <p>10 not actually a member of the committee, but</p> <p>11 that you represented --</p> <p>12 A. The director.</p> <p>13 Q. Director Hobson?</p> <p>14 A. Correct.</p> <p>15 Q. What did that involve?</p> <p>16 A. Attending the meetings, representing AOC and</p> <p>17 the court system again. Yeah. That's it.</p> <p>18 Q. Do you know when the Exploratory Committee</p> <p>19 first convened?</p> <p>20 A. Was it October of 2015, perhaps, I'm</p> <p>21 thinking. And that's based purely on --</p> <p>22 refreshing my memory -- documents.</p> <p>23 Q. Did you attend that October meeting?</p>

<p style="text-align: right;">Page 30</p> <p>1 A. I believe so, yes.</p> <p>2 Q. Do you know if anyone was taking notes at</p> <p>3 that meeting? Do you recall?</p> <p>4 MS. MESSICK: Object to the form.</p> <p>5 A. I'm sorry. I don't.</p> <p>6 Q. And approximately how many times did the</p> <p>7 committee meet?</p> <p>8 A. I only remember a handful. So five or less</p> <p>9 that I remember.</p> <p>10 Q. Who decided on the make-up and participation</p> <p>11 of the committee?</p> <p>12 A. I don't know the answer to that.</p> <p>13 Q. What was your understanding at the time of</p> <p>14 the purpose of the Exploratory Committee?</p> <p>15 A. To expand the number of ex-inmates who could</p> <p>16 vote, to increase.</p> <p>17 Q. Increase?</p> <p>18 A. Oh, yeah.</p> <p>19 Q. And by that you mean to --</p> <p>20 A. To enfranchise them instead of</p> <p>21 disenfranchising them.</p> <p>22 Q. Sure.</p> <p>23 A. That was my understanding.</p>	<p style="text-align: right;">Page 32</p> <p>1 shouldn't, and it would result in a less</p> <p>2 expansive definition, because vagueness can</p> <p>3 result in expanding things. And that was</p> <p>4 everybody -- Well, I can't speak for</p> <p>5 everybody. That was my concern. I know of</p> <p>6 others that was their concern.</p> <p>7 Q. Okay.</p> <p>8 A. I believe that was Secretary of State</p> <p>9 Merrill's concern that maybe people were</p> <p>10 being disenfranchised that shouldn't be.</p> <p>11 Q. Okay. So would you say that your</p> <p>12 understanding of time was that there was not</p> <p>13 a clear definition of which crimes</p> <p>14 constituted moral turpitude?</p> <p>15 MS. MESSICK: Object to the form.</p> <p>16 A. I wouldn't say that. I would say there was</p> <p>17 a lot of disagreement about what were the</p> <p>18 crimes that should be considered moral</p> <p>19 turpitude.</p> <p>20 Q. So did you understand that there -- despite</p> <p>21 the disagreement, then there was a clear</p> <p>22 definition of crimes that should be</p> <p>23 considered crimes of moral turpitude?</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. And what were the means the committee was</p> <p>2 exploring for being able to do that?</p> <p>3 A. Well, obviously the legislation that was</p> <p>4 proposed, that was drafted. And everybody</p> <p>5 had -- The State of Alabama had had an issue</p> <p>6 with the definition of moral turpitude for</p> <p>7 years. There were disagreements between the</p> <p>8 attorney general's office, the</p> <p>9 Administrative Offices of Courts, the</p> <p>10 Governor's office. And everybody felt like</p> <p>11 there was vagueness of some kind that needed</p> <p>12 to be clarified since nobody could really</p> <p>13 agree on it. I mean, I'm not saying that</p> <p>14 wasn't -- that was always the case, but at</p> <p>15 least at that time that had been the case.</p> <p>16 And so that was also -- That was the</p> <p>17 idea that if we could narrow it down to a</p> <p>18 specific definition of certain crimes, then</p> <p>19 it would be clearer for everyone involved,</p> <p>20 both people facing criminal punishment and</p> <p>21 the court system and the Board of Pardons</p> <p>22 and Paroles and the Board of Registrars so</p> <p>23 they could know who should vote and who</p>	<p style="text-align: right;">Page 33</p> <p>1 MS. MESSICK: Object to the form.</p> <p>2 A. Well, if I asked somebody on the street that</p> <p>3 had some knowledge of the definition of</p> <p>4 moral turpitude, they probably had a list.</p> <p>5 It wouldn't necessarily be the right one,</p> <p>6 but it could be clear.</p> <p>7 Q. Do you think voter registrars in Alabama at</p> <p>8 that time could tell you which crimes</p> <p>9 constituted crimes of moral turpitude?</p> <p>10 MS. MESSICK: Object to the form.</p> <p>11 A. Again, that's a little bit beyond my</p> <p>12 knowledge.</p> <p>13 Q. Did you produce any materials at any time</p> <p>14 for presentation at the committee?</p> <p>15 A. I can't say this for sure, but I may have</p> <p>16 produced, brought with me, to the meeting a</p> <p>17 list that a former legal director back more</p> <p>18 than a dozen years ago had drafted.</p> <p>19 Q. And was that list drafted by Griffin Sikes?</p> <p>20 A. Yes. But I honestly don't remember.</p> <p>21 Q. Sure.</p> <p>22 I'm going to show you what I'm marking</p> <p>23 now as Exhibit 1.</p>

<p style="text-align: right;">Page 34</p> <p>1 (Plaintiff's Exhibit Number 1 was marked 2 for identification.) 3 Q. Now, looking through this -- I'll give you a 4 chance to review it, but it appears to be a 5 packet of materials that was produced by or 6 to the Exploratory Committee; is that 7 correct? 8 MS. MESSICK: Object to the form. 9 A. It looks like it. 10 Q. And do you recognize these documents? 11 A. Yes. 12 Q. Now, the first document here on the very 13 first page it references a November 18, 14 2015, meeting; is that correct? 15 A. Yes. 16 Q. In flipping through there, there doesn't 17 seem to be a record of the October 15th 18 meeting; is that correct? 19 A. Well, I don't know -- I mean, in the packet, 20 yeah, there doesn't seem to be. I'm not 21 saying there weren't any, but I don't see it 22 here. 23 Q. Can you describe to me what happened at the</p>	<p style="text-align: right;">Page 36</p> <p>1 people I know. And then there was some 2 other people from other organizations, 3 nongovernmental as well as government. 4 Got the idea of what the purpose of the 5 committee was there to do. And like I said, 6 the purpose was clear to me. We needed to 7 clarify moral turpitude and make sure people 8 who should vote be able to vote that maybe 9 couldn't vote at that time. 10 Q. And at the October 15th meeting, did that 11 purpose -- did it -- was it clear -- Strike 12 that. 13 Was the understanding from the October 14 15th meeting that part of the purpose of the 15 Exploratory Committee was to look at the 16 rights restoration process as well? 17 A. Oh, I don't know. I don't know if that 18 became part of its goal in the meantime 19 because -- Okay. You're refreshing my 20 memory with these questions. 21 So let's say it started -- I'm just -- 22 I'm not saying this was all there was at the 23 beginning. I'm just saying based on my</p>
<p style="text-align: right;">Page 35</p> <p>1 October 15th meeting? 2 A. I've read this before I came here today and 3 I said, okay, yeah, that's what happened and 4 I can't add anything to what the minutes 5 say. 6 Q. I'm sorry. Just to clarify. I'm referring 7 to the October 15th meeting -- 8 A. Oh, that's right. 9 Q. -- which we don't -- 10 A. I'm sorry. I'm looking at the November 11 18th. 12 October 15th. Well, that was an 13 opportunity to get to know the other 14 committee members a little bit. I sat next 15 to Mr. Glasgow. We struck it off right 16 away. We had a good time talking to each 17 other. He's a neat guy. He told me his 18 story. Interesting. 19 There was a circuit clerk from a 20 southern Alabama County, Summer Scruggs, 21 also there. Judge Jolley from North 22 Alabama. And then the others from 23 different -- Those are the AOC related</p>	<p style="text-align: right;">Page 37</p> <p>1 memory. Let's say for a moment all we 2 wanted to do was make sure there was a law 3 passed that limited the number of moral 4 turpitude crimes and that hopefully that 5 wouldn't disenfranchise people. And 6 during -- As meetings occurred, we realized, 7 wait a minute, part of this ought to be 8 speeding up the process of the restoration 9 of rights, unless you were to go the way of 10 some who advocated for automatic 11 restoration. Anything short of that -- We 12 all wanted to speed up the process if we 13 could. 14 So I can't say that was the initial 15 goal, but it became a goal, just because the 16 goal was, like I said, to make sure we 17 didn't disenfranchise too many people or 18 were wrongfully disenfranchised people. 19 Q. So you've testified that the purpose of the 20 committee was to limit the number of crimes 21 that are defined as crimes of moral 22 turpitude? 23 A. Correct. Because with vagueness you have</p>

<p style="text-align: right;">Page 38</p> <p>1 potentially unlimited.</p> <p>2 Q. I'd like to ask you a couple of questions</p> <p>3 about some of the other folks who attended</p> <p>4 this meeting. If we can turn now to the</p> <p>5 November 18th minutes. There's one person</p> <p>6 in particular -- You've described several of</p> <p>7 the people that are on this list, but</p> <p>8 there's one gentlemen, Mr. Quin Hillyer, who</p> <p>9 is described as a freelance journalist. Do</p> <p>10 you know Mr. Hillyer?</p> <p>11 A. I didn't know him until I met him at the</p> <p>12 meeting.</p> <p>13 Q. And do you know anything about his</p> <p>14 background?</p> <p>15 A. I really didn't know him and I still don't.</p> <p>16 Q. Do you know why he was invited to be a</p> <p>17 member of the committee?</p> <p>18 A. No.</p> <p>19 Q. Now, you were there representing Mr. Hobson</p> <p>20 who was your boss at the time. That's what</p> <p>21 you've testified. Do you still currently</p> <p>22 have any relationship to Mr. Hobson?</p> <p>23 A. Yeah. He's a friend of mine.</p>	<p style="text-align: right;">Page 40</p> <p>1 Courts and the committee would somehow hurt</p> <p>2 the bottom line?</p> <p>3 A. Court costs and fees, that's a real</p> <p>4 controversial issue. But the bottom line is</p> <p>5 that the court system of Alabama is the</p> <p>6 biggest money maker of the State of Alabama</p> <p>7 for the State of Alabama. The courts don't</p> <p>8 get to keep that money. They send it to the</p> <p>9 general fund. It's part of our bargaining</p> <p>10 with the legislature because we have no real</p> <p>11 power. We're not at the bargaining table.</p> <p>12 Like the governor can veto. The</p> <p>13 legislatures can vote against or vote for</p> <p>14 things. We're just there to say please help</p> <p>15 us stay operational. And so one of our</p> <p>16 bargaining chips was to say, Look, we</p> <p>17 provide a lot of funding for y'all. We</p> <p>18 should get at least something proportionate</p> <p>19 of that. Y'all should be funding us</p> <p>20 adequately according to the -- Besides the</p> <p>21 constitutional duty, the fact that we're</p> <p>22 helping out the general fund. So to relieve</p> <p>23 someone of having to pay court costs, fees,</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. A friend. And did he have any other</p> <p>2 involvement with the Exploratory Committee</p> <p>3 other than asking you to go?</p> <p>4 A. No.</p> <p>5 Q. Did you report back to him on the -- what</p> <p>6 was discussed at the meeting?</p> <p>7 A. Yes.</p> <p>8 Q. Did he give you feedback on what the</p> <p>9 position of the Administrative Office of</p> <p>10 Courts should be?</p> <p>11 A. Yeah. Don't let the court's money get hurt</p> <p>12 in any way whatsoever. That was his mantra</p> <p>13 for anything dealing with the legislature.</p> <p>14 We can't afford to lose a penny.</p> <p>15 Q. And so was your understanding that this</p> <p>16 committee was legislative in nature?</p> <p>17 MS. MESSICK: Object to the form.</p> <p>18 A. That was not my understanding. My</p> <p>19 understanding was that it would be providing</p> <p>20 input to the legislature, but not</p> <p>21 legislative.</p> <p>22 Q. Why would Mr. Hobson be concerned that the</p> <p>23 involvement of the Administrative Office of</p>	<p style="text-align: right;">Page 41</p> <p>1 and fines hurts the courts, if not directly,</p> <p>2 indirectly.</p> <p>3 Q. Okay. So is it the position of</p> <p>4 Administrative Office of Courts that -- or</p> <p>5 was it at that time that requiring people to</p> <p>6 pay their court costs and fees as a</p> <p>7 condition to the reinstatement of their</p> <p>8 voting rights, was that a position that the</p> <p>9 AOC supported?</p> <p>10 A. Yes.</p> <p>11 Q. And that would be because, as you've</p> <p>12 described, those court costs and fees are</p> <p>13 important to the AOC in terms of its ability</p> <p>14 to bargain with the legislature for funding?</p> <p>15 A. Yes.</p> <p>16 Q. And can you explain why the position -- what</p> <p>17 the relationship between voting rights and</p> <p>18 payment of court costs and fees? Can you</p> <p>19 explain why those two are related?</p> <p>20 MS. MESSICK: Object to the form.</p> <p>21 Q. Go ahead.</p> <p>22 A. Are you asking for my penal philosophy?</p> <p>23 Q. Sure, if you're willing to give it.</p>

<p style="text-align: right;">Page 42</p> <p>1 A. Well, again, I can't say this is the 2 official position of AOC at that time or 3 now. If you are finished with your criminal 4 sentence in prison and you don't pay your 5 court costs, fines and fees, you're not 6 really showing responsible citizenship and 7 we want responsible citizens voting, I 8 think. That's a personal opinion. 9 Q. So you describe that as a penal philosophy. 10 Does that mean that you see court costs, 11 fines and fees as related to punishment? 12 A. No. It's just like any debt, responsible 13 debt. 14 Q. And then, again, can you explain why -- how 15 someone's voting rights are related to 16 whether they pay their fines and fees? 17 MS. MESSICK: Object to the form. 18 A. Well, that is -- Since the court costs, 19 fines -- Fines are part of the punishment, 20 the sentence. Court costs and fees are not. 21 However, as a person under criminal 22 sentencing, I have put the State of Alabama 23 to the task, to the labor, of prosecuting me</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Well, let me restate. Should someone who 2 has never been convicted of a crime, but 3 owes money to the State of Alabama and has 4 not paid that money off, should they be 5 allowed to vote? 6 A. I can't answer that. 7 Q. Why not? 8 A. I can't. I haven't even thought about it. 9 It's the first time it's ever been presented 10 to me, the idea. I wouldn't want to speak 11 too quickly. 12 Q. Would you say that someone who owes money to 13 the State of Alabama who hasn't been 14 convicted of a felony has shown some lack of 15 character? 16 MS. MESSICK: Object to the form. 17 A. I don't want to say that. 18 Q. Earlier you described someone who -- with a 19 felony conviction who still owes fines and 20 fees, as not having shown themselves to be 21 responsible until they pay those fines and 22 fees off. Is that an accurate statement? 23 A. Yes.</p>
<p style="text-align: right;">Page 43</p> <p>1 because I committed a crime or crimes. That 2 I would have to pay for that expense, at 3 least in part -- Obviously it wouldn't cover 4 the entire cost, unless we're talking about 5 a huge fine and court costs. It's part of 6 my responsibility as a citizen to say, yeah, 7 I take ownership of what I did. I am 8 responsible and I want to show the State of 9 Alabama I am now a responsible enough 10 citizen to pay my debts and do everything 11 else a responsible citizen does. It's not 12 that it's part of the punishment, but it's 13 hard to disengage it from that -- I want to 14 show you I've learned my lesson and that I 15 can be a good citizen. It's hard to unlink. 16 Q. Should people who otherwise owe money to the 17 State of Alabama but who haven't been 18 convicted of a felony and have not paid off 19 that obligation be allowed to vote? 20 MS. MESSICK: Object to the form. 21 A. Now you're trying to expand the list of 22 moral turpitude crimes. I wouldn't want to 23 do that.</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Does someone who otherwise has debt that 2 they have not yet paid off, does that show a 3 lack of responsibility on their part? 4 MS. MESSICK: Object to the form. 5 A. Yes. 6 Q. So your position would be that anybody with 7 outstanding debt is somehow irresponsible? 8 MS. MESSICK: Object to the form. 9 A. No. I wouldn't say that. 10 Q. Can you clarify when someone with 11 outstanding debt has displayed a lack of 12 responsibility and when someone with 13 outstanding debt has not displayed a lack of 14 responsibility? 15 MS. MESSICK: Object to the form. 16 A. Well, I think as a society we expect them to 17 pay their debts on time. That's responsible 18 behavior, to pay your debts on time. 19 Q. So to the extent someone -- Strike that. 20 I want to call your attention to part 21 of the meeting that was from the November 22 18, 2015 meeting. Again, that first page. 23 And we're actually going to go to page 2 of</p>

<p style="text-align: right;">Page 46</p> <p>1 the minutes.</p> <p>2 Now, it looks like -- The minutes</p> <p>3 represent that there was a discussion about</p> <p>4 whether or not court fines, fees and costs</p> <p>5 should be included in the requirements for</p> <p>6 reinstatement; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And did the -- Did you as a representative</p> <p>9 for the Administrative Office of Courts take</p> <p>10 a position on that during that discussion?</p> <p>11 A. Yes.</p> <p>12 Q. And what was that position?</p> <p>13 A. That for a person to be restored to full</p> <p>14 citizenship rights, including voting, they</p> <p>15 should pay all their court costs, fines and</p> <p>16 fees even after their sentence of</p> <p>17 imprisonment has been served and probation</p> <p>18 and parole. I think that was part of it,</p> <p>19 too.</p> <p>20 Q. Sure. At that time that was not just your</p> <p>21 personal view, but also the view of the</p> <p>22 Administrative Office of Courts?</p> <p>23 MS. MESSICK: Object to the form.</p>	<p style="text-align: right;">Page 48</p> <p>1 to define moral turpitude?</p> <p>2 A. I can't say that, no.</p> <p>3 Q. But you felt that you could not decide which</p> <p>4 crimes constituted crimes of moral turpitude</p> <p>5 without an understanding of the history of</p> <p>6 the term?</p> <p>7 A. I thought it would help.</p> <p>8 Q. Okay. In your own words, what is the</p> <p>9 history of the term moral turpitude as it</p> <p>10 relates to voting in Alabama?</p> <p>11 A. Well, I don't claim to be an expert on the</p> <p>12 history of the term moral turpitude. I did</p> <p>13 learn a little bit during the process that</p> <p>14 was going on. I was a little bit surprised</p> <p>15 that it's not that old of a term. So moving</p> <p>16 backward in time, you're dealing with kind</p> <p>17 of an evolution backwards of a view of</p> <p>18 morals, moral law, that we talked about</p> <p>19 earlier.</p> <p>20 So if you go back, I guess, to -- I</p> <p>21 guess you would call it the early modern</p> <p>22 period, which I would say is in the 1500s to</p> <p>23 1700s maybe -- I could be wrong with that.</p>
<p style="text-align: right;">Page 47</p> <p>1 A. I didn't say that was my personal view.</p> <p>2 That was the position of the Administrative</p> <p>3 Office of Courts.</p> <p>4 Q. Okay. Moving towards the -- I'm sorry.</p> <p>5 Let's go back to the first page. At the</p> <p>6 bottom of the first page it states that you</p> <p>7 had proposed to the committee postponing any</p> <p>8 vote on which crimes that should constitute</p> <p>9 crimes of moral turpitude until a history of</p> <p>10 the term moral turpitude could be</p> <p>11 established; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. What was your purpose in seeking to</p> <p>14 establish the history of the term moral</p> <p>15 turpitude?</p> <p>16 A. Just to help in determining a definition.</p> <p>17 It seems like before you define something,</p> <p>18 you might want to know the history of the</p> <p>19 words. It's just, I guess, my English major</p> <p>20 speaking.</p> <p>21 Q. So would you say that the goal of the</p> <p>22 committee was not just to define which</p> <p>23 crimes constitute moral turpitude, but also</p>	<p style="text-align: right;">Page 49</p> <p>1 I'm not a historian. If you go back to that</p> <p>2 time, they didn't use the term moral</p> <p>3 turpitude, but they used other terms.</p> <p>4 Latin, mala in se and mala prohibita. Mala</p> <p>5 in se crimes were the moral -- the</p> <p>6 objectionable crimes that are immoral all</p> <p>7 the time throughout eternity, history,</p> <p>8 whatever. And the mala prohibita are just</p> <p>9 crimes that are crimes because the State, as</p> <p>10 in the governmental entity known as the</p> <p>11 State, says they are wrong. So not</p> <p>12 necessarily immoral crime, but just a</p> <p>13 violation of a rule.</p> <p>14 I guess you would say like the</p> <p>15 difference between running a stop sign --</p> <p>16 Who says it's always immoral to drive past a</p> <p>17 sign that's red with the word stop on it?</p> <p>18 It's not some eternal moral principle.</p> <p>19 Versus murder. I think throughout all time</p> <p>20 we considered murder immoral and a crime.</p> <p>21 It would be hard for me to figure out a time</p> <p>22 in the future when we wouldn't.</p> <p>23 So those are two extremes of what is</p>

<p style="text-align: right;">Page 50</p> <p>1 moral turpitude, murder, versus what is not, 2 driving past a sign. So the best I could 3 learn was that moral turpitude grew out of 4 that language earlier, centuries ago. 5 Q. I'm going to turn now to the second tab on 6 this and its the minutes of the December 21, 7 2015, Exploratory Committee meeting. And on 8 the second page again it said -- It states 9 that you began a discussion of the 10 historical aspects and reasoning of the term 11 moral turpitude as it relates to Alabama 12 law. Can you describe the discussion that 13 you began? 14 A. It would be what I just told you, or 15 something to that effect. 16 Q. Okay. And did you discuss the history of 17 the application of the term moral turpitude 18 specifically to Alabama? 19 A. Let my memory bubble a little bit here, see 20 if something can come out, because I don't 21 want to speak without remembering correctly. 22 The best I can remember is that I 23 discussed certain crimes on the already</p>	<p style="text-align: right;">Page 52</p> <p>1 (Plaintiff's Exhibit Number 2 was marked 2 for identification.) 3 Q. I'll give you a second to review that. 4 A. (Witness reviewed document.) Okay. 5 Q. Ready? 6 A. I guess. 7 Q. So this is a memo titled Voting Rights of 8 Formerly Incarcerated Persons -- Meaning and 9 Historical Background of the Phrase "Felony 10 Involving Moral Turpitude." And it's on 11 letterhead for the Alabama Appleseed Center 12 and it is signed by John A. Pickens and Shay 13 M. Farley; is that correct? 14 A. Yes. 15 Q. Is this memo -- Do you recognize this memo? 16 A. Yes. 17 Q. And was this memo circulated to members of 18 the committee? 19 A. Yes. 20 Q. And then if you go back to the December 18th 21 minutes again on that second tab of Exhibit 22 1. 23 A. November 18th?</p>
<p style="text-align: right;">Page 51</p> <p>1 existing, quote, list, moral turpitude 2 crimes, that the history would support some 3 of those, but not all. 4 Q. What list -- 5 A. And so some of the crimes -- Sorry. Some of 6 the crimes that were considered before the 7 legislation on the list -- the vague list I 8 would call it -- I would not have considered 9 moral turpitude crimes. 10 Q. Can you give me an example? 11 A. I can't. I'm sorry. That's where my memory 12 stops, but I know there was at least a 13 couple. 14 Q. And what list of crimes were you referring 15 to? 16 A. Like I said before, there were at least 17 three lists. I think the most comprehensive 18 and accurate was the Attorney General's 19 Office list, because they went by statute 20 and court cases. Again, this is my memory 21 at this time of what I thought was accurate. 22 Q. I'm going to show you what I'm marking as 23 Exhibit 2.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. December. 2 A. December 21st. 3 Q. Yeah. After you -- The minutes reflect that 4 after you had discussed what you've 5 described now as a kind of philosophical 6 underpinnings of the term moral turpitude, 7 Secretary Merrill recognized John Pickens to 8 give a presentation on the history of the 9 term of moral turpitude as it sees in 10 Alabama; is that correct? 11 MS. MESSICK: Is that what the minutes 12 say happened? 13 MS. DANAHY: Yeah, that's the question. 14 A. The minutes, yeah, say that John Merrill, 15 Secretary Merrill, recognized John Pickens 16 to give a presentation to the group 17 regarding history of the term in Alabama 18 law. The term, I assume, means moral 19 turpitude. 20 Q. Okay. And do you remember that 21 conversation? 22 A. No. I'm sorry. It would not have been 23 anything more than what's in the memo from</p>

<p style="text-align: right;">Page 54</p> <p>1 John Pickens to Secretary of State Merrill 2 dated December 9, 2015 -- 3 Q. Is it reasonable to assume -- I apologize. 4 I didn't mean to speak over you. 5 Is it reasonable to assume that the 6 discussion likely centered on the same 7 topics that are in this memo? 8 A. Likely, yes, but I can't state for sure 9 because I honestly don't remember the 10 conversation or discussion. 11 Q. Turning to the memo again, Exhibit 2. The 12 memo describes the adoption. I'm going to 13 speak in general terms. But the memo 14 describes the adoption of the phrase "crimes 15 involving moral turpitude" as related to 16 voter disenfranchisement in the 1901 Alabama 17 Constitution. 18 Would it be accurate to say that the 19 general thesis of this memo is that the 20 phrase moral turpitude or the 1901 21 constitution disenfranchisement of persons 22 based on crimes of moral turpitude was based 23 on an intent to discriminate against black</p>	<p style="text-align: right;">Page 56</p> <p>1 once. 2 Q. And if I were to represent to you that the 3 holding of that case was that the phrase 4 "crimes of moral turpitude" as used in the 5 1901 constitution as it relates to voter 6 disenfranchisement was part of an intent to 7 discriminate against black voters in 8 Alabama, would that refresh your 9 recollection of that case? 10 MS. MESSICK: Object to the form. 11 A. I remember thinking one of two things when I 12 read it. And I can't remember which it was 13 that I would -- can verify I know -- you 14 know, felt that I thought at the time. But 15 one had to do with perhaps the Supreme Court 16 of the United States had -- Let me make sure 17 I say the right thing. 18 Q. Take your time. 19 A. Again, since I haven't read the opinion 20 recently, either that they had -- And again, 21 I don't know which of these I would attest 22 to today if I were to read it again. I 23 can't say. I thought either, okay, they</p>
<p style="text-align: right;">Page 55</p> <p>1 voters in Alabama? 2 MS. MESSICK: Object to the form. 3 A. I kind of lost you on what I would be 4 answering. 5 Q. I'll restate it. 6 Is it accurate to say that the thesis 7 of this memo is that when the phrase "crimes 8 of moral turpitude" was used to define when 9 people would lose their right to vote in the 10 1901 constitution, it was done so in part on 11 the basis of an intent to discriminate 12 against black voters in Alabama? 13 MS. MESSICK: Object to the form. 14 A. That would be part of the thesis at least of 15 John Pickens' memo December 9, 2015. 16 Q. Do you have any reason to disagree with that 17 thesis? 18 A. No. 19 Q. Are you familiar with the case Hunter v. 20 Underwood in the United States Supreme 21 Court? 22 Q. I was at one time. I couldn't really tell 23 you about it now. I know I looked at it</p>	<p style="text-align: right;">Page 57</p> <p>1 took the general accusation against the 2 drafters of the 1901 constitution and 3 applied it to the whole thing, including 4 Section 182, without being sure. And again, 5 I don't know if that's correct or not. Or I 6 thought others who had taken this opinion 7 and had used it and had gone too far with 8 it. 9 But I can't remember for sure which I 10 thought or even, you know, whether I 11 could -- if I read it again, if I would even 12 say either of those again. I don't know. I 13 just remember thinking they took this too 14 far. Somebody took it to far. I don't know 15 who. 16 Q. Can you describe -- 17 A. Because what I'm saying is that -- Yes, 18 there may have been a general intent to 19 discriminate against blacks and black 20 voters, but I don't know if I could say for 21 sure that particular section had evidence of 22 that. I don't know. 23 Q. Are you familiar -- Let's take a step back.</p>

<p style="text-align: right;">Page 58</p> <p>1 Generally speaking, the southern states</p> <p>2 after the Civil War, is it accurate to say</p> <p>3 they were not friendly to the newly</p> <p>4 enfranchised black citizens?</p> <p>5 A. I can't answer that.</p> <p>6 MS. MESSICK: Object to the form. I</p> <p>7 would like to take a break. If you</p> <p>8 need a few more questions, that's</p> <p>9 okay.</p> <p>10 MS. DANAHY: We can take a break now.</p> <p>11 MS. MESSICK: Thank you.</p> <p>12 (Whereupon a recess was taken.)</p> <p>13 Q. I want to turn back quickly to the November</p> <p>14 18, 2015, minutes and on the second page of</p> <p>15 those the minutes reflect that there was a</p> <p>16 review of practices and procedures related</p> <p>17 to felony disenfranchisement and rights</p> <p>18 restoration in many states other than</p> <p>19 Alabama.</p> <p>20 MS. MESSICK: Where are you looking?</p> <p>21 MS. DANAHY: Right at the top of page 2</p> <p>22 of the November minutes.</p> <p>23 Q. But then it further represents that</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Yes.</p> <p>2 Q. And you suggested that that presentation</p> <p>3 didn't expand beyond the scope of this</p> <p>4 December 9th memo; is that correct?</p> <p>5 A. Like I said, I don't remember the</p> <p>6 discussion. I can't imagine why it would go</p> <p>7 beyond this memo of December 9th.</p> <p>8 Q. Do you remember the committee discussing the</p> <p>9 racial impact of felony disenfranchisement</p> <p>10 at any time during the committee meeting?</p> <p>11 A. I mean, that was very important to</p> <p>12 everybody. I remember that.</p> <p>13 Q. Important how?</p> <p>14 A. We didn't want to do that as a state. We</p> <p>15 didn't want the State of Alabama to have any</p> <p>16 racial basis for felony disenfranchise.</p> <p>17 Q. And was there a concern at the time that</p> <p>18 there was a racial basis for felony</p> <p>19 disenfranchisement based on Alabama law?</p> <p>20 A. There was an assumption, I think, that there</p> <p>21 was such and people were, of course,</p> <p>22 concerned. I was concerned.</p> <p>23 Q. What were your concerns?</p>
<p style="text-align: right;">Page 59</p> <p>1 Secretary Merrill proposed focusing on the</p> <p>2 southern states, practices in the southern</p> <p>3 states. Is that correct that that's what</p> <p>4 the minutes reflect?</p> <p>5 A. Yes.</p> <p>6 Q. And do you recall that discussion?</p> <p>7 A. No, I really don't.</p> <p>8 Q. Do you know why Secretary Merrill proposed</p> <p>9 focusing on practices in the southern</p> <p>10 states?</p> <p>11 MS. MESSICK: Object to the form.</p> <p>12 A. No.</p> <p>13 Q. Returning to the Appleseed memo, was this</p> <p>14 the only time that the committee discussed</p> <p>15 the racial impact of felony</p> <p>16 disenfranchisement in Alabama?</p> <p>17 A. This isn't a discussion from the committee.</p> <p>18 This is a memo from the Appleseed Center.</p> <p>19 Q. Correct. I apologize. If we return to the</p> <p>20 minutes of the December 21st meeting, we</p> <p>21 earlier reviewed that Mr. Pickens gave a</p> <p>22 presentation regarding the history of the</p> <p>23 term in Alabama law.</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Well, like I said before, if the definition</p> <p>2 of moral turpitude had gotten too big</p> <p>3 because of vagueness, then we could sweep</p> <p>4 other people into its orbit that should not</p> <p>5 be there.</p> <p>6 Q. And how does race play into that?</p> <p>7 A. I'm not sure. I guess maybe because I know</p> <p>8 that there's disproportionate number of</p> <p>9 nonwhites in the penal system. Not because</p> <p>10 I know of any intent to discriminate. Just</p> <p>11 because, I guess, effect.</p> <p>12 Q. And did you know that at the time of these</p> <p>13 committee meetings?</p> <p>14 A. Oh, yeah.</p> <p>15 Q. Was that a topic of discussion during the</p> <p>16 committee meetings?</p> <p>17 A. You mean the fact that there was a</p> <p>18 disproportionate number of --</p> <p>19 Q. Correct.</p> <p>20 A. Again, I think it's common knowledge. It's</p> <p>21 an assumption. Everybody knows it.</p> <p>22 Q. When you say it's common knowledge, do you</p> <p>23 mean that it is fact that people commonly</p>

<p style="text-align: right;">Page 62</p> <p>1 know?</p> <p>2 MS. MESSICK: Object to the form.</p> <p>3 A. That's how I would understand it.</p> <p>4 Q. Okay. I'm trying to distinguish between</p> <p>5 your use of the term common knowledge and</p> <p>6 that it's an assumption.</p> <p>7 A. Yeah. Okay. So I don't know how to</p> <p>8 distinguish between those two because common</p> <p>9 knowledge means what everybody accepts as</p> <p>10 true. That doesn't mean it's true. So it's</p> <p>11 an assumption and it's common knowledge.</p> <p>12 Does that make sense? Because not everybody</p> <p>13 in Alabama has researched it and studied it</p> <p>14 and gotten their facts right like some Ph.D.</p> <p>15 research person.</p> <p>16 Q. Do you think that what you've described as</p> <p>17 the common knowledge that there is disparate</p> <p>18 numbers of --</p> <p>19 A. Disproportionate.</p> <p>20 Q. Disproportionate numbers of nonwhite people</p> <p>21 in the Alabama penal system. Do you think</p> <p>22 that has a basis in fact?</p> <p>23 A. Well, I can't say I've studied it</p>	<p style="text-align: right;">Page 64</p> <p>1 believed that there was a legitimate basis</p> <p>2 for defining certain crimes as moral</p> <p>3 turpitude type crimes. And the racist down</p> <p>4 the table might say, Yes, here, here, here,</p> <p>5 I agree. And he's a racist, even though we</p> <p>6 come to the same result. So I can't speak</p> <p>7 to the intent of everybody at that</p> <p>8 convention.</p> <p>9 Q. Sure. Just to clarify, I was referring to a</p> <p>10 more modern comment that you made. We were</p> <p>11 discussing whether there was a concern about</p> <p>12 the racial impact of Alabama's criminal</p> <p>13 disenfranchisement statute, and you said --</p> <p>14 you used the phrase assumption, that there</p> <p>15 was an assumption that it had that impact.</p> <p>16 And so I was -- Do you recall that</p> <p>17 testimony?</p> <p>18 A. No, I didn't say that. See, I see a</p> <p>19 difference between disparate and</p> <p>20 disproportionate. This is a layman's view.</p> <p>21 I think more white men commit serial</p> <p>22 murders, unfortunately. But the fact that</p> <p>23 we criminalize serial murder, are we</p>
<p style="text-align: right;">Page 63</p> <p>1 thoroughly, but, yeah, I've looked at the</p> <p>2 numbers, yeah.</p> <p>3 Q. And you also described that there was -- You</p> <p>4 also stated that there was an assumption</p> <p>5 that Alabama's criminal disenfranchisement</p> <p>6 law was based -- was based in -- was related</p> <p>7 to an intent to discriminate against black</p> <p>8 people in Alabama.</p> <p>9 MS. MESSICK: Object to the form.</p> <p>10 Misstates the testimony.</p> <p>11 Q. I'm happy for you to rearticulate your</p> <p>12 testimony in a way that you think I may have</p> <p>13 mangled it. So I'm fine with you restating</p> <p>14 it.</p> <p>15 A. If I were the only nonracist at the 1901</p> <p>16 Constitutional Convention, I would have been</p> <p>17 proposing the correct definition of moral</p> <p>18 turpitude, not because I was a racist, but</p> <p>19 because of the history and what I thought</p> <p>20 was correct. If that happened to match some</p> <p>21 racist down the table at the committee back</p> <p>22 in -- This is all theoretical. Would I be a</p> <p>23 racist? No. I would be a person who</p>	<p style="text-align: right;">Page 65</p> <p>1 targeting white men? I don't think so.</p> <p>2 There's a moral basis. So the fact that</p> <p>3 there's a disproportionate number of certain</p> <p>4 race in prison, doesn't mean there's some</p> <p>5 kind of disparate impact. Does that make</p> <p>6 sense?</p> <p>7 Q. I understand, I think, what your position</p> <p>8 is, yes.</p> <p>9 In your opinion what is the relevance</p> <p>10 of race to felony disenfranchisement or</p> <p>11 rights restoration?</p> <p>12 A. It should have no relevance at all.</p> <p>13 Q. Going back to the November 18 meeting, one</p> <p>14 last time. I think this is the last thing</p> <p>15 that I have on this. At the end of that</p> <p>16 meeting on page 2 of those minutes --</p> <p>17 A. Is this the December 21st or November 18th.</p> <p>18 Q. November 18th. It reflects that there was a</p> <p>19 proposal or at least a discussion about</p> <p>20 automatic restoration of rights.</p> <p>21 Sorry. It's the proposal that they are</p> <p>22 being automatic processed for restoration of</p> <p>23 rights once a citizen has completed their</p>

<p style="text-align: right;">Page 66</p> <p>1 sentence and paid all restitution. And what 2 was -- Do you recall that conversation? 3 A. Yes. 4 MS. MESSICK: Hold on. Restoration is 5 mentioned several times on the page. 6 Are you talking about the Marissa 7 Dodson entry? 8 MS. DANAHY: Correct. Yes. 9 A. Yes, I remember. 10 Q. And what was the position of the 11 Administrative Office of the Courts on that? 12 A. The Administrative Office of Courts was 13 against automatic restoration. 14 Q. And was that for the reasons we discussed 15 earlier, that it didn't require payment of 16 court fines and fees as a condition of 17 restoration? 18 A. Well, not just that. Because again, the 19 court system -- AOC has this weird -- I 20 don't know if you could call this being 21 pulled in more than one direction or that 22 its trying to advocate to people with a lot 23 more power.</p>	<p style="text-align: right;">Page 68</p> <p>1 didn't have. 2 So when you're talking about the judges 3 on the ground who see the criminals coming 4 before them, they are truly concerned about 5 the safety of the communities in which they 6 serve as well as their ability to be elected 7 again. There's all kinds of things going on 8 with that. So we're talking about criminal, 9 the status of people that have committed 10 crimes in their communities. Some of them 11 very serious. So that's part of it. That 12 whole -- I guess you would call it the law 13 and order position. But it's from those who 14 have experience, more so than the people 15 sitting up at AOC. 16 Q. Can you explain what the law and order 17 position is on automatic restoration? 18 A. Automatic restoration. You've got to define 19 that. 20 Q. As it's defined in this proposal. Automatic 21 restoration upon completion of sentence and 22 once the citizen has been -- has paid all 23 restitution.</p>
<p style="text-align: right;">Page 67</p> <p>1 Every judge in the state is elected by 2 the people of their district or county. 3 Circuit clerk is the same way. We're 4 dealing with elected officials. We're just 5 appointees, or just regular State employees 6 just trying to do our jobs. And so in a 7 sense we have to balance what the chief 8 justice wants, what the appellate courts 9 stand for and what the judges want and the 10 circuit clerks want. It's a very delicate 11 thing. Because if you offend one elected 12 official, it could have -- you know, people 13 get fired and who know what could happen. 14 Lots of complaints can get filed by judges 15 and such. 16 Anyway, we're dealing with those kind 17 of people. They are strong in their 18 opinions about things, especially Judges. 19 So it wouldn't just be the court costs issue 20 and fees issue. The judges see what's going 21 on in their communities. They see maybe us 22 take a position in the legislature and they 23 disagree. They give us information we</p>	<p style="text-align: right;">Page 69</p> <p>1 A. And fines? 2 Q. This proposal does not include fines. 3 A. It doesn't include fines? You've got a 4 problem there. The fines would be part of 5 the sentence. The court costs, no. So, I 6 guess, the strict law and order position 7 would be you've got to at least pay all the 8 fines. My opinion again. That's my 9 personal opinion. 10 Q. What relevance does a person's financial 11 ability to pay fines have on their ability 12 to vote? 13 MS. MESSICK: Object to the form. 14 A. Well, now you're getting into the indigency 15 issue, which is another issue that's 16 important. And the court system does take 17 that into account. Judges take that into 18 account. Indigency status is important. So 19 the fact that a person cannot, as opposed to 20 will not, is an important factor. 21 Q. An important factor in what? 22 A. And I'll just leave it as a question because 23 I don't know the answer.</p>

<p style="text-align: right;">Page 70</p> <p>1 Q. An important factor in what?</p> <p>2 A. Determining whether their inability to pay</p> <p>3 should bar them from voting. That would be</p> <p>4 the question; right? Because they are not</p> <p>5 acting willfully. You could still argue</p> <p>6 they're somewhat irresponsible. Maybe they</p> <p>7 didn't try hard enough to get a job. There</p> <p>8 are all kinds of things you could argue</p> <p>9 against them. But, you know, you've got to</p> <p>10 address that. Okay. Are they just hurting</p> <p>11 financially or are they in a bad community</p> <p>12 where they can't find a job? I mean,</p> <p>13 there's so many questions. So I couldn't</p> <p>14 answer them all. I couldn't even list them</p> <p>15 all. So is that inability also a bar? And</p> <p>16 I say it depends. Good lawyer answer.</p> <p>17 Q. Was this a topic that the committee</p> <p>18 addressed at all?</p> <p>19 A. Yes. But how extensively, I cannot tell</p> <p>20 you.</p> <p>21 Q. Do you recall the conversations about that?</p> <p>22 A. Yeah. There was talk about how -- Well,</p> <p>23 what about the person who can't pay? And, I</p>	<p style="text-align: right;">Page 72</p> <p>1 the process. But we wanted to speed up the</p> <p>2 process. And I think that ended up in some</p> <p>3 fashion -- Board of Pardons and Paroles was</p> <p>4 going to argue, if I remember correctly, to</p> <p>5 the legislature, we need more personnel. I</p> <p>6 believe that came in. If we're going to try</p> <p>7 to do this better and faster, we need more</p> <p>8 personnel.</p> <p>9 The committee had lots of questions</p> <p>10 that they could not answer. I'll say that.</p> <p>11 They were raised. They were just hard to</p> <p>12 answer.</p> <p>13 Q. Did the committee discuss who was best</p> <p>14 suited to make the determination --</p> <p>15 A. No.</p> <p>16 Q. -- of whether someone --</p> <p>17 A. I don't remember that.</p> <p>18 Q. -- could or could not pay?</p> <p>19 A. I don't remember.</p> <p>20 Q. Did the committee discuss whether automatic</p> <p>21 restoration would -- what the impact of</p> <p>22 automatic restoration would be on the need</p> <p>23 for staffing at Board of Pardons and</p>
<p style="text-align: right;">Page 71</p> <p>1 think -- Again, I'm sorry if it's vague</p> <p>2 here, but my memory, it's been a few years.</p> <p>3 But that kind of merged in with, okay, the</p> <p>4 process of restoration once -- You know, how</p> <p>5 do we speed up that process. We wanted to</p> <p>6 speed it up. We didn't want people who</p> <p>7 should get the voting rights back to be</p> <p>8 waiting for months and months and months and</p> <p>9 years. Because the Board of Pardons and</p> <p>10 Paroles only has so many personnel. You</p> <p>11 know, there's an issue there. What if this</p> <p>12 person should be able to vote and it takes</p> <p>13 too long and they miss an election or two.</p> <p>14 I mean, that's terrible.</p> <p>15 Okay. But how do you -- Okay.</p> <p>16 Rehabilitation. How do you know -- How do</p> <p>17 you quickly figure out, okay, yeah, they are</p> <p>18 rehabilitated. They are a fine, upstanding</p> <p>19 person. But they haven't paid their court</p> <p>20 costs, fees and fines, but they can't pay</p> <p>21 it. Okay. So many questions. You see what</p> <p>22 I'm saying? It's like -- It's so much to</p> <p>23 handle that it argues against speeding up</p>	<p style="text-align: right;">Page 73</p> <p>1 Paroles?</p> <p>2 A. I don't remember that. I don't remember</p> <p>3 that.</p> <p>4 Q. Did the committee discuss whether automatic</p> <p>5 restoration might streamline the rights</p> <p>6 restoration process by eliminating the need</p> <p>7 to address a lot of these questions that</p> <p>8 you've raised?</p> <p>9 MS. MESSICK: Object to the form.</p> <p>10 A. It could have been mentioned by someone.</p> <p>11 I'm thinking somebody from the ACLU probably</p> <p>12 would have brought that up. I mean, I'm not</p> <p>13 just saying that because I think they would.</p> <p>14 I think I did hear that. But again, my</p> <p>15 memory is vague on that.</p> <p>16 Q. And do you recall if Secretary Merrill took</p> <p>17 a position on automatic restoration?</p> <p>18 A. No.</p> <p>19 Q. No, he did not take a position or --</p> <p>20 A. I do not know. I don't remember him taking</p> <p>21 a position.</p> <p>22 Q. Do you recall whether he took a position on</p> <p>23 whether or not fines and fees should be</p>

<p style="text-align: right;">Page 74</p> <p>1 required before rights are restored?</p> <p>2 A. I don't think he did.</p> <p>3 Q. And the minutes also reflect that there was</p> <p>4 a discussion around disagreement about</p> <p>5 whether fines, fees and court costs are an</p> <p>6 aspect of punishment or not.</p> <p>7 A. Well, everybody agreed costs and fees are</p> <p>8 not punishment. Fines and restitution would</p> <p>9 be part of punishment.</p> <p>10 Q. Was there agreement on the fact that fines</p> <p>11 and restitution would be part of punishment</p> <p>12 or was there disagreement --</p> <p>13 A. I don't remember any disagreement.</p> <p>14 Q. Do you remember whether Secretary Merrill</p> <p>15 took the position on whether costs, fines</p> <p>16 and fees are part of --</p> <p>17 A. No. I don't remember.</p> <p>18 Q. You don't remember.</p> <p>19 We talked a little bit about the</p> <p>20 relevance of payment of fines and fees to</p> <p>21 the restoration of voting rights. And you</p> <p>22 were describing that part of the reason that</p> <p>23 the Administrative Office of the Courts took</p>	<p style="text-align: right;">Page 76</p> <p>1 experience with the court system, there's</p> <p>2 only so many incentives and carrots and</p> <p>3 sticks, just to put it in street language,</p> <p>4 you can use with somebody to get them to pay</p> <p>5 their fines. And it is a major task, even</p> <p>6 for a judge who has all the power of a</p> <p>7 judge, to get people to pay these things.</p> <p>8 It is excruciatingly difficult in law. So</p> <p>9 the more carrots and sticks you have, the</p> <p>10 better.</p> <p>11 Q. Do you know of any evidence that</p> <p>12 conditioning restoration of voting rights on</p> <p>13 payment of fines and fees actually results</p> <p>14 in more --</p> <p>15 A. Can I find somebody who said, I paid all my</p> <p>16 fines and fees so I can vote? I don't have</p> <p>17 anybody like that. Again, it's kind of</p> <p>18 commonsense and based on experience with the</p> <p>19 court systems trying to collect these</p> <p>20 things.</p> <p>21 Q. Commonsense in that it's based on fact or</p> <p>22 commonsense that it's something that</p> <p>23 generally people think?</p>
<p style="text-align: right;">Page 75</p> <p>1 the position that fines and fees should be</p> <p>2 paid before rights are restored is because</p> <p>3 it affects their bargaining power with the</p> <p>4 other branches of government in Alabama; is</p> <p>5 that correct?</p> <p>6 MS. MESSICK: Object to the form.</p> <p>7 A. In so many words. You've kind of</p> <p>8 paraphrased it in your own way, but yeah.</p> <p>9 Q. Honestly I'm just trying to boil it down.</p> <p>10 I'm not trying to put words in your mouth.</p> <p>11 A. You're basically correct, yes.</p> <p>12 Q. And is part of the rationale for that that</p> <p>13 if people have -- if there's a -- like a</p> <p>14 right to vote is a carrot to incentivize</p> <p>15 payment of fines and fees?</p> <p>16 A. I would say yes.</p> <p>17 Q. Do you think it's -- Do you think that there</p> <p>18 are fines and fees that would otherwise go</p> <p>19 unpaid if the person had the right to vote</p> <p>20 without having to pay them? Was able to</p> <p>21 obtain the right to vote without having to</p> <p>22 pay them?</p> <p>23 A. Well, I would say that based on my</p>	<p style="text-align: right;">Page 77</p> <p>1 MS. MESSICK: Object to the form.</p> <p>2 A. Commonsense that if you can't do something</p> <p>3 to me if I don't pay, why should I pay.</p> <p>4 Q. Okay. I want to turn -- I think I'm back</p> <p>5 now in the December 21st meeting. And</p> <p>6 there's actually -- In the minutes it</p> <p>7 reflects that during the discussion, if you</p> <p>8 look on page 2 towards the bottom, of rights</p> <p>9 restoration, you brought up the importance</p> <p>10 of fees remaining a focal point and the idea</p> <p>11 that they might not get paid. Does that --</p> <p>12 A. Yes. I remember.</p> <p>13 Q. You remember that. And is that an</p> <p>14 accurate --</p> <p>15 A. Yes.</p> <p>16 Q. -- characterization of what you said?</p> <p>17 A. Yes.</p> <p>18 Q. And then following the discussion,</p> <p>19 Mr. Packard -- The minutes reflect that</p> <p>20 Mr. Packard gave a synopsis of kind of what</p> <p>21 the recommendation was of the committee for</p> <p>22 the rights restoration process, and that</p> <p>23 included term of sentence, including parole</p>

<p style="text-align: right;">Page 78</p> <p>1 or probation, and the payment of restitution</p> <p>2 and then automatic restoration of voting</p> <p>3 rights if those two things are completed,</p> <p>4 and then fines and fees are not forgiven or</p> <p>5 relieved in any way. They still have to be</p> <p>6 paid, but per terms prescribed by the judge</p> <p>7 and not as a condition of rights</p> <p>8 restoration. Is that what the minutes</p> <p>9 state?</p> <p>10 A. Yes.</p> <p>11 Q. And do you remember that being the</p> <p>12 recommendation of the committee or the</p> <p>13 synopsis that Ed gave, Mr. Packard gave, the</p> <p>14 recommendation of the committee at that</p> <p>15 time?</p> <p>16 MS. MESSICK: Object to the form.</p> <p>17 A. I lost track. I'm sorry.</p> <p>18 Q. Was that, in fact, the majority position of</p> <p>19 the committee?</p> <p>20 A. I can't say. I don't remember us taking a</p> <p>21 vote. Are you talking about the</p> <p>22 subcommittee?</p> <p>23 Q. No. This is the committee.</p>	<p style="text-align: right;">Page 80</p> <p>1 or the majority position of the committee?</p> <p>2 MS. MESSICK: Object to the form.</p> <p>3 A. I mean, it's -- According to the minutes, it</p> <p>4 says it's based upon what Ed had heard from</p> <p>5 the committee. And I can't absolutely</p> <p>6 disagree with him. I'm saying I don't</p> <p>7 remember a vote being taken carefully and</p> <p>8 making sure the majority agreed with this</p> <p>9 minute and recommendation. I just can't</p> <p>10 remember that. And I can't say I would say</p> <p>11 that. That's all. It may be a totally</p> <p>12 different perspective or ability to</p> <p>13 understand what people were saying or doing.</p> <p>14 I don't know. I could be completely wrong</p> <p>15 in other words.</p> <p>16 Q. Do you remember -- So it says here that</p> <p>17 Mr. Packard was asked to give a synopsis or</p> <p>18 a recommendation and that this was the list</p> <p>19 that he gave.</p> <p>20 A. Correct. That's what it says.</p> <p>21 Q. Do you have any -- Did Mr. Packard offer a</p> <p>22 position on this proposal at all?</p> <p>23 A. Well, Ed was, I believe, the chairman of the</p>
<p style="text-align: right;">Page 79</p> <p>1 A. The main, major committee?</p> <p>2 Q. Uh-huh (positive response).</p> <p>3 A. The main committee. I was biased, but I</p> <p>4 thought not. And I knew who in the room had</p> <p>5 spoken in agreement with AOC's position. I</p> <p>6 thought -- Or I think -- Again, based on my</p> <p>7 memory, I think that would not be</p> <p>8 necessarily an accurate representation of</p> <p>9 the committee's makeup, vote, whatever you</p> <p>10 want to call it. If you sat down and asked</p> <p>11 them, okay, vote for this or vote against,</p> <p>12 you know.</p> <p>13 Q. Do you recall who agreed with the AOC's</p> <p>14 position?</p> <p>15 A. Everybody who was with the AOC, like the</p> <p>16 circuit clerk, Ms. Scruggs; Judge Jolley. I</p> <p>17 just -- I can't pin it down any further than</p> <p>18 that. Like I said, I didn't know everybody</p> <p>19 real well. I know Kenneth Glasgow did not.</p> <p>20 Q. You've testified that you don't think that</p> <p>21 what's laid out in the minutes as the</p> <p>22 recommendation of the committee is -- was,</p> <p>23 in fact, the recommendation of the committee</p>	<p style="text-align: right;">Page 81</p> <p>1 subcommittee that had met to deal with the</p> <p>2 moral turpitude issue, and I think this was</p> <p>3 Ed's opinion.</p> <p>4 Q. And did Secretary Merrill give an opinion on</p> <p>5 this proposal or --</p> <p>6 A. I don't remember him doing so. I think he</p> <p>7 was the one that asked Ed to give a</p> <p>8 synopsis.</p> <p>9 Q. Was it your understanding -- So the next --</p> <p>10 Strike that.</p> <p>11 Did anyone object -- Do you remember</p> <p>12 this being -- Setting aside whether it was,</p> <p>13 in fact, the majority position --</p> <p>14 A. Oh, I would have objected. Yeah, I --</p> <p>15 Q. Do you remember Ed giving this synopsis?</p> <p>16 MS. MESSICK: Object to the form.</p> <p>17 A. Orally in front of the whole committee you</p> <p>18 mean?</p> <p>19 Q. Yes.</p> <p>20 A. I don't remember that. And I would have</p> <p>21 objected. I would have said, No, no, no.</p> <p>22 Court costs, fees. We've got to have them.</p> <p>23 Q. Would you also have objected that you didn't</p>

<p style="text-align: right;">Page 82</p> <p>1 think that was the consensus? Or would you</p> <p>2 simply have objected to the substance?</p> <p>3 MS. MESSICK: Object to the form.</p> <p>4 A. Am I a perfect committee member? I don't</p> <p>5 think so. Should -- In my mind, the perfect</p> <p>6 committee member in my position should have</p> <p>7 said, Wait, wait, no. Let's have a vote.</p> <p>8 Come on. How do you vote? No. I would</p> <p>9 have let Secretary of State Merrill handle</p> <p>10 the vote. That seems to me like the more</p> <p>11 precise way to do it. But I don't remember</p> <p>12 a vote. I don't remember this being stated</p> <p>13 as the recommendation of the committee.</p> <p>14 Q. The next section of the minutes states that</p> <p>15 Secretary Merrill informed the committee the</p> <p>16 draft legislation would be created before</p> <p>17 the next meeting for the members to review.</p> <p>18 Do you recall that happening?</p> <p>19 MS. MESSICK: Object to the form.</p> <p>20 A. I'm sure it happened. Because that was the</p> <p>21 whole point was to lead the legislation.</p> <p>22 Q. Did Secretary Merrill plan to write</p> <p>23 legislation relating -- Was it your</p>	<p style="text-align: right;">Page 84</p> <p>1 of moral turpitude. We discussed all the</p> <p>2 things that you brought up in this memo and</p> <p>3 what I've talked about today. It still</p> <p>4 didn't help a whole lot, to be honest. It</p> <p>5 helped a little.</p> <p>6 Q. On page 3 of the minutes from the December</p> <p>7 meeting it references the creation of the</p> <p>8 subcommittee which was led by Mr. Packard,</p> <p>9 and states that the purpose was to review</p> <p>10 the full list of crimes and determine if any</p> <p>11 concerns or discrepancies exist. And then</p> <p>12 it lists out the subcommittee members.</p> <p>13 Is that an accurate statement of the</p> <p>14 charge of the subcommittee is?</p> <p>15 A. Yes.</p> <p>16 Q. And does that list of -- I can read them</p> <p>17 out. Ed Packard, Carol Hill, Judge Tim</p> <p>18 Jolley, Win Johnson, Pastor Glaskow, Senator</p> <p>19 Linda Coleman, and Judge Joel Laird. Does</p> <p>20 that sound like an accurate roster of the</p> <p>21 subcommittee?</p> <p>22 A. I can't remember. I know Judge Jolley was</p> <p>23 on there. I know I was. I know Ed was.</p>
<p style="text-align: right;">Page 83</p> <p>1 understanding that Secretary Merrill, the</p> <p>2 legislation -- the draft legislation would</p> <p>3 be based on this outline from Mr. Packard?</p> <p>4 MS. MESSICK: Object to the form.</p> <p>5 A. I don't remember that, so I can't say yes.</p> <p>6 But I also know how the legislature works.</p> <p>7 You don't get your first proposal. You've</p> <p>8 got to negotiate with a 105 people. You</p> <p>9 never know what's going to come out the</p> <p>10 other end.</p> <p>11 So even if I had known, I probably</p> <p>12 thought that ain't going to happen. They're</p> <p>13 not going to leave out fees and fines,</p> <p>14 because we're not going to let them. We're</p> <p>15 going to lobby for the court system. Things</p> <p>16 like that. There's all kinds of thoughts,</p> <p>17 once you know the system, that you can have</p> <p>18 to say, well, y'all can propose what you</p> <p>19 want, but I know you ain't going to get it.</p> <p>20 Q. You've mentioned a couple of times now a</p> <p>21 subcommittee. Can you explain what the</p> <p>22 subcommittee was?</p> <p>23 A. Just to look at the definition and history</p>	<p style="text-align: right;">Page 85</p> <p>1 And I believe Pastor Glasgow. I can't speak</p> <p>2 to all of them to be clear and remember</p> <p>3 correctly. I have no reason to question it.</p> <p>4 Q. Okay. Before we move on to the December</p> <p>5 21st meeting, would you go back to page 1.</p> <p>6 At the very bottom it says you discussed</p> <p>7 documents that were submitted. Were those</p> <p>8 documents that -- First, is that an</p> <p>9 accurate -- Do you recall submitting</p> <p>10 documents to a committee?</p> <p>11 A. Like I said, the only one I remember</p> <p>12 submitting would have been the AOC list of</p> <p>13 moral turpitude crimes from Griffin Sikes.</p> <p>14 It's possible I submitted the AG's list and</p> <p>15 the Governor's list. Maybe for comparison</p> <p>16 purposes because there were differences.</p> <p>17 Q. I think that if you continue to flip through</p> <p>18 this packet of information, there's a list</p> <p>19 of moral turpitude felonies according to</p> <p>20 Alabama courts.</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall if that was one of the</p> <p>23 documents you submitted?</p>

<p style="text-align: right;">Page 86</p> <p>1 A. I don't know. I thought this was already 2 submitted to everybody on the committee. 3 MS. MESSICK: And I'm sorry. I wanted 4 to launch an objection to the form on 5 that. 6 A. I can't tell you where this came from. I 7 thought it was already with the committee. 8 I could have provided it. I don't remember. 9 Q. The next document, looking through, is moral 10 turpitude felonies according to AG opinion. 11 A. Correct. 12 Q. Do you recall who submitted that? 13 A. No. 14 Q. You don't recall -- 15 A. It could have been me. It could have been 16 already submitted to the committee. I don't 17 remember. 18 Q. And then a couple of pages further there's a 19 document entitled 2015 research. I'll 20 represent I think this is an excerpt of the 21 Griffin Sikes memo. Does that look familiar 22 to you? 23 A. It could be.</p>	<p style="text-align: right;">Page 88</p> <p>1 completion of his or her sentence. 2 And then it goes on to state that 3 balances due to outstanding court ordered 4 fines and fees -- or balances due to 5 outstanding -- due to court-ordered fines 6 and fees must remain outstanding, but should 7 not prohibit someone from exercising their 8 constitutional right to vote. Is that 9 correct? 10 MS. MESSICK: Object to the form. 11 A. You need to restate the question, because 12 I'm not sure what I'm answering. 13 MS. MESSICK: I'm not sure if you're 14 asking him if that's what it says or 15 if that's what happened -- 16 MS. DANAHY: I'm just asking if that's 17 what it says. 18 MS. MESSICK: -- if it's accurate. 19 MS. DANAHY: I'm just asking if that's 20 an accurate description of what the 21 memo says. 22 A. It could have been written better. 23 Q. I probably could have said it better also.</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. So you're not sure who introduced this? 2 A. No. 3 (Plaintiff's Exhibit Number 3 was marked 4 for identification.) 5 Q. Turning to the last tabbed page -- Actually, 6 I'm going to introduce -- or show you what 7 I've marked as Exhibit 3. 8 This document is a memo dated January 9 13, 2016, titled Proposed Statutory Language 10 for Immediate Restoration Based on Consensus 11 of Committee. And it's from two members of 12 the ACLU to the members -- to Mr. Packard 13 and the members of the Exploratory 14 Committee. 15 Is that an accurate description of what 16 this -- 17 A. Yes. 18 MS. MESSICK: Object to the form. 19 Q. And the first line there of this memo is: 20 It appears to be the consensus of the 21 committee that individuals convicted of a 22 disqualifying felony should have their 23 voting rights immediately restored upon the</p>	<p style="text-align: right;">Page 89</p> <p>1 A. But that seems to be. 2 Q. And does that refresh your recollection at 3 all about what the consensus of the 4 committee was coming out of the December 5 meeting? 6 MS. MESSICK: Object to the form. 7 A. You know, we see what we want to see, and 8 I'm thinking that -- when I read this, I was 9 thinking that's what the ACLU wants to 10 believe this is the consensus of the 11 committee, but I don't think it was. I 12 remember thinking that when I read this. 13 Q. Was this proposal discussed at all at the 14 January 20th meeting? 15 A. I'm sorry. I do not remember. 16 Q. I'm going to show you what I'm marking now 17 as Exhibit 4. 18 (Plaintiff's Exhibit Number 4 was marked 19 for identification.) 20 Q. Now, this document appears to be an e-mail 21 exchange between Carol Hill and Mr. Packard 22 about the scheduling of a subcommittee 23 meeting. Is that an accurate reflection of</p>

<p style="text-align: right;">Page 90</p> <p>1 what the document is?</p> <p>2 MS. MESSICK: Object to the form.</p> <p>3 A. Yes.</p> <p>4 Q. And do you recall receiving this e-mail?</p> <p>5 MS. MESSICK: Object to the form.</p> <p>6 A. Yes.</p> <p>7 Q. And if you go to page 2 -- Strike that.</p> <p>8 When did the subcommittee meet?</p> <p>9 MS. MESSICK: Object to the form.</p> <p>10 A. I don't remember.</p> <p>11 Q. Did the subcommittee meet in person at any</p> <p>12 point after the December -- after being</p> <p>13 formed during the December meeting?</p> <p>14 A. Once at least that I remember. It may have</p> <p>15 been the only time.</p> <p>16 Q. And was there -- Do you recall whether there</p> <p>17 was subcommittee business conducted via</p> <p>18 e-mail other than the e-mail that's before</p> <p>19 you?</p> <p>20 MS. MESSICK: Object to the form.</p> <p>21 A. I do not recall. I remember this e-mail. I</p> <p>22 don't remember responding. I don't remember</p> <p>23 receiving any responses from any other</p>	<p style="text-align: right;">Page 92</p> <p>1 meeting could have occurred at a different</p> <p>2 time?</p> <p>3 A. I just -- I can't recall. I would say we</p> <p>4 did meet at one point. I can't remember</p> <p>5 when or how close to the main committee</p> <p>6 meeting we met on the 20th.</p> <p>7 Q. But you have no reason to doubt that it was</p> <p>8 scheduled for 1:00 p.m. on the day of?</p> <p>9 A. I have no reason to doubt that.</p> <p>10 Q. Do you recall -- What was discussed at the</p> <p>11 subcommittee meeting?</p> <p>12 A. Okay. This is not absolute, but I bet you</p> <p>13 this got sent by e-mail. The ACLU memo,</p> <p>14 which is Exhibit 3, was sent by e-mail after</p> <p>15 this e-mail, to everybody on the</p> <p>16 subcommittee.</p> <p>17 Q. Okay.</p> <p>18 A. Probably. So I take back -- I vaguely</p> <p>19 remember that. I don't know if anybody else</p> <p>20 sent any e-mails to the members of the</p> <p>21 subcommittee before we met. Now, back to</p> <p>22 your question. I can't remember.</p> <p>23 Q. What was discussed at the subcommittee</p>
<p style="text-align: right;">Page 91</p> <p>1 members. I just don't remember.</p> <p>2 Q. So your testimony is that there was at least</p> <p>3 one meeting, in-person meeting, of the</p> <p>4 subcommittee?</p> <p>5 A. Yes, that I remember.</p> <p>6 Q. Did that occur immediately prior to the</p> <p>7 January 20th full committee meeting?</p> <p>8 A. I thought it was before. You know, I</p> <p>9 thought this was -- It had to have been</p> <p>10 between this e-mail and the 20th, 2:00 p.m.</p> <p>11 on the 20th.</p> <p>12 Q. And I want to just point you to the</p> <p>13 paragraph on the second page of the e-mail</p> <p>14 which starts, The meeting on January 20,</p> <p>15 2016, is scheduled for 2:00 to 4:00. And it</p> <p>16 goes on to say, Since we have not had the</p> <p>17 opportunity to meet, we have a proposal to</p> <p>18 meet at 1:00 on that day to finalize any</p> <p>19 issues prior to the full committee meeting.</p> <p>20 Do you know if that meeting occurred?</p> <p>21 A. I have no reason to doubt that the meeting</p> <p>22 occurred.</p> <p>23 Q. Do you have any reason to think that the</p>	<p style="text-align: right;">Page 93</p> <p>1 meeting?</p> <p>2 A. Moral turpitude. And it was almost silly.</p> <p>3 I mean, that was when I started thinking</p> <p>4 this is going to be impossible. Because,</p> <p>5 you know, somebody has a strong opinion</p> <p>6 about a particular crime; somebody else</p> <p>7 doesn't. It became almost -- I remember</p> <p>8 feeling -- Well, I've stated my point about</p> <p>9 the history behind moral turpitude, but I</p> <p>10 don't see how I could convince anybody of a</p> <p>11 particular list. I do see certain crimes we</p> <p>12 can agree on should not be on the list. As</p> <p>13 I remember, they were taken off.</p> <p>14 Q. Do you recall which crimes those were?</p> <p>15 A. I'm sorry. I don't.</p> <p>16 Q. Do you recall who had the strong opinions</p> <p>17 about particular crimes?</p> <p>18 A. No.</p> <p>19 Q. Do you recall -- Go ahead.</p> <p>20 A. I don't recall.</p> <p>21 Q. Did you take any notes or otherwise document</p> <p>22 the subcommittee meeting?</p> <p>23 A. I don't believe so. Well, I take that back.</p>

<p style="text-align: right;">Page 94</p> <p>1 I would have written up something to Rich 2 Hobson just to say, hey, this was talked 3 about, I believe. I did that for the main 4 committee meetings, but I'm really reaching 5 here to say that I did it for the 6 subcommittee meeting. Maybe I did. But I 7 would have done it for the main committee 8 meetings. 9 Q. Do you know where those memos would be now? 10 A. In the possession of the director of AOC, on 11 my old computer -- Not on my old computer. 12 On my old hard drive from my computer. 13 Somewhere in the bowels of AOC. 14 Q. Would they have been archived in any way? 15 MS. MESSICK: Object to the form. 16 A. No. They might have been accessed by a new 17 legal director just so that legal director 18 could have some historical knowledge of 19 things that he would have to deal with 20 continually. 21 Q. Did the Administrative Office of the Courts 22 keep historical files on the work that it 23 does on a daily basis?</p>	<p style="text-align: right;">Page 96</p> <p>1 Pardons and Paroles for restoration of 2 voting rights. Do you see that -- 3 A. I do. 4 Q. -- in the minutes? 5 A. I see it. 6 Q. And did Ed Packard make that statement 7 during this meeting? 8 A. I don't want to say. I don't want to say 9 because I just feel like I would be taking a 10 position that I'm not clear on, because I 11 really don't remember. 12 Q. Do you have any reason to doubt the accuracy 13 of these minutes? 14 A. No, I don't. 15 MS. MESSICK: I'm going to object to the 16 form on that one. 17 Q. Was the majority opinion of the subcommittee 18 that the list of crimes of moral turpitude 19 should be limited to those crimes requiring 20 a full pardon by the Board of Pardons and 21 Paroles for restoration of voting rights? 22 A. I just have a problem with it because I -- 23 Wouldn't that just continue the same status</p>
<p style="text-align: right;">Page 95</p> <p>1 A. Not necessarily. I mean, they would keep my 2 hard drive if that's what you're asking. 3 Q. Do you recall if anyone else took notes or 4 otherwise documented the subcommittee 5 meeting? 6 A. No. 7 Q. Let's go back to the January 20th meeting, 8 which is the third tab on that flagged 9 document. Did you attend this meeting? 10 A. It says I did. 11 Q. Do you remember attending this meeting? 12 A. I believe I did, yes. 13 Q. The minutes reflect that Mr. Packard, who 14 was the chair of the subcommittee, provided 15 a summary of the subcommittee's work and 16 discussion about which felony crimes in 17 Alabama should be defined as moral turpitude 18 crimes, and that he related that a majority 19 of the members of the subcommittee were 20 leaning towards defining moral turpitude 21 felonies only as -- I think as only those 22 crimes currently identified in state law as 23 requiring a full pardon from the Board of</p>	<p style="text-align: right;">Page 97</p> <p>1 quo? It doesn't seem like we made any 2 progress if that's the case. 3 Q. Was it your understanding, then, that the 4 only crimes that were disenfranchising at 5 the time of this meeting were those that 6 were defined in state law as requiring a 7 full pardon? 8 MS. MESSICK: Object to the form. 9 A. Well, define full pardon. Again, I'm still 10 working on a faulty memory here. Define 11 full pardon. 12 Q. My understanding is that there are 13 approximately fifteen crimes identified in 14 statute as where you're not eligible for 15 rights restoration unless you apply for it 16 and obtain a full pardon from the Board of 17 Pardons and Paroles. And so my question is: 18 Is your understanding that those were the 19 only disenfranchising crimes at this time? 20 A. No. Can I -- If I'm an ex-inmate, can I -- 21 If I'm not one of those -- If I haven't been 22 convicted of one of those fifteen crimes, 23 can I apply for voting rights that's not</p>

<p style="text-align: right;">Page 98</p> <p>1 full pardon on some other crimes that are</p> <p>2 moral turpitude crimes under the law at that</p> <p>3 time? I'm trying to remember.</p> <p>4 Q. My understanding is that if the process at</p> <p>5 this time, which was new, I believe -- I</p> <p>6 could be wrong -- was that if you had been</p> <p>7 disenfranchised by a conviction for a crime</p> <p>8 of moral turpitude, in order to have your</p> <p>9 voting rights restored, you had to apply for</p> <p>10 a certificate of eligibility from the Board</p> <p>11 of Pardons and Paroles. And in order to be</p> <p>12 eligible for that, you had to have completed</p> <p>13 your sentence, including parole and</p> <p>14 probation, paid restitution and paid court</p> <p>15 fines, fees and costs.</p> <p>16 A. Correct. Right.</p> <p>17 MS. MESSICK: Object to the form.</p> <p>18 Q. But if you were convicted of one of those</p> <p>19 fifteen or so felonies, then you couldn't</p> <p>20 apply for rights restoration. You had to</p> <p>21 apply for a full --</p> <p>22 A. Okay. I've confused certificate of</p> <p>23 eligibility with a full pardon. I'm sorry.</p>	<p style="text-align: right;">Page 100</p> <p>1 do you come up with the committee as agreed.</p> <p>2 Again, I could be operating on faulty -- I</p> <p>3 am operating on faulty memory. I just</p> <p>4 didn't see it as that clear cut. It was a</p> <p>5 little hazier than what I see in the minutes</p> <p>6 here.</p> <p>7 Q. Would you say that the subcommittee didn't</p> <p>8 come to a consensus?</p> <p>9 A. I wouldn't say that. I can't say. Again,</p> <p>10 it's my memory.</p> <p>11 Q. So you can't -- Just to be clear for the</p> <p>12 record, you can't say because you don't</p> <p>13 remember?</p> <p>14 A. I don't remember it being as clear cut as</p> <p>15 stated in the minutes, but I can't say what</p> <p>16 the consensus was, if there even was one.</p> <p>17 Q. Was your understanding that the list of</p> <p>18 crimes that the subcommittee came up with --</p> <p>19 And I'm sorry. This goes more to the</p> <p>20 purpose of the subcommittee than what</p> <p>21 actually happened -- but was intended to</p> <p>22 form the basis for draft legislation that</p> <p>23 the committee would recommend or approve or</p>
<p style="text-align: right;">Page 99</p> <p>1 I really have a problem with this statement</p> <p>2 in the third paragraph of the minutes of the</p> <p>3 January 20th meeting. I don't believe</p> <p>4 that's what the subcommittee -- I mean,</p> <p>5 again, it could be a matter of</p> <p>6 interpretation, perception. But I just -- I</p> <p>7 know I would not have agreed to that.</p> <p>8 Q. Did Mr. Merrill attend the subcommittee</p> <p>9 meeting?</p> <p>10 A. No.</p> <p>11 Q. I want to circle back. The point of the --</p> <p>12 Can you describe again for me the purpose of</p> <p>13 the subcommittee?</p> <p>14 MS. MESSICK: Object to the form.</p> <p>15 A. To come up with a recommended list of crimes</p> <p>16 of moral turpitude.</p> <p>17 Q. And then what was your impression of the</p> <p>18 majority opinion of the subcommittee on</p> <p>19 which crimes should be considered crimes of</p> <p>20 moral turpitude?</p> <p>21 A. Like I said, I thought it was kind of</p> <p>22 hodgepodge. I'll say that. It was as if</p> <p>23 each person had their own opinion. So how</p>	<p style="text-align: right;">Page 101</p> <p>1 sign on to?</p> <p>2 MS. MESSICK: Object to the form.</p> <p>3 A. Here's how I see it. We don't like dealing</p> <p>4 with the subject because it's too difficult.</p> <p>5 We're going to get a subcommittee to do it.</p> <p>6 And then when the subcommittee comes back,</p> <p>7 it doesn't matter. It's just a</p> <p>8 subcommittee. I mean, what power does a</p> <p>9 subcommittee have on the other members that</p> <p>10 didn't form a part of the subcommittee? I</p> <p>11 mean, it's almost like we were just going</p> <p>12 through the motions. Because like I said,</p> <p>13 it's hard to pin you down and you down and</p> <p>14 everybody in this room down on what -- you</p> <p>15 list the list of crimes of moral turpitude</p> <p>16 and then we're all going to decide which</p> <p>17 list is good. Come on. How do you do that?</p> <p>18 Q. Returning to the minutes, the next item in</p> <p>19 the minutes states that Secretary Merrill</p> <p>20 led a discussion of a draft bill prepared by</p> <p>21 Ed Packard that would identify which crimes</p> <p>22 are crimes of moral turpitude.</p> <p>23 A. What was the question?</p>

<p style="text-align: right;">Page 102</p> <p>1 Q. Did Secretary Merrill introduce that draft 2 bill? 3 A. I believe so. 4 Q. Given the timing, there would have been no 5 way for that draft bill to have incorporated 6 the thoughts of the subcommittee; is that 7 correct? 8 MS. MESSICK: Object to the form. 9 A. Well, I don't remember when the meeting was. 10 It could have been right before, so I can't 11 answer that. 12 Q. The minutes represent that the committee 13 then went through the crimes identified in 14 that bill. And although they did not remove 15 any from the list, they added, I think, four 16 crimes and then approved the draft bill with 17 those modifications by unanimous vote. Does 18 that reflect your experience at that 19 committee meeting? 20 MS. MESSICK: Object to the form. 21 A. I can't remember, but I have no reason to 22 doubt what it says here. 23 Q. Did Secretary Merrill take a position on the</p>	<p style="text-align: right;">Page 104</p> <p>1 MS. MESSICK: Object to the form. 2 A. Okay. 3 Q. Do you recall how Secretary Merrill 4 described the draft bill? 5 A. No. 6 Q. Do you recall what was in the draft bill? 7 A. There may have been more than one, so I 8 can't answer that. 9 Q. Do you recall whether that draft bill which 10 I have now just represented to you -- But I 11 don't think this is true. But do you recall 12 whether the draft bill included only the 13 crimes identified as requiring a full 14 pardon? 15 A. I don't think so. I mean, I don't know. I 16 mean, I can't -- I really can't remember. 17 Hold on. Give me a moment. It can't have. 18 Again, I just -- I would have raised a 19 stink. It had to be a more extensive list. 20 Q. Okay. Do you recall any of the discussion 21 around the draft bill? 22 A. I think the folks with the ACLU objected to 23 some parts of it. They were always</p>
<p style="text-align: right;">Page 103</p> <p>1 draft bill? 2 A. No. I don't remember him doing so. 3 Q. Did the committee vote on that bill? 4 A. I have no reason to doubt. I can't imagine 5 me voting in favor, but I don't remember. 6 Q. Why do you think that you would not have 7 voted in favor of that? 8 A. Well, like I said, I didn't agree that every 9 crime present at that time on the list 10 should remain on the list. 11 Q. Do you remember who -- 12 A. This sounds too limited to me. 13 Q. Too limited how? 14 A. Well, if it was only those crimes that 15 required a full pardon. I always thought 16 that was too limited a list. So I wouldn't 17 have voted in favor and I wouldn't have 18 abstained either. 19 Q. My understanding is that the bill that 20 Secretary Merrill introduced was not the 21 same as the proposal that Ed Packard -- or 22 the majority opinion that Ed Packard 23 articulated.</p>	<p style="text-align: right;">Page 105</p> <p>1 advocating for automatic restoration for 2 everything except the fifteen more serious 3 part of full pardon. I think maybe Board of 4 Pardons and Paroles -- There was another 5 person who wasn't normally there who was 6 there for the Board of Pardons and Paroles. 7 I can't remember if that was at the December 8 or January meeting. And so that goes back 9 to the Board of Pardons and Paroles wanting 10 a less onerous process, automatic 11 restoration. It would have been easier. 12 Not necessarily the most principled way to 13 propose a change in the law, but it would 14 have been easier for them. I remember 15 something about that. You know, this is 16 going to really create a lot of work for us. 17 Something -- 18 Q. Do you -- I apologize for speaking over you. 19 Do you recall whether the list of 20 crimes that was in the bill presented by 21 Secretary Merrill was similar to the list in 22 the bill that ended up passing? 23 A. I think so. I don't remember thinking, wow,</p>

<p style="text-align: right;">Page 106</p> <p>1 this is a big difference.</p> <p>2 Q. And that would have been an expanded list</p> <p>3 and not just the full -- the fifteen --</p> <p>4 A. Right.</p> <p>5 Q. -- or so crimes that require a full pardon;</p> <p>6 is that correct?</p> <p>7 A. Right.</p> <p>8 Q. In the bill that finally passed?</p> <p>9 A. Right.</p> <p>10 Q. That actually --</p> <p>11 A. Right.</p> <p>12 Q. And then I'll represent to you, in fact,</p> <p>13 that in prior deposition testimony in this</p> <p>14 case, Mr. Packard testified that he drafted</p> <p>15 that bill prior to the formation of the</p> <p>16 Exploratory Committee. Were you aware of</p> <p>17 that at the time when it was introduced to</p> <p>18 the committee?</p> <p>19 A. Yeah, I think I was. I wouldn't say a</p> <p>20 hundred percent for sure, but, yeah, I think</p> <p>21 I understood that.</p> <p>22 Q. And did you understand that any changes had</p> <p>23 been made to that draft since Mr. Packard</p>	<p style="text-align: right;">Page 108</p> <p>1 draft bill related to rights restoration.</p> <p>2 And it does reflect that the Board of</p> <p>3 Pardons and Paroles attended and commented</p> <p>4 on provisions there as you just testified.</p> <p>5 Does that refresh your recollection of that</p> <p>6 conversation?</p> <p>7 MS. MESSICK: Object to the form.</p> <p>8 A. Not really.</p> <p>9 Q. You stated earlier that automatic</p> <p>10 restoration would not be a principled</p> <p>11 approach.</p> <p>12 A. No, no, no. I didn't say that.</p> <p>13 Q. Okay. Can you explain?</p> <p>14 A. I said if someone argued, it would be</p> <p>15 easier, less work, we just -- and even</p> <p>16 having asked for a restoration of rights,</p> <p>17 that to me is not principled.</p> <p>18 Q. And are you referring to less work for</p> <p>19 people seeking the restoration of their</p> <p>20 rights?</p> <p>21 A. No, no. For the Board of Pardons and</p> <p>22 Paroles. Gosh, we don't want anymore work.</p> <p>23 In fact, we want less work. That would be a</p>
<p style="text-align: right;">Page 107</p> <p>1 had created it based on conversations the</p> <p>2 committee had?</p> <p>3 A. I can't say. I don't know.</p> <p>4 Q. Do you think the work of the committee had</p> <p>5 any impact on that draft legislation other</p> <p>6 than the four crimes that were added</p> <p>7 according to these minutes?</p> <p>8 A. Well, we'd already had three meetings. I</p> <p>9 mean, surely -- I didn't think -- When I saw</p> <p>10 it, I didn't think what's the point of us</p> <p>11 meeting. I didn't think anything like that.</p> <p>12 Q. But you were aware that the draft bill that</p> <p>13 was presented had been drafted prior to the</p> <p>14 formation of the Exploratory Committee?</p> <p>15 MS. MESSICK: Object to the form.</p> <p>16 A. Prior to the very first meeting?</p> <p>17 Q. Correct.</p> <p>18 A. No.</p> <p>19 Q. Did you become aware of that at any point in</p> <p>20 time since then?</p> <p>21 A. Today.</p> <p>22 Q. I want to move on to the last section of</p> <p>23 these minutes, I think, which discussed the</p>	<p style="text-align: right;">Page 109</p> <p>1 very unprincipled way to approach proposed</p> <p>2 legislation.</p> <p>3 Q. What purpose does the application process</p> <p>4 serve?</p> <p>5 MS. MESSICK: Object to the form.</p> <p>6 A. I don't work for Pardons and Paroles. I</p> <p>7 didn't work for Pardons and Paroles.</p> <p>8 Q. In your opinion is there a principled reason</p> <p>9 why individuals should have to apply?</p> <p>10 A. To see if the person has been rehabilitated.</p> <p>11 That's my understanding.</p> <p>12 Q. How does completing the application</p> <p>13 demonstrate whether a person is</p> <p>14 rehabilitated?</p> <p>15 MS. MESSICK: Object to the form.</p> <p>16 A. I don't know.</p> <p>17 Q. The next section states that the committee</p> <p>18 agreed that the bill on rights restoration</p> <p>19 should require people to pay all court</p> <p>20 costs, fines, fees and restitution prior to</p> <p>21 having their rights restored. Does that --</p> <p>22 Do you recall --</p> <p>23 A. I apologize. Can I go back to the last</p>


<p style="text-align: right;">Page 110</p> <p>1 question?</p> <p>2 Q. Yes.</p> <p>3 A. What I meant when I said that about the</p> <p>4 unprincipled and -- or the rehabilitation,</p> <p>5 to see if a person -- That's the entire</p> <p>6 Pardons and Paroles process I'm referring</p> <p>7 to, not just filling out an application.</p> <p>8 Q. Okay.</p> <p>9 So the top paragraph on the final page</p> <p>10 of the minutes states that the committee</p> <p>11 agreed that the bill -- And this is</p> <p>12 referring to the bill related to rights</p> <p>13 restoration -- should state that a person</p> <p>14 must pay all court costs, fines, fees and</p> <p>15 victim restitution prior to having one's</p> <p>16 voting rights restored. The committee</p> <p>17 further agreed, however, that fees assessed</p> <p>18 against an offender after the original</p> <p>19 conviction in the same case should be</p> <p>20 excluded from this requirement.</p> <p>21 Was the majority opinion of the</p> <p>22 committee to require payment of fines and</p> <p>23 fees ordered at conviction prior to</p>	<p style="text-align: right;">Page 112</p> <p>1 paid before --</p> <p>2 A. Yes.</p> <p>3 Q. Before restoration of voting rights?</p> <p>4 A. Yes.</p> <p>5 Q. And why is that?</p> <p>6 A. The money issue and showing that you're a</p> <p>7 responsible citizen. Like I said before,</p> <p>8 that you're ready and willing to pay your</p> <p>9 debts to the State.</p> <p>10 Q. I'm going to show you now two exhibits,</p> <p>11 which I'll mark as Exhibit 5 and Exhibit 6.</p> <p>12 (Plaintiff's Exhibit Numbers 5 and 6</p> <p>13 were marked for identification.)</p> <p>14 Q. These documents appear to be e-mail</p> <p>15 exchanges between Secretary Merrill and Cam</p> <p>16 Ward and David Faulkner regarding the</p> <p>17 Exploratory Committee; is that correct?</p> <p>18 MS. MESSICK: Object to the form.</p> <p>19 A. Appears to be.</p> <p>20 Q. And both emails are part of the same chain</p> <p>21 in which Mr. Faulkner writes requesting a</p> <p>22 sit-down between Secretary Merrill himself</p> <p>23 and Cam Ward to discuss where the committee</p>
<p style="text-align: right;">Page 111</p> <p>1 restitution -- or prior to restoration of</p> <p>2 voting rights?</p> <p>3 A. I don't know. What I'm thinking about is,</p> <p>4 okay, I'm trying to remember what fees get</p> <p>5 assessed after the original conviction in</p> <p>6 the same case. I'm trying to remember when</p> <p>7 that would happen.</p> <p>8 Q. It can be a variety of things. Sometimes</p> <p>9 it's related to --</p> <p>10 A. It can happen. I'm sure it can happen. I</p> <p>11 just -- I should know better --</p> <p>12 Q. -- supervision and --</p> <p>13 A. Having worked for AOC, I should know this --</p> <p>14 You know, that's what I was -- I know AOC</p> <p>15 would not have agreed to that. I can't</p> <p>16 speak for the rest of the committee.</p> <p>17 Q. AOC would not have agreed to this position</p> <p>18 that's stated here in the minutes?</p> <p>19 A. Correct.</p> <p>20 Q. Is that because fees assessed against the</p> <p>21 offender after the original convictions</p> <p>22 should -- It's the position of the AOC that</p> <p>23 those fees should also be required to be</p>	<p style="text-align: right;">Page 113</p> <p>1 is and how we see this from a legislative</p> <p>2 perspective. Do you see that in both</p> <p>3 documents?</p> <p>4 A. Yes.</p> <p>5 Q. And in, I believe, it's Exhibit 5, Secretary</p> <p>6 Merrill responds to Cam Ward and says we</p> <p>7 need to talk about this after the first of</p> <p>8 the year. And in the other, Secretary</p> <p>9 Merrill responds to Mr. Faulkner and says we</p> <p>10 can meet whenever you like and we can come</p> <p>11 to Birmingham if necessary. Is that</p> <p>12 correct?</p> <p>13 MS. MESSICK: Object to the form.</p> <p>14 A. It appears to be what the e-mails say.</p> <p>15 Q. Do you recognize these documents?</p> <p>16 A. Yeah, I think I did see these at the time.</p> <p>17 Q. At the time of the Exploratory Committee?</p> <p>18 A. Well, I mean, at the time -- I would assume</p> <p>19 that Rich Hobson would have forwarded them</p> <p>20 to me since I was the one attending the</p> <p>21 meetings.</p> <p>22 Q. And Rich Hobson is listed as copied on this</p> <p>23 e-mail; is that correct?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. Correct.</p> <p>2 Q. Just to take a quick step back. If you go</p> <p>3 back to the November 18, 2015, minutes, at</p> <p>4 the end of that first paragraph it says,</p> <p>5 Absent from the meeting were Alabama State</p> <p>6 Representatives Chris England, David</p> <p>7 Faulkner and Alabama State Senator Cam Ward?</p> <p>8 A. Correct.</p> <p>9 Q. Is it your understanding that Mr. Faulkner</p> <p>10 and Mr. Ward were members of the Exploratory</p> <p>11 Committee?</p> <p>12 A. Yes. But I would have to see an official</p> <p>13 list to be sure I was correct on that.</p> <p>14 Q. Did you ever attend any meetings between</p> <p>15 Secretary Merrill and Mr. Ward or</p> <p>16 Mr. Faulkner related to the business of the</p> <p>17 committee?</p> <p>18 A. No.</p> <p>19 MS. MESSICK: Object to the form.</p> <p>20 Q. Did Secretary Merrill ever include you on</p> <p>21 any conversations with Mr. Ward and</p> <p>22 Mr. Faulkner related to the business of the</p> <p>23 committee separate from other members of the</p>	<p style="text-align: right;">Page 116</p> <p>1 he meant. I don't know. Because it's not</p> <p>2 just some presumption and thinking bad of</p> <p>3 someone. It's the way it works. People</p> <p>4 propose all kinds of things to the</p> <p>5 legislators all day long during a session,</p> <p>6 outside of a session. They have to hear</p> <p>7 their constituents. They have to hear</p> <p>8 interested parties. When the rubber meets</p> <p>9 the road, it's when that vote happens that</p> <p>10 matters. So a committee could be unanimous.</p> <p>11 This is the absolute most perfect</p> <p>12 legislation that Alabama could ever have and</p> <p>13 the legislature say, No, we disagree,</p> <p>14 because we're the legislators. We're the</p> <p>15 elected representatives of the people.</p> <p>16 I was just a guy that happened to work</p> <p>17 for the State of Alabama that got the job of</p> <p>18 going to a meeting. I'm nobody. So how</p> <p>19 could I have any authority or power to force</p> <p>20 recommendations for anything. It's</p> <p>21 ridiculous to think that.</p> <p>22 Q. Did you ever communicate with State</p> <p>23 Representative England, Faulkner or State</p>
<p style="text-align: right;">Page 115</p> <p>1 committee?</p> <p>2 A. No.</p> <p>3 Q. But you were forwarded these emails by</p> <p>4 Mr. Hobson?</p> <p>5 MS. MESSICK: Object to the form.</p> <p>6 A. I saw them at the time, so they had to be</p> <p>7 forwarded to me by Rich Hobson. I'm just</p> <p>8 making a logical assumption.</p> <p>9 Q. Do you know if the meeting that's referenced</p> <p>10 in these emails between Mr. Merrill and</p> <p>11 Mr. Ward and Mr. Faulkner ever took place?</p> <p>12 A. I have no idea.</p> <p>13 Q. Do you know what Mr. Faulkner means by "how</p> <p>14 we see this from the legislative</p> <p>15 perspective"?</p> <p>16 A. As I told you before, the committee can</p> <p>17 propose whatever it wants, but the</p> <p>18 legislature has the final say.</p> <p>19 Q. And just for the record, that's your</p> <p>20 opinion. I'm not trying to ask you to read</p> <p>21 Mr. Faulkner's mind as the --</p> <p>22 A. No. I can state that from my experience</p> <p>23 with the legislature. That's probably what</p>	<p style="text-align: right;">Page 117</p> <p>1 Senator Cam Ward about the business of the</p> <p>2 subcommittee -- or of the committee? I'm</p> <p>3 sorry.</p> <p>4 MS. MESSICK: Object to the form.</p> <p>5 A. I don't remember, but I could have. I just</p> <p>6 don't remember. Because I dealt with</p> <p>7 Senator Ward quite a bit since he was head</p> <p>8 of the judiciary committee for the Senate.</p> <p>9 So there's no telling. But he was hard to</p> <p>10 get to sometimes. Maybe not.</p> <p>11 Representative Faulkner, he was a</p> <p>12 member of the judiciary committee in the</p> <p>13 house. I dealt with him on a couple of</p> <p>14 issues, but I don't remember talking to him</p> <p>15 about this, but I could have. I really</p> <p>16 could have just in passing even and just not</p> <p>17 remember. I'm not saying I did or didn't.</p> <p>18 Q. Do you remember having any conversation with</p> <p>19 Representative England about it, about the</p> <p>20 committee?</p> <p>21 A. Well, now, Representative England was also</p> <p>22 on the judicial committee, I believe, for</p> <p>23 the House. I've talked with him about</p>

<p style="text-align: right;">Page 118</p> <p>1 different issues. I might have. I just 2 don't remember. 3 Q. Did you ever communicate with Secretary 4 Merrill about the work of the committee 5 separately from other members of the 6 committee? 7 A. No, I don't remember. I don't think it 8 would have been wrong of me to. I knew him. 9 I don't remember anything like that. 10 Q. Did you ever have any conversations or 11 communicate with Mr. Merrill about the issue 12 of felony disenfranchisement other than the 13 work of the committee? 14 MS. MESSICK: Object to the form. 15 A. You mean outside the meetings? 16 Q. Yes. 17 A. It's possible. I just don't remember. It 18 would have been something -- If it happened, 19 it would have been to the effect of you know 20 the court system's position and the court's 21 fines and fees and costs and all that. That 22 was pretty well known. But if I had, it 23 might have been reemphasizing. But I can't</p>	<p style="text-align: right;">Page 120</p> <p>1 communicated about the work of the 2 committee and one was have you 3 communicated about felony 4 disenfranchisement separate from the 5 work of the committee. Those were 6 the two conversations I was trying to 7 nail down. 8 A. The only thing I would say would be 9 speculation. I could have. It would have 10 been brief and philosophical. I can't say. 11 Q. You don't recall any specific instances? 12 A. No. 13 Q. Have you ever worked on any political 14 campaigns? 15 A. Yes. 16 Q. Which campaigns? 17 A. Perry Hooper, Sr., who ran for chief justice 18 in 1994; Judge Roy Moore who ran for Senate 19 and special elections 2017; Debra Jones, the 20 circuit court judge. The county that 21 Anniston is in. I can't remember the name 22 of the county. She ran for supreme court 23 justice in 2018. I don't remember any</p>
<p style="text-align: right;">Page 119</p> <p>1 remember having any actual discussions with 2 him by phone or any other way about it 3 outside the meetings. Because I felt like 4 the meetings were free and open. We could 5 state our opinion. Why would you need to 6 talk to anybody on the side? So I don't 7 know. I don't remember. But I don't think 8 so. 9 Q. Okay. Did you ever communicate with 10 Mr. Ward about issues related to felony 11 disenfranchisement outside the work of the 12 committee? 13 A. Same answer. 14 MS. MESSICK: Object to the form. 15 You've just gone through this. You 16 just went through Cam -- Senator Ward 17 and Representative Faulkner and then 18 Secretary Merrill twice and now 19 you've circled back to Cam Ward. 20 Unless there's a difference in the 21 question I'm not hearing. 22 MS. DANAHY: I'm sorry. I'm asking a 23 different question. One was have you</p>	<p style="text-align: right;">Page 121</p> <p>1 others except a mayoral election when I was 2 in law school in Tuscaloosa, or a city 3 counsel election or something. 4 Q. Do you recall during the Roy Moore campaign 5 when he -- Let me take a step back. 6 What was your role in the campaign? 7 A. Volunteer. 8 Q. Volunteer? 9 A. Yeah. How do you need me to help? What can 10 I do? 11 Q. Did that involve door knocking? 12 A. I wasn't really into door knocking. 13 Q. What did you do? 14 A. I did help with -- I guess I did get an 15 official position after the election and 16 that was to check into the integrity of the 17 election and to see if any complaints by 18 voters that there may have been voter fraud, 19 this or that, to see if there was and 20 provide a legal mechanism for a challenge to 21 the election of Jones. 22 Q. Do you remember the nature of any of those 23 complaints?</p>

<p style="text-align: right;">Page 122</p> <p>1 A. Yes, I do. I saw a table -- I'm quoting a 2 person. I saw a table with all these 3 driver's licenses on it and they looked like 4 they were from out of state. Okay. Thank 5 you for that information. I saw a whole bus 6 load of people show up and they all got out. 7 I think they were from Mississippi. How do 8 you know they were from Mississippi? Okay. 9 Dead end there. Things like that. 10 Q. Did you find anything credible? 11 A. Oh, yeah, there was credible. But we're 12 talking 20 something thousand votes that had 13 to be overcome. And in Alabama you've got 14 to come into court and say we found 20 15 something votes plus one in favor -- against 16 Jones, in favor of Moore. No way. 17 Q. Do you recall during the campaign when 18 Mr. Moore Tweeted -- Breaking -- And I'm 19 quoting here. Breaking, Democratic 20 operatives in Alabama are registering 21 thousands of felons all across the state in 22 an effort to swing the U.S. Senate election 23 to Doug Jones?</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. -- intentional -- 2 A. No. 3 Q. -- registration of ineligible voters? 4 A. No. 5 Q. Is there anything wrong with registering 6 eligible felons? 7 A. Eligible felons? No. Ex-felons? No, of 8 course not. 9 Q. And what about eligible felons who are still 10 serving time but weren't disqualified? 11 A. Say that again. 12 Q. I apologize. That was very confusing. What 13 about registering eligible voters who have 14 been convicted of felony convictions and are 15 still in jail, but whose convictions were 16 not disqualified? 17 A. No problem there. 18 MS. DANAHY: Okay. I don't think I have 19 anything further. 20 MS. MESSICK: Great. Thank you. We're 21 going to have some quick questions. 22 Does anybody need just a five minute 23 break or are we ready to go?</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Uh-huh (positive response). 2 Q. What was he referring to there? 3 MS. MESSICK: Object to the form. 4 A. You have to ask him. 5 Q. Do you think that Democratic operatives in 6 Alabama were registering thousands of felons 7 across the state? 8 A. Uh-huh (positive response). 9 Q. Do you think that they were doing so 10 lawfully? 11 A. Uh-huh (positive response). 12 Q. Do you think that there was operatives doing 13 unlawful registration work of -- 14 A. I can't speak for them; I can't speak 15 against them. I mean, I could see a mistake 16 happening because the law had just changed 17 for moral turpitude, if you could get their 18 rights back, some -- I don't know. Maybe 19 mistakes happen. I wouldn't accuse 20 anybody purposely. 21 Q. That was going to be my next question. Did 22 you see any evidence of purposeful -- 23 A. No.</p>	<p style="text-align: right;">Page 125</p> <p>1 MS. DANAHY: I'm happy to power through. 2 EXAMINATION 3 BY MS. MESSICK: 4 Q. You mentioned that you met Reverend Kenneth 5 Glasgow at the first meeting and he told you 6 his story. Can you briefly tell us who he 7 is? 8 A. He's a pastor down in, I think, Dothan. A 9 black man. He's been to prison and he said 10 he became a Christian, got born again, in 11 prison and his life changed. He became a 12 model prisoner. He became somebody the 13 guards trusted and gave all kinds of 14 responsibilities. It was just a turn 15 around. Guards that used to regard him as 16 suspicious. It was a fantastic turn around. 17 It was a real miracle story, a person's 18 life. 19 And then when he got out, he also 20 started a ministry at some point to help 21 ex-felons find jobs and get their lives 22 straight and live a life of responsibility. 23 I know he was one of the people going around</p>

<p style="text-align: right;">Page 126</p> <p>1 registering people to vote. I thought, man. 2 Makes sense to me. 3 Q. Did he specifically work to help felons 4 register to vote? 5 A. I'm sure he did. That was his mission in 6 life, I think, was to help them get on their 7 feet and be normal people again. 8 Q. And he -- Representatives of the ACLU and 9 representatives of the Alabama Appleseed 10 Foundation were all on this Exploratory 11 Committee? 12 A. Yes. 13 Q. Would you say that there were diverse views 14 invited to participate in the committee? 15 A. Just about every person on the committee had 16 a diverse -- a different view from everybody 17 else in some shade. 18 Q. Were there any instances that you can 19 remember at committee meetings where 20 somebody wanted to express their views to 21 the committee and they were prohibited from 22 doing so? 23 A. Never. It was very open, friendly.</p>	<p style="text-align: right;">Page 128</p> <p>1 reason to disagree with what the memo says. 2 Q. You talked a lot about the process -- So 3 there's a certificate of eligibility to 4 register to vote that gets you your voting 5 rights back as a faster alternative to a 6 pardon. And you talked a lot about wanting 7 to speed up that process. I will represent 8 to you that the final bill that passed eased 9 the process by reducing which fines and fees 10 and restitution and all had to be paid, 11 taking it from court ordered moneys for all 12 of your convictions to just court ordered 13 moneys on their disenfranchising felons. 14 Do you remember any discussion of the 15 committee about that change? 16 A. And you're talking about the change in 17 easing the process? 18 Q. Right. 19 A. Yes, there was discussion. 20 Q. Do you remember what the position of the AOC 21 was with respect to whether court ordered 22 moneys needed to be paid on the 23 nondisqualifying conviction so if somebody</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. You talked a lot about that fines are 2 punishment, that costs and fees are not 3 punishment. Do you remember any discussion 4 of restitution with respect to restoration 5 of voting rights? 6 A. Separate from fines? 7 Q. Yes. Restitution to the victim. 8 A. It seems like there was separate -- not 9 separate, but just adjoining discussion. 10 Actually, each category. I guess you could 11 say fines was one category, restitution was 12 another, cost and fees are another. I think 13 briefly there was some discussion about 14 restitution itself. 15 Q. Exhibit 3 was represented to be a memo from 16 some people with the ACLU, and it appears -- 17 It appears to me, as I read this, the ACLU 18 accepted that restitution would have to be 19 paid. Was it your understanding that the 20 ACLU accepted restitution as part of 21 restoration, restitution being paid as a 22 part of restoration of rights? 23 A. I think so. I believe so. I don't have any</p>	<p style="text-align: right;">Page 129</p> <p>1 had a felony that wasn't disqualify or had 2 misdemeanors that had court ordered moneys? 3 A. I don't know why we would be even talking 4 about it because they weren't 5 disenfranchising. 6 Q. So when the certificate process was first 7 created in 2003, it required payment of all 8 court ordered moneys that a person owed. If 9 you were disenfranchised on the basis of a 10 felony conviction, you had to pay all your 11 court ordered moneys, even if some of those 12 moneys were related to nondisenfranchising 13 felonies or to misdemeanors. And so my 14 question is: Do you remember that aspect of 15 this legislative change? 16 A. Either there's a flaw in my memory or there 17 was a flaw in my thinking at the time and I 18 missed that, because that would have been a 19 great argument that I did not make. But I 20 don't remember us talking about those other 21 nondisenfranchising crimes and -- Yeah, 22 you're right. That would create a disparity 23 between -- Yeah. I don't remember that</p>

<p style="text-align: right;">Page 130</p> <p>1 being discussed. I'm sorry. I don't think</p> <p>2 it was discussed actually.</p> <p>3 Q. Okay. Thank you.</p> <p>4 You were asked about memos that you</p> <p>5 would have written to Rich Hobson</p> <p>6 summarizing the committee meetings. You're</p> <p>7 a lawyer; right?</p> <p>8 A. Yes.</p> <p>9 Q. And was Rich Hobson your client?</p> <p>10 A. I mean, I advised him, but, no. I would</p> <p>11 consider the entire court system and AOC my</p> <p>12 client, and more importantly the chief</p> <p>13 justice, who is obligated under law to</p> <p>14 liaise with the legislature. So it's not</p> <p>15 that simple. But, yeah, he was part of my</p> <p>16 client I guess you would say.</p> <p>17 Q. You may have already addressed this, but you</p> <p>18 were asked how filling out an application is</p> <p>19 proof of rehabilitation. Isn't it true that</p> <p>20 it's not about filling out the piece of</p> <p>21 paper. It's about the information in it;</p> <p>22 right? It's about what the answers to the</p> <p>23 questions are as to whether somebody is</p>	<p style="text-align: right;">Page 132</p> <p>1 today.</p> <p>2 (Deposition was concluded at 6:09 p.m.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
<p style="text-align: right;">Page 131</p> <p>1 eligible --</p> <p>2 MS. DANAHY: Object to the form.</p> <p>3 Q. -- that they meet the criteria to have their</p> <p>4 voting rights restored?</p> <p>5 A. What I tried to clarify was that it's the</p> <p>6 whole process, which would include the</p> <p>7 answers to the questions.</p> <p>8 MS. MESSICK: We don't have any further</p> <p>9 questions.</p> <p>10 MS. DANAHY: I just have one follow-up.</p> <p>11 EXAMINATION</p> <p>12 BY MS. DANAHY:</p> <p>13 Q. When restitution was discussed by the</p> <p>14 committee as a requirement for rights</p> <p>15 restoration, did the committee discuss</p> <p>16 ability to pay in the context of restitution</p> <p>17 at all?</p> <p>18 A. I can't remember. I mean, the ability to</p> <p>19 pay was discussed in the context of</p> <p>20 everything. I can't say it was singled out</p> <p>21 from this or that.</p> <p>22 MS. DANAHY: Okay.</p> <p>23 MS. MESSICK: Thank you for your time</p>	<p style="text-align: right;">Page 133</p> <p>1 CERTIFICATE</p> <p>2 STATE OF ALABAMA)</p> <p>3 COUNTY OF MONTGOMERY)</p> <p>4</p> <p>5 I hereby certify that the above and</p> <p>6 foregoing deposition was taken down by me in</p> <p>7 stenotype, and the questions and answers</p> <p>8 thereto were reduced to typewriting under my</p> <p>9 supervision, and that the foregoing</p> <p>10 represents a true and correct transcript of</p> <p>11 the deposition given by said witness upon</p> <p>12 said hearing.</p> <p>13 I further certify that I am neither of</p> <p>14 counsel nor kin to the parties to the action,</p> <p>15 nor am I in any way interested in the result</p> <p>16 of said cause.</p> <p>17</p> <p>18</p> <p>19 </p> <p>20 KIRSTIE PEARSON</p> <p>21 CERTIFIED COURT REPORTER</p> <p>22 LICENSE #516</p> <p>23 EXPIRATION: 09/30/2019</p> <p>NOTARY PUBLIC</p> <p>COMMISSION EXPIRATION: 09/12/2022</p>

[01/13/16 - ago]

Page 134

0	20 91:14 122:12,14	4:00 91:15	87:15 88:18,20
01/13/16 3:16	20005 2:14	5	89:23
09/12/2022 133:21	2003 129:7	5 3:9,18 112:11,12	accusation 57:1
09/30/2019 133:20	2005 2:7	113:5	accuse 123:19
1	2013 13:19	501 1:19 2:22	aclu 73:11 87:12
1 3:14 33:23 34:1	2015 29:20 34:14	516 133:20	89:9 92:13 104:22
52:22 85:5	45:22 50:7 54:2	52 3:15	126:8 127:16,17,20
10 1:20	55:15 58:14 86:19	6	acting 21:10 70:5
105 83:8	114:3	6 3:19 112:11,12	action 1:7 28:22
1101 2:13	2016 13:13,19 87:9	6:09 132:2	133:14
112 3:18,19	91:15	8	active 28:15,19
12/09/15 3:15	2017 11:1 120:19	87 3:16	actual 119:1
124 3:10	2018 120:23	89 3:17	add 35:4
13 87:9	2019 1:20	9	added 102:15
131 3:9	202-736-2200 2:15	9 54:2 55:15	107:6
1400 2:6	202-856-7911 2:8	9th 60:4,7	address 70:10 73:7
1411 2:6	20th 89:14 91:7,10	a	addressed 70:18
14st 2:13	91:11 92:6 95:7	ability 8:13 41:13	130:17
1500s 48:22	99:3	able 6:9 8:17 24:1	adequately 15:15
15th 34:17 35:1,7	21 50:6	75:20	40:20
35:12 36:10,14	21st 53:2 59:20	absent 114:5	adjoining 127:9
16 13:7	65:17 77:5 85:5	absolute 92:12	administrative
17 11:2 13:8	27 28:17	116:11	13:16,22 17:14
1700s 48:23	28 29:2	absolutely 26:8	18:15 20:2 21:5
18 34:13 45:22	2:00 91:10,15	80:5	31:9 39:9,23 41:4
58:14 65:13 114:3	2:16:783 1:8	abstained 103:18	46:9,22 47:2 66:11
182 57:4	3	accepted 127:18,20	66:12 74:23 94:21
18324 133:18	3 3:16 13:19 84:6	access 19:15	adoption 54:12,14
18th 35:11 38:5	87:3,7 92:14	accessed 94:16	advance 11:8
52:20,23 65:17,18	127:15	account 69:17,18	advances 12:13
1901 54:16,20	33 3:14	accuracy 96:12	advised 130:10
55:10 56:5 57:2	334 3:1,2	accurate 44:22	advocate 66:22
63:15	353-8400 3:2	51:18,21 54:18	advocated 37:10
1987 9:5	353-8674 3:1	55:6 58:2 77:14	advocating 105:1
1994 120:18	36104 2:23	79:8 84:13,20 85:9	afford 39:14
1:00 91:18 92:8	3:05 1:21		afternoon 5:15
2	4		ag 86:10
2 3:15 45:23 51:23	4 3:17 89:17,18		ag's 85:14
52:1 54:11 58:21	400 2:13		ago 6:4 9:16 20:4
65:16 77:8 90:7			25:10,11 33:18
			50:4

[ago.state.al.us - backwards]

Page 135

ago.state.al.us 3:3 3:4 agree 31:13 64:5 93:12 103:8 agreed 4:2,18 5:3 74:7 79:13 80:8 99:7 100:1 109:18 110:11,17 111:15 111:17 agreement 1:15 74:10 79:5 ahead 8:9 41:21 93:19 ain't 83:12,19 air 28:15,16 29:3 al 1:5,9 2:23 alabama 1:2,9,17 1:18,20 4:10 9:1,4 10:13 13:16 14:7 14:11 15:11,18 16:3 23:2,14 24:14 29:6 31:5 33:7 35:20,22 40:5,6,7 42:22 43:9,17 44:3 44:13 48:10 50:11 50:18 52:11 53:10 53:17 54:16 55:1 55:12 56:8 58:19 59:16,23 60:15,19 62:13,21 63:8 75:4 85:20 95:17 114:5 114:7 116:12,17 122:13,20 123:6 126:9 133:2 alabama's 63:5 64:12 allowed 23:10,11 43:19 44:5 alternative 128:5 analyses 16:5	anniston 120:21 answer 6:21 8:8,9 8:14,17 13:9 30:12 44:6 58:5 69:23 70:14,16 72:10,12 102:11 104:8 119:13 answering 6:15 7:13 55:4 88:12 answers 6:10,16,19 130:22 131:7 133:6 anybody 13:9 45:6 76:17 92:19 93:10 119:6 123:20 124:22 anymore 11:17 19:16 108:22 anyway 67:16 aoc 16:7 18:12 24:8 29:16 35:23 41:9 41:13 42:2 66:19 68:15 79:15 85:12 94:10,13 111:13,14 111:17,22 128:20 130:11 aoc's 79:5,13 apologize 54:3 59:19 105:18 109:23 124:12 appear 112:14 appearances 2:1 appears 34:4 87:20 89:20 112:19 113:14 127:16,17 appellate 67:8 appleseed 52:11 59:13,18 126:9 application 50:17 109:3,12 110:7 130:18	applied 57:3 apply 97:15,23 98:9,20,21 109:9 appointees 67:5 appointment 22:6 appreciate 19:13 approach 108:11 109:1 approve 100:23 approved 102:16 approximately 1:21 9:11 30:6 97:13 april 11:1 13:7 archived 94:14 argue 70:5,8 72:4 argued 108:14 argues 71:23 argument 129:19 articulated 103:23 aside 81:12 asked 7:9 16:16 21:9 33:2 79:10 80:17 81:7 108:16 130:4,18 asking 6:7 7:21 15:8 19:8,9 39:3 41:22 88:14,16,19 95:2 119:22 aspect 74:6 129:14 aspects 50:10 assertion 20:14 assessed 110:17 111:5,20 assisted 14:2 associated 15:17 assume 7:8 19:14 53:18 54:3,5 113:18 assumption 60:20 61:21 62:6,11 63:4	64:14,15 115:8 attend 29:23 95:9 99:8 114:14 attended 24:12 38:3 108:3 attending 29:16 95:11 113:20 attention 45:20 attest 56:21 attorney 1:18 2:21 5:20 25:7 31:8 51:18 authority 116:19 automatic 37:10 65:20,22 66:13 68:17,18,20 72:20 72:22 73:4,17 78:2 105:1,10 108:9 automatically 19:17 avenue 1:19 2:22 aware 28:1 106:16 107:12,19
b			
back 9:16 33:17 39:5 47:5 48:20 49:1 52:20 57:23 58:13 63:21 65:13 71:7 77:4 85:5 92:18,21 93:23 95:7 99:11 101:6 105:8 109:23 114:2 114:3 119:19 121:5 123:18 128:5 background 8:21 28:10,13 38:14 52:9 backward 48:16 backwards 13:12 48:17			

[bad - chief]

Page 136

bad 70:11 116:2 balance 67:7 balances 88:3,4 bar 70:3,15 barely 19:18 bargain 41:14 bargaining 40:9,11 40:16 75:3 based 23:17 24:14 24:21 29:21 36:23 54:22,22 60:19 63:6,6 75:23 76:18 76:21 79:6 80:4 83:3 87:10 107:1 bases 12:8,9 basically 14:10 26:1 75:11 basis 55:11 60:16 60:18 62:22 64:1 65:2 94:23 100:22 129:9 battle 15:10,16 beard 22:1 began 50:9,13 beginning 36:23 behalf 24:10 behavior 45:18 believe 19:2 24:3 24:19 25:8,12 29:9 30:1 32:8 72:6 80:23 85:1 89:10 93:23 94:3 95:12 98:5 99:3 102:3 113:5 117:22 127:23 believed 64:1 beneficence 15:12 benefit 12:13 best 6:15 7:4 20:21 50:2,22 72:13	bet 92:12 better 72:7 76:10 88:22,23 111:11 beyond 33:11 60:3 60:7 biased 79:3 bid 9:22 bids 9:21 big 61:2 106:1 biggest 40:6 bill 101:20 102:2,5 102:14,16 103:1,3 103:19 104:4,6,9 104:12,21 105:20 105:22 106:8,15 107:12 108:1 109:18 110:11,12 128:8 birmingham 113:11 bit 10:18 11:4 33:11 35:14 48:13 48:14 50:19 74:19 117:7 black 54:23 55:12 56:7 57:19 58:4 63:7 125:9 blacks 57:19 board 23:12 31:21 31:22 71:9 72:3,23 95:23 96:20 97:16 98:10 105:3,6,9 108:2,21 boil 75:9 born 125:10 boss 22:6,8 24:11 38:20 bottom 9:5 40:2,4 47:6 77:8 85:6 bowels 94:13	branch 14:6 branches 75:4 break 7:14,17 58:7 58:10 124:23 breaking 122:18,19 breaks 7:11 brief 29:4,7 120:10 briefly 125:6 127:13 bring 16:17 brought 33:16 73:12 77:9 84:2 bubble 50:19 budget 14:13,14 15:10 bus 122:5 business 9:19 90:17 114:16,22 117:1 busy 28:6	case 4:20,22 5:21 6:5 11:20 19:11,14 20:8 24:18 25:4 26:2,5 27:11 31:14 31:15 55:19 56:3,9 97:2 106:14 110:19 111:6 cases 51:20 category 127:10,11 cause 133:16 center 2:5,12 52:11 59:18 centered 54:6 centuries 50:4 certain 14:22 16:16 31:18 50:23 64:2 65:3 93:11 certificate 98:10,22 128:3 129:6 certified 1:16 4:8 133:19 certify 133:4,13 chain 112:20 chair 95:14 chairman 80:23 challenge 121:20 chance 19:18 34:4 change 105:13 128:15,16 129:15 changed 123:16 125:11 changes 106:22 character 44:15 characterization 77:16 charge 84:14 charged 14:3,4,15 check 17:1 19:12 121:16 chief 21:10,12 67:7 120:17 130:12
		c 133:1,1 call 45:20 48:21 51:8 66:20 68:12 79:10 called 28:20 cam 112:15,23 113:6 114:7 117:1 119:16,19 campaign 2:5,12 121:4,6 122:17 campaignlegal.org 2:16 campaignlegalce... 2:9 campaigns 120:14 120:16 carefully 80:7 carol 84:17 89:21 carrot 75:14 carrots 76:2,9	

[chips - conversation]

Page 137

chips 40:16 chris 114:6 christian 125:10 church 10:18 circle 99:11 circled 119:19 circuit 35:19 67:3 67:10 79:16 120:20 circulated 52:17 citizen 23:14 43:6 43:10,11,15 65:23 68:22 112:7 citizens 42:7 58:4 citizenship 42:6 46:14 city 121:2 civil 1:7 4:7 6:5 58:2 civilian 29:6 claim 48:11 clarified 31:12 clarify 7:4 24:4 35:6 36:7 45:10 64:9 131:5 class 9:5 clear 32:13,21 33:6 36:6,11 85:2 96:10 100:4,11,14 clearer 31:19 clerk 35:19 67:3 79:16 clerks 67:10 client 130:9,12,16 close 27:23 92:5 code 28:23 coleman 84:19 collect 16:21 76:19 college 8:23 come 24:23 50:20 64:6 82:8 83:9 99:15 100:1,8	101:17 113:10 122:14 comes 10:14 101:6 coming 68:3 89:4 commencing 1:21 comment 64:10 commented 108:3 commission 4:11 133:21 commissioner 1:17 4:9 commit 64:21 committed 43:1 68:9 committee 3:14 21:20 24:8 26:5 27:16,20 28:2 29:10,18 30:7,11 30:14 31:1 33:14 34:6 35:14 36:5,15 37:20 38:17 39:2 39:16 40:1 47:7,22 50:7 52:18 59:14 59:17 60:8,10 61:13,16 63:21 70:17 72:9,13,20 73:4 77:21 78:12 78:14,19,23 79:1,3 79:22,23 80:1,5 81:17 82:4,6,13,15 85:10 86:2,7,16 87:11,14,21 89:4 89:11 91:7,19 92:5 94:4,7 100:1,23 102:12,19 103:3 106:16,18 107:2,4 107:14 109:17 110:10,16,22 111:16 112:17,23 113:17 114:11,17 114:23 115:1,16	116:10 117:2,8,12 117:20,22 118:4,6 118:13 119:12 120:2,5 126:11,14 126:15,19,21 128:15 130:6 131:14,15 committee's 79:9 committees 21:16 common 61:20,22 62:5,8,11,17 commonly 61:23 commonsense 76:18,21,22 77:2 communicate 116:22 118:3,11 119:9 communicated 120:1,3 communities 67:21 68:5,10 community 70:11 company 9:17,22 comparison 85:15 complaints 67:14 121:17,23 completed 65:23 78:3 98:12 completely 80:14 completing 109:12 completion 68:21 88:1 comprehensive 51:17 computer 17:1,4,6 17:11,12,16,17 18:1,9 94:11,11,12 concern 32:5,6,9 60:17 64:11 concerned 39:22 60:22,22 68:4	concerns 60:23 84:11 concluded 132:2 condition 41:7 66:16 78:7 conditioning 76:12 conducted 90:17 confused 98:22 confusing 124:12 consensus 82:1 87:10,20 89:3,10 100:8,16 consider 11:9 130:11 considered 20:18 32:18,23 49:20 51:6,8 99:19 constituents 116:7 constitute 47:8,23 constituted 32:14 33:9 48:4 constitution 11:20 15:13 54:17,21 55:10 56:5 57:2 constitutional 14:9 23:17 40:21 63:16 88:8 context 131:16,19 continually 94:20 continue 85:17 96:23 continuing 15:10 contract 9:20 contracts 9:18 16:5 controversial 40:4 convened 29:19 convention 63:16 64:8 conversation 24:21 25:1,20 26:9,14 53:21 54:10 66:2
---	--	--	--

[conversation - defendant's]

Page 138

108:6 117:18 conversations 25:13 27:10 70:21 107:1 114:21 118:10 120:6 convicted 23:6 43:18 44:2,14 87:21 97:22 98:18 124:14 conviction 23:9 44:19 98:7 110:19 110:23 111:5 128:23 129:10 convictions 111:21 124:14,15 128:12 convince 93:10 copied 113:22 copy 19:23 27:3 correct 17:9 18:14 22:13 24:18 29:14 34:7,14,18 37:23 46:6 47:11 52:13 53:10 57:5 59:3,19 60:4 61:19 63:17 63:20 66:8 75:5,11 80:20 86:11 88:9 98:16 102:7 106:6 107:17 111:19 112:17 113:12,23 114:1,8,13 133:9 correctly 50:21 72:4 85:3 cost 43:4 127:12 costs 23:10 40:3,23 41:6,12,18 42:5,10 42:18,20 43:5 46:4 46:15 67:19 69:5 71:20 74:5,7,15 81:22 98:15 109:20 110:14 118:21 127:2	counsel 4:3,19 11:1 24:22 25:1,14 27:11 121:3 133:14 country 11:10 county 35:20 67:2 120:20,22 133:3 couple 29:5 38:2 51:13 83:20 86:18 117:13 course 16:2,4 19:3 28:18 60:21 124:8 court 1:1,16 4:9 6:8 14:7 15:10 23:9 28:18,22 29:17 31:21 40:3,5,23 41:6,12,18 42:5,10 42:18,20 43:5 46:4 46:15 51:20 55:21 56:15 66:16,19 67:19 69:5,16 71:19 74:5 76:1,19 81:22 83:15 88:3,5 98:14 109:19 110:14 118:20 120:20,22 122:14 128:11,12,21 129:2 129:8,11 130:11 133:19 court's 39:11 118:20 courts 13:17,23 14:13 15:14,18,21 16:3 17:15 18:16 21:5 31:9 39:10 40:1,7 41:1,4 46:9 46:22 47:3 66:11 66:12 67:8 74:23 85:20 94:21 cover 43:3 crazy 15:4	create 16:2,8 105:16 129:22 created 82:16 107:1 129:7 creation 84:7 credible 122:10,11 crime 43:1 44:2 49:12,20 93:6 98:7 103:9 crimes 20:17,19 23:19 24:1,16 28:9 31:18 32:13,18,22 32:23 33:8,9 37:4 37:20,21 43:1,22 47:8,9,23 48:4,4 49:5,6,9,9 50:23 51:2,5,6,9,14 54:14 54:22 55:7 56:4 64:2,3 68:10 84:10 85:13 93:11,14,17 95:16,18,22 96:18 96:19 97:4,13,19 97:22 98:1,2 99:15 99:19,19 100:18 101:15,21,22 102:13,16 103:14 104:13 105:20 106:5 107:6 129:21 criminal 28:10,14 28:18 29:1,2,7 31:20 42:3,21 63:5 64:12 68:8 criminalize 64:23 criminals 68:3 criteria 131:3 current 10:7 20:23 21:1 23:1 currently 9:6 10:11 10:16 38:21 95:22 cut 100:4,14	d daily 94:23 danahy 2:11 3:9 5:14,20 7:17 8:5 53:13 58:10,21 66:8 88:16,19 119:22 124:18 125:1 131:2,10,12 131:22 danielle 2:4 date 28:3 dated 54:2 87:8 david 112:16 114:6 day 91:18 92:8 116:5 dc 2:7,14 dead 122:9 deal 81:1 94:19 dealing 24:12 28:8 39:13 48:16 67:4 67:16 101:3 dealt 21:16 117:6 117:13 debra 120:19 debt 42:12,13 45:1 45:7,11,13 debts 43:10 45:17 45:18 112:9 december 50:6 52:20 53:1,2 54:2 55:15 59:20 60:4,7 65:17 77:5 84:6 85:4 89:4 90:12,13 105:7 decide 48:3 101:16 decided 30:10 defendant 2:18 24:18 defendant's 26:18 26:20
---	--	--	--

[defendants - draft]

Page 139

defendants 1:10 24:22 27:11 29:5 defense 24:22 25:1 25:14 27:11 define 11:11,12 47:17,22 48:1 55:8 68:18 97:9,10 defined 37:21 68:20 95:17 97:6 defining 20:17 64:2 95:20 definition 31:6,18 32:2,13,22 33:3 47:16 61:1 63:17 83:23 degree 9:2 delay 25:18 delicate 67:10 democratic 122:19 123:5 demonstrate 109:13 departments 16:5 dependent 15:11 depends 12:2 70:16 deposed 5:22 deposition 1:14 4:4 4:7,15,21 5:6 6:7 7:19 25:19 26:11 26:12 27:1,8,12 106:13 132:2 133:5 133:10 derives 12:1 describe 8:20 10:6 20:12 25:20 28:13 34:23 42:9 50:12 57:16 99:12 described 38:6,9 41:12 44:18 53:5 62:16 63:3 104:4	describes 54:12,14 describing 74:22 description 87:15 88:20 despite 32:20 determination 72:14 determine 84:10 determining 47:16 70:2 devices 17:5 difference 49:15 64:19 106:1 119:20 differences 85:16 different 16:4 21:12 35:23 80:12 92:1 118:1 119:23 126:16 difficult 76:8 101:4 direction 66:21 directly 41:1 director 13:15 14:3 24:7 28:4 29:12,13 33:17 94:10,17,17 disagree 55:16 67:23 80:6 116:13 128:1 disagreement 32:17,21 74:4,12 74:13 disagreements 31:7 disciplinary 28:22 discrepancies 84:11 discriminate 54:23 55:11 56:7 57:19 61:10 63:7 discriminatory 20:19 discuss 50:16 72:13 72:20 73:4 112:23	131:15 discussed 39:6 50:23 53:4 59:14 66:14 84:1 85:6 89:13 92:10,23 107:23 130:1,2 131:13,19 discussing 60:8 64:11 discussion 46:3,10 50:9,12 54:6,10 59:6,17 60:6 61:15 65:19 74:4 77:7,18 95:16 101:20 104:20 127:3,9,13 128:14,19 discussions 119:1 disenfranchise 37:5,17 60:16 disenfranchised 32:10 37:18 98:7 129:9 disenfranchisement 20:23 23:2 24:13 27:17,19 54:16,21 56:6 58:17 59:16 60:9,19 63:5 64:13 65:10 118:12 119:11 120:4 disenfranchising 23:7 30:21 97:4,19 128:13 129:5 disengage 43:13 disparate 62:17 64:19 65:5 disparity 129:22 displayed 45:11,13 disproportionate 61:8,18 62:19,20 64:20 65:3	disqualified 124:10 124:16 disqualify 129:1 disqualifying 23:7 87:22 distinguish 62:4,8 district 1:1,2 67:2 diverse 126:13,16 division 1:3 13:16 dlang 2:9 document 34:12 52:4 86:9,19 87:8 89:20 90:1 93:21 95:9 documented 95:4 documents 9:22 16:10,17,21,22 19:3,22,23 26:23 27:5 29:22 34:10 85:7,8,10,23 112:14 113:3,15 dodson 66:7 doing 10:4,21 13:9 20:3 80:13 81:6 103:2 123:9,12 126:22 door 19:21 121:11 121:12 dothan 125:8 doubt 91:21 92:7,9 96:12 102:22 103:4 doug 122:23 dozen 33:18 dr 28:4 draft 82:16 83:2 100:22 101:20 102:1,5,16 103:1 104:4,6,9,12,21 106:23 107:5,12 108:1
--	---	---	--

[drafted - extremes]

Page 140

drafted 24:15 31:4 33:18,19 106:14 107:13 drafters 57:2 drafting 9:21 20:14 28:8 drive 10:9 49:16 94:12 95:2 driver's 122:3 driving 50:2 due 88:3,4,5 duly 5:10 duties 10:7 13:21 duty 28:15,19 40:21	effort 122:22 either 4:17,23 13:3 56:20,23 57:12 103:18 129:16 elected 67:1,4,11 68:6 116:15 election 71:13 121:1,3,15,17,21 122:22 elections 120:19 electronic 19:22 eligibility 98:10,23 128:3 eligible 97:14 98:12 124:6,7,9,13 131:1 eliminating 73:6 elizabeth 2:11 email 2:9,16 3:3,4 3:17 emails 3:18,19 16:8 21:19 112:20 115:3 115:10 employed 9:6,7,8 10:21 11:17 12:20 13:1,14 employees 67:5 employer 10:8 employment 9:10 10:22 12:18 13:2,3 ended 72:2 105:22 enfranchise 30:20 enfranchised 58:4 england 114:6 116:23 117:19,21 english 9:2 47:19 enjoying 13:8 ensure 14:12 entered 7:18 entire 14:4 43:4 110:5 130:11	entirely 15:11 entitled 86:19 entity 49:10 entry 66:7 especially 67:18 esq 2:4,11,19,20 establish 26:21 47:14 established 47:11 et 1:5,9 eternal 49:18 eternity 49:7 everybody 31:4,10 32:4,5 60:12 61:21 62:9,12 64:7 74:7 79:15,18 86:2 92:15 101:14 126:16 evidence 4:16 57:21 76:11 123:22 evolution 48:17 ex 30:15 97:20 124:7 125:21 examination 3:8 5:13 125:2 131:11 example 15:2,5,22 51:10 excerpt 86:20 exchange 89:21 exchanges 112:15 excluded 110:20 excruciatingly 76:8 executive 14:6 exercising 88:7 exhibit 3:13,14,15 3:16,17,18,19 33:23 34:1 51:23 52:1,21 54:11 87:3 87:7 89:17,18 92:14 112:11,11,12 113:5 127:15	exhibits 3:12 112:10 exist 18:6 29:8 84:11 existence 28:2 existing 51:1 expand 30:15 43:21 60:3 expanded 106:2 expanding 32:3 expansive 32:2 expect 45:16 expected 14:21 expense 43:2 experience 29:7 68:14 76:1,18 102:18 115:22 expert 48:11 expiration 133:20 133:21 explain 22:23 24:5 41:16,19 42:14 68:16 83:21 108:13 explained 26:1 explaining 25:23 explanation 22:5 exploratory 27:20 28:2 29:18 30:14 34:6 36:15 39:2 50:7 87:13 106:16 107:14 112:17 113:17 114:10 126:10 exploring 31:2 express 126:20 extensive 104:19 extensively 70:19 extent 45:19 extreme 15:2,7 extremes 49:23
e			
e 18:17,19,23 19:5 19:16 89:20 90:4 90:18,18,21 91:10 91:13 92:13,14,15 92:20 112:14 113:14,23 133:1,1 earlier 44:18 48:19 50:4 59:21 66:15 108:9 early 48:21 eased 128:8 easier 105:11,14 108:15 easing 128:17 ecm 1:8 ed 78:13 80:4,23 81:7,15 84:17,23 96:6 101:21 103:21 103:22 ed's 81:3 educational 8:21 edward 5:18 effect 20:20 50:15 61:11 118:19			

[f - free]

Page 141

f	74:5,7,16,20 75:1 75:15,18 76:13,16 77:10 78:4 81:22 83:13 88:4,6 98:15 109:20 110:14,17 110:23 111:4,20,23 118:21 127:2,12 128:9	financial 69:10 financially 70:11 find 20:7 70:12 76:15 122:10 125:21 fine 6:13 43:5 63:13 71:18 finer 23:10 41:1 42:5,11,16,19,19 44:19,21 46:4,15 66:16 69:1,2,3,4,8 69:11 71:20 73:23 74:5,8,10,15,20 75:1,15,18 76:5,13 76:16 78:4 83:13 88:4,5 98:15 109:20 110:14,22 118:21 127:1,6,11 128:9 finish 6:14 7:12 finished 42:3 fired 67:13 first 5:9 25:3,9,21 28:1 29:19 34:12 34:13 44:9 45:22 47:5,6 83:7 85:8 87:19 107:16 113:7 114:4 125:5 129:6 five 30:8 124:22 flagged 95:8 flaw 129:16,17 flip 85:17 flipping 34:16 focal 77:10 focusing 59:1,9 folks 38:3 104:22 follow 131:10 following 77:18 follows 5:12 force 28:15,17 29:3 116:19	foregoing 133:5,8 forever 23:21 forget 21:23 forgiven 78:4 form 4:12 21:8 28:22 30:4 32:15 33:1,10 34:8 39:17 41:20 42:17 43:20 44:16 45:4,8,15 46:23 55:2,13 56:10 58:6 59:11 62:2 63:9 69:13 73:9 75:6 77:1 78:16 80:2 81:16 82:3,19 83:4 86:4 87:18 88:10 89:6 90:2,5,9,20 94:15 96:16 97:8 98:17 99:14 100:22 101:2 101:10 102:8,20 104:1 107:15 108:7 109:5,15 112:18 113:13 114:19 115:5 117:4 118:14 119:14 123:3 131:2 formality 4:10 formation 106:15 107:14 formed 90:13 former 33:17 formerly 52:8 forwarded 113:19 115:3,7 found 21:19 122:14 foundation 10:23 11:5,9,14,16 12:19 22:11,15,19 126:10 four 102:15 107:6 fraud 121:18 free 7:3 119:4
f 133:1 facing 31:20 fact 27:4 40:21 61:17,23 62:22 64:22 65:2 69:19 74:10 76:21 78:18 79:23 81:13 106:12 108:23 factor 69:20,21 70:1 facts 26:15 62:14 fair 12:17 fairbanks 2:19 familiar 20:9 55:19 57:23 86:21 fantastic 125:16 far 57:7,14,14 farley 52:13 fashion 72:3 faster 72:7 128:5 faulkner 112:16,21 113:9 114:7,9,16 114:22 115:11,13 116:23 117:11 119:17 faulkner's 115:21 faulty 97:10 100:2 100:3 favor 103:5,7,17 122:15,16 fax 3:2 federal 4:6 9:21 feedback 39:8 feel 7:3 96:9 feeling 93:8 fees 23:9 40:3,23 41:6,12,18 42:5,11 42:16,20 44:20,22 46:4,16 66:16 67:20 71:20 73:23	feet 126:7 felonies 85:19 86:10 95:21 98:19 129:13 felons 24:13 122:21 123:6 124:6,7,7,9 125:21 126:3 128:13 felony 20:22 23:1,7 27:17 43:18 44:14 44:19 52:9 58:17 59:15 60:9,16,18 65:10 87:22 95:16 118:12 119:10 120:3 124:14 129:1 129:10 felt 31:10 48:3 56:14 119:3 fifteen 22:5 97:13 97:22 98:19 105:2 106:3 figure 12:22 49:21 71:17 filed 67:14 files 94:22 filing 4:20 5:2 filling 110:7 130:18 130:20 final 110:9 115:18 128:8 finalize 91:18 finally 106:8		

[freelance - house]

Page 142

freelance 38:9 friend 38:23 39:1 friendly 58:3 126:23 front 81:17 full 24:1 27:21 46:13 84:10 91:7 91:19 95:23 96:20 97:7,9,11,16 98:1 98:21,23 103:15 104:13 105:3 106:3 106:5 fully 15:15,21 fund 40:9,22 funded 15:16,19,21 funding 22:16 40:17,19 41:14 further 4:18 5:3 58:23 79:17 86:18 110:17 124:19 131:8 133:13 future 49:22	glasgow 35:15 79:19 85:1 125:5 glaskow 84:18 go 5:18 7:14 8:9,23 14:22 17:22 21:9 28:6 37:9 39:3 41:21 45:23 47:5 48:20 49:1 52:20 60:6 75:18 85:5 90:7 93:19 95:7 109:23 114:2 124:23 goal 36:18 37:15,15 37:16 47:21 goals 26:18 goes 88:2 91:16 100:19 105:8 going 7:7 12:23 13:11 28:21 33:22 45:23 48:14 50:5 51:22 54:12 65:13 67:20 68:7 72:4,6 83:9,12,13,14,15 83:19 87:6 89:16 93:4 96:15 101:5 101:11,16 105:16 112:10 116:18 123:21 124:21 125:23 good 5:15 35:16 43:15 70:16 101:17 goodness 15:8 gosh 108:22 gotten 61:2 62:14 governed 11:19 government 9:17 9:21 11:21 17:8 18:2,16,22 19:15 36:3 75:4 governmental 49:10	governor 17:14 21:14 40:12 governor's 31:10 85:15 graduated 9:4 great 124:20 129:19 grew 50:3 griffin 33:19 85:13 86:21 ground 68:3 group 53:16 guards 125:13,15 guess 11:18,22 12:13 47:19 48:20 48:21 49:14 52:6 61:7,11 68:12 69:6 121:14 127:10 130:16 guy 35:17 116:16	117:9 hazier 100:5 head 6:22 117:7 hear 6:9 73:14 116:6,7 heard 80:4 hearing 119:21 133:11 help 40:14 47:16 48:7 84:4 121:9,14 125:20 126:3,6 helped 84:5 helping 9:19 40:22 hereto 4:23 5:4 hey 94:2 hill 84:17 89:21 hillyer 38:8,10 historian 49:1 historical 50:10 52:9 94:18,22 history 47:9,14,18 48:5,9,12 49:7 50:16 51:2 53:8,17 59:22 63:19 83:23 93:9 hobson 22:9,10 24:11 28:4 29:13 38:19,22 39:22 94:2 113:19,22 115:4,7 130:5,9 hodgepodge 99:22 hold 66:4 104:17 holding 56:3 home 17:19,23 honest 84:4 honestly 33:20 54:9 75:9 hooper 120:17 hopefully 37:4 house 117:13,23
g	glasgow 35:15 79:19 85:1 125:5 glaskow 84:18 go 5:18 7:14 8:9,23 14:22 17:22 21:9 28:6 37:9 39:3 41:21 45:23 47:5 48:20 49:1 52:20 60:6 75:18 85:5 90:7 93:19 95:7 109:23 114:2 124:23 goal 36:18 37:15,15 37:16 47:21 goals 26:18 goes 88:2 91:16 100:19 105:8 going 7:7 12:23 13:11 28:21 33:22 45:23 48:14 50:5 51:22 54:12 65:13 67:20 68:7 72:4,6 83:9,12,13,14,15 83:19 87:6 89:16 93:4 96:15 101:5 101:11,16 105:16 112:10 116:18 123:21 124:21 125:23 good 5:15 35:16 43:15 70:16 101:17 goodness 15:8 gosh 108:22 gotten 61:2 62:14 governed 11:19 government 9:17 9:21 11:21 17:8 18:2,16,22 19:15 36:3 75:4 governmental 49:10	half 9:12 handful 30:8 handle 71:23 82:9 handwritten 16:10 happen 28:7 67:13 83:12 111:7,10,10 123:19 happened 16:20 34:23 35:3 53:12 63:20 82:20 88:15 100:21 116:16 118:18 happening 82:18 123:16 happens 116:9 happy 63:11 125:1 hard 9:9 12:15 19:23 43:13,15 49:21 70:7 72:11 94:12 95:2 101:13	h

[hu - kind]

Page 143

hu 6:23 huge 43:5 huh 6:22,23 11:13 12:5 79:2 123:1,8 123:11 hundred 106:20 hunter 55:19 hurt 39:11 40:1 hurting 70:10 hurts 41:1 hypothetical 15:6	impression 99:17 imprisonment 46:17 inability 70:2,15 incarcerated 52:8 incentives 76:2 incentivize 75:14 include 69:2,3 114:20 131:6 included 46:5 77:23 104:12 includes 23:14 including 46:14 57:3 77:23 98:13 incorporated 102:5 increase 30:16,17 index 3:7 indigency 69:14,18 indirectly 41:2 individuals 87:21 109:9 ineligible 124:3 information 67:23 85:18 122:5 130:21 informed 82:15 initial 23:9 37:14 injured 14:8 inmate 97:20 inmates 30:15 input 39:20 insane 14:23 instances 120:11 126:18 instructs 8:8 integrity 121:16 intended 100:21 intent 54:23 55:11 56:6 57:18 61:10 63:7 64:7 intentional 124:1	interested 14:2 21:13 116:8 133:15 interesting 35:18 interpretation 99:6 interrupt 6:16 introduce 87:6 102:1 introduced 4:22 87:1 103:20 106:17 invited 38:16 126:14 involve 28:18,21 29:15 121:11 involved 29:2 31:19 involvement 26:5 39:2,23 involves 28:23 involving 28:9 52:10 54:15 irresponsible 45:7 70:6 issue 15:22 31:5 40:4 67:19,20 69:15,15 71:11 81:2 112:6 118:11 issued 17:8 18:3,17 18:22 19:16 issues 20:23 21:12 91:19 117:14 118:1 119:10 item 101:18	job 10:7 13:21 70:7 70:12 116:17 jobs 67:6 125:21 joel 84:19 john 52:12 53:7,14 53:15 54:1 55:15 johnson 1:14 4:5 5:8,15,18,19,23 8:12,20 84:18 joked 21:23 22:1 joking 22:2 jolley 35:21 79:16 84:18,22 jones 120:19 121:21 122:16,23 journalist 38:9 judge 35:21 67:1 76:6,7 78:6 79:16 84:17,19,22 120:18 120:20 judges 67:9,14,18 67:20 68:2 69:17 judicial 14:18 117:22 judiciary 117:8,12 july 1:20 jury 15:1 justice 21:10,13,22 29:1 67:8 120:17 120:23 130:13
i			k
idea 31:17 36:4 44:10 77:10 115:12 ideas 13:10 identification 34:2 52:2 87:4 89:19 112:13 identified 95:22 97:13 102:13 104:13 identify 101:21 imagine 60:6 103:4 immediate 87:10 immediately 87:23 91:6 immoral 49:6,12 49:16,20 impact 8:13 59:15 60:9 64:12,15 65:5 72:21 107:5 impeachment 21:14 importance 77:9 important 6:11,17 41:13 60:11,13 69:16,18,20,21 70:1 importantly 130:12 impossible 93:4		j j 2:20 jag 28:15,17 jail 124:15 january 13:19 87:8 89:14 91:7,14 95:7 99:3 105:8 jim 21:22	k 2:6 keep 13:11 40:8 94:22 95:1 keeping 21:15 kenneth 79:19 125:4 kept 23:3 kin 133:14 kind 9:13 13:1 14:15 28:13 31:11

[kind - lot]

Page 144

48:16 53:5 55:3 65:5 67:16 71:3 75:7 76:17 77:20 99:21 kinds 13:10 68:7 70:8 83:16 116:4 125:13 knew 17:2 79:4 118:8 knocking 121:11 121:12 know 12:6 20:16 25:10,11 29:18 30:2,12 31:23 32:5 34:19 35:13 36:1 36:17,17 38:10,11 38:13,15,16 47:18 51:12 55:23 56:13 56:14,21 57:5,10 57:12,14,20,22 59:8 61:7,10,12 62:1,7 66:20 67:12 67:13 69:23 70:9 71:4,11,16 73:20 76:11 79:12,18,19 80:14 83:6,9,17,19 84:22,23,23 86:1 89:7 91:8,20 92:19 93:5 94:9 99:7 104:15 105:15 107:3 109:16 111:3 111:11,13,14,14 115:9,13 116:1 118:19 119:7 122:8 123:18 125:23 129:3 knowledge 22:20 33:3,12 61:20,22 62:5,9,11,17 94:18 known 49:10 83:11 118:22	knows 61:21 kristie 1:15 4:8 133:19 I labor 42:23 lack 22:16 44:14 45:3,11,13 laid 79:21 laird 84:19 lang 2:4 language 50:4 76:3 87:9 laptop 18:3,6 large 1:18 4:10 latin 49:4 launch 86:4 law 9:3 10:23 11:5 11:10,11,12,18,20 11:22,23 12:10,19 22:12 28:10,14,18 29:3,7 37:2 48:18 50:12 53:18 59:23 60:19 63:6 68:12 68:16 69:6 76:8 95:22 97:6 98:2 105:13 121:2 123:16 130:13 lawfully 123:10 laws 14:11 24:14 lawyer 14:20 28:7 29:6 70:16 130:7 layman's 64:20 lead 13:2 15:20 82:21 leaning 95:20 learn 48:13 50:3 learned 43:14 leave 21:6,6 22:4 22:15 69:22 83:13 led 84:8 101:20	left 21:4 legal 2:5,12 9:20 10:11 13:15 14:6 15:17 16:4,6 21:12 24:7 33:17 94:17 94:17 121:20 legislation 20:15,17 24:14 28:8 31:3 51:7 82:16,21,23 83:2,2 100:22 107:5 109:2 116:12 legislative 39:16,21 113:1 115:14 129:15 legislators 116:5,14 legislature 14:5,23 39:13,20 40:10 41:14 67:22 72:5 83:6 115:18,23 116:13 130:14 legislature's 15:12 legislatures 40:13 legitimate 64:1 lesson 43:14 letterhead 52:11 liaise 130:14 liaising 14:5 liberty 11:7 license 133:20 licensed 10:13 licenses 122:3 life 12:22 17:13 21:1 29:5 125:11 125:18,22 126:6 limit 37:20 limited 37:3 96:19 103:12,13,16 linda 84:19 line 40:2,4 87:19 list 12:6,16 20:18 23:21 24:15 33:4	33:17,19 38:7 43:21 51:1,4,7,7,14 51:19 70:14 80:18 84:10,16 85:12,14 85:15,18 93:11,12 96:18 99:15 100:17 101:15,15,17 102:15 103:9,10,16 104:19 105:19,21 106:2 114:13 listed 113:22 lists 51:17 84:12 litigation 20:10,13 20:16 27:14 little 10:18 11:4 15:6 20:11 33:11 35:14 48:13,14 50:19 74:19 84:5 100:5 live 125:22 lives 125:21 load 122:6 lobby 83:15 logical 115:8 long 6:3 9:8 13:18 15:17 20:4 71:13 116:5 look 12:9 19:4,18 20:5 36:15 40:16 77:8 83:23 86:21 looked 55:23 63:1 122:3 looking 19:3 23:4 34:3 35:10 58:20 86:9 looks 34:9 46:2 lose 39:14 55:9 lost 23:20 55:3 78:17 lot 15:9 32:17 40:17 66:22 73:7
---	--	---	--

[lot - military]

Page 145

84:4 105:16 127:1 128:2,6 lots 67:14 72:9 lyft 10:9 lyn 21:10	matter 25:7,17 99:5 101:7 matters 27:13 116:10 mayoral 121:1 mdanahy 2:16 mean 10:12 12:15 25:18 30:19 31:13 34:19 42:10 54:4 60:11 61:17,23 62:10 65:4 70:12 71:14 73:12 80:3 81:18 93:3 95:1 99:4 101:8,11 104:15,16 107:9 113:18 118:15 123:15 130:10 131:18 meaning 52:8 means 31:1 53:18 62:9 115:13 meant 110:3 116:1 mechanism 121:20 medications 8:13 meet 30:7 90:8,11 91:17,18 92:4 113:10 131:3 meeting 29:23 30:3 33:16 34:14,18 35:1,7 36:10,14 38:4,12 39:6 45:21 45:22 50:7 59:20 60:10 65:13,16 77:5 82:17 84:7 85:5 89:5,14,23 90:13 91:3,3,7,14 91:19,20,21 92:1,6 92:11 93:1,22 94:6 95:5,7,9,11 96:7 97:5 99:3,9 102:9 102:19 105:8	107:11,16 114:5 115:9 116:18 125:5 meetings 21:20 24:12 29:16 37:6 61:13,16 94:4,8 107:8 113:21 114:14 118:15 119:3,4 126:19 130:6 meets 116:8 member 24:10 29:10 38:17 82:4,6 117:12 members 35:14 52:17 82:17 84:12 87:11,12,13 91:1 92:20 95:19 101:9 114:10,23 118:5 memo 3:15,16 52:7 52:15,15,17 53:23 54:7,11,12,13,19 55:7,15 59:13,18 60:4,7 84:2 86:21 87:8,19 88:21 92:13 127:15 128:1 memory 15:9 23:3 29:22 36:20 37:1 50:19 51:11,20 71:2 73:15 79:7 97:10 100:3,10 129:16 memos 16:4,10 94:9 130:4 men 64:21 65:1 mentioned 27:16 28:5 66:5 73:10 83:20 125:4 merged 71:3 merrill 24:9 26:6 53:7,14,15 54:1 59:1,8 73:16 74:14	81:4 82:9,15,22 83:1 99:8 101:19 102:1,23 103:20 104:3 105:21 112:15,22 113:6,9 114:15,20 115:10 118:4,11 119:18 merrill's 32:9 messick 2:19 3:10 7:16,18,20,22 8:3,6 21:8 25:5,9,21 26:10,17 30:4 32:15 33:1,10 34:8 39:17 41:20 42:17 43:20 44:16 45:4,8 45:15 46:23 53:11 55:2,13 56:10 58:6 58:11,20 59:11 62:2 63:9 66:4 69:13 73:9 75:6 77:1 78:16 80:2 81:16 82:3,19 83:4 86:3 87:18 88:10 88:13,18 89:6 90:2 90:5,9,20 94:15 96:15 97:8 98:17 99:14 101:2 102:8 102:20 104:1 107:15 108:7 109:5 109:15 112:18 113:13 114:19 115:5 117:4 118:14 119:14 123:3 124:20 125:3 131:8 131:23 met 5:15 38:11 81:1 92:6,21 125:4 metal 9:18 middle 1:2 military 29:1
m			
m 52:13 mail 18:17,19,23 19:5,16 89:20 90:4 90:18,18,21 91:10 91:13 92:13,14,15 112:14 113:23 mails 92:20 113:14 main 14:1 21:22 79:1,3 92:5 94:3,7 major 47:19 76:5 79:1 majority 78:18 80:1,8 81:13 95:18 96:17 99:18 103:22 110:21 maker 40:6 makeup 79:9 making 80:8 115:8 mala 49:4,4,4,8 man 125:9 126:1 mangled 63:13 manner 4:23 mantra 39:12 marissa 66:6 mark 112:11 marked 34:1 52:1 87:3,7 89:18 112:13 marking 33:22 51:22 89:16 martials 28:18 match 63:20 materials 23:4 33:13 34:5			

[mind - object]

Page 146

mind 11:15 82:5 115:21 mine 38:23 ministry 125:20 minor 9:3 minute 37:7 80:9 124:22 minutes 3:14 22:5 35:4 38:5 46:1,2 50:6 52:21 53:3,11 53:14 58:14,15,22 59:4,20 65:16 74:3 77:6,19 78:8 79:21 80:3 82:14 84:6 95:13 96:4,13 99:2 100:5,15 101:18,19 102:12 107:7,23 110:10 111:18 114:3 miracle 125:17 misdeemeanors 129:2,13 missed 129:18 mission 126:5 mississippi 122:7,8 misstates 63:10 mistake 123:15 mistakes 123:19 misty 2:19 mixed 9:10 mmessick 3:3 model 125:12 modern 48:21 64:10 modifications 102:17 molly 2:11 5:20 moment 37:1 104:17 money 39:11 40:6,8 43:16 44:3,4,12	112:6 moneys 128:11,13 128:22 129:2,8,11 129:12 montgomery 1:20 2:23 133:3 months 11:3 13:20 22:12 25:10,11 71:8,8,8 moore 120:18 121:4 122:16,18 moral 10:23 11:5,9 11:10,11,12,23 12:14,19 20:18 22:11 24:16 28:9 31:6 32:14,18,23 33:4,9 36:7 37:3,21 43:22 47:9,10,14 47:23 48:1,4,9,12 48:18 49:2,5,18 50:1,3,11,17 51:1,9 52:10 53:6,9,18 54:15,20,22 55:8 56:4 61:2 63:17 64:2 65:2 81:2 84:1 85:13,19 86:9 93:2 93:9 95:17,20 96:18 98:2,8 99:16 99:20 101:15,22 123:17 morality 12:11,12 morals 48:18 motions 101:12 mouth 75:10 move 85:4 107:22 moving 47:4 48:15 murder 49:19,20 50:1 64:23 murders 64:22	n nail 120:7 name 5:16,20 27:21 120:21 narrow 31:17 natural 12:9,10 nature 6:23 26:4 39:16 121:22 neat 35:17 necessarily 11:19 26:8 33:5 49:12 79:8 95:1 105:12 necessary 113:11 need 4:13 7:11 15:19 58:8 72:5,7 72:22 73:6 88:11 113:7 119:5 121:9 124:22 needed 14:18 16:7 18:4 31:11 36:6 128:22 negotiate 83:8 neither 133:13 never 23:18 44:2 83:9 126:23 new 17:16 94:16 98:5 newly 58:3 night 17:22 nodding 6:18 nondisenfranchis... 129:12,21 nondisqualifying 128:23 nongovernmental 36:3 nonjudicial 28:20 nonracist 63:15 nonwhite 62:20 nonwhites 61:9	normal 126:7 normally 105:5 north 35:21 northern 1:3 notary 133:21 notes 30:2 93:21 95:3 noticed 24:17 notified 28:4 november 11:2 13:7,13,19 34:13 35:10 38:5 45:21 52:23 58:13,22 65:13,17,18 114:3 number 30:15 34:1 37:3,20 52:1 61:8 61:18 65:3 87:3 89:18 numbers 62:18,20 63:2 112:12 numerous 14:1 nw 2:6,13 o object 7:20 8:6 21:8 30:4 32:15 33:1,10 34:8 39:17 41:20 42:17 43:20 44:16 45:4,8,15 46:23 55:2,13 56:10 58:6 59:11 62:2 63:9 69:13 73:9 75:6 77:1 78:16 80:2 81:11 81:16 82:3,19 83:4 87:18 88:10 89:6 90:2,5,9,20 94:15 96:15 97:8 98:17 99:14 101:2 102:8 102:20 104:1 107:15 108:7 109:5 109:15 112:18
---	--	---	--

[object - part]

Page 147

113:13 114:19 115:5 117:4 118:14 119:14 123:3 131:2 objected 81:14,21 81:23 82:2 104:22 objection 8:10 86:4 objectionable 49:6 objections 4:11,12 obligated 130:13 obligation 43:19 obtain 24:1 75:21 97:16 obviously 15:3 31:3 43:3 occasion 17:21 occur 91:6 occurred 37:6 91:20,22 92:1 october 11:2 29:20 29:23 34:17 35:1,7 35:12 36:10,13 offend 67:11 offender 110:18 111:21 offer 80:21 offered 4:15 office 1:19 2:21 13:17,22 16:3 17:15,22 18:16 20:2 21:5,21 25:7 31:8,10 39:9,23 41:4 46:9,22 47:3 51:19 66:11,12 74:23 94:21 offices 1:18 31:9 official 11:21 14:9 42:2 67:12 114:12 121:15 officials 67:4 oh 10:3 15:8 16:9 18:8 30:18 35:8	36:17 61:14 81:14 122:11 okay 6:12,23 7:1,5 7:6,9,10 8:3,11 9:13 10:11 12:6,7 22:19 32:7,11 35:3 36:19 41:3 47:4 48:8 50:16 52:4 53:20 56:23 58:9 62:4,7 70:10 71:3 71:15,15,17,21 77:4 79:11 85:4 92:12,17 98:22 104:2,20 108:13 110:8 111:4 119:9 122:4,8 124:18 130:3 131:22 old 48:15 94:11,11 94:12 once 6:3 8:9 26:11 56:1 65:23 68:22 71:4 83:17 90:14 one's 110:15 onerous 105:10 open 22:19 119:4 126:23 operating 22:22 100:2,3 operation 22:18 operational 40:15 operatives 122:20 123:5,12 opinion 12:3,4 16:7 42:8 56:19 57:6 65:9 69:8,9 81:3,4 86:10 93:5 96:17 99:18,23 103:22 109:8 110:21 115:20 119:5 opinions 67:18 93:16	opportunities 9:20 opportunity 35:13 91:17 opposed 69:19 orally 81:17 orbit 61:4 order 68:13,16 69:6 98:8,11 ordered 88:3,5 110:23 128:11,12 128:21 129:2,8,11 organization 14:4 organizations 36:2 original 110:18 111:5,21 ought 37:7 outline 25:23 83:3 outside 11:21 116:6 118:15 119:3,11 outstanding 45:7 45:11,13 88:3,5,6 overcome 122:13 owe 43:16 owed 129:8 owes 44:3,12,19 ownership 43:7	87:5 90:7 91:13 110:9 pages 86:18 paid 43:18 44:4 45:2 66:1 68:22 71:19 75:2 76:15 77:11 78:6 98:14 98:14 112:1 127:19 127:21 128:10,22 pan 13:4 paper 130:21 paragraph 91:13 99:2 110:9 114:4 paraphrased 75:8 pardon 24:2 95:23 96:20 97:7,9,11,16 98:1,23 103:15 104:14 105:3 106:5 128:6 pardons 23:12 31:21 71:9 72:3,23 96:1,20 97:17 98:11 105:4,6,9 108:3,21 109:6,7 110:6 parole 46:18 77:23 98:13 paroles 23:12 31:22 71:10 72:3 73:1 96:1,21 97:17 98:11 105:4,6,9 108:3,22 109:6,7 110:6 part 9:9,13,15 10:4 10:21 20:15 36:14 36:18 37:7 40:9 42:19 43:3,5,12 45:3,20 46:18 55:10,14 56:6 68:11 69:4 74:9,11 74:16,22 75:12
--	---	---	---

[part - prisoner]

Page 148

101:10 105:3 112:20 127:20,22 130:15 participate 126:14 participated 24:11 participation 30:10 particular 14:8,20 38:6 57:21 93:6,11 93:17 particularly 23:6 parties 4:3,19 5:4 116:8 133:14 parts 104:23 party 4:17,23 passed 37:3 106:8 128:8 passing 105:22 117:16 pastor 84:18 85:1 125:8 pay 23:8 40:23 41:6 42:4,16 43:2,10 44:21 45:17,18 46:15 69:7,11 70:2 70:23 71:20 72:18 75:20,22 76:4,7 77:3,3 109:19 110:14 112:8 129:10 131:16,19 payment 41:18 66:15 74:20 75:15 76:13 78:1 110:22 129:7 pearson 1:16 4:8 133:19 penal 41:22 42:9 61:9 62:21 penny 39:14 people 10:9 11:7 12:9,14 19:18 31:20 32:9 36:1,2,7	37:5,17,18 38:7 41:5 43:16 55:9 60:21 61:4,23 62:20 63:8 66:22 67:2,12,17 68:9,14 71:6 75:13 76:7,23 80:13 83:8 108:19 109:19 116:3,15 122:6 125:23 126:1 126:7 127:16 percent 106:20 perception 99:6 perfect 82:4,5 116:11 period 10:20 13:5 13:12 48:22 perry 120:17 person 23:6 38:5 42:21 46:13 62:15 63:23 69:19 70:23 71:12,19 75:19 90:11 91:3 99:23 105:5 109:10,13 110:5,13 122:2 126:15 129:8 person's 69:10 125:17 personal 17:4,6,7 17:10,13,17,23 18:19,23 19:5 20:6 42:8 46:21 47:1 69:9 personnel 71:10 72:5,8 persons 52:8 54:21 perspective 80:12 113:2 115:15 petition 23:12,20 ph.d. 62:14 philosophical 12:8 53:5 120:10	philosophy 41:22 42:9 phone 2:8,15 3:1 119:2 phrase 52:9 54:14 54:20 55:7 56:3 64:14 pickens 52:12 53:7 53:15 54:1 55:15 59:21 piece 130:20 pin 79:17 101:13 place 115:11 plaintiff 2:3 plaintiff's 3:13 34:1 52:1 87:3 89:18 112:12 plaintiffs 1:6 5:21 plan 82:22 play 61:6 playing 13:10 please 5:16 6:21 7:3 8:20 40:14 plus 122:15 point 77:10 82:21 90:12 91:12 92:4 93:8 99:11 107:10 107:19 125:20 political 120:13 portion 23:17 pose 7:13 position 13:18 39:9 41:3,8,16 42:2 45:6 46:10,12 47:2 65:7 66:10 67:22 68:13 68:17 69:6 73:17 73:19,21,22 74:15 75:1 78:18 79:5,14 80:1,22 81:13 82:6 96:10 102:23 111:17,22 118:20	121:15 128:20 positive 11:13 12:5 79:2 123:1,8,11 possession 94:10 possible 85:14 118:17 postponing 47:7 potentially 38:1 power 40:11 66:23 75:3 76:6 101:8 116:19 125:1 practice 10:1 practices 58:16 59:2,9 precise 82:11 preliminaries 8:2 premed 9:2 preparation 27:1,5 prepare 27:7,12 prepared 101:20 prescribed 78:6 present 103:9 presentation 33:14 53:8,16 59:22 60:2 presented 44:9 105:20 107:13 presumption 116:2 pretty 28:6 118:22 preventing 14:16 principle 49:18 principled 105:12 108:10,17 109:8 prior 10:20 12:18 13:12 25:14 91:6 91:19 106:13,15 107:13,16 109:20 110:15,23 111:1 prison 42:4 65:4 125:9,11 prisoner 125:12
---	--	---	---

[probably - red]

Page 149

probably 26:2,7,7 33:4 73:11 83:11 88:23 92:18 115:23 probation 46:17 78:1 98:14 problem 15:20 69:4 96:22 99:1 124:17 procedure 4:7 procedures 58:16 process 16:20 21:13 36:16 37:8 37:12 48:13 71:4,5 72:1,2 73:6 77:22 98:4 105:10 109:3 110:6 128:2,7,9,17 129:6 131:6 processed 65:22 produce 33:13 produced 33:16 34:5 product 17:18 products 16:1 progress 97:2 prohibit 88:7 prohibita 49:4,8 prohibited 126:21 prominent 15:22 proof 130:19 proportionate 40:18 proposal 65:19,21 68:20 69:2 80:22 81:5 83:7 89:13 91:17 103:21 propose 83:18 105:13 115:17 116:4 proposed 24:15 31:4 47:7 59:1,8 87:9 109:1	proposing 63:17 prosecuting 42:23 protect 14:10,18 provide 40:17 121:20 provided 4:17 5:1 26:23 86:8 95:14 providing 39:19 provision 15:13 provisions 108:4 public 133:21 pulled 66:21 punishment 28:21 31:20 42:11,19 43:12 74:6,8,9,11 127:2,3 purely 29:21 purpose 4:16 20:20 30:14 36:4,6,11,14 37:19 47:13 84:9 99:12 100:20 109:3 purposeful 123:22 purposely 123:20 purposes 11:8 12:11 85:16 pursuant 1:14 4:6 put 42:22 75:10 76:3	131:7,9 133:6 quick 114:2 124:21 quickly 44:11 58:13 71:17 quin 38:8 quit 10:4 quite 117:7 quo 97:1 quote 51:1 quoting 122:1,19	rearticulate 63:11 reason 8:16 55:16 74:22 85:3 91:21 91:23 92:7,9 96:12 102:21 103:4 109:8 128:1 reasonable 54:3,5 reasoning 50:10 reasons 66:14 recall 30:3 59:6 64:16 66:2 70:21 73:16,22 79:13 82:18 85:9,22 86:12,14 90:4,16 90:21 92:3,10 93:14,16,19,20 95:3 104:3,6,9,11 104:20 105:19 109:22 120:11 121:4 122:17 receiving 90:4,23 recess 58:12 recognize 34:10 52:15 113:15 recognized 53:7,15 recollection 56:9 89:2 108:5 recommend 100:23 recommendation 77:21 78:12,14 79:22,23 80:9,18 82:13 recommendations 116:20 recommended 99:15 record 5:17 6:9 8:10 24:4 34:17 100:12 115:19 red 49:17
	q	r	
	question 4:13 6:14 7:2,8,13 8:7,9 53:13 69:22 70:4 85:3 88:11 92:22 97:17 101:23 110:1 119:21,23 123:21 129:14 questions 4:11 6:8 6:10 7:20 8:17 36:20 38:2 58:8 70:13 71:21 72:9 73:7 124:21 130:23	r 133:1 race 61:6 65:4,10 racial 59:15 60:9 60:16,18 64:12 racist 63:18,21,23 64:3,5 raised 72:11 73:8 104:18 ran 120:17,18,22 rare 17:21 rarely 17:17 rationale 75:12 reached 25:3,22 reaching 94:4 read 35:2 56:12,19 56:22 57:11 84:16 89:8,12 115:20 127:17 ready 52:5 112:8 124:23 real 15:20 40:3,10 79:19 125:17 realized 37:6 really 13:4 24:10 25:19 31:12 38:15 42:6 55:22 59:7 94:4 96:11 99:1 104:16 105:16 108:8 117:15 121:12	

[reduced - restoration]

Page 150

reduced 133:7 reducing 128:9 reemphasizing 118:23 referenced 115:9 references 34:13 84:7 referring 27:18 35:6 51:14 64:9 108:18 110:6,12 123:2 reflect 53:3 58:15 59:4 74:3 77:19 95:13 102:18 108:2 reflection 89:23 reflects 65:18 77:7 refresh 56:8 89:2 108:5 refreshing 29:22 36:19 regain 24:2 regard 125:15 regarding 53:17 59:22 112:16 regardless 5:1 register 126:4 128:4 registering 122:20 123:6 124:5,13 126:1 registrars 31:22 33:7 registration 123:13 124:3 regular 67:5 rehabilitated 71:18 109:10,14 rehabilitation 71:16 110:4 130:19 reinstatement 23:13 41:7 46:6	related 27:17 35:23 41:19 42:11,15 54:15 58:16 63:6 95:18 108:1 110:12 111:9 114:16,22 119:10 129:12 relates 48:10 50:11 56:5 relating 82:23 relationship 38:22 41:17 relevance 65:9,12 69:10 74:20 relevant 18:13,14 19:11 20:7 relieve 40:22 relieved 78:5 religious 11:7 remain 88:6 103:10 remaining 77:10 remember 6:3 14:9 20:3 26:3 30:8,9 33:20 50:22 53:20 54:9 56:11,12 57:9 57:13 60:5,8,12 66:9 72:4,17,19 73:2,2,20 74:13,14 74:17,18 77:12,13 78:11,20 80:7,10 80:16 81:6,11,15 81:20 82:11,12 83:5 84:22 85:2,11 86:8,17 89:12,15 90:10,14,21,22,22 91:1,5 92:4,19,22 93:7,13 95:11 96:11 98:3 100:13 100:14 102:9,21 103:2,5,11 104:16 105:7,14,23 111:4 111:6 117:5,6,14	117:17,18 118:2,7 118:9,17 119:1,7 120:21,23 121:22 126:19 127:3 128:14,20 129:14 129:20,23 131:18 remembering 50:21 remove 102:14 report 39:5 reporter 1:16 4:9 6:8 133:19 represent 46:3 56:2 86:20 102:12 106:12 128:7 representation 79:8 representations 29:4 representative 46:8 116:23 117:11,19 117:21 119:17 representatives 114:6 116:15 126:8 126:9 represented 25:6 29:11 104:10 127:15 representing 4:3 4:19 29:16 38:19 represents 11:7 58:23 133:9 request 25:18 requesting 112:21 require 66:15 106:5 109:19 110:22 required 16:6 74:1 103:15 111:23 129:7	requirement 110:20 131:14 requirements 46:5 requiring 41:5 95:23 96:19 97:6 104:13 research 62:15 86:19 researched 62:13 reserved 4:14 reservist 28:16 respect 127:4 128:21 responding 90:22 responds 113:6,9 response 11:13 12:5 19:4 79:2 123:1,8,11 responses 90:23 responsibilities 125:14 responsibility 43:6 45:3,12,14 125:22 responsible 42:6,7 42:12 43:8,9,11 44:21 45:17 112:7 responsive 16:22 rest 111:16 restate 44:1 55:5 88:11 restating 63:13 restitution 66:1 68:23 74:8,11 78:1 98:14 109:20 110:15 111:1 127:4 127:7,11,14,18,20 127:21 128:10 131:13,16 restoration 27:19 36:16 37:8,11 58:18 65:11,20,22
---	---	---	---

[restoration - show]

Page 151

66:4,13,17 68:17 68:18,21 71:4 72:21,22 73:5,6,17 74:21 76:12 77:9 77:22 78:2,8 87:10 96:1,21 97:15 98:20 105:1,11 108:1,10,16,19 109:18 110:13 111:1 112:3 127:4 127:21,22 131:15 restored 46:13 74:1 75:2 87:23 98:9 109:21 110:16 131:4 result 32:1,3 64:6 133:15 results 76:13 retain 19:23 return 59:19 returning 59:13 101:18 reverend 125:4 review 27:1,4 34:4 52:3 58:16 82:17 84:9 reviewed 52:4 59:21 rich 22:9,10 24:11 94:1 113:19,22 115:7 130:5,9 rides 10:10 ridiculous 116:21 right 7:14,15 10:6 15:1 16:14 19:20 24:2 27:22 33:5 35:8,15 55:9 56:17 58:21 62:14 70:4 75:14,19,21 88:8 98:16 102:10 106:4 106:7,9,11 128:18	129:22 130:7,22 rights 23:13,15,21 27:20 36:16 37:9 41:8,17 42:15 46:14 52:7 58:17 65:11,20,23 71:7 73:5 74:1,21 75:2 76:12 77:8,22 78:3 78:7 87:23 96:2,21 97:15,23 98:9,20 108:1,16,20 109:18 109:21 110:12,16 111:2 112:3 123:18 127:5,22 128:5 131:4,14 road 116:9 role 121:6 room 7:19 79:4 101:14 roster 84:20 roy 120:18 121:4 rubber 116:8 rule 49:13 rules 4:6 16:4 ruling 4:14 running 49:15 s s 2:19 safety 68:5 sat 21:23 35:14 79:10 saw 107:9 115:6 122:1,2,5 saying 6:9 8:6 18:7 18:8 31:13 34:21 36:22,23 57:17 71:22 73:13 80:6 80:13 117:17 says 12:12 15:13 49:11,16 80:4,16 80:20 85:6 88:14	88:17,21 95:10 102:22 113:6,9 114:4 128:1 scheduled 91:15 92:8 scheduling 89:22 school 9:3 12:12 121:2 scope 60:3 scruggs 35:20 79:16 se 49:4,5 search 16:21 second 26:9 50:5,8 52:3,21 58:14 91:13 secretary 24:9 26:6 32:8 53:7,15 54:1 59:1,8 73:16 74:14 81:4 82:9,15,22 83:1 101:19 102:1 102:23 103:20 104:3 105:21 112:15,22 113:5,8 114:15,20 118:3 119:18 section 57:4,21 82:14 107:22 109:17 see 6:17 12:10 21:9 34:21 42:10 50:19 64:18,18 67:20,21 68:3 71:21 89:7,7 93:10,11 96:2,5 100:4,5 101:3 109:10 110:5 113:1 113:2,16 114:12 115:14 121:17,19 123:15,22 seeking 9:20 47:13 108:19	seeks 11:8 sees 53:9 self 9:7,8,10 10:20 13:3 senate 117:8 120:18 122:22 senator 84:18 114:7 117:1,7 119:16 send 40:8 sending 21:19 sense 26:17 62:12 65:6 67:7 126:2 sent 23:5 92:13,14 92:20 sentence 42:4,20 46:16 66:1 68:21 69:5 77:23 88:1 98:13 sentencing 42:22 separate 114:23 120:4 127:6,8,9 separately 118:5 serial 64:21,23 serious 68:11 105:2 serve 23:8 68:6 109:4 served 16:13 27:16 46:17 serving 124:10 session 116:5,6 set 24:9 26:6 setting 81:12 shade 126:17 shakes 6:22 shay 52:12 short 37:11 show 33:22 43:8,14 45:2 51:22 87:6 89:16 112:10 122:6
--	--	--	---

[showed - summer]

Page 152

showed 21:21 showing 42:6 112:6 shown 19:21 44:14 44:20 shut 19:17 side 119:6 sign 49:15,17 50:2 101:1 signature 5:5 133:18 signed 52:12 sikes 33:19 85:13 86:21 silly 93:2 similar 105:21 simple 130:15 simply 82:2 sinclair 2:20 8:1,4 singled 131:20 sit 112:22 site 2:13 sitting 21:22 68:15 six 11:2 22:12 28:15 small 22:18 29:7 smd 1:8 society 45:16 solo 10:1 somebody 10:12 33:2 57:14 73:11 76:4,15 93:5,6 125:12 126:20 128:23 130:23 someone's 42:15 somewhat 70:6 sorry 7:22 30:5 35:6,10 47:4 51:5 51:11 53:22 65:21 71:1 78:17 86:3 89:15 93:15 98:23 100:19 117:3	119:22 130:1 sorts 16:1 sound 27:22 84:20 sounds 19:20 27:21 103:12 sources 11:22 12:15 14:17 southern 35:20 58:1 59:2,2,9 speak 5:10 6:11 11:16,18 25:9 32:4 44:10 50:21 54:4 54:13 64:6 85:1 111:16 123:14,14 speaking 47:20 58:1 105:18 special 120:19 specific 8:22 31:18 120:11 specifically 50:18 126:3 speculation 120:9 speed 37:12 71:5,6 72:1 128:7 speeding 37:8 71:23 spoken 79:5 sr 120:17 staff 11:1 staffing 72:23 stake 21:15 stand 67:9 start 7:22 started 8:1 13:13 36:21 93:3 125:20 starts 91:14 state 1:9,17 4:9 5:16 15:2 24:9 25:6 26:6 31:5 32:8 40:6 40:7 42:22 43:8,17 44:3,13 49:9,11	54:1,8 60:14,15 67:1,5 78:9 82:9 88:2 95:22 97:6 110:13 112:9 114:5 114:7 115:22 116:17,22,23 119:5 122:4,21 123:7 133:2 stated 63:4 82:12 93:8 100:15 108:9 111:18 statement 44:22 84:13 96:6 99:1 states 1:1 47:6 50:8 55:20 56:16 58:1 58:18 59:2,3,10 82:14 84:9 101:19 109:17 110:10 status 68:9 69:18 96:23 statute 4:17 5:1 11:20 51:19 64:13 97:14 statutory 14:10 87:9 stay 40:15 stenotype 133:6 step 15:3 57:23 114:2 121:5 sticks 76:3,9 stink 104:19 stipulated 4:2,18 5:3 stipulation 1:15 stipulations 4:1 8:4 stop 49:15,17 stops 51:12 storage 17:5,10 story 35:18 125:6 125:17	straight 125:22 streamline 73:5 street 2:6 33:2 76:3 strict 69:6 strike 36:11 45:19 81:10 90:7 strong 67:17 93:5 93:16 struck 35:15 stuart 21:10 studied 62:13,23 stuff 13:1 subcommittee 78:22 81:1 83:21 83:22 84:8,12,14 84:21 89:22 90:8 90:11,17 91:4 92:11,16,21,23 93:22 94:6 95:4,14 95:19 96:17 99:4,8 99:13,18 100:7,18 100:20 101:5,6,8,9 101:10 102:6 117:2 subcommittee's 95:15 subject 101:4 submitted 85:7,14 85:23 86:2,12,16 submitting 85:9,12 subpoena 16:13,16 16:23 19:4 25:2 substance 82:2 substantive 26:13 sufficient 14:13 suggested 60:2 suite 2:6 suited 72:14 summarizing 130:6 summary 95:15 summer 35:20
---	---	---	---

supervision 111:12 133:8 supply 9:18 support 51:2 supported 41:9 suppose 21:1 supposed 15:14,15 supreme 55:20 56:15 120:22 sure 6:21 8:23 12:17 13:11 14:6 14:15 16:1 17:2,20 22:17 30:22 33:15 33:21 36:7 37:2,16 41:23 46:20 54:8 56:16 57:4,9,21 61:7 64:9 80:8 82:20 87:1 88:12 88:13 106:20 111:10 114:13 126:5 surely 107:9 surprised 48:14 suspicious 125:16 sweep 61:3 swing 122:22 sworn 5:10 synopsis 77:20 78:13 80:17 81:8 81:15 system 14:7,7,11 14:19 15:11,18 23:1 29:17 31:21 40:5 61:9 62:21 66:19 69:16 76:1 83:15,17 130:11 system's 118:20 systems 76:19	t t 133:1,1 tab 50:5 52:21 95:8 tabbed 87:5 table 40:11 63:21 64:4 122:1,2 take 7:11,17 43:7 46:9 56:18 57:23 58:7,10 67:22 69:16,17 73:19 92:18 93:21,23 102:23 114:2 121:5 taken 1:14 4:6,8 57:6 58:12 80:7 93:13 133:5 takes 71:12 talk 21:18 70:22 113:7 119:6 talked 48:18 74:19 84:3 94:2 117:23 127:1 128:2,6 talking 21:11 35:16 43:4 66:6 68:2,8 78:21 117:14 122:12 128:16 129:3,20 targeting 65:1 task 42:23 76:5 tell 7:7 11:4 16:19 21:4 26:16 33:8 55:22 70:19 86:6 125:6 telling 117:9 ten 13:20 term 47:10,14 48:6 48:9,12,15 49:2 50:10,17 53:6,9,17 53:18 59:23 62:5 77:23 terms 41:13 49:3 54:13 78:6	terrible 71:14 testified 5:11 29:9 37:19 38:21 79:20 106:14 108:4 testimony 26:14,19 63:10,12 64:17 91:2 106:13 thank 58:11 122:4 124:20 130:3 131:23 theoretical 63:22 thereto 133:7 thesis 54:19 55:6 55:14,17 thing 10:3 12:14 13:9 14:1 22:7 56:17 57:3 65:14 67:11 120:8 things 6:23 9:22 14:14,15,22 18:10 32:3 40:14 56:11 67:18 68:7 70:8 76:7,20 78:3 83:15 84:2 94:19 111:8 116:4 122:9 think 14:1 15:5 19:7,10 22:1 23:16 23:19 28:5 33:7 42:8 45:16 46:18 49:19 51:17 60:20 61:20 62:16,21 63:12 64:21 65:1,7 65:14 71:1 72:2 73:13,14 74:2 75:17,17 76:23 77:4 79:6,7,20 81:2 81:6 82:1,5 85:17 86:20 89:11 91:23 95:21 102:15 103:6 104:11,15,22 105:3 105:23 106:19,20	107:4,9,10,11,23 113:16 116:21 118:7 119:7 122:7 123:5,9,12 124:18 125:8 126:6 127:12 127:23 130:1 thinking 29:21 56:11 57:13 73:11 89:8,9,12 93:3 105:23 111:3 116:2 129:17 third 95:8 99:2 thompson 1:5 thoroughly 63:1 thought 13:2 21:11 21:17 44:8 48:7 51:21 56:14,23 57:6,10 63:19 79:4 79:6 83:12 86:1,7 91:8,9 99:21 103:15 126:1 thoughts 83:16 102:6 thousand 122:12 thousands 122:21 123:6 three 13:20 51:17 107:8 thrown 20:4 tim 84:17 time 4:13,14 6:3 9:9,13,15 10:4,21 15:5 17:13 18:11 18:12,20 20:1 21:15 22:2,8,9 23:8 28:16,19 30:13 31:15 32:12 33:8 33:13 35:16 36:9 38:20 41:5 42:2 44:9 45:17,18 46:20 48:16 49:2,7
---	--	---	--

[time - voting]

Page 154

49:19,21 51:21 55:22 56:14,18 59:14 60:10,17 61:12 65:14 78:15 90:15 92:2 97:5,19 98:3,5 103:9 106:17 107:20 113:16,17,18 115:6 124:10 129:17 131:23 times 6:2 29:5 30:6 66:5 83:20 timing 102:4 titled 52:7 87:9 today 8:14,18 16:14 18:6 20:10 24:6,21 25:15,19 27:5 35:2 56:22 84:3 107:21 132:1 told 21:6 22:6 26:11,16 35:17 50:14 115:16 125:5 top 58:21 110:9 topic 20:9 61:15 70:17 topics 54:7 totally 80:11 track 21:16 78:17 transcript 133:9 transfer 18:1 trea 1:5 trial 4:22 15:1 tried 9:17 131:5 true 62:10,10 104:11 130:19 133:9 truly 68:4 trusted 125:13 truth 5:10,11,11 26:16	truthful 8:17 truthfully 8:14 try 6:14 70:7 72:6 trying 12:21 43:21 62:4 66:22 67:6 75:9,10 76:19 98:3 111:4,6 115:20 120:6 turn 38:4 50:5 58:13 77:4 125:14 125:16 turning 54:11 87:5 turpitude 20:18 24:16 28:9 31:6 32:14,19,23 33:4,9 36:7 37:4,22 43:22 47:9,10,15,23 48:1 48:4,9,12 49:3 50:1 50:3,11,17 51:1,9 52:10 53:6,9,19 54:15,20,22 55:8 56:4 61:2 63:18 64:3 81:2 84:1 85:13,19 86:10 93:2,9 95:17,20 96:18 98:2,8 99:16 99:20 101:15,22 123:17 tuscaloosa 121:2 tweeted 122:18 twice 119:18 two 25:16,19 41:19 49:23 56:11 62:8 71:13 78:3 87:11 112:10 120:6 type 20:19 64:3 typewriting 133:7	uh 6:22 11:13 12:5 79:2 123:1,8,11 unanimous 102:17 116:10 undergraduate 9:2 undermined 14:12 undermining 14:17 underpinnings 53:6 understand 7:3,8 14:21 32:20 62:3 65:7 80:13 106:22 understanding 23:23 24:20,23 30:13,23 32:12 36:13 39:15,18,19 48:5 81:9 83:1 97:3 97:12,18 98:4 100:17 103:19 109:11 114:9 127:19 understood 106:21 underwood 55:20 unfortunately 64:22 uniform 28:23 united 1:1 55:20 56:16 university 9:1,4 unlawful 123:13 unlimited 38:1 unlink 43:15 unpaid 75:19 unprincipled 109:1 110:4 upstanding 71:18 use 17:17 18:23 49:2 62:5 76:4 usual 8:4 utilitarian 12:11,12	v v 55:19 vague 51:7 71:1 73:15 vaguely 92:18 vagueness 31:11 32:2 37:23 61:3 variety 111:8 verbal 6:18 verify 56:13 versus 49:19 50:1 veto 40:12 victim 110:15 127:7 view 46:21,21 47:1 48:17 64:20 126:16 views 126:13,20 violation 49:13 violations 28:23 volunteer 10:16 121:7,8 vote 24:2 30:16 31:23 36:8,8,9 40:13,13 43:19 44:5 47:8 55:9 69:12 71:12 75:14 75:19,21 76:16 78:21 79:9,11,11 80:7 82:7,8,10,12 88:8 102:17 103:3 116:9 126:1,4 128:4 voted 103:7,17 voter 27:18 33:7 54:16 56:5 121:18 voters 55:1,12 56:7 57:20 121:18 124:3 124:13 votes 122:12,15 voting 23:14,21 27:19 41:8,17 42:7
	u		
	u.s. 122:22 uber 10:9		

[voting - years]

Page 155

42:15 46:14 48:10 52:7 70:3 71:7 74:21 76:12 78:2 87:23 96:2,21 97:23 98:9 103:5 110:16 111:2 112:3 127:5 128:4 131:4 vs 1:7	102:5 105:12 109:1 116:3 119:2 122:16 133:15 we've 5:15 81:22 weird 66:19 went 9:3 16:20 24:10 51:19 102:13 119:16 whatsoever 39:12 white 64:21 65:1 whoa 15:3 willfully 70:5 willing 41:23 112:8 win 1:14 4:5 5:8,18 84:18 winfield 2:20 winthrop 5:18 witness 3:8 5:5,5,9 24:17 26:8 52:4 133:10 word 16:10 49:17 wording 14:10 words 20:12 22:23 24:6 47:19 48:8 75:7,10 80:15 work 9:10,13,15,20 10:11,16,21 15:9 16:2 17:18,23 18:2 18:3 19:1 20:22 22:4 27:7 94:22 95:15 105:16 107:4 108:15,18,22,23 109:6,7 116:16 118:4,13 119:11 120:1,5 123:13 126:3 worked 9:16 13:15 24:8 111:13 120:13 working 12:21 13:1 13:11 18:15 97:10	works 23:2 83:6 116:3 world 12:10 wow 105:23 write 82:22 writes 112:21 written 16:1,6 88:22 94:1 130:5 wrong 14:22 23:18 48:23 49:11 80:14 98:6 118:8 124:5 wrongfully 37:18 wsinclair 3:4
w		y
wait 37:7 82:7,7 waiting 71:8 waived 4:21 5:6 waiving 5:2 want 7:12 14:22 17:22 42:7 43:8,13 43:22 44:10,17 45:20 47:18 50:21 58:13 60:14,15 67:9,10 71:6 77:4 79:10 83:19 89:7 91:12 96:8,8 99:11 107:22 108:22,23 wanted 10:12 12:22 13:4 24:4 26:21 37:2,12 71:5 72:1 86:3 126:20 wanting 105:9 128:6 wants 21:17 67:8 89:9 115:17 war 58:2 ward 112:16,23 113:6 114:7,10,15 114:21 115:11 117:1,7 119:10,16 119:19 washington 1:19 2:7,14,22 way 37:9 39:12 63:12 67:3 75:8 78:5 82:11 94:14		y'all 14:2 40:17,19 83:18 yeah 6:6 10:3,18 16:9 17:6 18:12 19:2 24:3 26:11 29:17 30:18 34:20 35:3 38:23 39:11 43:6 53:3,13,14 61:14 62:7 63:1,2 70:22 71:17 75:8 81:14 106:19,20 113:16 121:9 122:11 129:21,23 130:15 year 9:11,16 25:12 113:8 years 13:20 28:16 28:17 29:2 31:7 33:18 71:2,9

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.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Deposition of:
Honorable Tim Jolley

August 21, 2019

In the Matter of:
**Thompson, Treva, et al. Vs. Merrill,
John H., et al.**

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Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE
3 MIDDLE DISTRICT OF ALABAMA
4
5

6 CASE NUMBER: 2:16-783-ECM-SMD
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10
11

12 TREVA THOMPSON, et al.,
13 Plaintiffs,
14 vs.
15 JOHN H. MERRILL, et al.,
16 Defendants.
17
18
19
20

21 DEPOSITION TESTIMONY OF:
22 HONORABLE TIM JOLLEY
23 AUGUST 21, 2019

Page 2	Page 4
<p>1 S T I P U L A T I O N 2 It is hereby stipulated and agreed by 3 and between counsel representing the parties 4 that the deposition of Honorable Tim Jolley is 5 taken pursuant to the Federal Rules of Civil 6 Procedure and that said deposition may be taken 7 before Stephanie Nicholas, Court Reporter and 8 Commissioner for the State of Alabama at Large, 9 without the formality of a commission; that 10 objections to questions other than objections as 11 to the form of the questions need not be made at 12 this time but may be reserved for a ruling at 13 such time as the deposition may be offered in 14 evidence or used for any other purpose as 15 provided for by the Federal Rules of Civil 16 Procedure. 17 It is further stipulated and agreed 18 by and between counsel representing the parties 19 in this case that said deposition may be 20 introduced at the trial of this case or used in 21 any manner by either party hereto provided for 22 by the Federal Rules of Civil Procedure. 23 It is further stipulated and agreed</p>	<p>1 I N D E X 2 3 EXAMINATION BY: PAGE NO.: 4 MS. YUN 8, 141 5 MS. MESSICK 128 6 7 EXHIBITS: 8 PLAINTIFF'S EXHIBIT 1 30 9 (Agenda) 10 PLAINTIFF'S EXHIBIT 2 34 11 (Meeting Minutes) 12 PLAINTIFF'S EXHIBIT 3 61 13 (December 15, 2015 Email) 14 PLAINTIFF'S EXHIBIT 4 70 15 (December 9, 2015 Letter) 16 PLAINTIFF'S EXHIBIT 5 85 17 (Proposed Statutory Language) 18 PLAINTIFF'S EXHIBIT 6 88 19 (Email and Attachments) 20 PLAINTIFF'S EXHIBIT 7 90 21 (Tim Jolley Letter and Email) 22 PLAINTIFF'S EXHIBIT 8 109 23 (HB282)</p>
Page 3	Page 5
<p>1 that the signature to and the reading of the 2 deposition by the witness is waived, the 3 deposition to have the same force and effect as 4 if full compliance had been had with all laws 5 and rules of Court relating to the taking of 6 depositions. 7 It is further stipulated and agreed 8 that the notice of filing of the deposition by 9 the Commissioner is waived.</p>	<p>1 A P P E A R A N C E S 2 3 APPEARING ON BEHALF OF THE PLAINTIFFS: 4 MS. JENNIFER J. YUN 5 JENNER & BLOCK, LLP 6 1099 New York Avenue NW, Suite 900 7 Washington, D.C. 20001-4412 8 9 10 11 12 13 APPEARING ON BEHALF OF THE DEFENDANTS: 14 MS. MISTY S. FAIRBANKS MESSICK 15 MR. WINFIELD J. SINCLAIR 16 STATE OF ALABAMA 17 OFFICE OF ATTORNEY GENERAL 18 501 Washington Avenue 19 Montgomery, Alabama 36130 20 21 ALSO PRESENT: 22 Ms. Blair Bowie 23 Mr. Brenton Smith</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 6</p> <p>1 I, Stephanie Nicholas, a Court Reporter 2 of Tallassee, Alabama, acting as Commissioner, 3 certify that on this date, as provided by 4 the Federal Rules of Civil Procedure and the 5 foregoing stipulation of counsel, there came 6 before me at the Alabama Attorney General's 7 Office, 501 Washington Avenue, Montgomery, 8 Alabama, beginning at 10:07 a.m., Honorable Tim 9 Jolley, in the above cause, 10 for oral examination, whereupon the following 11 proceedings were had: 12 13 14 15 16 17 18 19 20 21 22 23</p>	<p style="text-align: right;">Page 8</p> <p>1 THE VIDEOGRAPHER: Okay. Court 2 reporter, please swear in the witness. 3 THE COURT REPORTER: Okay. 4 5 HONORABLE TIM JOLLEY, 6 being first duly sworn, was 7 examined and testified as follows: 8 EXAMINATION BY MS. YUN: 9 Q. Good morning. 10 A. Good morning. 11 Q. Please state your full name and 12 current address for the record. 13 A. Allen Timothy Jolley. 14 MS. MESSICK: Can he give you his 15 work address? If you put his home address -- 16 you don't need his home address, and we'll have 17 to redact it. 18 MS. YUN: Sure. Work address is 19 fine. 20 MS. MESSICK: Thank you. 21 A. All right. 22 MR. SINCLAIR: Or city and state. 23 A. Marshall County Courthouse,</p>
<p style="text-align: right;">Page 7</p> <p>1 THE VIDEOGRAPHER: Okay. We're now 2 on the record. Today is Wednesday, August the 3 21st, 2019. The time is 10:07 a.m. Central 4 Standard Time. This begins the video deposition 5 of Honorable Tim Jolley, in the matter of Treva 6 Thompson, et al., versus John H. Merrill, et 7 al., Case Number 2:16-783-ECM-SMD, District 8 Court Middle District of Alabama. The 9 deposition is taking place at the offices of the 10 Alabama Attorney General, 501 Washington Avenue, 11 Montgomery, Alabama. 12 My name is Lane Boggs, videographer, 13 representing Boggs Multimedia. The court 14 reporter is Stephanie Nicholas representing 15 Freedom/Veritext. 16 Counsel, identify yourself and state 17 whom you represent. 18 MS. YUN: This is Jennifer Yun 19 representing the plaintiffs. 20 MS. MESSICK: Misty S. Fairbanks 21 Messick for the defendants. 22 MR. SINCLAIR: Winfield Sinclair for 23 the defendants.</p>	<p style="text-align: right;">Page 9</p> <p>1 Guntersville, Alabama for part of the time and 2 the other part of the time, private practice, 3 431 Gunter Avenue, Guntersville, Alabama. 4 Q. (BY MS. YUN:) And as you heard, my 5 name is Jennifer Yun, and I represent the 6 plaintiffs in this case. And I'll be taking 7 your deposition today. Have you ever been 8 deposed before? 9 A. No, ma'am. 10 Q. Have you ever testified at trial? 11 A. I have. 12 Q. And when was that? 13 A. Oh. I'm going to have to try to 14 estimate. I gave testimony in a divorce case 15 that I was -- why -- why I divorced my previous 16 wife. And it was simply testimony for the 17 jurisdictional proof of the divorce. We were 18 able to reach a settlement on the day of trial. 19 The other time that I testified was 20 during a capital murder case in about 1992, 21 somewhere in that neighborhood. It was State of 22 Alabama versus Shannon Mitchell, who was a local 23 attorney. I was working at the district</p>

3 (Pages 6 - 9)

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 10</p> <p>1 attorney's office at that time as the chief 2 assistant district attorney. I was also the 3 director of the -- of our special crime unit and 4 I assisted in making decisions during 5 investigations of homicides. 6 During that case, I testified about 7 my involvement in the investigation of the case 8 but primarily concerning a conversation I had 9 with the attorney that was charged with capital 10 murder of a police officer. He was acquitted of 11 the charge. He is currently a municipal court 12 judge in Guntersville and in Boaz. And I'm a 13 prosecutor in the City of Guntersville court 14 where he's the judge. 15 Q. Great. So do you understand that 16 you'll be answering questions today under oath? 17 A. Yes, ma'am. 18 Q. And that it is the same as if you 19 are trying -- testifying in court? 20 A. I do. 21 Q. And do you understand that your 22 testimony must be truthful and complete? 23 A. Yes, ma'am.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Sure. 2 A. I have a habit of calling people sir 3 or ma'am. Does that bother you if I do that or 4 is that -- 5 Q. That does not bother me at all. 6 A. All right. 7 Q. Thank you. 8 A. Thank you. 9 Q. Ms. Messick may object to one of my 10 questions, and unless she instructs you not to 11 answer and when she finishes her objection, you 12 should answer the question. 13 A. Yes, ma'am. 14 Q. And let me know, as we spoke before, 15 if you need a break, however, I would ask that 16 you not request a break while one of my 17 questions is pending. Is that -- 18 A. Yes, ma'am. 19 Q. -- okay? 20 A. Yes, ma'am. 21 Q. Is there any reason you may not be 22 able to testify truthfully and accurately today? 23 A. No, ma'am.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. So I will now go over some ground 2 rules governing this deposition. I'll try to 3 ask my questions slowly and clearly. And I will 4 ask that you do the same with your answers. Is 5 that okay? 6 A. Yes, ma'am. 7 Q. I would also ask that you let me 8 know if you don't understand a question. Is 9 that okay? 10 A. Certainly. 11 Q. It's important that we speak one at 12 a time and that you listen to the full question 13 before giving your answer, otherwise, it's hard 14 for the court reporter to transcribe and -- and 15 you will not be sure that you're answering the 16 full question before being -- that is being 17 asked. We also want the transcript to be as 18 complete and accurate as possible, so please 19 make sure to respond verbally to questions. If 20 you just nod or shake your head or say uh-huh, 21 it will not appear in the transcript. Is that 22 all right? 23 A. Yes, ma'am. May I ask something?</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Have you taken medications or 2 substances that may affect your memory or should 3 impair your ability to answer my questions 4 today? 5 A. No, ma'am. 6 Q. When did you first speak with anyone 7 from the state attorney general's office about 8 this case? 9 A. I don't remember the exact date, but 10 it was several months ago. 11 Q. And who did you speak with? 12 A. Ms. Messick. 13 Q. Are you being represented by the 14 state of -- the state attorney general's office 15 in this case? 16 A. No, ma'am. I'm not a party. 17 Q. And when you spoke with Ms. Messick 18 several months ago, was it about this 19 deposition, or was it about this case in 20 general? 21 A. It was about this case in general. 22 Q. What was the nature of that 23 conversation?</p>

4 (Pages 10 - 13)

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 14</p> <p>1 A. I was in, I believe, my office at 2 the district attorney's office, one of my 3 part-time gigs -- 4 Q. Uh-huh. 5 A. -- and I got a call or a -- I had 6 a -- perhaps a message from my other office that 7 she had called and wanted to get in touch with 8 me. So I returned her call, as I -- as I 9 remember. 10 And the crux of the conversation was 11 they explained -- or she explained, not 12 they -- but she explained that this lawsuit was 13 pending and that she wanted to talk with me to 14 see if I had any information that might be 15 relevant to the case. And her -- her question 16 to me, as I believe it -- and it was a very 17 short conversation; but it was, during the 18 discussions in the committee meetings that you 19 had, do you believe that there was actual 20 discussions and debate that were meaningful as 21 opposed to, I think, perhaps the Secretary of 22 State just saying this is what I want and this 23 is how we're going to do it.</p>	<p style="text-align: right;">Page 16</p> <p>1 in any case, but if I'm -- if I'm asked to 2 testify, I'll testify, you know, to what I know. 3 Q. Thank you. 4 A. Yes, ma'am. 5 Q. Did you have any subsequent 6 conversations with Ms. -- 7 A. I did. 8 Q. -- Messick? Okay. 9 A. I did. Actually -- actually, I 10 forgot one point of our first conversation. She 11 asked me if I had any documents relating to -- 12 relating to our meetings with the task force. 13 And I -- I told her that I wasn't sure, I didn't 14 think I did because when -- when I retired from 15 the bench, I didn't -- I didn't recall keeping a 16 file on this case. I knew I had one, but I -- I 17 didn't recall keeping it. So I told her that I 18 didn't think I had documents. 19 I had a subsequent conversation with 20 her after that. I believe it was perhaps 21 sometime in maybe June or July. And she asked 22 me if -- if -- pursuant to the subpoena, if she 23 could send me documents for me to look at that</p>
<p style="text-align: right;">Page 15</p> <p>1 And do you want me to give -- give 2 you my response as I recall? 3 Q. Yes, please. 4 A. As I recall, I said, yes. You know, 5 I've served on other committees or -- or other 6 task force dealing with legislation, and I'm 7 kind of skeptical about them starting out 8 because I had what I thought was not the best 9 experience when I served on the Prison Reform 10 Task Force due to the fact that legislation was 11 in the hopper before anyone on the committee was 12 able to look at it or -- or discuss the actual 13 contents of it. And it was about, I think, over 14 100 pages. 15 So when I first -- when I first went 16 onto this committee and we had our first 17 meeting, we actually had discussions about what 18 the issues may be. Anyway, I told her -- my 19 conversation with her was, yes, I thought we did 20 have meaningful discussions. And then she 21 said -- asked me would I be willing to serve as 22 a witness in the case, and I said, well, you 23 know, no one really likes to serve as a witness</p>	<p style="text-align: right;">Page 17</p> <p>1 might help me refresh my recollection. 2 I brought those documents with me. 3 There were a packet of documents that she 4 actually sent to me. I -- and I recently moved 5 from one home to another. We had boxes and 6 boxes. So when I actually started going through 7 those boxes to put things in my home office, I 8 found a file that actually had these documents 9 in there. They were the same documents. They 10 were the same documents. No additional ones. 11 Q. And those are the documents that you 12 received; The box -- 13 A. These -- 14 Q. -- that you found in -- when you 15 moved was from when you served on the committee? 16 A. Yes, ma'am, it was. 17 Q. Thank you. 18 A. Yes. And I had -- oh, I'm sorry. I 19 had another conversation with her relating to 20 the deposition. I know I got a really -- like a 21 week's notice of the first setting. I 22 appreciate y'all rescheduling. But I did talk 23 with her about that, I think, twice, once then</p>

5 (Pages 14 - 17)

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 18</p> <p>1 and once maybe last week or so -- or a couple of</p> <p>2 weeks ago, relating to setting the deposition</p> <p>3 for today.</p> <p>4 Q. And those were -- could you tell me</p> <p>5 the nature of those discussions that you had in</p> <p>6 preparation for this deposition?</p> <p>7 A. Oh. I -- are you talking about</p> <p>8 facts? Do you mean facts relating to the case</p> <p>9 or --</p> <p>10 Q. No.</p> <p>11 A. -- just --</p> <p>12 Q. Just --</p> <p>13 A. -- any conversation?</p> <p>14 Q. -- what you talked about.</p> <p>15 A. Okay. We -- we simply talked about</p> <p>16 the timing of the deposition, when we could</p> <p>17 possibly schedule it. And I know I had -- I had</p> <p>18 court conflicts and -- and I have a court</p> <p>19 conflict today, but it's just -- you know, I</p> <p>20 can't -- obviously sometimes you can't fix court</p> <p>21 conflicts. You just have to jump in there and</p> <p>22 say, all right, whenever you say do it, we'll do</p> <p>23 it.</p>	<p style="text-align: right;">Page 20</p> <p>1 was teaching at the midwinter judges conference</p> <p>2 and could not attend. But all of these, in some</p> <p>3 way, refresh my recollection.</p> <p>4 Q. Did you learn any new information</p> <p>5 from any of those documents?</p> <p>6 A. I did.</p> <p>7 Q. And if you could briefly explain</p> <p>8 what those were.</p> <p>9 A. I learned that in discussing --</p> <p>10 or -- or not discussing -- in preparing my list</p> <p>11 of what I think was titled additional moral</p> <p>12 turpitude crimes, that I actually maybe left one</p> <p>13 or two off. But that's basically it.</p> <p>14 Q. Okay. So no other new information</p> <p>15 that you learned from the documents?</p> <p>16 A. No, no new information.</p> <p>17 Q. Have you spoken with Secretary</p> <p>18 Merrill about this litigation at all?</p> <p>19 A. I have not. Not at all.</p> <p>20 Q. Have you spoken with anyone in the</p> <p>21 Alabama State Legislature about this litigation?</p> <p>22 A. I have not.</p> <p>23 Q. Have you spoken with anyone in the</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. And you mentioned those documents</p> <p>2 that you reviewed -- that you received from Ms.</p> <p>3 Messick.</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. Did any of those refresh your</p> <p>6 recollection?</p> <p>7 A. They do somewhat, yes.</p> <p>8 Q. And which ones were they?</p> <p>9 A. Do you want me to name each one of</p> <p>10 them or -- or provide you the ones that --</p> <p>11 Q. Maybe it will save us time if we</p> <p>12 could -- maybe you could mark them with a tape</p> <p>13 flag during the break or something like that --</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. -- and -- because we'll -- we'll</p> <p>16 take those from you eventually.</p> <p>17 A. All the documents that she provided</p> <p>18 me helped somewhat to refresh my recollection,</p> <p>19 you know, with reference to at least when the</p> <p>20 meeting was held, whether or not I was there at</p> <p>21 the meeting. Because the last meeting, where</p> <p>22 they actually voted on acceptance of the -- of</p> <p>23 the proposed legislation, I was -- I believe I</p>	<p style="text-align: right;">Page 21</p> <p>1 exploratory committee about this litigation?</p> <p>2 A. I have not.</p> <p>3 Q. Did you speak to anyone else to</p> <p>4 prepare your testimony today?</p> <p>5 A. No.</p> <p>6 Q. Could you give us a brief overview</p> <p>7 of your educational background?</p> <p>8 A. Yes. I attended undergraduate</p> <p>9 school at Jacksonville State University, where I</p> <p>10 majored in criminal justice, with an emphasis on</p> <p>11 forensic sciences, and then attended Birmingham</p> <p>12 School of Law. I graduated Birmingham School of</p> <p>13 Law in 1981, took the bar exam. I graduated in</p> <p>14 late May of '81, took the bar exam in July and</p> <p>15 was admitted to the Bar in October of that year.</p> <p>16 Q. And could you tell us your</p> <p>17 professional background starting --</p> <p>18 A. Certainly.</p> <p>19 Q. -- from then? Yeah.</p> <p>20 A. Certainly. I was in private</p> <p>21 practice from 1981 until January of 1987. In</p> <p>22 January of 1987, I went to work with the</p> <p>23 district attorney of Marshall County, Ronald P.</p>

6 (Pages 18 - 21)

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 22</p> <p>1 Thompson. I had actually managed his campaign 2 in his bid for -- to defeat an incumbent 3 district attorney. I worked for him from 1987 4 until 1999. I worked there 12 years. And ten 5 years of that was his chief assistant district 6 attorney. When I left that office, I was 7 handling primarily homicide, arsons and 8 drug-related cases. 9 I went to -- I ran for circuit 10 judge. And it was a vacant post that was being 11 vacated by the retirement of a circuit judge 12 that we had there by the name of Bill Gatton. I 13 was fortunate enough to run unopposed for that 14 first term in 1998, took the bench in 1999. I 15 was there for 18 years. I ran two other times 16 unopposed. Two times as a Democrat, the last 17 time as a Republican. I retired -- I believe it 18 was January the 14th at 12:01 a.m. And by 8:00 19 that morning, I was in my new office where I now 20 practice law. 21 Q. And which year was that? 22 A. That was 2017. January of 2017. 23 And I've been engaged in the private practice of</p>	<p style="text-align: right;">Page 24</p> <p>1 city attorney. If the city attorney has a 2 conflict in civil matters, I handle those. If 3 he does not, I simply assist in the prosecution. 4 And primarily DUI cases. 5 Q. And how much of your time right now 6 is being devoted to your private practice as 7 opposed to your other duties working for -- 8 A. Oh, okay. 9 Q. -- the DA and the district attorney? 10 A. Actually, I would say probably -- if 11 you count the weekend work, probably two days to 12 two and a half days a week to private practice. 13 The remainder of those six days would be devoted 14 to district attorney work. I have actual office 15 hours in the district attorney's office. On 16 Monday, Tuesday and Thursdays -- or any other 17 times that it's needed if I happen to be in 18 court. 19 Q. Thank you. 20 A. Yes, ma'am. 21 Q. So you mentioned that you found a 22 box of documents that were -- 23 A. Well, not a box. I found a box that</p>
<p style="text-align: right;">Page 23</p> <p>1 law since then. I also work part-time with the 2 current district attorney, who is Everett 3 Johnson. Strangely enough, I was his supervisor 4 when I was in the district attorney's office the 5 first time, and now he's mine. 6 I currently handle issues that come 7 up dealing with homicides, particularly capital 8 murder and Miller versus Alabama issues dealing 9 with juveniles that may have been sentenced and 10 are coming back for Miller hearings. I've 11 actually tried one in -- I'm sure it will be on 12 appeal pretty soon. 13 I also, once again, handle arson 14 cases, drug trafficking cases. I handle issues 15 that come up with dealing with difficult -- what 16 I consider -- some are difficult and some are 17 not -- procedural aspects in -- in the criminal 18 cases. 19 And in civil law, strangely enough, 20 I handle real estate litigation. That's 21 primarily what I do. I also prosecute for the 22 City of Guntersville. I'm, you might say, an 23 assistant city prosecutor. I'm not the actual</p>	<p style="text-align: right;">Page 25</p> <p>1 had these documents in them. Yes. 2 Q. Those were the identical documents 3 that you received from Ms. Messick? 4 A. Yes, ma'am. 5 Q. And -- 6 A. Uh-huh. 7 Q. -- during your time as a circuit 8 judge, did you ever use an email address other 9 than your government account to send or receive 10 any communications that are related to your 11 position as a circuit judge? 12 A. No, ma'am. 13 Q. Did you store any files related to 14 your official duties on any nongovernment 15 computer? 16 A. No, ma'am. 17 Q. And does your current job touch on 18 issues related to felony disenfranchisement in 19 any way? 20 A. It doesn't. Well, I say it doesn't. 21 I -- it depends on how you look at it, I guess. 22 I mean, as a prosecutor, when I -- when I 23 prosecute someone, if they plead guilty or</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 26</p> <p>1 they're convicted of certain offenses, they're 2 going to lose their right to vote. So it would, 3 I guess, actually. Yes. You're right. 4 Q. So we already spoke a little bit 5 about the committee that you served on. So 6 could you tell us a little bit about your 7 involvement with the Voter Disenfranchisement 8 and Restoration of Voting Rights Exploratory 9 Committee that you served on? 10 A. Yes, ma'am. On this particular 11 committee -- I don't remember who asked me to 12 serve on it, and I was trying to think of that. 13 I don't remember if it was the secretary of 14 state or if it was the chief justice or actually 15 who it was. But however that came about, I -- I 16 remember accepting the agreement to work on the 17 committee. 18 And we met only a couple of times -- 19 or I was present only, I think, in a couple of 20 meetings. And -- and I noticed in looking over 21 the minutes from one of the meetings -- I 22 believe it was the second meeting. The first 23 meeting was -- was primarily introductions of</p>	<p style="text-align: right;">Page 28</p> <p>1 commission adjourned at 11:30 p.m. That is 2 incorrect. It was 11:30 a.m. 3 Q. (BY MS. YUN:) And you're referring 4 to the November 18, 2015 meeting? 5 A. Yes, ma'am, I am. 6 Q. Yeah. We'll go over those minutes 7 in -- 8 A. Okay. 9 Q. -- more detail -- 10 A. Yes, ma'am. 11 Q. -- in time, but thanks for pointing 12 that out. 13 A. Sure. 14 Q. So you were saying that you did not 15 recall how the -- how the committee makeup was 16 determined? 17 MS. MESSICK: Object to the form. 18 A. I don't. 19 Q. (BY MS. YUN:) And do you remember 20 how -- do you remember how you were asked or who 21 asked you to be on the committee? 22 MS. MESSICK: Object to the form. 23 A. I actually don't. I would have to</p>
<p style="text-align: right;">Page 27</p> <p>1 people and what we do, identifying, I think, the 2 task that we had before us. 3 And in the second meeting that we 4 had, I notice the minutes of those minutes said 5 it adjourned sometime in the p.m., but actually 6 -- or it may have been the first one. Let me 7 look. One of the -- I noticed one of the times 8 on the meetings adjournment signed by Secretary 9 Merrill was obviously incorrect because it said 10 p.m. instead of a.m. and it -- there's no way we 11 would have been there at perhaps 11 p.m. or 12 whenever it was that it said. If I can locate 13 that. 14 MS. MESSICK: It looks like it is 15 that. November 18th minutes. 16 THE WITNESS: Thank you. 17 MS. MESSICK: Do you-all have a 18 copy? 19 MS. YUN: Yes. 20 MS. MESSICK: Okay. 21 A. Yes. Here it is. It's on the 22 adjournment page, the last page. It says that 23 with no other business before the body, the</p>	<p style="text-align: right;">Page 29</p> <p>1 speculate as to who it may have been. 2 Q. (BY MS. YUN:) And what is your 3 understanding of the purpose of the exploratory 4 committee? 5 A. My understanding of the purpose of 6 the exploratory committee was to accomplish -- 7 or try to accomplish two things. One was to 8 define under our constitutional provision what a 9 crime involving -- or a felony, rather, 10 involving moral turpitude was. And also to look 11 at the process and determine whether or not 12 automatic reinstatement should be accomplished 13 or whether there should be a process and -- and 14 what that process was or -- or would look like. 15 Q. Thank you. 16 A. Yes, ma'am. 17 Q. Just to go back to the documents 18 that you were referring to. Did the documents 19 that you found in that box have any notes that 20 you had written on them? 21 A. They -- they did. It had -- one of 22 them -- I believe it was the first one, I had 23 handwritten a note as to when our next meeting</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 30</p> <p>1 was -- or the discussions. And I didn't</p> <p>2 actually -- I can provide that. Because that's</p> <p>3 the only thing -- that's the only note that was</p> <p>4 on any of those documents was the -- the one</p> <p>5 where I put down a -- a date of a -- of a</p> <p>6 meeting that was to occur.</p> <p>7 Q. And that was the only note that you</p> <p>8 had written on --</p> <p>9 A. Yes, ma'am, it was.</p> <p>10 Q. Okay. It would be great if we</p> <p>11 could --</p> <p>12 A. Sure.</p> <p>13 Q. -- get a copy of that --</p> <p>14 A. Sure.</p> <p>15 Q. -- from you.</p> <p>16 THE WITNESS: Let me make a note.</p> <p>17 MS. MESSICK: I'm doing it.</p> <p>18 THE WITNESS: Oh, okay.</p> <p>19 Q. (BY MS. YUN:) I am now handing you</p> <p>20 what has been marked as Exhibit 1. Do you</p> <p>21 recognize this document?</p> <p>22 (Plaintiff's Exhibit 1 was marked</p> <p>23 for identification and attached.)</p>	<p style="text-align: right;">Page 32</p> <p>1 what are the things we're going to have to look</p> <p>2 at in order to come up with some legislation to</p> <p>3 assist with coming -- well, with not only</p> <p>4 defining moral turpitude under Alabama law, but</p> <p>5 also the procedures for convicted felons being</p> <p>6 able to apply to vote again.</p> <p>7 They were -- there were a number of</p> <p>8 people that participated in those discussions,</p> <p>9 but I don't remember the exact details of them.</p> <p>10 And quite frankly, I focused more -- and perhaps</p> <p>11 I should have listened better, but I focused</p> <p>12 more on the moral turpitude issue. I kind of</p> <p>13 jumped on that because of my position and my</p> <p>14 experience. So I thought I was more adept to</p> <p>15 work on that issue and primarily focused on</p> <p>16 that.</p> <p>17 Q. Are you aware of any -- were you</p> <p>18 aware of any -- sorry. Strike that. Are you</p> <p>19 aware of any meeting minutes being taken for</p> <p>20 these committee meetings?</p> <p>21 A. I have --</p> <p>22 MS. MESSICK: Object to the form.</p> <p>23 A. Yes.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. I do.</p> <p>2 Q. And this is an agenda for an October</p> <p>3 15, 2015 meeting of the exploratory committee,</p> <p>4 correct?</p> <p>5 A. Yes, ma'am, it is.</p> <p>6 Q. Did you attend this meeting?</p> <p>7 A. I did.</p> <p>8 Q. Do you recall what was discussed at</p> <p>9 this meeting?</p> <p>10 MS. MESSICK: Object to the form.</p> <p>11 A. I didn't until I looked at the</p> <p>12 agenda and the minutes to help refresh my</p> <p>13 recollection. But that's the only way that I</p> <p>14 could -- could tell you is from looking at that.</p> <p>15 But I -- I do have some independent</p> <p>16 recollection, after looking at that, as to some</p> <p>17 of the things that were discussed in the</p> <p>18 meeting.</p> <p>19 Q. (BY MS. YUN:) And what were those</p> <p>20 things that were discussed?</p> <p>21 A. The purpose of the committee other</p> <p>22 than the introductions of the people involved</p> <p>23 and some discussion about, I believe, you know,</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. (BY MS. YUN:) Did you or other</p> <p>2 committee members ever review those meeting</p> <p>3 minutes shortly after those meetings occurred?</p> <p>4 A. I don't recall ever reviewing those</p> <p>5 minutes until they were provided. So I don't</p> <p>6 have an independent recollection, but, I mean,</p> <p>7 obviously, I did. I had these documents. But a</p> <p>8 short time after, I don't -- I can't recall. I</p> <p>9 can't recall ever doing that.</p> <p>10 Q. And do you recall seeing any</p> <p>11 meetings minutes for this October 15, 2015</p> <p>12 meeting?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. You do recall seeing minutes for</p> <p>15 that -- for this meeting?</p> <p>16 A. Well, perhaps I'm incorrect. Let me</p> <p>17 look at -- the only ones -- no. No. It's a</p> <p>18 November 18. That's -- no. I'm -- I don't.</p> <p>19 There is -- there is -- at least I didn't have</p> <p>20 any in my documents, and the documents here that</p> <p>21 I -- have been provided don't reflect it either.</p> <p>22 And I don't have any independent recollection of</p> <p>23 it.</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 34</p> <p>1 Q. Understood.</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. And I'm now handing you what's been</p> <p>4 marked as Exhibit 2.</p> <p>5 (Plaintiff's Exhibit 2 was marked</p> <p>6 for identification and attached.)</p> <p>7 MS. YUN: I have another copy.</p> <p>8 MR. SINCLAIR: No. It's all right.</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. (BY MS. YUN:) Do you recognize this</p> <p>11 document?</p> <p>12 A. I do.</p> <p>13 MS. MESSICK: Object to the form.</p> <p>14 Q. (BY MS. YUN:) And it appears to be</p> <p>15 a packet of materials produced by and to the</p> <p>16 exploratory committee; is that correct?</p> <p>17 A. Yes, ma'am. I don't know if you</p> <p>18 would call it a packet of materials that were</p> <p>19 produced. I believe they were produced at</p> <p>20 separate time -- at different times. But, yes,</p> <p>21 those are materials that -- that I would have</p> <p>22 received as a member of the exploratory</p> <p>23 committee.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. All right. The reason that I felt</p> <p>2 it was so -- I felt there were some</p> <p>3 inconsistencies in the list. And my opinion was</p> <p>4 if you accept a short list, fine. If you accept</p> <p>5 a long list, you need to make sure that it's</p> <p>6 consistent and that you don't exclude certain --</p> <p>7 certain felons and -- from voting, where others</p> <p>8 with the same type of offense are allowed to</p> <p>9 vote. And I understand that if you don't</p> <p>10 disenfranchise someone, then there may not be</p> <p>11 harm in it under -- under the law, maybe there</p> <p>12 isn't, but I -- I think looking at it just to be</p> <p>13 fair.</p> <p>14 And -- and I'll give you an example</p> <p>15 of that. I know that witnesses aren't supposed</p> <p>16 to ramble during depositions, but I'll give you</p> <p>17 an example of that. If you're going to exclude</p> <p>18 forgeries, then you should also exclude someone</p> <p>19 that's -- has a conviction for possession of a</p> <p>20 forged instrument, first or second degree. And</p> <p>21 I don't believe on the list, possession of</p> <p>22 forgeries are excluded, but forgeries are. And</p> <p>23 I just -- I remember voicing my opinion</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. We'll start with the November 17,</p> <p>2 2015 meeting minutes --</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. -- which is on page 1 of that</p> <p>5 exhibit, Exhibit 2.</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Do you recall attending this</p> <p>8 meeting?</p> <p>9 A. I do.</p> <p>10 Q. Do you remember the purpose of this</p> <p>11 meeting?</p> <p>12 A. I believe the -- the purpose of the</p> <p>13 meeting was to discuss, as before except</p> <p>14 in-depth, people's opinions on the committee as</p> <p>15 to what should be included in the legislation,</p> <p>16 what the effects of the legislation might be and</p> <p>17 how it may affect felons that -- that are --</p> <p>18 that would be disenfranchised as a result of</p> <p>19 felony convictions.</p> <p>20 Q. And why did you believe that it was</p> <p>21 necessary to come up with this list of felonies</p> <p>22 involving moral turpitude during this meeting?</p> <p>23 MS. MESSICK: Object to the form.</p>	<p style="text-align: right;">Page 37</p> <p>1 concerning some of those issues during the --</p> <p>2 during the meeting.</p> <p>3 Another example is murder is on the</p> <p>4 list and, interesting, assault first and second</p> <p>5 degree are on the list, but attempted murder</p> <p>6 isn't. So you've excluded someone actually for</p> <p>7 committing a Class B or C felony, but yet</p> <p>8 attempted murder is punished the same as the</p> <p>9 murder committed under Alabama law. So you have</p> <p>10 actually allowed someone that's not on the list,</p> <p>11 allowed someone that has a conviction for</p> <p>12 attempted murder.</p> <p>13 And there are others. There --</p> <p>14 there are -- three are misdemeanors -- there was</p> <p>15 a couple that were misdemeanors. The statute</p> <p>16 may not be quite as clear, until you read it,</p> <p>17 whether it's a felony or misdemeanor. An</p> <p>18 example of that is sexual assault in the second</p> <p>19 degree that's on the list, that's a misdemeanor</p> <p>20 unless the defendant has committed a second --</p> <p>21 or subsequent sexual crime within a year. And</p> <p>22 also there was -- there was a -- a provision on</p> <p>23 there dealing with securities, violations of</p>

10 (Pages 34 - 37)

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 38</p> <p>1 securities law, that -- and I think there's --</p> <p>2 one of the notes in there that says there's no</p> <p>3 punishment provided or it's unclassified.</p> <p>4 That's not correct. The punishment for it is</p> <p>5 one or two code sections over from what's listed</p> <p>6 in the -- in there.</p> <p>7 There was also another -- there was</p> <p>8 also another one on the -- that wound up in the</p> <p>9 legislation that was also -- could be a felony</p> <p>10 or a misdemeanor. And I think it dealt with</p> <p>11 hoaxes, possession of hoax -- hoax devices and</p> <p>12 that sort of thing.</p> <p>13 But -- but those were my concerns,</p> <p>14 that -- that, you know, if you're going to -- if</p> <p>15 you're going to include a category of crimes,</p> <p>16 then it should include all those categories or</p> <p>17 exclude all those categories.</p> <p>18 Q. Thank you. And you --</p> <p>19 A. Yes.</p> <p>20 Q. -- mentioned that you expressed some</p> <p>21 of these concerns that you had about</p> <p>22 inconsistencies. Do you remember what the</p> <p>23 committees' response was or any committee</p>	<p style="text-align: right;">Page 40</p> <p>1 thing about chastity, you know, dealing with --</p> <p>2 it was okay for a man to go out and carouse</p> <p>3 around but it wasn't for a woman. And I</p> <p>4 think -- I think historically, that's where it</p> <p>5 got its footing, and it found its way into</p> <p>6 criminal law later on.</p> <p>7 After the -- after the war between</p> <p>8 the states, a lot of the Confederate states, in</p> <p>9 trying to come up with a -- a mechanism to keep</p> <p>10 African Americans from voting, enacted state</p> <p>11 constitutions that had provisions, that I think</p> <p>12 they were open about in their debates on the</p> <p>13 legislative floor, that they were intended</p> <p>14 specifically and directed to minorities,</p> <p>15 particularly, at that time, African Americans.</p> <p>16 In that, many states passed similar provisions</p> <p>17 that had the moral turpitude exception in it to</p> <p>18 exclude voters that were convicted, not only a</p> <p>19 felon -- of felonies, but of crimes involving</p> <p>20 moral turpitude.</p> <p>21 And Alabama was such a state in the</p> <p>22 constitution of 1901. And -- and I think</p> <p>23 that if I'm not -- I may be mistaken, but I</p>
<p style="text-align: right;">Page 39</p> <p>1 member's reaction?</p> <p>2 A. No. No.</p> <p>3 Q. In looking back at Exhibit 2, the</p> <p>4 meeting minutes, the minutes state that Mr. Win</p> <p>5 Johnson proposed postponing any vote until the</p> <p>6 history of the term moral turpitude could be</p> <p>7 established. What is your understanding of the</p> <p>8 history of the term moral turpitude as it</p> <p>9 relates to voting in Alabama?</p> <p>10 A. Oh, wow.</p> <p>11 MS. MESSICK: Object to the form.</p> <p>12 A. Well, I think you have to go</p> <p>13 further -- a little further back than that</p> <p>14 actually. You know, moral turpitude first got</p> <p>15 its footing in the United States in the early</p> <p>16 1800s dealing with defamation cases. And the</p> <p>17 term encompassed social activities that,</p> <p>18 particularly during that period of time, were</p> <p>19 not acceptable for minorities, were not</p> <p>20 acceptable for women. For example, it was okay</p> <p>21 for a Caucasian man to get in a fight with</p> <p>22 another -- another man, but it wasn't okay for a</p> <p>23 woman or a minority person to do that. And same</p>	<p style="text-align: right;">Page 41</p> <p>1 think it -- there's even some case law that</p> <p>2 discusses the fact that Alabama's constitution</p> <p>3 of 1901, that particular provision you're</p> <p>4 talking about, the disenfranchised voters was</p> <p>5 directed to exclude African Americans.</p> <p>6 Q. And do you recall any discussion</p> <p>7 regarding the suggestion that the committee</p> <p>8 should understand the history of the term moral</p> <p>9 turpitude?</p> <p>10 A. Win Johnson. Yes, I do. As a</p> <p>11 matter of fact, after I looked at that, I</p> <p>12 recalled Win saying, wait a minute, let's --</p> <p>13 let's look at -- look at this.</p> <p>14 Q. And was there anything else said</p> <p>15 about that topic at that meeting as far as you</p> <p>16 can recall?</p> <p>17 A. Moral turpitude?</p> <p>18 Q. About understanding the history of</p> <p>19 the term. Do you recall anything --</p> <p>20 A. I don't --</p> <p>21 Q. -- additional?</p> <p>22 A. I don't recall. I remember we -- we</p> <p>23 set up a subcommittee at -- at some point to --</p>

11 (Pages 38 - 41)

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 42</p> <p>1 that I was a member of -- to -- to try to look 2 at that. But to my recollection, we never 3 actually met. You know, the -- the documents 4 that you have here in this packet is what we 5 used to discuss, I guess, if you call it a 6 discussion, to send those documents back and 7 forth. 8 And primarily, they went through Ed 9 Packard. I got what I got from Ed Packard. 10 And -- and as I recall, Ed Packard asked me to 11 send him my list. That's what I did. 12 Q. Going back to the meeting minutes of 13 the November 18th meeting. On page 2, there's a 14 description of a discussion of other states' 15 practices with regard to felony 16 disenfranchisement and rights restoration. 17 A. Yes. 18 Q. Do you see that? 19 A. Yes. 20 Q. What was the nature of that 21 discussion as far as you can recall? 22 A. I don't have an independent 23 recollection of the details, but I do recall</p>	<p style="text-align: right;">Page 44</p> <p>1 southern states were doing was not relevant to 2 the purpose of the committee? 3 A. No. It's relevant, but I don't 4 think we should just, you know, look at what 5 southern states are doing. You look at what 6 other states are doing other than those in the 7 South. 8 Q. Do you recall -- or did you express 9 any -- did you express that opinion to the 10 committee or any -- 11 A. I did not. 12 Q. -- committee members? 13 A. I did not. No, ma'am. 14 Q. Was there any discussion during the 15 meeting that -- of the potential that by 16 focusing on southern states, that the committee 17 might perpetuate the discriminatory practices? 18 A. I don't remember that there was any 19 such discussion. There may have been. It could 20 have been, but I -- I don't recall that. I 21 don't recall that. 22 Q. Did the committee ever discuss the 23 potential racial impact of any of the proposals</p>
<p style="text-align: right;">Page 43</p> <p>1 that we reviewed what other southern states -- 2 several southern states were doing with regard 3 to reinstatement of voters' rights that had been 4 disenfranchised due to felony convictions. 5 Q. So the minutes state that Secretary 6 Merrill proposed that the committee should 7 direct its attention to what southern states are 8 doing. And do you recall why he made that 9 suggestion? 10 A. I do not. 11 MS. MESSICK: Object to the form. 12 THE WITNESS: Oh. I'm sorry. 13 MS. MESSICK: Thank you. 14 A. I do not. 15 Q. (BY MS. YUN:) In your opinion, what 16 is the import of what other southern states are 17 doing with regard to -- 18 A. I don't think -- I don't think it 19 should matter what other states are doing. I 20 think you should just look at it in a vacuum and 21 determine if what you're doing is 22 constitutional. 23 Q. So you believe looking at what other</p>	<p style="text-align: right;">Page 45</p> <p>1 that it considered -- 2 A. Yes. I'm sorry. Okay. 3 Q. What -- what were the -- what was 4 the nature of those discussions? 5 A. That the change in the law relating 6 to re-establishing voter rights, depending on 7 how it was -- how it was worded, could impact 8 poor people, including Caucasians and African 9 Americans and other minorities, by requiring 10 costs that they couldn't bear. For example, 11 court costs and -- and that sort of thing. And 12 also, if -- if you make the process too 13 cumbersome, it would also have a tendency to 14 discourage people from -- from registering to 15 vote. That's what I recall. 16 Q. And was there any discussion, say, 17 as related to the cost -- the burden of cost? 18 A. There was. And I actually 19 participated -- I remember participating in that 20 discussion. And as a -- as a judge, I guess I 21 kicked in and gave my opinion. I had a 22 differing opinion from some people's. Some 23 people on the committee felt that if you require</p>

12 (Pages 42 - 45)

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 46</p> <p>1 the payment of court cost and restitution, that 2 there are a number of people that can't pay 3 that. And I understand there's some times -- 4 depending on the crime that's committed, may be 5 a whopping amount of restitution. 6 And the concern was that if you have 7 someone that's burdened with paying court cost 8 and fees -- and that's a -- that's a term 9 that -- fees, you -- you have to try to look and 10 determine what -- what is a fee. Is that 11 something that's imposed by the court initially, 12 or is that something that administratively is 13 added on afterwards. But I felt -- I felt -- my 14 opinion was that people aren't engaged and 15 become engaged if, as a judge, you can get them 16 to take pride in what they're doing. 17 When I went on the bench in Marshall 18 County, we started a drug court. We started 19 several different drug courts and also started 20 a -- a HOPE probation program before the program 21 in Hawaii was in existence. And I went to a 22 program with a guy that -- the judge, Judge Alm 23 out in Hawaii, who's now retired and works in</p>	<p style="text-align: right;">Page 48</p> <p>1 felons is -- is obtaining work, obtaining jobs. 2 In our community, as a judge, we got our 3 committee on board with providing work to 4 convicted felons, and particularly our drug 5 court and HOPE probation people, because they 6 were -- they were less likely to -- to miss work 7 because of sickness or because of drug use. And 8 they were also drug testing. So the businesses 9 actually didn't have to pay for the drug 10 testing. They were actually cleaner than the 11 people that were generally on the assembly line. 12 So our community got engaged. Our 13 churches got engaged in trying to mentor people 14 and help them. Our community corrections 15 program in Marshall County also uses a system 16 of teaching people how to -- how to balance a 17 checkbook, how to make a budget, how to make 18 simple repairs to their automobiles, things of 19 that nature, to try to help as well. And I 20 think that's a big thing that Alabama, 21 irrespective of -- I mean, as part of 22 punishment, that we actually need to try to help 23 with engaging people and rehabilitate them. And</p>
<p style="text-align: right;">Page 47</p> <p>1 Washington, I believe. I went to a program 2 presented on HOPE probation, and we got together 3 and realized that I was doing some of the things 4 already that -- that he did. 5 So we actually set up a HOPE 6 probation program. And the thing that I found 7 is that if you have a court system that is 8 engaged with people and treats them with 9 respect, irrespective of what the crime is or -- 10 or what the situation is, that they -- they will 11 take pride in and -- and actually want to be a 12 part of civic activities. Now, I know there's 13 research that would show otherwise. And it may 14 not be applicable in other parts of the state. 15 It's just that that's the way it is in -- in my 16 little slice of the pie in Marshall County. You 17 might say when I was a judge is that's what 18 would happen. People would be engaged. They -- 19 they took pride in paying their court cost and 20 restitution. And I think they were more apt to 21 be engaged in civic activities. 22 One of the things, though, 23 obvious -- that's an obvious disadvantage to</p>	<p style="text-align: right;">Page 49</p> <p>1 to me, paying those costs are a part of that 2 engagement and part of the responsibility. 3 I believe we -- we discussed -- I may 4 have been the one that mentioned it. It's hard 5 to remember all the exact details, but that when 6 a judge determines a sentence -- there was some 7 issue about, well, you can't afford to pay the 8 court cost for a lot of these people that can't 9 afford to pay restitution. That's -- that's 10 determined, though, at the time the sentence is 11 imposed, whether or not a person can -- can pay 12 their cost, their fines and restitution. Those 13 issues are brought up at the time of the guilty 14 plea typically. 15 Now, I'm not saying that there 16 aren't defense attorneys that let that slide and 17 ignore that, but typically if I had someone that 18 couldn't afford to pay, that was brought to my 19 attention at the time that they entered the 20 guilty plea and they were sentenced. And we 21 addressed that issue then as to whether or not 22 the fees and costs should be remitted. 23 The thing is under Alabama law, you</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 50</p> <p>1 can't remit restitution. Restitution will 2 always be -- always be there. Okay? 3 Q. Thank you. 4 A. Yes, ma'am. 5 Q. So you were talking about how 6 restitution and court costs -- your ability to 7 pay is generally determined at the time of 8 sentencing. So how was that -- how is that 9 relevant, in your opinion, to restoring voting 10 rights of that person who's being sentenced? 11 MS. MESSICK: Object to the form. 12 A. Okay. I think that one of the 13 issues in the legislation -- and as I 14 understand, one of the issues, as we discussed 15 it, was how can people afford to pay. I mean, 16 how -- if they can't afford to pay and you 17 require, as part of the legislation, that they 18 pay their fees, fines, court costs and 19 restitution, then that would be something that 20 would disenfranchise unconstitutionally a voter 21 because they're denying the right to vote 22 because they're indigent, and it would amount 23 to -- to just precluding someone from being able</p>	<p style="text-align: right;">Page 52</p> <p>1 been others. I'm not -- I'm not sure. 2 Q. (BY MS. YUN:) And do you -- do the 3 minutes, the meeting minutes, accurately reflect 4 those discussions of disparate impact based on 5 race? 6 A. I don't think the minutes reflect 7 details of -- a lot of details about -- 8 Q. Impacts based on race. 9 A. -- a lot of the discussions. Yes. 10 I would have to agree with that. I don't think 11 the minutes reflect that. 12 Q. Going back to the November 18th 13 meeting minutes, the minutes reflect that there 14 was a proposal to automatically restore the 15 right to vote upon completion of sentence and 16 payment of restitution; is that correct? 17 A. That's what it says. 18 Q. What was -- do you recall this 19 proposal? 20 A. No. I mean, I don't -- the -- the 21 proposal -- the way I read that was that it was 22 adopted and voted on and adopted by the 23 committee. And I don't recall that happening.</p>
<p style="text-align: right;">Page 51</p> <p>1 to vote because they're poor. 2 Q. (BY MS. YUN:) And was there any 3 discussion as to how that scheme, where indigent 4 people are being blocked from voting as a result 5 of their felony conviction, might have disparate 6 impact on African American felons? 7 A. I believe there was, yes. That 8 was -- that was discussed, as I recall. And -- 9 and that was one -- one position that was taken 10 is that if -- if we require them to pay the 11 cost, fines, fees and restitution, then you -- 12 you -- you might have a situation where someone 13 would never get those paid. 14 Q. And who were the people, as far as 15 you can recall, who took that position, that it 16 may have disparate impact on African American -- 17 MS. MESSICK: Object to the form. 18 Q. -- voters? 19 A. All right. I don't know that I can 20 recall all. Perhaps Appleseed. The -- Reverend 21 Glasgow with TOPS -- TOPS. And if I'm not 22 mistaken -- I -- I may be -- I believe Michael 23 Coleman did as well. But -- and there may have</p>	<p style="text-align: right;">Page 53</p> <p>1 MS. MESSICK: I'm sorry. He's 2 answering very quickly. Where are you at? 3 Where are you -- where on the minutes is this 4 discussion that you're talking about? 5 MS. YUN: On -- at the bottom of 6 page 2 of Exhibit 2, it says, Quin Hillyer and a 7 few others voiced concerns regarding the 8 automatic reinstatement of rights. 9 MS. MESSICK: Okay. But your 10 question -- 11 MS. YUN: My question was -- 12 MS. MESSICK: -- incorporated a 13 description of what that would mean. Where is 14 that description at? I think automatic 15 restoration of rights could be -- could look 16 different ways. So where is that at? 17 MS. YUN: So -- and I'm looking at 18 the third paragraph of page 2 of Exhibit 2. 19 Marissa Dodson brings up the idea of automatic 20 restoration for discussion. Focus is whether an 21 automatic process could be considered upon 22 completion of sentence and once the citizen had 23 paid all restitution related fees.</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 54</p> <p>1 MS. MESSICK: Okay. Thank you.</p> <p>2 A. Oh, okay. Would you ask the</p> <p>3 question again? I'm sorry.</p> <p>4 Q. (BY MS. YUN:) Sure. So do you</p> <p>5 recall this proposal being brought up during</p> <p>6 this meeting?</p> <p>7 A. I remember the idea of automatic</p> <p>8 restoration being brought during the discussion,</p> <p>9 but I didn't recall who brought it up. Yes.</p> <p>10 Q. And what was your position on this</p> <p>11 proposal?</p> <p>12 MS. MESSICK: Object to the form.</p> <p>13 A. All right. My -- my position on the</p> <p>14 proposal was that I felt that court cost and</p> <p>15 restitution should be -- along with fines should</p> <p>16 be paid. There's a -- I think there's a vague</p> <p>17 term that was used, fees, and I know that's in</p> <p>18 the legislation. Fees, I wasn't sure exactly</p> <p>19 what fees would encompass, but my vision of it</p> <p>20 was as part of a sentence to a felony, I inform</p> <p>21 a defendant that if they don't make payments on</p> <p>22 their restitution, if -- you know, in accordance</p> <p>23 with whatever is agreed upon, that if they</p>	<p style="text-align: right;">Page 56</p> <p>1 pay. I think the judge has to look individually</p> <p>2 at those situations.</p> <p>3 Q. And you were in favor of</p> <p>4 automatically restoring the right to vote upon</p> <p>5 payment of those --</p> <p>6 A. Yes.</p> <p>7 Q. -- fees?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall if Secretary Merrill</p> <p>10 articulated any position on this proposal?</p> <p>11 A. I don't -- I don't recall. I don't</p> <p>12 recall. It -- I would -- it -- I would have to</p> <p>13 speculate if I do. Something, though, in the</p> <p>14 back of my mind -- I'm thinking that he said,</p> <p>15 well, maybe we need to look at this further.</p> <p>16 I -- I don't recall us actually, at that time,</p> <p>17 voting on that.</p> <p>18 Q. Do you -- what else do you recall</p> <p>19 about this topic?</p> <p>20 MS. MESSICK: Object to the form.</p> <p>21 A. I -- oh. I do remember the lady</p> <p>22 with the victims rights. She sat next to me, I</p> <p>23 think, at this meeting. I'm trying to think</p>
<p style="text-align: right;">Page 55</p> <p>1 become 30 days delinquent in that, Alabama law</p> <p>2 provides for a restitution recovery fee to be</p> <p>3 added to that and that's 30 percent of any</p> <p>4 outstanding monies. That restitution recovery</p> <p>5 fee is oftentimes -- you have a district</p> <p>6 attorney's office that has a restitution</p> <p>7 recovery unit, and that's part of their</p> <p>8 responsibility is to -- to collect court costs,</p> <p>9 to collect those fees. And that's what I</p> <p>10 envision we're talking about fees.</p> <p>11 Also, if someone is placed on</p> <p>12 probation and required to report to the</p> <p>13 probation officer, unless those fees are waived</p> <p>14 due to indigency, they also have a monthly</p> <p>15 reporting fee that they're required to pay. So</p> <p>16 when the -- when the term fee was used, that's</p> <p>17 what I was thinking may be encompassed in that.</p> <p>18 And so -- but -- but I was -- I was in favor of</p> <p>19 having court costs, fines and restitution paid.</p> <p>20</p> <p>21 I have remitted fees in cases like</p> <p>22 we're talking about with regard to the</p> <p>23 restitution recovery fees, if someone couldn't</p>	<p style="text-align: right;">Page 57</p> <p>1 what's her name. Darlene? Was it this meeting?</p> <p>2 Darlene? Yes. Darlene, B-I-E-H-L, Biehl. She</p> <p>3 likewise, of course, as I recall, was in</p> <p>4 favor -- in favor of that. But she was sitting</p> <p>5 next to me so she could talk to me about that.</p> <p>6 But I -- I don't -- I don't recall anything else</p> <p>7 currently about it.</p> <p>8 Q. (BY MS. YUN:) In favor of what?</p> <p>9 A. In favor of requiring the payment of</p> <p>10 restitution. I remember her saying restitution</p> <p>11 particularly. I don't recall if she -- if she</p> <p>12 felt one way or the other about fines and court</p> <p>13 costs. But quite frankly, I mean, I -- I would</p> <p>14 have been fine either way. We -- we agreed that</p> <p>15 whatever the majority of the committee came up</p> <p>16 with and agreed on, that -- that we would -- we</p> <p>17 would support it.</p> <p>18 Q. And that is -- you're saying</p> <p>19 automatic restoration upon whatever composition</p> <p>20 of --</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. -- fees or --</p> <p>23 A. Right.</p>

15 (Pages 54 - 57)

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 58</p> <p>1 Q. -- costs --</p> <p>2 A. Right.</p> <p>3 Q. Understood. The minutes also</p> <p>4 reflect that there was discussion about whether</p> <p>5 or not payment of court cost and fees</p> <p>6 constitutes punishment. Do you see that?</p> <p>7 A. Oh, yeah. Yes. I -- yes.</p> <p>8 Q. What do you recall about that</p> <p>9 discussion?</p> <p>10 A. Actually, I may have -- I may have</p> <p>11 chimed in and said, you know, that's -- the --</p> <p>12 the payment of court costs and the payment of</p> <p>13 those fines and restitution are a part of -- of</p> <p>14 the punishment. It's -- those things are</p> <p>15 actually set out in our sentencing laws. Those</p> <p>16 things are things that the court is to cover</p> <p>17 whenever there's a guilty plea to a felony</p> <p>18 offense. So it is prescribed by the state law</p> <p>19 as being part of the punishment.</p> <p>20 Q. And did you state that position</p> <p>21 to --</p> <p>22 A. I --</p> <p>23 Q. -- the committee?</p>	<p style="text-align: right;">Page 60</p> <p>1 of the --</p> <p>2 A. I don't --</p> <p>3 Q. -- positions that you --</p> <p>4 A. I mean, they were differing -- there</p> <p>5 were -- there were differing opinions about</p> <p>6 that, so I couldn't tell you for sure who -- who</p> <p>7 wanted it to occur which way, but I -- I don't</p> <p>8 recall us actually coming to a consensus about</p> <p>9 it.</p> <p>10 Q. So you -- so there was no -- was</p> <p>11 there any conclusion about whether fines and</p> <p>12 fees were part of the punishment?</p> <p>13 MS. MESSICK: Object to the form.</p> <p>14 A. My recollection is -- it may be</p> <p>15 inconsistent with something, but I don't recall</p> <p>16 us actually coming up with a conclusion on that.</p> <p>17 Q. (BY MS. YUN:) Why do you believe it</p> <p>18 was relevant whether those costs were a part of</p> <p>19 the punishment in determining whether voting</p> <p>20 rights should be restored?</p> <p>21 MS. MESSICK: Object to the form.</p> <p>22 A. Okay. Because it's part of a felony</p> <p>23 sentence. And to complete a sentence, I felt</p>
<p style="text-align: right;">Page 59</p> <p>1 A. I did. Uh-huh.</p> <p>2 Q. Do you recall --</p> <p>3 A. I did.</p> <p>4 Q. -- if Secretary Merrill state a</p> <p>5 position -- stated a position regarding that?</p> <p>6 A. No.</p> <p>7 Q. And did you state a position on</p> <p>8 whether payment of fines and court costs should</p> <p>9 be required for rights restoration? That is,</p> <p>10 voting rights restoration.</p> <p>11 A. I'm sure I did. I'm sure that I --</p> <p>12 MS. MESSICK: Object to the form.</p> <p>13 A. I'm sure I expressed that opinion in</p> <p>14 favor of it, yes.</p> <p>15 Q. (BY MS. YUN:) And -- and that</p> <p>16 opinion is?</p> <p>17 A. That -- that --</p> <p>18 MS. MESSICK: Object to the form.</p> <p>19 A. That opinion is that I believe that</p> <p>20 should be part of the requirement before</p> <p>21 restoration of rights, yes.</p> <p>22 Q. (BY MS. YUN:) And how did the other</p> <p>23 committee members react to your position or any</p>	<p style="text-align: right;">Page 61</p> <p>1 that that would be required in order to</p> <p>2 successfully complete your sentence.</p> <p>3 Q. (BY MS. YUN:) And you believe that</p> <p>4 your rights -- your voting should not be</p> <p>5 restored until you complete your sentence?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall any other parts of the</p> <p>8 discussion regarding fines and fees being part</p> <p>9 of the reinstatement requirement?</p> <p>10 A. I don't recall. I don't recall.</p> <p>11 Q. I am now handing you what's been</p> <p>12 marked as Exhibit 3. Do you recognize this</p> <p>13 document? I'll give you a minute to review.</p> <p>14 (Plaintiff's Exhibit 3 was marked</p> <p>15 for identification and attached.)</p> <p>16 A. Well, it's definitely -- it's</p> <p>17 definitely an email from my email account at the</p> <p>18 time to Ed Packard. And as I recall -- as I</p> <p>19 recall, it -- it may have been pursuant to -- to</p> <p>20 a conversation that I had with him about the</p> <p>21 fact that I felt there were more crimes of moral</p> <p>22 turpitude that were not on the list and that as</p> <p>23 -- as moral turpitude goes, that if you're going</p>

<p style="text-align: right;">Page 62</p> <p>1 to include certain ones, you should include --</p> <p>2 either include all that -- that the committee</p> <p>3 would determine are moral turpitude crimes or</p> <p>4 exclude certain categories of them. Uh-huh.</p> <p>5 Q. And when you said the list, you're</p> <p>6 talking about the list of felonies that were --</p> <p>7 that was included in the 2015 bill? Do you --</p> <p>8 is that correct?</p> <p>9 A. Are you talking about the -- the</p> <p>10 short list?</p> <p>11 Q. No. I'm asking --</p> <p>12 A. Are you talking about the --</p> <p>13 Q. -- what you meant when you said the</p> <p>14 list didn't have -- the list was --</p> <p>15 A. Okay. The -- the list of what</p> <p>16 constituted moral turpitude crimes, as I recall,</p> <p>17 was a -- a compilation of -- from somebody,</p> <p>18 here's what moral turpitude crimes have been</p> <p>19 determined to be. And -- but -- but the list</p> <p>20 that I compiled was my opinion of -- although,</p> <p>21 you know, courts may not have determined these</p> <p>22 to be moral turpitude, they, I think, are crimes</p> <p>23 involving moral turpitude. So --</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. So this --</p> <p>2 A. That's -- that -- yes. That</p> <p>3 refreshes my recollection.</p> <p>4 Q. So this discussion, this email chain</p> <p>5 that you're looking at is talking about</p> <p>6 specifically the list that was included in the</p> <p>7 2015 legislation that was proposed but did not</p> <p>8 pass? Does that -- is that correct?</p> <p>9 A. I think so. I think that's correct.</p> <p>10 Yes. I think you're correct.</p> <p>11 Q. And do you recall sending a list of</p> <p>12 additional crimes that should be added to the</p> <p>13 proposed legislation?</p> <p>14 A. I do.</p> <p>15 Q. Do you recall discussing that</p> <p>16 additional list with the committee or any of the</p> <p>17 committee members?</p> <p>18 A. No. Not -- I mean, I -- before I</p> <p>19 sent that list, I voiced my concerns about if</p> <p>20 you include, you know, certain crimes, you --</p> <p>21 you need to make sure that they're consistent</p> <p>22 was my feeling, like thefts, also receiving,</p> <p>23 forgery, also possession of a forged instrument</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. I'm --</p> <p>2 A. That's what I recall, but I --</p> <p>3 Q. I'm going to direct your attention</p> <p>4 to the --</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. -- second page, which is just on the</p> <p>7 flip side of that --</p> <p>8 A. Okay.</p> <p>9 Q. -- same piece of paper, Exhibit 3.</p> <p>10 A. Oh. Here we go.</p> <p>11 Q. So this is an email that you wrote</p> <p>12 to Ed Packard. And it says that you have</p> <p>13 reviewed the legislation that was proposed in</p> <p>14 the last legislative term relating to defining</p> <p>15 moral turpitude crimes.</p> <p>16 A. Yes. I even mention the new Class D</p> <p>17 felonies weren't considered because in the</p> <p>18 legislation that -- that I assisted in working</p> <p>19 on with the -- coming up with the new sentencing</p> <p>20 law, the Prison Reform Task Force that I was on,</p> <p>21 that list didn't even consider the fact that</p> <p>22 there were Class D felonies and whether they</p> <p>23 should be included or excluded.</p>	<p style="text-align: right;">Page 65</p> <p>1 and those sorts of things.</p> <p>2 Q. And do you recall, when you</p> <p>3 expressed that opinion, what the committee's</p> <p>4 response was?</p> <p>5 MS. MESSICK: Object to the form.</p> <p>6 A. All right. I don't -- my</p> <p>7 recollection of it is that it didn't -- it -- it</p> <p>8 didn't get a response. And it -- and it may be</p> <p>9 -- it may be that the few lawyers in the group</p> <p>10 that -- that we were talking perhaps more</p> <p>11 amongst ourselves and the other committee -- the</p> <p>12 other members of the committee may not have</p> <p>13 truly understood what we were talking about.</p> <p>14 Q. (BY MS. YUN:) And who are the --</p> <p>15 who are the lawyers in the committee that you</p> <p>16 recall talking about?</p> <p>17 A. Well, Ed Packard, Joel Laird, who</p> <p>18 was the secretary's -- I think -- I think he was</p> <p>19 at that meeting. Win Johnson. And -- and as</p> <p>20 I -- I recall Win -- Win Johnson's opinion was</p> <p>21 that perhaps there should be another</p> <p>22 constitutional amendment that we couldn't add</p> <p>23 those crimes because the constitutional</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 66</p> <p>1 amendment was there and we couldn't define it</p> <p>2 with legislation I think was one point that he</p> <p>3 was making.</p> <p>4 Q. And what was your position on that,</p> <p>5 or did you express any position?</p> <p>6 A. I didn't express an opinion, but</p> <p>7 it -- it provoked some thought. I mean --</p> <p>8 Q. Earlier you mentioned how things</p> <p>9 like attempted murder was --</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. Were not included on the list. So</p> <p>12 do you remember ever voicing that opinion that</p> <p>13 certain inchoate crimes were not included on the</p> <p>14 list like they should be in order to be</p> <p>15 consistent?</p> <p>16 A. I don't recall. I don't recall</p> <p>17 being -- and I was not at the meeting where --</p> <p>18 on the 20th where I could have voiced it, I</p> <p>19 suppose, on the 20th of January.</p> <p>20 Q. And your understanding is that the</p> <p>21 list that they considered didn't include those?</p> <p>22 A. It included some inchoate crimes</p> <p>23 that were specifically designed by statute, but</p>	<p style="text-align: right;">Page 68</p> <p>1 THE VIDEOGRAPHER: Okay. Stand by.</p> <p>2 The time is 11:19 a.m. Central Time. We're off</p> <p>3 the record.</p> <p>4 (Whereupon, a break was taken.)</p> <p>5 THE VIDEOGRAPHER: The time is 11:32</p> <p>6 a.m. We're now back on the record.</p> <p>7 Q. (BY MS. YUN:) You mentioned</p> <p>8 earlier -- we talked a little bit about fines</p> <p>9 and fees and whether those were a part of</p> <p>10 punishment and how they relate to restoration of</p> <p>11 voting rights.</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. Do you recall during any of the</p> <p>14 committee meetings if anyone brought up</p> <p>15 statistics about how requiring payments of those</p> <p>16 various costs and fees would have disparate</p> <p>17 impact on African American felons?</p> <p>18 MS. MESSICK: Object to the form.</p> <p>19 A. I don't recall, but I -- I do recall</p> <p>20 seeing something in a document dealing with</p> <p>21 that.</p> <p>22 Q. (BY MS. YUN:) Did that -- and that</p> <p>23 document that you saw was during your -- during</p>
<p style="text-align: right;">Page 67</p> <p>1 it didn't generally include inchoate crimes.</p> <p>2 Inchoate crimes in Alabama are typically</p> <p>3 punished one grade lower than the actual crime</p> <p>4 committed. For example, theft of property in --</p> <p>5 in the first degree is a Class B felony. But if</p> <p>6 it was an attempt to commit theft of property by</p> <p>7 trying -- attempting to steal an automobile, for</p> <p>8 example, it would be a situation where it would</p> <p>9 be a Class C felony, one grade lower. So in --</p> <p>10 in defining those inchoate crimes, perhaps</p> <p>11 attempts in -- in solicitations to commit those</p> <p>12 crimes would have -- or need to be specified to</p> <p>13 the particular crimes. Because once you get to</p> <p>14 a Class C felony, generally, and committing an</p> <p>15 attempt, then it becomes a Class D felony. Or</p> <p>16 if you don't have a Class D felony in that</p> <p>17 crime, then it becomes a Class A misdemeanor.</p> <p>18 So it would be excluded.</p> <p>19 MS. MESSICK: Can we take a break</p> <p>20 when it's a good time?</p> <p>21 MS. YUN: Yeah. Actually, this is a</p> <p>22 great time to take a break. So maybe --</p> <p>23 MS. MESSICK: Thank you.</p>	<p style="text-align: right;">Page 69</p> <p>1 the committee meetings?</p> <p>2 A. I don't recall whether it was during</p> <p>3 the committee meetings. It's a document that</p> <p>4 was included, I thought, in this packet of</p> <p>5 information. Maybe I'm wrong. Maybe it wasn't.</p> <p>6 I don't have -- I don't have an independent</p> <p>7 recollection of it. I do know -- I do know</p> <p>8 there are some statistics out there -- or</p> <p>9 supposed statistics about -- about the -- the</p> <p>10 difference in the way it affects African</p> <p>11 American population versus Caucasian population.</p> <p>12 Q. We are now going to look at the</p> <p>13 meeting minutes from the December 18th, 2015</p> <p>14 meeting, which is in Exhibit 3. You should have</p> <p>15 a --</p> <p>16 MS. MESSICK: Exhibit 2?</p> <p>17 MS. YUN: Oh, I'm -- I apologize.</p> <p>18 Yes. Exhibit 2.</p> <p>19 A. Okay.</p> <p>20 Q. (BY MS. YUN:) It should follow the</p> <p>21 November meeting minutes. There should be a</p> <p>22 green tab.</p> <p>23 A. December 21?</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 70</p> <p>1 Q. Yes.</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. Oh, sorry. Yeah. December 21, not</p> <p>4 18. Did you attend this meeting?</p> <p>5 A. I did.</p> <p>6 Q. The minutes reflect that Mr. Pickens</p> <p>7 of Alabama Appleseed Center gave a presentation</p> <p>8 regarding the history of the term moral</p> <p>9 turpitude. Do you recall that presentation?</p> <p>10 A. I don't have an independent</p> <p>11 recollection of the details of the presentation,</p> <p>12 but, yes, I -- I believe he did. And he -- I</p> <p>13 was thinking there was -- there was a document</p> <p>14 that he provided.</p> <p>15 Q. We'll look at that document in a</p> <p>16 second.</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. All right. I'm now handing you</p> <p>19 what's been marked as Exhibit 4. Is this the</p> <p>20 document or memo that you were referring to</p> <p>21 earlier?</p> <p>22 (Plaintiff's Exhibit 4 was marked</p> <p>23 for identification and attached.)</p>	<p style="text-align: right;">Page 72</p> <p>1 A. At the time --</p> <p>2 MS. MESSICK: Could you read back --</p> <p>3 THE COURT REPORTER: I didn't even</p> <p>4 get all of that. And do you agree with the</p> <p>5 history of the disenfranchisement based on --</p> <p>6 and then I --</p> <p>7 Q. -- based on felonies of moral</p> <p>8 turpitude grew out of an intent to</p> <p>9 disenfranchise black voters in Alabama?</p> <p>10 MS. MESSICK: Object to the form.</p> <p>11 A. In the 1901 constitution,</p> <p>12 absolutely.</p> <p>13 Q. (BY MS. YUN:) Could you describe</p> <p>14 what was discussed in -- in response to the</p> <p>15 presentation and this memo?</p> <p>16 A. I don't recall independently what</p> <p>17 was discussed about it. I'm sure -- I'm sure</p> <p>18 there was a discussion.</p> <p>19 Q. Do you recall stating a position --</p> <p>20 your own position at the time?</p> <p>21 A. No. And -- but I -- I don't recall,</p> <p>22 but I -- I feel that -- that this was -- the</p> <p>23 1901 constitutional provision was intended to</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Yes.</p> <p>2 Q. And you recall receiving this memo?</p> <p>3 A. I -- I do. And I believe, if I'm</p> <p>4 not mistaken -- well, it has a date of December</p> <p>5 9th. I was thinking we received it before the</p> <p>6 actual meeting.</p> <p>7 Q. And this is --</p> <p>8 A. Or at least I did.</p> <p>9 Q. And this is a memo on the Meaning</p> <p>10 and Historical Background of the Phrase "Felony</p> <p>11 Involving Moral Turpitude" written by John</p> <p>12 Pickens; is that right?</p> <p>13 MS. MESSICK: Object to the form.</p> <p>14 A. Well, it has his signature along</p> <p>15 with Shay Farley, legal -- the legal director.</p> <p>16 I'm not sure which one wrote it, but --</p> <p>17 Q. (BY MS. YUN:) Uh-huh. Okay.</p> <p>18 A. -- yes.</p> <p>19 Q. Yeah. Shay Farley, as well. And do</p> <p>20 you agree with the -- that the history of</p> <p>21 disenfranchisement based on felonies of moral</p> <p>22 turpitude grew out of an intent to</p> <p>23 disenfranchise black voters in Alabama?</p>	<p style="text-align: right;">Page 73</p> <p>1 disenfranchise black voters.</p> <p>2 Q. And do you recall if Secretary</p> <p>3 Merrill stated a -- if -- do you recall if</p> <p>4 Secretary Merrill stated a position regarding</p> <p>5 this memo or in response to this memo?</p> <p>6 A. No.</p> <p>7 Q. How about anybody else in the</p> <p>8 Secretary of State office?</p> <p>9 A. I don't recall any of them</p> <p>10 expressing an opinion. They may have. I don't</p> <p>11 recall any of them expressing an opinion.</p> <p>12 Q. And you stated that you believe that</p> <p>13 the 1901 constitution -- the constitutional --</p> <p>14 the provision that introduced the term felon --</p> <p>15 crimes involving moral turpitude in 1901 grew</p> <p>16 out of an intent to discriminate against black</p> <p>17 voters. Do you have any opinion as to why the</p> <p>18 term should be still used today?</p> <p>19 MS. MESSICK: Object to the form.</p> <p>20 A. Why the term moral turpitude should</p> <p>21 be used?</p> <p>22 Q. (BY MS. YUN:) Uh-huh.</p> <p>23 A. Well, I have my -- I have a personal</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 74</p> <p>1 opinion and then I have a legal opinion. My 2 personal opinion is that without the -- without 3 defining what crimes constitute moral turpitude, 4 you -- it's vague and it doesn't really advise 5 the people that have to make those decisions 6 about what crimes are crimes involving moral 7 turpitude nor the voter as to what that really 8 consists of. 9 And I can -- I can say that my legal 10 opinion, though, is that it is constitutional 11 based on my understanding of the law. One of 12 the other things that I wonder is -- is, you 13 know, high crimes and misdemeanors. That term 14 has been used many times in many cases 15 apparently and -- and has been determined to be 16 constitutional. 17 Now, my personal opinion is that how 18 do you determine what -- I mean, a misdemeanor 19 you can determine, but what's a high crime? So 20 my personal philosophy is that those are vague 21 terms. Apparently legally, it's not. 22 Q. And as -- as it relates to the 23 history of the term --</p>	<p style="text-align: right;">Page 76</p> <p>1 hand, the Legislature feels that as a -- 2 pursuant to a state constitution that there are 3 provisions in the law that relate to 4 qualifications of a voter, then I think that is 5 a civil issue where there's a -- I guess a -- 6 a taking away of a civil right that someone has, 7 like the right to vote, the right to hold public 8 office, the -- those kinds of things. Okay. 9 But with regard to defining moral 10 turpitude, I think if you are going to leave 11 that in the constitution, you have to have a 12 legislative process to go with that, that 13 actually defines the particular crimes to put 14 people on notice, to put registrars on notice, 15 to put the Secretary of State on notice. 16 Everyone that deals with elections, I -- I 17 think -- I think that has to be done. 18 Do I think that the constitutional 19 provision prior to -- prior to the Legislature 20 passing this law to actually set out moral 21 turpitude crimes -- do I feel that it was 22 unconstitutionally vague? Legally, no. But do 23 I believe that it was racially motivated when it</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Yes. 2 Q. -- do you have an opinion about 3 that, why we should still use that term despite 4 the history that it comes with? 5 MS. MESSICK: Object to the form. 6 A. That's a great question. I can see 7 arguments on both -- both sides as to why -- you 8 know, if you can -- if you could look in a 9 constitution and set out exactly what crimes 10 constituted moral turpitude, yes, but then the 11 constitution becomes so cumbersome, I suppose, 12 that it makes it difficult to change, obviously, 13 because the constitutional amendments have to be 14 ratified. Not only do they have to go through 15 the legislative body that's considering it, but 16 have to be ratified by the people. So I think 17 that would be difficult to -- to be able to 18 express those terms definitively in a 19 constitutional provision. 20 Now, if you said, well, let's let 21 all felons vote, irrespective of whether they 22 have a conviction or not, and just removed it, 23 that would solve that issue. If on the other</p>	<p style="text-align: right;">Page 77</p> <p>1 was passed in 1901? I do. 2 Q. (BY MS. YUN:) Thank you. 3 A. Yes. 4 Q. Do you remember if any -- if you 5 stated any of those thoughts about whether the 6 term was too vague and whether the history 7 should be considered at this committee meeting 8 after the Appleseed presentation was given? 9 A. No. Because the 1996 amendment I 10 think changed all that. 11 Q. You mean the amendment that changed 12 the term -- 13 A. The state constitutional amendment. 14 Yeah. 15 Q. -- the term -- 16 A. No. The -- the fact that the 17 Legislature passed it in 1996, I don't believe 18 was at all racially motivated in 1996. We 19 had -- both houses of the state legislature were 20 Democrat. Bill Clinton was president. And I 21 really don't feel that it was -- that anything 22 about the passage of that legislation at that 23 time was racially motivated in 1996.</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 78</p> <p>1 Q. So going back to the December 2 meeting minutes, the minutes reflect that there 3 was another discussion related to payment of 4 fines and fees in relation to rights 5 restoration. It's on page 2 of the meeting 6 minutes for December. 7 A. Thank you. 8 MS. MESSICK: Can you identify which 9 paragraph -- 10 MS. YUN: Sure. 11 MS. MESSICK: -- or which speaker? 12 MS. YUN: Yes. It's right under Win 13 Johnson in the middle of the page of page 2. 14 Q. (BY MS. YUN:) It says -- 15 A. Yes, ma'am. 16 Q. It says, Extensive discussion 17 followed showing the presence of some 18 disagreement as to whether or not fines, fees 19 and court costs are an aspect of punishment. 20 A. Okay. 21 Q. And right above that, the minutes 22 reflect that Mr. Win Johnson brought up 23 importance of -- and I'm quoting -- importance</p>	<p style="text-align: right;">Page 80</p> <p>1 for years, been kind of on the short end of the 2 stick with regard to funding by the Legislature. 3 And although we're constitutionally a separate 4 branch of government, we don't get funded that 5 way. And during that -- during that period of 6 time, as I recall, we were in a situation where 7 emphasis was being placed on collection of court 8 costs and -- and fines and how much was 9 outstanding and -- and that a better job could 10 be done of collecting it. 11 And now, let me say this. I have to 12 agree with that because judges typically didn't 13 try to collect court costs. If someone didn't 14 pay them, they just didn't get paid. There was 15 no review process to look at and say, hey, you 16 know, why have you not paid your court costs in 17 this case? Are you able to -- to pay? If so, 18 why have you not paid? Or if you can't, you 19 know, what are we going to do about it? Are we 20 going to remit those court costs? Do you have 21 the prospect of obtaining a job now? If so, are 22 you -- how much is that job going to pay? 23 There wasn't a lot of time spent by</p>
<p style="text-align: right;">Page 79</p> <p>1 of fees remaining a focal point and idea that 2 they may -- they might not get paid. Do you -- 3 A. Oh. 4 Q. -- recall -- 5 A. I'm sorry. I was looking at the 6 wrong place. 7 Q. Oh. 8 A. Thank you. 9 Q. Are you -- 10 A. I'm -- I'm -- I'm with you. 11 Q. Okay. 12 A. Yes, ma'am. 13 Q. Great. Do you recall this 14 discussion that if they are not required as part 15 of the rights restoration process, that the 16 concern is that those fees may not be paid? 17 A. I do. 18 Q. And what else do you recall other 19 than what's written here? 20 A. Well, the reason I recall it is 21 because Win Johnson was, I believe, at the time 22 chief legal counsel for the Administrative 23 Office of Courts. The courts have, in Alabama,</p>	<p style="text-align: right;">Page 81</p> <p>1 judges engaging people in those conversations 2 because my feeling -- I was on the Alabama 3 Judicial College faculty. And my feeling was 4 that as a general rule, the -- the judges, 5 particularly the older judges, were taking the 6 opinion, I don't have time to deal with that, 7 you know. But the newer judges that were coming 8 on the bench back during this period of time and 9 the ones currently, I believe they have 10 emphasized, you know, making those 11 determinations in -- in looking at -- taking the 12 time to look at people's abilities to make those 13 determinations. 14 Q. So you were -- were you sympathetic 15 to Mr. Johnson's position that it -- with -- 16 without requiring it for restoring your voting 17 rights, those costs and fees may not get paid? 18 A. Well, I don't know -- I mean, he 19 would have to, I suppose, testify about what he 20 believed, but -- 21 Q. What was your position? 22 A. My position -- my position is that 23 they should be paid, but I believe they should</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 82</p> <p>1 be paid because they were part of the 2 punishment. I don't know and don't recall 3 whether his position was they should be paid 4 because they're a part of punishment or because 5 I'm with AOC and we need to collect that money. 6 That's what I'm saying. 7 Q. And do you recall what was the 8 outcome of that discussion that was sparked by 9 Mr. Johnson's -- 10 A. No. 11 Q. -- comment? 12 A. No. 13 Q. And do you remember any discussion 14 about -- including an indigency exception in the 15 proposed legislation? 16 A. I don't. 17 Q. The minutes state that -- it's right 18 below where I just read earlier, a few minutes 19 ago, that Secretary Merrill asked -- oh. I 20 apologize. Strike that. 21 It states, Following a discussion, 22 Ed was asked to devise a synopsis or 23 recommendation based upon what he had heard from</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. (BY MS. YUN:) So just to clarify, 2 the meeting -- the meeting minutes do not say 3 that there was a consensus, just that Mr. 4 Packard gave the synopsis, correct? 5 A. Right. Yes, ma'am. 6 MS. MESSICK: Object to the form. 7 Q. (BY MS. YUN:) And is it in line 8 with -- generally speaking, with what you 9 remember from this meeting, the synopsis? 10 MS. MESSICK: Object to the form. 11 A. Well, I'm -- number four where it 12 says fees and fines will be paid as prescribed 13 by a judge, I don't understand what he meant by 14 that. I mean, whether -- whether this -- the 15 judge would still decide how costs and fines are 16 paid, but the voter would be automatically 17 restored after they completed their term of 18 sentence and paid restitution. I -- I'm just 19 trying to gauge that that's what he meant, but I 20 don't know. 21 Q. (BY MS. YUN:) And is that your 22 understanding of how the discussion went during 23 that meeting?</p>
<p style="text-align: right;">Page 83</p> <p>1 the committee on page 2. 2 A. Oh. 3 Q. Do you see that? 4 A. I do. Yes, ma'am. 5 Q. And then the synopsis -- that list 6 says, Number one, term of sentence, including 7 parole or probation. Two, restitution of 8 payments complete. Three, right to vote, auto 9 restore following completion of one and two. 10 Four, fines and fees will be paid as prescribed 11 by the judge. 12 A. Yes. 13 Q. Do you recall the discussion during 14 this meeting being in line with what was 15 summarized by Mr. Packard and reflected in the 16 meeting minutes? 17 MS. MESSICK: Object to the form. 18 A. I don't remember the consensus about 19 automatically restoring on completion of one or 20 two, but, obviously, I mean, that's -- that's 21 what the minutes say. But I'm not saying it 22 didn't happen that way. I just don't recall 23 that.</p>	<p style="text-align: right;">Page 85</p> <p>1 MS. MESSICK: Object to the form. 2 A. No. I don't have -- I don't have an 3 independent recollection of exactly what -- what 4 the consensus was at the end of the meeting or 5 when this occurred. 6 Q. (BY MS. YUN:) Understood. 7 A. Not saying I disagree with it, I 8 just don't recall. 9 Q. I am now handing you what's been 10 marked as Exhibit 5. Do you recognize this 11 document? 12 (Plaintiff's Exhibit 5 was marked 13 for identification and attached.) 14 A. Yes, I do. Thank you. 15 Q. And this is a proposal from the ACLU 16 regarding proposed language for automatic rights 17 restoration; is that correct? 18 A. That is correct. 19 Q. And did you receive this proposal? 20 A. Yes. 21 Q. In the first paragraph of the memo, 22 the proposal states that the consensus of the 23 committee was for automatic rights restoration</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 86</p> <p>1 upon completion of sentence and that outstanding</p> <p>2 fees and fines should not -- or it would not</p> <p>3 prevent someone from voting; is that correct?</p> <p>4 A. Yes. That is correct.</p> <p>5 Q. Is -- was this an accurate</p> <p>6 description of the consensus of the committee</p> <p>7 after the December 18 -- December 21 meeting?</p> <p>8 A. I don't recall. I don't recall.</p> <p>9 That's what it -- that's what it says, and it</p> <p>10 may be -- well, I don't recall.</p> <p>11 Q. So you don't recall whether --</p> <p>12 whether this is correct or not?</p> <p>13 A. No. No, I don't.</p> <p>14 Q. Going back to the December meeting</p> <p>15 minutes, which is Exhibit 2.</p> <p>16 A. Yes, ma'am.</p> <p>17 A. At the end of the minutes, the</p> <p>18 minutes state that a subcommittee was formed.</p> <p>19 Do you -- could you describe what the purpose of</p> <p>20 the subcommittee was?</p> <p>21 MS. MESSICK: Object to the form.</p> <p>22 Q. (BY MS. YUN:) It's on page 3 of</p> <p>23 the --</p>	<p style="text-align: right;">Page 88</p> <p>1 about what moral turpitude crimes may have been.</p> <p>2 Of course, I had submitted my list. I think</p> <p>3 perhaps at some point in time, also Win Johnson</p> <p>4 submitted something that was a compilation of</p> <p>5 Supreme Court decisions, appellate court</p> <p>6 decisions and that sort of thing. But I don't</p> <p>7 ever recall the subcommittee meeting.</p> <p>8 Q. (BY MS. YUN:) I am now handing you</p> <p>9 what's marked as Exhibit 6. This is an email</p> <p>10 from Ed Packard to the members of the</p> <p>11 subcommittee on moral turpitude crimes.</p> <p>12 (Plaintiff's Exhibit 6 was marked</p> <p>13 for identification and attached.)</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall receiving this email?</p> <p>16 A. I do.</p> <p>17 Q. And is this what you were referring</p> <p>18 to when you said there may have been some</p> <p>19 documents being exchanged?</p> <p>20 A. Yes. Yes.</p> <p>21 Q. Do you recall receiving any other</p> <p>22 emails that were related to a subcommittee?</p> <p>23 A. I don't -- I don't recall. I don't</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Oh, I'm sorry.</p> <p>2 Q. -- December meeting minutes.</p> <p>3 A. The purpose of the committee was to</p> <p>4 review crimes concerning moral turpitude or</p> <p>5 coming up with a list of crimes that would be</p> <p>6 defined as crimes involving moral turpitude, I</p> <p>7 think is the gist of what we were supposed to</p> <p>8 do.</p> <p>9 Q. What steps did the subcommittee take</p> <p>10 out? Strike that.</p> <p>11 You were a part of the subcommittee,</p> <p>12 correct?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. And what steps did the subcommittee</p> <p>15 take to review the list of disenfranchising</p> <p>16 felonies or otherwise to fulfill its purpose?</p> <p>17 A. Collectively --</p> <p>18 MS. MESSICK: Object to the form.</p> <p>19 A. Collectively, I don't think we ever</p> <p>20 did anything. My -- my -- I may be wrong, but</p> <p>21 my recollection is the subcommittee never</p> <p>22 actually met, that we may have exchanged</p> <p>23 documents, you know, expressing our opinion</p>	<p style="text-align: right;">Page 89</p> <p>1 recall receiving it and I don't -- like I said,</p> <p>2 I don't remember us meeting.</p> <p>3 Q. Do you recall having any other</p> <p>4 discussion with the members of the subcommittee?</p> <p>5 A. No, ma'am.</p> <p>6 MS. MESSICK: Are you sure this is</p> <p>7 complete? The email says what's attached.</p> <p>8 MS. YUN: Uh-huh.</p> <p>9 MS. MESSICK: And it starts with a</p> <p>10 current list of moral turpitude felonies in the</p> <p>11 Alabama law handbook. I don't see that.</p> <p>12 MS. YUN: I mean, this was as</p> <p>13 produced in the -- this has the consecutive</p> <p>14 Bates number. It -- it is possible that this</p> <p>15 version of the email production was not complete</p> <p>16 and maybe it fell out and it's in some part of</p> <p>17 the -- some other part of the record, but the</p> <p>18 Bates numbers are consecutive.</p> <p>19 A. There was a --</p> <p>20 MS. MESSICK: Okay. Thank you.</p> <p>21 A. I don't see --</p> <p>22 Q. (BY MS. YUN:) Go ahead.</p> <p>23 A. I don't see anything from the</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 90</p> <p>1 election handbook. You mentioned that, but I 2 don't -- 3 Q. But you do recall receiving this 4 email, the -- 5 A. Yes. 6 Q. -- the cover email that -- 7 A. Yes, ma'am, I did. 8 Q. -- included this attachment? Great. 9 I'm now handing you what's been marked as 10 Exhibit 7. Do you recognize this document? 11 (Plaintiff's Exhibit 7 was marked 12 for identification and attached.) 13 A. Yes. Yes, I do. 14 Q. And it's a cover email from Ed 15 Packard forwarding your January 19, 2016 letter 16 to the committee; is that correct? 17 A. Yes, ma'am. 18 Q. And the letter is what you wrote to 19 the Secretary of State office? 20 A. Yes. 21 Q. Looking at the second paragraph of 22 your letter of Exhibit 7, and it states, After 23 carefully considering the obvious problem</p>	<p style="text-align: right;">Page 92</p> <p>1 recklessly in one aspect of it. And including a 2 reckless crime, unless, to me, if -- if, for 3 example, I were defending someone that had been 4 disenfranchised or -- or prosecuting a civil 5 case, I would say, hey, you know, this -- this 6 doesn't require an evil intent. It was done 7 recklessly. 8 But on the other hand, there's a 9 provision in the manslaughter law that 10 provides -- I believe it's subsection (a)(2) 11 that provides that manslaughter that would have 12 been murder except for done in a heat of passion 13 under provocation recognized by law. Now, that 14 on the other hand, I think, does involve moral 15 turpitude because there's a evil intent -- 16 something bad involved -- scienter -- involved 17 in -- in the action, whereas, if something done 18 recklessly like someone is speeding and -- and 19 runs over someone and kills them, they may have 20 been reckless, but they had no intent to kill 21 the person. 22 So there's -- there's where I'm -- 23 where I have some difficulties with defining</p>
<p style="text-align: right;">Page 91</p> <p>1 associated with defining felony involving moral 2 turpitude, I believe the definition for purposes 3 of a disqualifying felony should be narrow 4 rather than broad. The more felonies included 5 in the traditional concept of moral turpitude as 6 provided in the legislation proposed last year 7 would provide a number of challenges from people 8 convicted of similar crimes not included. 9 A. Yes. 10 Q. Could you explain what you meant by 11 the obvious problem associated with defining 12 felony involving moral turpitude? 13 A. The obvious problem with defining 14 crimes involving moral turpitude is, you know, 15 what social norms may be in existence at the 16 time. Society's concept of what was 17 traditionally moral turpitude 100 years ago 18 would not be today. In trying to define crimes 19 involving moral turpitude -- for example -- I -- 20 I mean, this comes to mind. Manslaughter is 21 included as a crime involving moral turpitude, 22 but yet DUI -- felony DUI is not. Okay? And I 23 understand that. But manslaughter is done</p>	<p style="text-align: right;">Page 93</p> <p>1 crimes involving moral turpitude. I guess you 2 have to draw the line somewhere, but where do 3 you draw it, you know? 4 Q. So if I understand this correctly -- 5 and feel free to correct me -- 6 A. Yes, ma'am. 7 Q. -- if I'm wrong. So your -- so 8 your -- in -- in your opinion, the obvious 9 problem here is that you want to draw the line 10 at -- depending on where the intent requirement 11 is and it's difficult to draw that line? Is 12 that -- is that what you're expressing? 13 MS. MESSICK: Object to the form. 14 A. No. Not -- not something done with 15 a specific intent, but something that's done 16 with a general intent, understanding perhaps 17 that you're taking a risk, like in a reckless 18 causing of someone's death, the example I gave. 19 I think those at least create questions in the 20 mind of drafting legislation. You know, is this 21 something that really we should say goes to the 22 qualification of someone to vote if they acted 23 recklessly or if they acted negligently as</p>

24 (Pages 90 - 93)

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 94</p> <p>1 opposed to intentionally causing harm to 2 someone.</p> <p>3 Q. (BY MS. YUN:) So in your mind, the 4 term moral turpitude has to do with what level 5 of intent you had?</p> <p>6 MS. MESSICK: Object to the form.</p> <p>7 A. I think -- I -- I think -- that's 8 the way -- that's the way I see it. Not just 9 the -- the level intent -- of intent, but also 10 whether or not a crime is -- fits within that 11 scienter or the evilness of it.</p> <p>12 I know theft is debated a lot, I 13 guess, you know, among states as to whether or 14 not theft should be included as a crime 15 involving moral turpitude if you've got that 16 definition. But then again, I believe some 17 states just basically say any felony conviction 18 disqualifies you.</p> <p>19 Q. (BY MS. YUN:) And when you chose 20 the word obvious in this letter, did you say 21 obvious because you thought that the rest of the 22 committee understood this problem as you 23 understood it?</p>	<p style="text-align: right;">Page 96</p> <p>1 at the whole paragraph that I just read on page 2 2 of your letter, which is Exhibit 7 -- could 3 you explain how you came to have this view that 4 you believe the definition should be narrow 5 rather than broad?</p> <p>6 MS. MESSICK: Object to the form.</p> <p>7 A. Which paragraph are you --</p> <p>8 Q. (BY MS. YUN:) It's the --</p> <p>9 A. Are you talking about how did -- did 10 I form my opinion?</p> <p>11 Q. Yes. The -- the second paragraph of 12 your letter.</p> <p>13 A. Okay.</p> <p>14 Q. The letter states that you believe 15 that the definition for purposes --</p> <p>16 A. Yes.</p> <p>17 Q. -- should be narrow --</p> <p>18 A. Right.</p> <p>19 Q. -- rather than broad.</p> <p>20 A. Right.</p> <p>21 Q. So --</p> <p>22 A. To me, broad is just saying moral 23 turpitude. How do -- you know. The -- the</p>
<p style="text-align: right;">Page 95</p> <p>1 MS. MESSICK: Object to the form.</p> <p>2 A. I don't think so. I think that 3 obvious -- to me, the obvious problem associated 4 with defining felonies involving moral turpitude 5 that -- that -- that I was talking about dealt 6 with simply how can you exclude receiving stolen 7 property? That's -- to me, is an obvious 8 problem. It would be if I were the person that 9 was convicted of theft and I couldn't vote, but 10 the person that I went and sold the property to, 11 that fenced the property for me knowing it was 12 stolen, could vote, no. I wouldn't -- that's 13 what I'm --</p> <p>14 Q. (BY MS. YUN:) So the --</p> <p>15 A. -- that's what I'm --</p> <p>16 Q. So the --</p> <p>17 A. To me, that was obvious. It may not 18 have been obvious to the other members of the 19 committee, but I -- you know.</p> <p>20 Q. So the obvious problem was the --</p> <p>21 the problem with inconsistency?</p> <p>22 A. That's the way I felt, yes.</p> <p>23 Q. And could you now, sort of looking</p>	<p style="text-align: right;">Page 97</p> <p>1 fewer crimes -- to me, the fewer crimes that are 2 on that list, the -- the easier it would be to 3 say, okay, these are definitely crimes involving 4 moral turpitude. And one of the -- one of the 5 things that I just mentioned, for example, the 6 manslaughter situation, to me, is -- is one of 7 those situations if -- if -- if you're going to 8 have manslaughter in there, you should exclude 9 the -- the reckless manslaughter and only 10 include the provision that requires intent or 11 either exclude it altogether rather than create 12 the inconsistency.</p> <p>13 Q. And was there any concern -- did you 14 have any concern that a larger list of felonies 15 would have a greater racial impact?</p> <p>16 A. I can't say that I thought it would 17 have a greater or lesser impact, but I believe 18 studies show that any criminal offense seems to 19 affect African American population perhaps more 20 than Caucasian population. That's -- I mean, 21 I've -- I've been told that in seminars I've 22 been to, and that's my understanding, yes. It 23 -- it doesn't matter whether the list is large</p>

25 (Pages 94 - 97)

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 98</p> <p>1 or the list is small. Still, according to</p> <p>2 statistics, there's a disproportionate numbers</p> <p>3 of African Americans that are imprisoned as a</p> <p>4 result of criminal convictions. I guess at</p> <p>5 least that, I'm -- I'm certain of.</p> <p>6 Q. And would you agree with me that if</p> <p>7 the list is larger, that the -- the absolute</p> <p>8 number of people affected will be greater?</p> <p>9 A. Yes. The mathematical proportions</p> <p>10 would bear that out. Yes.</p> <p>11 Q. And the amount of African American</p> <p>12 people with felonies who are affected by the</p> <p>13 legislation with regards to their voting rights,</p> <p>14 that number would also increase if the number of</p> <p>15 felonies involving moral turpitude was larger?</p> <p>16 A. Yes.</p> <p>17 Q. Do you remember this topic, the one</p> <p>18 that I just mentioned about racial impact being</p> <p>19 discussed in any of the committee members?</p> <p>20 A. I believe it was, yes. And I don't</p> <p>21 recall how many meetings it was discussed, but</p> <p>22 yes. I'm -- I'm quite sure it was.</p> <p>23 Q. And do you recall -- what else do</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Yes. He -- he sat next to me at a</p> <p>2 meeting. And actually I had a discussion with</p> <p>3 him, I think, on the phone after -- after one of</p> <p>4 these meetings, and he just kind of convinced me</p> <p>5 that -- that a -- a narrower list would be</p> <p>6 better, you know. And I didn't -- it didn't</p> <p>7 really matter to me whether you had a large list</p> <p>8 or a short list, but it needed to be consistent</p> <p>9 whichever way it was.</p> <p>10 Q. And do I remember correctly that you</p> <p>11 stated earlier that you thought it would be</p> <p>12 easier to have a narrower list to be consistent?</p> <p>13 A. Yes.</p> <p>14 MS. MESSICK: Object to the form.</p> <p>15 A. Yes.</p> <p>16 Q. (BY MS. YUN:) And could you explain</p> <p>17 your view about automatic restoration versus</p> <p>18 people having to go through a certain process to</p> <p>19 get their voting rights restored?</p> <p>20 A. All right. My feeling is that when</p> <p>21 someone is eligible to have their voting rights</p> <p>22 restored, to me, it -- the simpler the process,</p> <p>23 the better it is for everyone involved. Not</p>
<p style="text-align: right;">Page 99</p> <p>1 you recall about that other than it being</p> <p>2 mentioned about that discussion?</p> <p>3 A. Well, nothing -- nothing in</p> <p>4 particular. No details about it, but, I'm --</p> <p>5 I'm sure that it was discussed.</p> <p>6 Q. Going to the second page of your</p> <p>7 letter. I think you're looking at it right now,</p> <p>8 in fact.</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. At the bottom of the letter -- at</p> <p>11 the end of -- at the very end of your letter,</p> <p>12 you say -- you stated, With regard to the issue</p> <p>13 of restoration, I favor an automatic restoration</p> <p>14 upon the completion of their sentence, to</p> <p>15 include the payment of restitution to a crime</p> <p>16 victim. A. Yes.</p> <p>17 Q. Could you explain your reasoning</p> <p>18 behind this view that you stated in the letter?</p> <p>19 A. Well, I -- the gentleman from</p> <p>20 Appleseed --</p> <p>21 Q. Mr. Pickens, John --</p> <p>22 A. Yes.</p> <p>23 Q. -- Pickens?</p>	<p style="text-align: right;">Page 101</p> <p>1 only the person that regains the voting rights,</p> <p>2 but also for the people involved in all the</p> <p>3 paperwork, the electronic transfers of</p> <p>4 information, the personnel hours that it takes</p> <p>5 to complete all that as well.</p> <p>6 But, to me, looking at the</p> <p>7 legislation that we have, there's -- I mean, I</p> <p>8 would have -- I would have wanted -- or liked</p> <p>9 personally, I think, to see a shorter appeal</p> <p>10 process or -- or a more concise, particularly</p> <p>11 if -- if someone is denied.</p> <p>12 As I -- as I recall -- I may be</p> <p>13 wrong, but as I recall, if you're denied by the</p> <p>14 registrar, you have to request the probate judge</p> <p>15 to conduct a hearing. If the probate judge</p> <p>16 denies, then you have to file an appeal there,</p> <p>17 and I don't recall to which court. But, to me,</p> <p>18 in -- in -- in -- as I recall the legislation,</p> <p>19 it says, to the court listed in a particular</p> <p>20 code section, and that code section delineates</p> <p>21 whether it appeals from probate court and go to</p> <p>22 circuit court or a court of civil appeals or</p> <p>23 Supreme Court -- well, I mean, not -- court --</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 102</p> <p>1 whether it goes to circuit court or Alabama 2 Supreme Court. And, to me, that sometimes is 3 confusing to lawyers. So I -- I -- I just, 4 after looking at the legislation, feel that a -- 5 a restoration process, whatever that is, needs 6 to be simple. 7 Q. And do you recall communicating -- 8 you -- you mentioned that you spoke with Mr. 9 Pickens on the phone after one of the meetings. 10 A. I think so. 11 Q. Do you recall talking to anyone 12 else -- any other committee members on the phone 13 outside of these meetings? 14 A. No. But Ed -- Ed Packard is not a 15 committee member, but I -- I do recall talking 16 with him about, you know, the list that I had. 17 Yes. 18 Q. I see. Did you have any other 19 conversation with Mr. Packard about the 20 committee? 21 A. I don't recall having any other 22 conversations with him. If I did, I certainly 23 don't recall what the -- what the subject matter</p>	<p style="text-align: right;">Page 104</p> <p>1 of that -- 2 A. No. 3 Q. --- discussion? 4 A. No. 5 Q. And do you recall any discussion 6 after the letter? 7 A. No. 8 Q. Did you -- so you mentioned that you 9 were not present at the meeting that occurred on 10 January 20 -- 11 A. That's correct. 12 Q. -- 2016? Did you hear about how the 13 meeting went on January 20, 2016? 14 A. No. No. 15 Q. Were you aware that the majority of 16 the subcommittee was in favor of keeping the 17 list of felonies involving moral turpitude to be 18 18 offenses? 19 A. No. 20 MS. MESSICK: Object to the form. 21 THE WITNESS: Oh. 22 A. No. 23 Q. (BY MS. YUN:) Do you know why or</p>
<p style="text-align: right;">Page 103</p> <p>1 was. 2 Q. And do you recall communicating your 3 view about automatic restoration or the favoring 4 a narrower rather than broad list -- do you 5 remember communicating this -- these views with 6 any other committee members either -- outside of 7 sending this letter? 8 A. No. 9 Q. Do you recall any responses or 10 reactions from the committee members after you 11 sent this letter? 12 A. No. 13 Q. Did you speak to anyone in the 14 Secretary of State office regarding this letter? 15 A. Before I sent it? 16 Q. Before or after. 17 A. I probably -- I probably did. I -- 18 I don't have an independent recollection, but I 19 would think I expressed my views because I 20 wasn't going to be at the -- able to be at the 21 meeting. I wanted somehow to -- to express 22 those views. 23 Q. And you don't recall the specifics</p>	<p style="text-align: right;">Page 105</p> <p>1 were you informed -- sorry. Strike that. 2 Were you informed that the 3 committee -- the full committee voted to approve 4 the draft legislation that was put behind -- put 5 in front of them during the January 20 meeting? 6 A. I don't ever recall being advised of 7 that. I'm not saying it didn't happen. I mean, 8 it may have happened, but certainly I -- I -- I 9 don't recall ever being advised. 10 Q. Do you recall or do you know why the 11 committee voted to approve that legislation that 12 had a significantly larger list of crimes? 13 MS. MESSICK: Object to the form. 14 A. No. 15 Q. (BY MS. YUN:) And do you know why 16 paying all court costs, fines and fees was 17 included as a requirement for restoring voting 18 rights in that proposed legislation? 19 MS. MESSICK: Object to the form. 20 A. Do I know discussions that occurred 21 on January the 20th, or are you talking about do 22 I know based on previous conversations had at 23 other meetings?</p>

27 (Pages 102 - 105)

<p style="text-align: right;">Page 106</p> <p>1 Q. (BY MS. YUN:) Based on -- based on</p> <p>2 the discussions that happened during the January</p> <p>3 20 meeting?</p> <p>4 A. No. I wasn't there.</p> <p>5 Q. Did you ever see the proposed</p> <p>6 legislation that the committee discussed during</p> <p>7 the January 20 meeting?</p> <p>8 MS. MESSICK: Object to the form.</p> <p>9 A. I don't recall ever seeing it. I</p> <p>10 don't recall ever seeing it. I wasn't at the</p> <p>11 meeting, so I guess -- I don't think it -- I</p> <p>12 don't recall it coming before the meeting.</p> <p>13 Q. (BY MS. YUN:) So --</p> <p>14 A. I don't know. I mean, I don't</p> <p>15 recall it.</p> <p>16 Q. So no -- as far as you recall, no</p> <p>17 one, say, sought your input or opinion regarding</p> <p>18 that particular draft?</p> <p>19 A. I don't --</p> <p>20 MS. MESSICK: Object to the form.</p> <p>21 A. Yeah. I -- I don't know if anyone</p> <p>22 saw that legislation before the meeting or not.</p> <p>23 I don't recall seeing it before the meeting.</p>	<p style="text-align: right;">Page 108</p> <p>1 that was sponsored by Representative Jones,</p> <p>2 House Bill 282, was the result. But I wouldn't</p> <p>3 know since I wasn't at the meeting and didn't</p> <p>4 actually see the draft.</p> <p>5 Q. Did you -- was there any further</p> <p>6 communication among the committee members after</p> <p>7 the January 20 meeting?</p> <p>8 A. I don't --</p> <p>9 MS. MESSICK: Object to the form.</p> <p>10 A. I don't recall any.</p> <p>11 Q. (BY MS. YUN:) Did you get any</p> <p>12 updates from Secretary Merrill's office</p> <p>13 regard -- or anyone else regarding the status of</p> <p>14 the proposed legislation?</p> <p>15 A. No.</p> <p>16 Q. Are you aware of a bill that was</p> <p>17 separate from what you referred to as HB8-282</p> <p>18 (sic) that -- that changed the application</p> <p>19 process for the certificate of eligibility to</p> <p>20 register to vote in 2016?</p> <p>21 A. No, ma'am.</p> <p>22 Q. Are you aware whether bribery,</p> <p>23 perjury or abuse of public office were on the</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. (BY MS. YUN:) So no one from the</p> <p>2 Secretary of State office, say, called you or</p> <p>3 contacted you in some other way to ask about</p> <p>4 this draft legislation?</p> <p>5 A. I don't --</p> <p>6 MS. MESSICK: Object to the form.</p> <p>7 A. I don't recall that happening.</p> <p>8 Q. (BY MS. YUN:) And was that meeting,</p> <p>9 the meeting on January 20, 2016, was that the</p> <p>10 last meeting of the exploratory committee?</p> <p>11 A. If there was another one, I was</p> <p>12 never notified. I think it was.</p> <p>13 Q. What was your understanding of the</p> <p>14 outcome of the committee?</p> <p>15 A. You mean outcome so far as whether</p> <p>16 it was dissolved, whether it continues to work?</p> <p>17 When you said outcome of the committee --</p> <p>18 Q. What came as a result of the</p> <p>19 committee having been existent and met three or</p> <p>20 four times during those --</p> <p>21 A. All right.</p> <p>22 Q. -- during those months?</p> <p>23 A. My understanding is that legislation</p>	<p style="text-align: right;">Page 109</p> <p>1 list of felonies involving moral turpitude as</p> <p>2 defined in that bill that you just mentioned,</p> <p>3 the definition of moral turpitude, the Act of</p> <p>4 2017?</p> <p>5 MS. MESSICK: Object to the form.</p> <p>6 A. I don't re -- I don't recall. Do</p> <p>7 you mind if I look at it?</p> <p>8 Q. Yes. I -- I can hand you the bill,</p> <p>9 actually.</p> <p>10 A. All right.</p> <p>11 Q. I am handing you what's been marked</p> <p>12 as Exhibit 8.</p> <p>13 (Plaintiff's Exhibit 8 was marked</p> <p>14 for identification and attached.)</p> <p>15 A. Thank you.</p> <p>16 Q. And I can also represent to you that</p> <p>17 none of the three crimes that I just mentioned</p> <p>18 is --</p> <p>19 A. Are in there?</p> <p>20 Q. Right.</p> <p>21 A. All right. Now, what was your</p> <p>22 question again?</p> <p>23 MS. MESSICK: Her question was is it</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 110</p> <p>1 in there.</p> <p>2 THE WITNESS: No.</p> <p>3 Q. (BY MS. YUN:) Well, whether you are</p> <p>4 aware. And you said, no, you're not aware.</p> <p>5 A. No. I wasn't aware.</p> <p>6 Q. And do you know why not?</p> <p>7 MS. MESSICK: Object to the form.</p> <p>8 A. No, I don't. I would have to</p> <p>9 speculate. It may have been oversight.</p> <p>10 Certainly perjury, to me, is -- is important,</p> <p>11 although, I can say it's not very often</p> <p>12 prosecuted.</p> <p>13 Q. (BY MS. YUN:) And do you recall any</p> <p>14 discussion regarding any of those crimes, which</p> <p>15 are bribery, perjury or abuse of public office?</p> <p>16 A. I don't. I -- I believe -- I</p> <p>17 believe my list included -- of suggested crimes</p> <p>18 included bribery of witnesses and jurors, but I</p> <p>19 really don't know if it included bribery of a</p> <p>20 public official. See, that -- I mean,</p> <p>21 there's -- therein lies a reason that I think</p> <p>22 that -- that legislation should have a more</p> <p>23 airing effect and a little more time to work on</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Right. Where -- or more like where</p> <p>2 did the list come from or what --</p> <p>3 A. Oh.</p> <p>4 Q. -- source documented the drafter of</p> <p>5 the legislation --</p> <p>6 A. No, ma'am.</p> <p>7 Q. -- to work with? I will represent</p> <p>8 to you that in prior deposition testimony in</p> <p>9 this case, Mr. Ed Packard testified that he</p> <p>10 drafted the bill prior to the formation of the</p> <p>11 exploratory committee.</p> <p>12 A. All right.</p> <p>13 Q. Were you aware of that when you were</p> <p>14 a part of the exploratory committee?</p> <p>15 A. No.</p> <p>16 MS. MESSICK: Object to the form.</p> <p>17 A. No.</p> <p>18 Q. (BY MS. YUN:) Did you become aware</p> <p>19 of that at any point in time since?</p> <p>20 A. Yes.</p> <p>21 MS. MESSICK: At the --</p> <p>22 A. Right now.</p> <p>23 MS. MESSICK: Object to the form.</p>
<p style="text-align: right;">Page 111</p> <p>1 it with committees is that we miss things</p> <p>2 sometimes that perhaps should be included or</p> <p>3 excluded.</p> <p>4 Q. And what is your opinion on things</p> <p>5 like embezz -- white collar crimes like</p> <p>6 embezzlement?</p> <p>7 MS. MESSICK: Object to the form.</p> <p>8 A. Embezzlement is included -- or -- or</p> <p>9 was included on the proposed list that I had.</p> <p>10 Those -- those crimes are included under theft</p> <p>11 of property and should be theft of property</p> <p>12 first and second degree and -- and they should</p> <p>13 be prosecuted.</p> <p>14 Q. (BY MS. YUN:) Should be prosecuted</p> <p>15 and should be --</p> <p>16 A. Right. Securities crimes. And --</p> <p>17 and those -- those, in my opinion, are crimes</p> <p>18 that involve moral turpitude as well. Yes.</p> <p>19 Q. Are you aware where the eventual</p> <p>20 list of felonies involving mortal turpitude in</p> <p>21 that bill came from?</p> <p>22 A. No, ma'am. You mean, who authored</p> <p>23 it? Is that what you're talking about or --</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Just now.</p> <p>2 Q. (BY MS. YUN:) Do you -- do you</p> <p>3 think the work of the committee had any impact</p> <p>4 on the draft legislation?</p> <p>5 MS. MESSICK: Object to the form.</p> <p>6 A. I don't -- I don't know that -- I</p> <p>7 don't know that I could answer that without</p> <p>8 speculating. I -- in what portions of it did</p> <p>9 the committee -- I mean, there were parts of the</p> <p>10 committee that may have been a majority, I</p> <p>11 suppose, that may have been in favor of one</p> <p>12 thing and then a majority that may have been in</p> <p>13 favor of another. And so I -- I couldn't tell</p> <p>14 you. Was -- did you say the entire bill had</p> <p>15 been drafted before the committee met?</p> <p>16 Q. That is the testimony that we have</p> <p>17 in this case.</p> <p>18 A. Oh, okay.</p> <p>19 MS. MESSICK: Object to the</p> <p>20 representation.</p> <p>21 A. All right.</p> <p>22 Q. (BY MS. YUN:) Did you talk to any</p> <p>23 Alabama legislators about the bill during the</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 114</p> <p>1 time you were a part of the exploratory 2 committee?</p> <p>3 A. No, not about the particulars of the 4 bill. I think I saw -- I saw Cam Ward and spoke 5 to him either in the hallway or -- or maybe 6 briefly at one of the meetings. I don't recall 7 him being there at -- at the meetings. I think 8 he was absent. But I spoke to him, but not 9 about that legislation. He was -- he was also 10 part of the prison -- or chair of the Prison 11 Reform Task Force that I was member of.</p> <p>12 Q. How about after January 2016?</p> <p>13 A. No.</p> <p>14 Q. And there was no other communication 15 regarding -- or you said there was no 16 communication regarding the bill with any 17 Alabama legislators because you -- when you 18 spoke with Mr. Ward, Senator Ward, it was about 19 a different task force?</p> <p>20 MS. MESSICK: Object to the form.</p> <p>21 A. I didn't even speak with him about 22 that task force. I just spoke to him in saying 23 hello.</p>	<p style="text-align: right;">Page 116</p> <p>1 conversation that you described earlier in the 2 deposition?</p> <p>3 A. I think so.</p> <p>4 Q. Was there any other conversation you 5 had with any other committee members outside of 6 those meetings?</p> <p>7 A. No.</p> <p>8 Q. Did you ever communicate with Mr. 9 Merrill, Secretary Merrill, separate from your 10 involvement with the committee to discuss voting 11 rights restoration in general, not -- not 12 concerning -- not particularly about the 13 committee, but just the issue in general?</p> <p>14 A. No, ma'am.</p> <p>15 Q. Are you aware if any other committee 16 members spoke with Secretary Merrill or anyone 17 in his office about the bill after the committee 18 meeting in January 20, 2016?</p> <p>19 A. No, ma'am, I'm not.</p> <p>20 Q. Do you remember if there was any 21 discussion during any of the committee meetings 22 whether the bill would be applied retroactively?</p> <p>23 A. Wow.</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. (BY MS. YUN:) Oh. And it was not 2 about the bill --</p> <p>3 A. No.</p> <p>4 Q. -- that we are talking about here?</p> <p>5 A. No.</p> <p>6 Q. Did you talk to Secretary Merrill or 7 anyone in this office -- in -- in that office, 8 Secretary Merrill's office, about the bill 9 separate from the other members of the 10 committee?</p> <p>11 A. About the bill itself? About the 12 bill itself, I never discussed it with anyone.</p> <p>13 Q. What about the work of the 14 committee?</p> <p>15 A. Other than -- other than inside the 16 committee meetings?</p> <p>17 Q. Exactly.</p> <p>18 A. I probably -- probably spoke to Mr. 19 Pickens. I mean, I -- I think -- whatever 20 conversation I had with him would have been 21 concerning the task -- or the -- the exploratory 22 committee's work.</p> <p>23 Q. And that was -- is that the same</p>	<p style="text-align: right;">Page 117</p> <p>1 MS. MESSICK: Object to the form.</p> <p>2 A. I don't recall. I don't recall.</p> <p>3 Q. (BY MS. YUN:) And was it your 4 understanding that the bill would be applied 5 retroactively?</p> <p>6 MS. MESSICK: Object to the form.</p> <p>7 A. I hadn't really thought about it.</p> <p>8 Are you talking about perhaps the -- the crimes 9 that were listed would go back and 10 disenfranchise people that may not have been 11 included before? Is that what you're talking 12 about?</p> <p>13 Q. Yes. And whether people who 14 committed those crimes before the bill was 15 passed would be now disenfranchised --</p> <p>16 MS. MESSICK: Object to the form.</p> <p>17 Q. -- after the --</p> <p>18 A. No. No. I hadn't -- I hadn't 19 really -- that's one of those things, I suppose, 20 we didn't think about -- or I -- I didn't. Wow. 21 But -- yeah. Never mind. I -- I see -- I see 22 what you're talking about, if -- if -- if the 23 provision had -- if the constitutional amendment</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 118</p> <p>1 had been -- to the Alabama Constitution had been 2 unconstitutional because it was vague or because 3 you -- you amend it by adding something that 4 goes back retroactively like es -- ex -- ex post 5 facto disqualifies people. 6 I mean, I -- I see where you're 7 going with it. But -- but the crime moral 8 turpitude, I think, legally -- now, remember I 9 said there's a distinction between my personal 10 feeling and legally. Legally, I -- I think has 11 been determined to be not vague. So I don't see 12 how that would go back and dis -- well, that's 13 not -- I don't want to become an advocate for 14 one side or the other. I'm a witness. I'm 15 sorry. I'm just academically thinking about 16 these things. 17 MS. YUN: Can we take a short break? 18 MS. MESSICK: Sure. 19 MS. YUN: I think we're almost done, 20 but I just want to make sure. 21 THE VIDEOGRAPHER: Okay. Stand by. 22 The time is 12:32 p.m. Central Time. We're off 23 the record.</p>	<p style="text-align: right;">Page 120</p> <p>1 is included in moral turpitude is -- is the 2 situation where you have crimes that are -- what 3 we consider or discuss in law school is called a 4 malum in se as opposed to malum prohibitum, 5 because it's prohibited by society. But then I 6 guess it -- you can look at some crimes that are 7 prohibited by society and say those should be 8 moral turpitude crimes too because they -- they 9 involve fraud or deceit. I think moral 10 turpitude includes fraud as well, deceit. 11 Q. And could you explain why you 12 believe that that's a good barometer for 13 determining whether someone's voting rights 14 should be taken away? 15 MS. MESSICK: Object to the form. 16 A. Okay. I think -- I think that 17 honesty in a person is one of the 18 characteristics that would be great to have with 19 someone that's -- that's exercising the right to 20 vote, someone that's going to pick the leaders 21 of our community, people that are going to 22 decide laws that are passed that are 23 constitutional in nature, that are going to</p>
<p style="text-align: right;">Page 119</p> <p>1 (Whereupon, a break was taken.) 2 THE VIDEOGRAPHER: Okay. The time 3 is 12:43 p.m. Central Time. We're now back on 4 the record. 5 Q. (BY MS. YUN:) Judge Jolley, you 6 mentioned earlier in the deposition that -- your 7 beliefs about what moral turpitude means. 8 A. Yes. 9 Q. And you mentioned the phrase evil 10 intent when you were giving some examples. 11 Could you describe to me why -- how that relates 12 to someone's voting rights? 13 MS. MESSICK: Object to the form. 14 Q. (BY MS. YUN:) So you believe that 15 having evil intent is -- is what defines moral 16 turpitude? 17 A. No. 18 Q. So -- 19 A. That's one -- that's one of the 20 things that define moral turpitude. I think 21 that -- that if a -- if a crime is considered 22 bad because the act itself is bad -- and I guess 23 -- you know, one of -- one of the things I think</p>	<p style="text-align: right;">Page 121</p> <p>1 affect everyone in a community or in the state. 2 I think that it's good that if a person is going 3 to hold office, that they also exhibit those 4 characteristics as well, but that's -- 5 that's -- my personal belief is it -- it gets 6 down to -- to morals. 7 Q. (BY MS. YUN:) And you believe that 8 you should have that -- those -- you know, 9 honesty and that kind of character in order to 10 have the right to vote? 11 A. I do. And it's very interesting 12 that under state law, if you -- on the election 13 law violations that are criminal offenses are 14 misdemeanors except -- I'm sorry -- except for 15 the ones dealing with Fair Campaign Act reports 16 under certain circumstances. 17 Q. You mentioned earlier that you've 18 learned and you've been told that more African 19 American people are affected by the criminal 20 justice system. 21 A. Yes. 22 Q. Do you -- why -- do you know why 23 that is in the state of Alabama? Let's just</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 122</p> <p>1 narrow it down.</p> <p>2 MS. MESSICK: Object to the form.</p> <p>3 A. Well, my personal belief is that</p> <p>4 when someone commits a crime, it shouldn't</p> <p>5 matter what color they are. If -- if they</p> <p>6 happen to be more people of color that commit</p> <p>7 crimes, then that would be the explanation for</p> <p>8 it. Another reason that is given -- and -- and</p> <p>9 I can see that -- is -- is that if you're not</p> <p>10 given an opportunity as a child, whether it's</p> <p>11 education or -- or whether it's the ability to</p> <p>12 obtain a job, that you're going to resort to</p> <p>13 other ways of surviving. And likewise, I think</p> <p>14 that may be very well part of it as well.</p> <p>15 But -- but I could say this. Of</p> <p>16 course, Marshall County is -- we have a sizable</p> <p>17 Hispanic population. I don't think the census</p> <p>18 is accurate. I live in Albertville. And</p> <p>19 Albertville, I think, just -- is probably about</p> <p>20 20 percent Hispanic. And our African American</p> <p>21 population is -- is very low. I think</p> <p>22 countywide, there's only about 1 percent of the</p> <p>23 population in Marshall County that's African</p>	<p style="text-align: right;">Page 124</p> <p>1 that (sic) their guilt, but I think the -- the</p> <p>2 penalties that apply to someone for committing a</p> <p>3 crime should be uniform and, likewise, any civil</p> <p>4 penalties that may apply to someone that has</p> <p>5 committed a crime should -- should apply across</p> <p>6 the board.</p> <p>7 I think that we -- if we're having a</p> <p>8 problem with -- with education and -- and jobs,</p> <p>9 that that's where we need to emphasize making</p> <p>10 the correction to -- to right the shift, not</p> <p>11 give particular passes to someone on -- on</p> <p>12 either civil or criminal penalties for</p> <p>13 committing a crime that -- because of race.</p> <p>14 Either for or against, one way or the other.</p> <p>15 Q. (BY MS. YUN:) And my last topic --</p> <p>16 or my last question is you mentioned the 1996</p> <p>17 amendment.</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. And you believe -- you stated, I</p> <p>20 believe, that that was not -- that did not grow</p> <p>21 out of intent to discriminate against black</p> <p>22 voters -- or black -- black people convicted of</p> <p>23 felonies?</p>
<p style="text-align: right;">Page 123</p> <p>1 American. And out of that, about -- actually</p> <p>2 the majority of the African American community</p> <p>3 lives in Guntersville, which is a smaller town</p> <p>4 than Albertville.</p> <p>5 In court, depending on any given</p> <p>6 day, you may see a proportionate number of</p> <p>7 Caucasians, African Americans, Hispanics in</p> <p>8 court, and then there may be days where you have</p> <p>9 a disproportionate number of -- you know.</p> <p>10 Looking at the 1 percent population of blacks in</p> <p>11 Marshall County of African Americans and then</p> <p>12 seeing the courtroom, maybe, you know three out</p> <p>13 of 15 or -- or three out of -- or five out of 25</p> <p>14 that come in there that may be African Americans</p> <p>15 and maybe two or three that are Hispanic.</p> <p>16 So it -- it varies. So I don't have</p> <p>17 an accurate account. I haven't actually kept</p> <p>18 those statistics. All I have to go on are --</p> <p>19 would be what I've seen.</p> <p>20 But the bottom line -- I feel the</p> <p>21 bottom line is if someone commits a crime, you</p> <p>22 shouldn't look at their color, their race or</p> <p>23 their national origin to make a determination</p>	<p style="text-align: right;">Page 125</p> <p>1 A. Yes. Once again, that's my personal</p> <p>2 belief.</p> <p>3 Q. Right.</p> <p>4 A. Yes.</p> <p>5 Q. And you mention that it was a</p> <p>6 Democratic house, the senate.</p> <p>7 A. I was a Democrat at that time. Yes.</p> <p>8 Q. So could you give me any other</p> <p>9 additional reasons why you believe that it was</p> <p>10 not racially motivated?</p> <p>11 A. I just don't -- I don't think the</p> <p>12 Legislature in 1996, the Alabama State</p> <p>13 Legislature, was passing laws that were intended</p> <p>14 for discriminating based on race. There was --</p> <p>15 there was -- there's one exception to that and</p> <p>16 it came much later, and I think it was directed</p> <p>17 toward the Hispanic population. It had nothing</p> <p>18 to do with this. I don't think this law was</p> <p>19 passed for that reason, but --</p> <p>20 Q. And what's the --</p> <p>21 A. When --</p> <p>22 Q. Sorry --</p> <p>23 A. I'm sorry.</p>

32 (Pages 122 - 125)

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 126</p> <p>1 Q. -- to interrupt.</p> <p>2 A. No.</p> <p>3 Q. What was the -- what's the law that</p> <p>4 you are referring to that's directed at Hispanic</p> <p>5 people?</p> <p>6 A. Well, illegal immigrants, but in our</p> <p>7 case, at least in Marshall County, it would have</p> <p>8 Hispanic. There was a -- a law passed by the</p> <p>9 Legislature that required to hold someone</p> <p>10 without bond even if they -- if they were an</p> <p>11 illegal immigrant, if they could not produce --</p> <p>12 well, not produce ID. If -- if they were an</p> <p>13 illegal immigrant and they were stopped on a</p> <p>14 minor traffic offense, they were held without</p> <p>15 bond.</p> <p>16 And I actually had a case that came</p> <p>17 before me. Ordinarily, I don't handle traffic</p> <p>18 offenses. And I -- I believe I was -- may have</p> <p>19 been filling in for a district judge that day.</p> <p>20 There was no time to notify the attorney general</p> <p>21 about the issue of constitutionality and -- and</p> <p>22 perhaps I should, but I raised it myself. I</p> <p>23 mean, the defense attorney didn't mention it at</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. So you believe changing that word</p> <p>2 from crimes to felonies resolved the issue?</p> <p>3 A. Legally.</p> <p>4 MS. MESSICK: Object to the form.</p> <p>5 A. Yes. Legally.</p> <p>6 Q. (BY MS. YUN:) And personally you</p> <p>7 believe it's still kind of --</p> <p>8 A. I think it --</p> <p>9 Q. -- vague?</p> <p>10 A. Yes.</p> <p>11 Q. I think that's it for my questions.</p> <p>12 A. All right.</p> <p>13 MS. YUN: Should we take a break, or</p> <p>14 do you want to go ahead and --</p> <p>15 MS. MESSICK: Give me one second.</p> <p>16 MS. YUN: Sure.</p> <p>17 MS. MESSICK: I'd like to go -- go</p> <p>18 ahead and ask my questions now.</p> <p>19 EXAMINATION BY MS. MESSICK:</p> <p>20 Q. Judge Jolley, I'd like to start with</p> <p>21 the illegal immigrant law that you were just</p> <p>22 talking about.</p> <p>23 A. Yes, ma'am.</p>
<p style="text-align: right;">Page 127</p> <p>1 the time. But I said, to me, the United States</p> <p>2 Constitution as well as a provision in the</p> <p>3 Alabama constitution provides that you can't</p> <p>4 hold someone without bond -- without setting a</p> <p>5 reasonable bond in a case unless it's a capital</p> <p>6 murder case and the likelihood that they</p> <p>7 committed the offense is great. This was a</p> <p>8 minor traffic offense. I found that -- at least</p> <p>9 as applied in this case -- in that case, that --</p> <p>10 that it was unconstitutional. And it -- it</p> <p>11 didn't go any further than that, of course.</p> <p>12 That was the end of it. But that's the one</p> <p>13 exception I can think of.</p> <p>14 Otherwise, I -- I think particularly</p> <p>15 in this legislation, there was -- there was</p> <p>16 an -- there was an intent to try to determine</p> <p>17 qualifications for voters in -- that they pass</p> <p>18 that legislation for that reason and realizing</p> <p>19 that the pred -- predecessor to it not only</p> <p>20 said -- not only said that I believe felon --</p> <p>21 felonies involve moral turpitude, but see,</p> <p>22 crimes, which would include misdemeanors of</p> <p>23 moral turpitude.</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. Was that law also passed by the 1996</p> <p>2 legislature?</p> <p>3 A. No.</p> <p>4 Q. That was something much more recent,</p> <p>5 right?</p> <p>6 A. That was two -- in two thousand -- I</p> <p>7 forgot the year that it -- that it was passed.</p> <p>8 That was much later than the other ones.</p> <p>9 Q. Uh-huh. Approximately 2011?</p> <p>10 A. I'm not sure of the date. I know</p> <p>11 that it was -- I know that it was --</p> <p>12 Q. Was it --</p> <p>13 A. -- after 2000.</p> <p>14 Q. Okay.</p> <p>15 A. A little after 2000.</p> <p>16 Q. Well, 1996 is still close to 2000.</p> <p>17 Was it the same legislature?</p> <p>18 A. No.</p> <p>19 Q. Okay.</p> <p>20 A. No.</p> <p>21 Q. Thank you. Are you here today as an</p> <p>22 expert witness or a fact witness?</p> <p>23 A. Fact witness. Or at least that's</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 130</p> <p>1 what my subpoena -- it didn't indicate I was 2 here as an expert. 3 Q. And you haven't written an ex -- an 4 expert report in -- 5 A. No. 6 Q. -- this case? 7 A. Huh-uh. 8 Q. Did anybody on the exploratory 9 comment at any meeting that you attended or to 10 you separately that they were looking to select 11 felonies to put on the moral turpitude list in 12 order to disenfranchise blacks? 13 A. No. I would certainly remember 14 that. 15 Q. The 1996 amendment that repealed the 16 1901 provision on suffrage and elections and 17 replaced it with a provision that felonies of 18 moral turpitude are disenfranchising, do you 19 remember if you personally voted on that 20 amendment? 21 A. I would have voted on it. I vote -- 22 I have voted in every election, whether it's 23 local, state or national since I turned 18. And</p>	<p style="text-align: right;">Page 132</p> <p>1 sort of Alabama Appleseed or ACLU arguing that 2 the amendment should not be passed because it 3 would have a racial and discriminatory impact? 4 A. I have no knowledge of that one way 5 or the other. 6 Q. You talked about your personal 7 opinion that moral turpitude is vague. 8 A. Yes. 9 Q. But your legal opinion that it -- 10 the courts have found that it's not, correct? 11 A. That's correct. 12 Q. Do you understand moral turpitude to 13 have a common law definition? 14 A. Yes. 15 Q. Okay. And you were aware at the 16 time that you worked on the exploratory 17 committee that the courts of Alabama had decided 18 whether some felonies -- or whether some crimes 19 involved moral turpitude; is that correct? 20 A. That's correct. 21 Q. Did the committee have the option to 22 ignore the constitutional provision that it was 23 trying to implement when it developed a list of</p>
<p style="text-align: right;">Page 131</p> <p>1 I'm -- I'm 64. 2 Q. Okay. 3 A. So, yes. 4 Q. And do you -- 5 A. And -- and quite frankly, I don't 6 vote on every amendment, but -- 7 Q. All right. Any chance that you 8 remember if you voted for or against that 9 amendment? 10 A. No. 11 Q. You -- no recollection? 12 A. No recollection. 13 Q. Okay. Do -- as a member of the 1996 14 electorate -- and at that time, you were a grown 15 man, a practicing lawyer at the DA's office, 16 right? 17 A. In 1996, that's correct. 18 Q. Okay. Do you remember any messages 19 directed at the Alabama electorate, of which you 20 were a part, that that constitutional amendment 21 was racially discriminatory? 22 A. No. 23 Q. Do you remember any groups of the</p>	<p style="text-align: right;">Page 133</p> <p>1 felonies involving moral turpitude in order to 2 implement that constitutional provision? 3 A. I don't know. I wasn't at that 4 meeting where it happened. 5 Q. Well, in -- 6 A. That was on January the 20th you're 7 talking about, right? 8 Q. No. I'm talking about the entire 9 meeting. I'm -- the entire committee. I'm 10 saying could the committee say we don't like 11 moral turpitude, we're going to go with a 12 different standard? 13 A. Yes. 14 Q. Why do you believe that the 15 committee would have a right to do that if moral 16 turpitude is in the constitutional amendment? 17 A. I think the committee could have 18 done that, but I don't think it would have been 19 constitutional. 20 Q. Okay. 21 A. You can't amend the constitution by 22 a committee making a recommendation and the 23 Legislature passing a legislative amendment that</p>

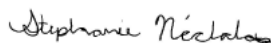
Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 134</p> <p>1 would, in fact, supplant that constitutional 2 amendment. 3 Q. Okay. So could both a long list and 4 a short list be consistent with the 5 constitution? 6 A. I don't understand the form of 7 your ques -- I mean, I don't understand what 8 you're asking me. Could it be consistent? A -- 9 a -- I think, yes. I think a -- where the 10 Legislature clarifies, you know, a 11 constitutional amendment, that they could have 12 adopted a short list or a longer list that says 13 these crimes are crimes that are -- involve 14 moral turpitude for purposes of an election, for 15 purposes of -- of disqualifying someone from 16 voting. 17 Q. Are you aware of the use of the 18 phrase moral turpitude in other aspects of 19 Alabama law outside of the voting context? 20 A. Defamation. 21 Q. Any other contexts? 22 A. No. I haven't really given it a lot 23 of thought. If you're asking me am I aware of</p>	<p style="text-align: right;">Page 136</p> <p>1 were moral violations, but were not punished by 2 criminal laws. But in -- in the modern day 3 context, no. 4 I think -- I mean, I -- I think the 5 term moral turpitude was in -- was clearly 6 intended because it says conviction of a crime 7 involving moral turpitude. It doesn't use moral 8 turpitude in the context of, well, she's 9 unchaste or she -- she drinks excessively in 10 terms of how it was used early on in -- in 11 American jurisprudence. 12 Q. So you think the 1996 use is 13 different from the use you discussed earlier in 14 the 1800s where it was applied to social 15 activities that were not okay for women or 16 minorities but were okay for men? 17 A. I guess you could say use, yes. 18 And -- but certainly that application is 19 different. 20 Q. You talked about court costs and 21 fines and restitution and remittance. Did 22 you -- is it correct that you determine -- as a 23 judge, you determine the ability to pay those</p>
<p style="text-align: right;">Page 135</p> <p>1 other statutes that use the term, no, I'm not. 2 Q. Are you aware of the term being used 3 in federal law? 4 A. Yes. Uh-huh. 5 Q. And in what context? 6 A. In the context of immigration law. 7 Q. Are you familiar with any examples 8 where a concept like moral turpitude would have 9 different definitions and different contexts 10 without it being explicitly stated that that was 11 the way it was to operate? 12 A. I'm not sure I understand your 13 question. Could -- well, I won't try to clarify 14 it. 15 Q. Did you have any reason to believe 16 that moral turpitude in the voting context means 17 something different than moral turpitude in the 18 defamation context or the licensing context or 19 the immigration context? 20 A. I do. I -- I did understand it to 21 be different from what would ordinarily have 22 been used in defamation and common law because 23 it included things that were morally -- that</p>	<p style="text-align: right;">Page 137</p> <p>1 court-ordered monies at the time of sentencing? 2 A. Well, in theory. We determine -- we 3 determine that because the defense, I believe -- 4 and as a defense attorney when I did -- before I 5 was prosecutor, if I had someone that couldn't 6 pay, that was indigent, I would certainly raise 7 that issue and address it with the court then. 8 And I have it -- that happens in court. I can't 9 say in every case, it happens, because if it's 10 not brought to my attention, I don't know. But, 11 yes, we do. And that -- in theory, that's 12 supposed to be what happens is -- is -- is when 13 sentencing takes place, if we're going to 14 determine that someone can't pay those fees and 15 fines, that would be the place for it to be 16 determined. But circumstances do change with 17 people later on as well. 18 Q. And you have remitted fines and fees 19 where you found that the criminal defendant 20 could not pay? 21 A. Yes. 22 Q. And -- 23 A. Well, I say -- I've -- I've remitted</p>

35 (Pages 134 - 137)

<p style="text-align: right;">Page 138</p> <p>1 the court cost. You know, in Marshall County, 2 we just rarely ever have -- I mean, we just 3 don't fine. The DA's office basically doesn't 4 fine people in felony cases. 5 Q. Okay. 6 A. But -- but with regard to whatever 7 comes before me, whether it's cost and fines 8 or -- or whatever, yes, I do make the 9 determination when it's raised. 10 Q. And is sentencing the only time at 11 which a criminal defendant's ability to pay can 12 be considered? 13 A. No. 14 Q. When else can it be considered? 15 A. Are you talking about by me or by 16 someone else? 17 Q. By the court. 18 A. By the court, by me. It can be 19 determined at any time during a period of 20 probation, before the -- before probation 21 expires. And quite frankly, that's by statute. 22 It also can be addressed -- and -- and this is, 23 I feel, an interpretation of Alabama case law in</p>	<p style="text-align: right;">Page 140</p> <p>1 outstanding costs. But certainly not 2 restitution. That's not allowed. 3 Q. And the restitution goes to the 4 victim of the crime -- 5 A. It does. 6 Q. -- correct? 7 A. It does. But I might mention that 8 resti -- in setting restitution, the law 9 requires that the court take into consideration 10 the defendant's ability to pay in -- in setting 11 the amount of restitution. In other words, if 12 someone comes into court and they're claiming 13 \$40,000 in restitution, but the defendant can't 14 pay that, the court is supposed to set the 15 restitution at an amount that the defendant can 16 pay. And that's after a hearing, after a due 17 process hearing, or in the event that the 18 parties can agree on an amount as well. 19 MS. MESSICK: Okay. I don't have 20 any further questions. Did you have follow-up? 21 MS. YUN: Yeah. Just a couple of 22 questions. 23 MS. MESSICK: Yes, ma'am.</p>
<p style="text-align: right;">Page 139</p> <p>1 particular. It can be addressed even after the 2 expiration of the sentence and probationary 3 period if someone is brought back to court for 4 contempt after that time period has expired for 5 not paying the fines or court costs, and the 6 court can remit those. 7 Q. Do you recall ever having a case 8 where somebody was seeking a pardon and came to 9 the -- to your court to seek remittance in order 10 to -- 11 A. Yes. 12 Q. -- help -- okay. So people have 13 come to you seeking remittance when they were 14 pursuing a pardon? 15 A. Yes. They have been -- not more -- 16 not many, though -- that have come to my office 17 and asked -- asked for that. Maybe four or five 18 that I have actually written letters for 19 requesting the Board of Pardons and Parole to 20 parole them. That would -- I have done that 21 in -- in some of those -- 22 Q. Okay. 23 A. -- cases where there were</p>	<p style="text-align: right;">Page 141</p> <p>1 RE-EXAMINATION BY MS. YUN: 2 Q. So Judge Jolley, you just mentioned 3 in theory, you as a judge are supposed to 4 determine the defendant's ability to pay during 5 sentencing, but it doesn't happen every case -- 6 in every case; is that -- is that correct? 7 A. I guess that would -- 8 MS. MESSICK: Object to the form. 9 A. No. I guess that would be a 10 supposition that -- or speculation. I -- I said 11 that that's a -- assuming that the defense 12 attorney is doing their job and they're raising 13 the issue. 14 Q. (BY MS. YUN:) So it gets considered 15 when it's raised? 16 A. It gets considered by a court -- it 17 gets considered by a court at -- at sentencing. 18 Yes. 19 Q. But generally -- but if it's raised. 20 And if it's not raised? 21 A. Then it would go unaddressed and 22 simply the court would order the payment unless 23 the defendant is found to be indigent or someone</p>

Thompson, Treva, et al. Vs. Merrill, John H., et al.

<p style="text-align: right;">Page 142</p> <p>1 requests it.</p> <p>2 Q. In your experience, do you believe</p> <p>3 ability to pay was frequently considered in</p> <p>4 these proceedings?</p> <p>5 A. Oh, yes, especially with regard to</p> <p>6 restitution. That's probably -- that's probably</p> <p>7 where I saw it addressed considerably. But I</p> <p>8 also saw it addressed at the time of sentencing</p> <p>9 where someone didn't have restitution, but they</p> <p>10 couldn't pay the court cost as well.</p> <p>11 Q. So in the context of fines and fees</p> <p>12 and court costs, it is less likely to be</p> <p>13 considered than it is when you're thinking of</p> <p>14 restitution -- when you're determining</p> <p>15 restitution amounts?</p> <p>16 MS. MESSICK: Object to the form.</p> <p>17 A. No. I -- I think what I said</p> <p>18 that -- is that it was raised more frequently.</p> <p>19 And perhaps that's because a lot of the times,</p> <p>20 the restitution amount claimed is a humongous</p> <p>21 amount.</p> <p>22 Q. (BY MS. YUN:) I understand.</p> <p>23 A. Yes. Oftentimes by an insurance</p>	<p style="text-align: right;">Page 144</p> <p>1 THE WITNESS: Okay.</p> <p>2 MS. MESSICK: -- for your time</p> <p>3 today.</p> <p>4 THE WITNESS: Thank you.</p> <p>5 THE VIDEOGRAPHER: Okay. The time</p> <p>6 is 1:10 p.m. We're off the record.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
<p style="text-align: right;">Page 143</p> <p>1 company.</p> <p>2 Q. Do you believe that people who are</p> <p>3 unable to pay, who are not paying court costs</p> <p>4 and fees are, more likely than not, willing --</p> <p>5 willfully not paying even though they have the</p> <p>6 ability to pay?</p> <p>7 A. Oh, yes.</p> <p>8 MS. MESSICK: Object.</p> <p>9 A. There's no question about it in my</p> <p>10 experience in Marshall County. I can't testify</p> <p>11 about other places. But, yes.</p> <p>12 Q. (BY MS. YUN:) That they're</p> <p>13 willfully not paying?</p> <p>14 A. Yes. Uh-huh.</p> <p>15 MS. MESSICK: Object to the form.</p> <p>16 Q. (BY MS. YUN:) And I think that is</p> <p>17 it.</p> <p>18 A. All right.</p> <p>19 Q. Thank you so much, Judge Jolley.</p> <p>20 A. Thank you.</p> <p>21 Q. We really appreciate it.</p> <p>22 MS. MESSICK: No further questions.</p> <p>23 Thank you --</p>	<p style="text-align: right;">Page 145</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 STATE OF ALABAMA:</p> <p>4 TALLAPOOSA COUNTY:</p> <p>5</p> <p>6</p> <p>7 I hereby certify that the above and</p> <p>8 foregoing proceedings were taken down by me in</p> <p>9 stenotype, and the questions and answers thereto</p> <p>10 were reduced to computer print under my</p> <p>11 supervision, and that the foregoing represents a</p> <p>12 true and correct transcript of the testimony</p> <p>13 given by said witness upon said proceedings.</p> <p>14 I further certify that I am neither</p> <p>15 of counsel nor of kin to the parties to the</p> <p>16 action, nor am I anyway interested in the</p> <p>17 result of said cause.</p> <p>18</p> <p>19 </p> <p>20 Stephanie Nicholas</p> <p>21 ACCR# 29</p> <p>22 Expires 9/30/2019</p> <p>23 My Commission Expires 3/19/2020</p>

37 (Pages 142 - 145)

[& - actual]

Page 1

&	129:1,16 130:15	3/19/2020 145:23	able 9:18 12:22
& 5:5	131:13,17 136:12	30 4:8 55:1,3	15:12 32:6 50:23
1	1998 22:14	34 4:10	75:17 80:17
1 4:8 30:20,22	1999 22:4,14	36130 5:19	103:20
35:4 122:22	1:10 144:6	4	absent 114:8
123:10	2	4 4:14 70:19,22	absolute 98:7
100 15:14 91:17	2 4:10 34:4,5 35:5	40,000 140:13	absolutely 72:12
109 4:22	39:3 42:13 53:6,6	431 9:3	abuse 108:23
1099 5:6	53:18,18 69:16,18	5	110:15
10:07 6:8 7:3	78:5,13 83:1	5 4:16 85:10,12	academically
11 27:11	86:15 92:10 96:2	501 5:18 6:7 7:10	118:15
11:19 68:2	20 104:10,13 105:5	6	accept 36:4,4
11:30 28:1,2	106:3,7 107:9	6 4:18 88:9,12	acceptable 39:19
12 22:4	108:7 116:18	61 4:12	39:20
128 4:5	122:20	64 131:1	acceptance 19:22
12:01 22:18	2000 129:13,15,16	7	accepting 26:16
12:32 118:22	20001-4412 5:7	7 4:20 90:10,11,22	accomplish 29:6,7
12:43 119:3	2011 129:9	96:2	accomplished
141 4:4	2015 4:13,15 28:4	70 4:14	29:12
14th 22:18	31:3 33:11 35:2	8	account 25:9
15 4:13 31:3 33:11	62:7 64:7 69:13	8 4:4,22 109:12,13	61:17 123:17
123:13	2016 90:15 104:12	81 21:14	accr 145:21
17 35:1	104:13 107:9	85 4:16	accurate 11:18
18 22:15 28:4	108:20 114:12	88 4:18	86:5 122:18
33:18 70:4 86:7	116:18	9	123:17
104:18 130:23	2017 22:22,22	9 4:15	accurately 12:22
1800s 39:16	109:4	9/30/2019 145:22	52:3
136:14	2019 1:23 7:3	90 4:20	aclu 85:15 132:1
18337 145:19	20th 66:18,19	900 5:6	acquitted 10:10
18th 27:15 42:13	105:21 133:6	9th 71:5	act 109:3 119:22
52:12 69:13	21 1:23 69:23 70:3	a	121:15
19 90:15	86:7	a.m. 6:8 7:3 22:18	acted 93:22,23
1901 40:22 41:3	21st 7:3	27:10 28:2 68:2,6	acting 6:2
72:11,23 73:13,15	25 123:13	abilities 81:12	action 92:17
77:1 130:16	282 108:2	ability 13:3 50:6	145:16
1981 21:13,21	29 145:21	122:11 136:23	activities 39:17
1987 21:21,22 22:3	2:16-783 1:6 7:7	138:11 140:10	47:12,21 136:15
1992 9:20	3	141:4 142:3 143:6	actual 14:19 15:12
1996 77:9,17,18,23	3 4:12 61:12,14		23:23 24:14 67:3
124:16 125:12	63:9 69:14 86:22		71:6

add 65:22 added 46:13 55:3 64:12 adding 118:3 additional 17:10 20:11 41:21 64:12 64:16 125:9 address 8:12,15,15 8:16,18 25:8 137:7 addressed 49:21 138:22 139:1 142:7,8 adept 32:14 adjourned 27:5 28:1 adjournment 27:8 27:22 administrative 79:22 administratively 46:12 admitted 21:15 adopted 52:22,22 134:12 advise 74:4 advised 105:6,9 advocate 118:13 affect 13:2 35:17 97:19 121:1 afford 49:7,9,18 50:15,16 african 40:10,15 41:5 45:8 51:6,16 68:17 69:10 97:19 98:3,11 121:18 122:20,23 123:2,7 123:11,14 agenda 4:9 31:2 31:12	ago 13:10,18 18:2 82:19 91:17 agree 52:10 71:20 72:4 80:12 98:6 140:18 agreed 2:2,17,23 3:7 54:23 57:14 57:16 agreement 26:16 ahead 89:22 128:14,18 airing 110:23 al 1:12,15 7:6,7 alabama 1:3 2:8 5:16,19 6:2,6,8 7:8,10,11 9:1,3,22 20:21 23:8 32:4 37:9 39:9 40:21 48:20 49:23 55:1 67:2 70:7 71:23 72:9 79:23 81:2 89:11 102:1 113:23 114:17 118:1 121:23 125:12 127:3 131:19 132:1,17 134:19 138:23 145:3 alabama's 41:2 albertville 122:18 122:19 123:4 allen 8:13 allowed 36:8 37:10,11 140:2 alm 46:22 altogether 97:11 amend 118:3 133:21 amendment 65:22 66:1 77:9,11,13 117:23 124:17	130:15,20 131:6,9 131:20 132:2 133:16,23 134:2 134:11 amendments 75:13 american 51:6,16 68:17 69:11 97:19 98:11 121:19 122:20 123:1,2 136:11 americans 40:10 40:15 41:5 45:9 98:3 123:7,11,14 amount 46:5 50:22 98:11 140:11,15,18 142:20,21 amounts 142:15 answer 11:13 12:11,12 13:3 113:7 answering 10:16 11:15 53:2 answers 11:4 145:9 anybody 73:7 130:8 anyway 15:18 anywise 145:16 aoc 82:5 apologize 69:17 82:20 apparently 74:15 74:21 appeal 23:12 101:9,16 appeals 101:21,22 appear 11:21 appearances 5:1	appearing 5:3,13 appears 34:14 appellate 88:5 appleseed 51:20 70:7 77:8 99:20 132:1 applicable 47:14 application 108:18 136:18 applied 116:22 117:4 127:9 136:14 apply 32:6 124:2,4 124:5 appreciate 17:22 143:21 approve 105:3,11 approximately 129:9 apt 47:20 arguing 132:1 arguments 75:7 arson 23:13 arsons 22:7 articulated 56:10 asked 11:17 15:21 16:1,11,21 26:11 28:20,21 42:10 82:19,22 139:17 139:17 asking 62:11 134:8,23 aspect 78:19 92:1 aspects 23:17 134:18 assault 37:4,18 assembly 48:11 assist 24:3 32:3 assistant 10:2 22:5 23:23
--	--	---	---

assisted 10:4 63:18 associated 91:1,11 95:3 assuming 141:11 attached 30:23 34:6 61:15 70:23 85:13 88:13 89:7 90:12 109:14 attachment 90:8 attachments 4:19 attempt 67:6,15 attempted 37:5,8 37:12 66:9 attempting 67:7 attempts 67:11 attend 20:2 31:6 70:4 attended 21:8,11 130:9 attending 35:7 attention 43:7 49:19 63:3 137:10 attorney 5:17 6:6 7:10 9:23 10:2,9 13:7,14 21:23 22:3,6 23:2 24:1,1 24:9,14 126:20,23 137:4 141:12 attorney's 10:1 14:2 23:4 24:15 55:6 attorneys 49:16 august 1:23 7:2 authored 111:22 auto 83:8 automatic 29:12 53:8,14,19,21 54:7 57:19 85:16,23 99:13 100:17 103:3	automatically 52:14 56:4 83:19 84:16 automobile 67:7 automobiles 48:18 avenue 5:6,18 6:7 7:10 9:3 aware 32:17,18,19 104:15 108:16,22 110:4,4,5 111:19 112:13,18 116:15 132:15 134:17,23 135:2 b b 37:7 57:2 67:5 back 23:10 29:17 39:3,13 42:6,12 52:12 56:14 68:6 72:2 78:1 81:8 86:14 117:9 118:4 118:12 119:3 139:3 background 21:7 21:17 71:10 bad 92:16 119:22 119:22 balance 48:16 bar 21:13,14,15 barometer 120:12 based 52:4,8 71:21 72:5,7 74:11 82:23 105:22 106:1,1 125:14 basically 20:13 94:17 138:3 bates 89:14,18 bear 45:10 98:10 beginning 6:8 begins 7:4 behalf 5:3,13	belief 121:5 122:3 125:2 beliefs 119:7 believe 14:1,16,19 16:20 19:23 22:17 26:22 29:22 31:23 34:19 35:12,20 36:21 43:23 47:1 49:3 51:7,22 59:19 60:17 61:3 70:12 71:3 73:12 76:23 77:17 79:21 81:9,23 91:2 92:10 94:16 96:4 96:14 97:17 98:20 110:16,17 119:14 120:12 121:7 124:19,20 125:9 126:18 127:20 128:1,7 133:14 135:15 137:3 142:2 143:2 believed 81:20 bench 16:15 22:14 46:17 81:8 best 15:8 better 32:11 80:9 100:6,23 bid 22:2 biehl 57:2 big 48:20 bill 22:12 62:7 77:20 108:2,16 109:2,8 111:21 112:10 113:14,23 114:4,16 115:2,8 115:11,12 116:17 116:22 117:4,14 birmingham 21:11,12	bit 26:4,6 68:8 black 71:23 72:9 73:1,16 124:21,22 124:22 blacks 123:10 130:12 blair 5:22 block 5:5 blocked 51:4 board 48:3 124:6 139:19 boaz 10:12 body 27:23 75:15 boggs 7:12,13 bond 126:10,15 127:4,5 bother 12:3,5 bottom 53:5 99:10 123:20,21 bowie 5:22 box 17:12 24:22 24:23,23 29:19 boxes 17:5,6,7 branch 80:4 break 12:15,16 19:13 67:19,22 68:4 118:17 119:1 128:13 brenton 5:23 bribery 108:22 110:15,18,19 brief 21:6 briefly 20:7 114:6 brings 53:19 broad 91:4 96:5 96:19,22 103:4 brought 17:2 49:13,18 54:5,8,9 68:14 78:22 137:10 139:3
--	---	---	--

budget 48:17	cause 6:9 145:17	churches 48:13	123:14 139:13,16
burden 45:17	causing 93:18 94:1	circuit 22:9,11	comes 75:4 91:20
burdened 46:7	census 122:17	25:7,11 101:22	138:7 140:12
business 27:23	center 70:7	102:1	coming 23:10 32:3
businesses 48:8	central 7:3 68:2	circumstances	60:8,16 63:19
c	118:22 119:3	121:16 137:16	81:7 87:5 106:12
c 37:7 67:9,14	certain 26:1 36:6,7	citizen 53:22	comment 82:11
call 14:5,8 34:18	62:1,4 64:20	city 8:22 10:13	130:9
42:5	66:13 98:5 100:18	23:22,23 24:1,1	commission 2:9
called 14:7 107:2	121:16	civic 47:12,21	28:1 145:23
120:3	certainly 11:10	civil 2:5,15,22 6:4	commissioner 2:8
calling 12:2	21:18,20 102:22	23:19 24:2 76:5,6	3:9 6:2
cam 114:4	105:8 110:10	92:4 101:22 124:3	commit 67:6,11
campaign 22:1	130:13 136:18	124:12	122:6
121:15	137:6 140:1	claimed 142:20	commits 122:4
capital 9:20 10:9	certificate 108:19	claiming 140:12	123:21
23:7 127:5	145:1	clarifies 134:10	committed 37:9
carefully 90:23	certify 6:3 145:7	clarify 84:1	37:20 46:4 67:4
carouse 40:2	145:14	135:13	117:14 124:5
case 1:6 2:19,20	chain 64:4	class 37:7 63:16,22	127:7
7:7 9:6,14,20 10:6	chair 114:10	67:5,9,14,15,16,17	committee 14:18
10:7 13:8,15,19,21	challenges 91:7	cleaner 48:10	15:11,16 17:15
14:15 15:22 16:1	chance 131:7	clear 37:16	21:1 26:5,9,11,17
16:16 18:8 41:1	change 45:5 75:12	clearly 11:3 136:5	28:15,21 29:4,6
80:17 92:5 112:9	137:16	clinton 77:20	31:3,21 32:20
113:17 126:7,16	changed 77:10,11	close 129:16	33:2 34:16,23
127:5,6,9,9 130:6	108:18	code 38:5 101:20	35:14 38:23 41:7
137:9 138:23	changing 128:1	101:20	43:6 44:2,10,12,16
139:7 141:5,6	character 121:9	coleman 51:23	44:22 45:23 48:3
cases 22:8 23:14	characteristics	collar 111:5	52:23 57:15 58:23
23:14,18 24:4	120:18 121:4	collect 55:8,9	59:23 62:2 64:16
39:16 55:21 74:14	charge 10:11	80:13 82:5	64:17 65:11,12,15
138:4 139:23	charged 10:9	collecting 80:10	68:14 69:1,3 77:7
categories 38:16	chastity 40:1	collection 80:7	83:1 85:23 86:6
38:17 62:4	checkbook 48:17	collectively 87:17	87:3 90:16 94:22
category 38:15	chief 10:1 22:5	87:19	95:19 98:19
caucasian 39:21	26:14 79:22	college 81:3	102:12,15,20
69:11 97:20	child 122:10	color 122:5,6	103:6,10 105:3,3
caucasians 45:8	chimed 58:11	123:22	105:11 106:6
123:7	chose 94:19	come 23:6,15 32:2	107:10,14,17,19
		35:21 40:9 112:2	108:6 112:11,14

113:3,9,10,15 114:2 115:10,14 115:16 116:5,10 116:13,15,17,21 132:17,21 133:9 133:10,15,17,22 committee's 65:3 115:22 committees 15:5 38:23 111:1 committing 37:7 67:14 124:2,13 common 132:13 135:22 communicate 116:8 communicating 102:7 103:2,5 communication 108:6 114:14,16 communications 25:10 community 48:2 48:12,14 120:21 121:1 123:2 company 143:1 compilation 62:17 88:4 compiled 62:20 complete 10:22 11:18 60:23 61:2 61:5 83:8 89:7,15 101:5 completed 84:17 completion 52:15 53:22 83:9,19 86:1 99:14 compliance 3:4 composition 57:19 computer 25:15 145:10	concept 91:5,16 135:8 concern 46:6 79:16 97:13,14 concerning 10:8 37:1 87:4 115:21 116:12 concerns 38:13,21 53:7 64:19 concise 101:10 conclusion 60:11 60:16 conduct 101:15 confederate 40:8 conference 20:1 conflict 18:19 24:2 conflicts 18:18,21 confusing 102:3 consecutive 89:13 89:18 consensus 60:8 83:18 84:3 85:4 85:22 86:6 consider 23:16 63:21 120:3 considerably 142:7 consideration 140:9 considered 45:1 53:21 63:17 66:21 77:7 119:21 138:12,14 141:14 141:16,17 142:3 142:13 considering 75:15 90:23 consistent 36:6 64:21 66:15 100:8 100:12 134:4,8	consists 74:8 constitute 74:3 constituted 62:16 75:10 constitutes 58:6 constitution 40:22 41:2 72:11 73:13 75:9,11 76:2,11 118:1 127:2,3 133:21 134:5 constitutional 29:8 43:22 65:22 65:23 72:23 73:13 74:10,16 75:13,19 76:18 77:13 117:23 120:23 131:20 132:22 133:2,16,19 134:1 134:11 constitutionality 126:21 constitutionally 80:3 constitutions 40:11 contacted 107:3 contempt 139:4 contents 15:13 context 134:19 135:5,6,16,18,18 135:19 136:3,8 142:11 contexts 134:21 135:9 continues 107:16 conversation 10:8 13:23 14:10,17 15:19 16:10,19 17:19 18:13 61:20 102:19 115:20 116:1,4	conversations 16:6 81:1 102:22 105:22 convicted 26:1 32:5 40:18 48:4 91:8 95:9 124:22 conviction 36:19 37:11 51:5 75:22 94:17 136:6 convictions 35:19 43:4 98:4 convinced 100:4 copy 27:18 30:13 34:7 correct 31:4 34:16 38:4 52:16 62:8 64:8,9,10 84:4 85:17,18 86:3,4,12 87:12 90:16 93:5 104:11 131:17 132:10,11,19,20 136:22 140:6 141:6 145:12 correction 124:10 corrections 48:14 correctly 93:4 100:10 cost 45:17,17 46:1 46:7 47:19 49:8 49:12 51:11 54:14 58:5 138:1,7 142:10 costs 45:10,11 49:1,22 50:6,18 55:8,19 57:13 58:1,12 59:8 60:18 68:16 78:19 80:8,13,16,20 81:17 84:15 105:16 136:20 139:5 140:1
--	---	--	--

142:12 143:3 counsel 2:3,18 6:5 7:16 79:22 145:15 count 24:11 county 8:23 21:23 46:18 47:16 48:15 122:16,23 123:11 126:7 138:1 143:10 145:4 countywide 122:22 couple 18:1 26:18 26:19 37:15 140:21 course 57:3 88:2 122:16 127:11 court 1:1 2:7 3:5 6:1 7:8,13 8:1,3 10:11,13,19 11:14 18:18,18,20 24:18 45:11 46:1,7,11,18 47:7,19 48:5 49:8 50:6,18 54:14 55:8,19 57:12 58:5,12,16 59:8 72:3 78:19 80:7 80:13,16,20 88:5,5 101:17,19,21,22 101:22,23,23 102:1,2 105:16 123:5,8 136:20 137:1,7,8 138:1,17 138:18 139:3,5,6,9 140:9,12,14 141:16,17,22 142:10,12 143:3 courthouse 8:23 courtroom 123:12 courts 46:19 62:21 79:23,23 132:10 132:17	cover 58:16 90:6 90:14 create 93:19 97:11 crime 10:3 29:9 37:21 46:4 47:9 67:3,17 74:19 91:21 92:2 94:10 94:14 99:15 118:7 119:21 122:4 123:21 124:3,5,13 136:6 140:4 crimes 20:12 38:15 40:19 61:21 62:3,16,18,22 63:15 64:12,20 65:23 66:13,22 67:1,2,10,12,13 73:15 74:3,6,6,13 75:9 76:13,21 87:4,5,6 88:1,11 91:8,14,18 93:1 97:1,1,3 105:12 109:17 110:14,17 111:5,10,16,17 117:8,14 120:2,6,8 122:7 127:22 128:2 132:18 134:13,13 criminal 21:10 23:17 40:6 97:18 98:4 121:13,19 124:12 136:2 137:19 138:11 crux 14:10 cumbersome 45:13 75:11 current 8:12 23:2 25:17 89:10 currently 10:11 23:6 57:7 81:9	d d 63:16,22 67:15 67:16 d.c. 5:7 da 24:9 da's 131:15 138:3 darlene 57:1,2,2 date 6:3 13:9 30:5 71:4 129:10 day 9:18 123:6 126:19 136:2 days 24:11,12,13 55:1 123:8 deal 81:6 dealing 15:6 23:7 23:8,15 37:23 39:16 40:1 68:20 121:15 deals 76:16 dealt 38:10 95:5 death 93:18 debate 14:20 debated 94:12 debates 40:12 deceit 120:9,10 december 4:13,15 69:13,23 70:3 71:4 78:1,6 86:7,7 86:14 87:2 decide 84:15 120:22 decided 132:17 decisions 10:4 74:5 88:5,6 defamation 39:16 134:20 135:18,22 defeat 22:2 defendant 37:20 54:21 137:19 140:13,15 141:23	defendant's 138:11 140:10 141:4 defendants 1:16 5:13 7:21,23 defending 92:3 defense 49:16 126:23 137:3,4 141:11 define 29:8 66:1 91:18 119:20 defined 87:6 109:2 defines 76:13 119:15 defining 32:4 63:14 67:10 74:3 76:9 91:1,11,13 92:23 95:4 definitely 61:16,17 97:3 definition 91:2 94:16 96:4,15 109:3 132:13 definitions 135:9 definitively 75:18 degree 36:20 37:5 37:19 67:5 111:12 delineates 101:20 delinquent 55:1 democrat 22:16 77:20 125:7 democratic 125:6 denied 101:11,13 denies 101:16 denying 50:21 depending 45:6 46:4 93:10 123:5 depends 25:21 deposed 9:8 deposition 1:21 2:4,6,13,19 3:2,3,8
---	---	--	---

7:4,9 9:7 11:2 13:19 17:20 18:2 18:6,16 112:8 116:2 119:6 depositions 3:6 36:16 depth 35:14 describe 72:13 86:19 119:11 described 116:1 description 42:14 53:13,14 86:6 designed 66:23 despite 75:3 detail 28:9 details 32:9 42:23 49:5 52:7,7 70:11 99:4 determination 123:23 138:9 determinations 81:11,13 determine 29:11 43:21 46:10 62:3 74:18,19 127:16 136:22,23 137:2,3 137:14 141:4 determined 28:16 49:10 50:7 62:19 62:21 74:15 118:11 137:16 138:19 determines 49:6 determining 60:19 120:13 142:14 developed 132:23 devices 38:11 devise 82:22 devoted 24:6,13 difference 69:10	different 34:20 46:19 53:16 114:19 133:12 135:9,9,17,21 136:13,19 differing 45:22 60:4,5 difficult 23:15,16 75:12,17 93:11 difficulties 92:23 direct 43:7 63:3 directed 40:14 41:5 125:16 126:4 131:19 director 10:3 71:15 dis 118:12 disadvantage 47:23 disagree 85:7 disagreement 78:18 discourage 45:14 discriminate 73:16 124:21 discriminating 125:14 discriminatory 44:17 131:21 132:3 discuss 15:12 35:13 42:5 44:22 116:10 120:3 discussed 31:8,17 31:20 49:3 50:14 51:8 72:14,17 98:19,21 99:5 106:6 115:12 136:13 discusses 41:2	discussing 20:9,10 64:15 discussion 31:23 41:6 42:6,14,21 44:14,19 45:16,20 51:3 53:4,20 54:8 58:4,9 61:8 64:4 72:18 78:3,16 79:14 82:8,13,21 83:13 84:22 89:4 99:2 100:2 104:3 104:5 110:14 116:21 discussions 14:18 14:20 15:17,20 18:5 30:1 32:8 45:4 52:4,9 105:20 106:2 disenfranchise 36:10 50:20 71:23 72:9 73:1 117:10 130:12 disenfranchised 35:18 41:4 43:4 92:4 117:15 disenfranchisem... 25:18 26:7 42:16 71:21 72:5 disenfranchising 87:15 130:18 disparate 51:5,16 52:4 68:16 disproportionate 98:2 123:9 disqualifies 94:18 118:5 disqualifying 91:3 134:15 dissolved 107:16 distinction 118:9	district 1:1,3 7:7,8 9:23 10:2 14:2 21:23 22:3,5 23:2 23:4 24:9,14,15 55:5 126:19 divorce 9:14,17 divorced 9:15 document 30:21 34:11 61:13 68:20 68:23 69:3 70:13 70:15,20 85:11 90:10 documented 112:4 documents 16:11 16:18,23 17:2,3,8 17:9,10,11 19:1,17 20:5,15 24:22 25:1,2 29:17,18 30:4 33:7,20,20 42:3,6 87:23 88:19 dodson 53:19 doing 30:17 33:9 43:2,8,17,19,21 44:1,5,6 46:16 47:3 141:12 draft 105:4 106:18 107:4 108:4 113:4 drafted 112:10 113:15 drafter 112:4 drafting 93:20 draw 93:2,3,9,11 drinks 136:9 drug 22:8 23:14 46:18,19 48:4,7,8 48:9 due 15:10 43:4 55:14 140:16 dui 24:4 91:22,22
---	---	---	---

duly 8:6 duties 24:7 25:14	emails 88:22 embezz 111:5 embezzlement 111:6,8 emphasis 21:10 80:7 emphasize 124:9 emphasized 81:10 enacted 40:10 encompass 54:19 encompassed 39:17 55:17 engaged 22:23 46:14,15 47:8,18 47:21 48:12,13 engagement 49:2 engaging 48:23 81:1 entered 49:19 entire 113:14 133:8,9 envision 55:10 es 118:4 especially 142:5 established 39:7 establishing 45:6 estate 23:20 estimate 9:14 et 1:12,15 7:6,6 event 140:17 eventual 111:19 eventually 19:16 everett 23:2 evidence 2:14 evil 92:6,15 119:9 119:15 evilness 94:11 ex 118:4,4 130:3 exact 13:9 32:9 49:5	exactly 54:18 75:9 85:3 115:17 exam 21:13,14 examination 4:3 6:10 8:8 128:19 141:1 examined 8:7 example 36:14,17 37:3,18 39:20 45:10 67:4,8 91:19 92:3 93:18 97:5 examples 119:10 135:7 exception 40:17 82:14 125:15 127:13 excessively 136:9 exchanged 87:22 88:19 exclude 36:6,17,18 38:17 40:18 41:5 62:4 95:6 97:8,11 excluded 36:22 37:6 63:23 67:18 111:3 exercising 120:19 exhibit 4:8,10,12 4:14,16,18,20,22 30:20,22 34:4,5 35:5,5 39:3 53:6 53:18 61:12,14 63:9 69:14,16,18 70:19,22 85:10,12 86:15 88:9,12 90:10,11,22 96:2 109:12,13 121:3 exhibits 4:7 existence 46:21 91:15	existent 107:19 experience 15:9 32:14 142:2 143:10 expert 129:22 130:2,4 expiration 139:2 expired 139:4 expires 138:21 145:22,23 explain 20:7 91:10 96:3 99:17 100:16 120:11 explained 14:11 14:11,12 explanation 122:7 explicitly 135:10 exploratory 21:1 26:8 29:3,6 31:3 34:16,22 107:10 112:11,14 114:1 115:21 130:8 132:16 express 44:8,9 66:5,6 75:18 103:21 expressed 38:20 59:13 65:3 103:19 expressing 73:10 73:11 87:23 93:12 extensive 78:16
e		f	
e 57:2 earlier 66:8 68:8 70:21 82:18 100:11 116:1 119:6 121:17 136:13 early 39:15 136:10 easier 97:2 100:12 ecm 1:6 7:7 ed 42:8,9,10 61:18 63:12 65:17 82:22 88:10 90:14 102:14,14 112:9 education 122:11 124:8 educational 21:7 effect 3:3 110:23 effects 35:16 either 2:21 33:21 57:14 62:2 97:11 103:6 114:5 124:12,14 election 90:1 121:12 130:22 134:14 elections 76:16 130:16 electorate 131:14 131:19 electronic 101:3 eligibility 108:19 eligible 100:21 email 4:13,19,21 25:8 61:17,17 63:11 64:4 88:9 88:15 89:7,15 90:4,6,14		fact 15:10 41:2,11 61:21 63:21 77:16 99:8 129:22,23 134:1 facto 118:5 facts 18:8,8 faculty 81:3 fair 36:13 121:15	

fairbanks 5:14 7:20	95:4 97:14 98:12 98:15 104:17	finishes 12:11	54:12 56:20 59:12
familiar 135:7	109:1 111:20	first 8:6 13:6	59:18 60:13,21
far 41:15 42:21	124:23 127:21	15:15,15,16 16:10	65:5 68:18 71:13
51:14 106:16	128:2 130:11,17	17:21 22:14 23:5	72:10 73:19 75:5
107:15	132:18 133:1	26:22 27:6 29:22	83:17 84:6,10
farley 71:15,19	felons 32:5 35:17	36:20 37:4 39:14	85:1 86:21 87:18
favor 55:18 56:3	36:7 48:1,4 51:6	67:5 85:21 111:12	93:13 94:6 95:1
57:4,4,8,9 59:14	68:17 75:21	fits 94:10	96:6,10 100:14
99:13 104:16	felony 25:18 29:9	five 123:13 139:17	104:20 105:13,19
113:11,13	35:19 37:7,17	fix 18:20	106:8,20 107:6
favoring 103:3	38:9 42:15 43:4	flag 19:13	108:9 109:5 110:7
federal 2:5,15,22	51:5 54:20 58:17	flip 63:7	111:7 112:16,23
6:4 135:3	60:22 67:5,9,14,15	floor 40:13	113:5 114:20
fee 46:10 55:2,5,15	67:16 71:10 91:1	focal 79:1	117:1,6,16 119:13
55:16	91:3,12,22 94:17	focus 53:20	120:15 122:2
feel 72:22 76:21	138:4	focused 32:10,11	128:4 134:6 141:8
77:21 93:5 102:4	felt 36:1,2 45:23	32:15	142:16 143:15
123:20 138:23	46:13,13 54:14	focusing 44:16	formality 2:9
feeling 64:22 81:2	57:12 60:23 61:21	follow 69:20	formation 112:10
81:3 100:20	95:22	140:20	formed 86:18
118:10	fenced 95:11	followed 78:17	forth 42:7
feels 76:1	fewer 97:1,1	following 6:10	fortunate 22:13
fees 46:8,9 49:22	fight 39:21	82:21 83:9	forwarding 90:15
50:18 51:11 53:23	file 16:16 17:8	follows 8:7	found 17:8,14
54:17,18,19 55:9	101:16	footing 39:15 40:5	24:21,23 29:19
55:10,13,21,23	files 25:13	force 3:3 15:6,10	40:5 47:6 127:8
56:7 57:22 58:5	filing 3:8	16:12 63:20	132:10 137:19
60:12 61:8 68:9	filling 126:19	114:11,19,22	141:23
68:16 78:4,18	fine 8:19 36:4	foregoing 6:5	four 83:10 84:11
79:1,16 81:17	57:14 138:3,4	145:8,11	107:20 139:17
83:10 84:12 86:2	finer 49:12 50:18	forensic 21:11	frankly 32:10
105:16 137:14,18	51:11 54:15 55:19	forged 36:20	57:13 131:5
142:11 143:4	57:12 58:13 59:8	64:23	138:21
fell 89:16	60:11 61:8 68:8	forgeries 36:18,22	fraud 120:9,10
felon 40:19 73:14	78:4,18 80:8	36:22	free 93:5
127:20	83:10 84:12,15	forgery 64:23	freedom 7:15
felonies 35:21	86:2 105:16	forgot 16:10 129:7	frequently 142:3
40:19 62:6 63:17	136:21 137:15,18	form 2:11 28:17	142:18
63:22 71:21 72:7	138:7 139:5	28:22 31:10 32:22	front 105:5
87:16 89:10 91:4	142:11	34:13 35:23 39:11	fulfill 87:16
		43:11 50:11 51:17	

full 3:4 8:11 11:12 11:16 105:3 funded 80:4 funding 80:2 further 2:17,23 3:7 39:13,13 56:15 108:5 127:11 140:20 143:22 145:14	133:11 141:21 goes 61:23 93:21 102:1 118:4 140:3 going 9:13 14:23 17:6 26:2 32:1 36:17 38:14,15 42:12 52:12 61:23 63:3 69:12 76:10 78:1 80:19,20,22 86:14 97:7 99:6 103:20 118:7 120:20,21,23 121:2 122:12 133:11 137:13 good 8:9,10 67:20 120:12 121:2 governing 11:2 government 25:9 80:4 grade 67:3,9 graduated 21:12 21:13 great 10:15 30:10 67:22 75:6 79:13 90:8 120:18 127:7 greater 97:15,17 98:8 green 69:22 grew 71:22 72:8 73:15 ground 11:1 group 65:9 groups 131:23 grow 124:20 grown 131:14 guess 25:21 26:3 42:5 45:20 76:5 93:1 94:13 98:4 106:11 119:22 120:6 136:17 141:7,9	guilt 124:1 guilty 25:23 49:13 49:20 58:17 gunter 9:3 guntersville 9:1,3 10:12,13 23:22 123:3 guy 46:22	head 11:20 hear 104:12 heard 9:4 82:23 hearing 101:15 140:16,17 hearings 23:10 heat 92:12 held 19:20 126:14 hello 114:23 help 17:1 31:12 48:14,19,22 139:12 helped 19:18 hereto 2:21 hey 80:15 92:5 high 74:13,19 hillyer 53:6 hispanic 122:17 122:20 123:15 125:17 126:4,8 hispanics 123:7 historical 71:10 historically 40:4 history 39:6,8 41:8,18 70:8 71:20 72:5 74:23 75:4 77:6 hoax 38:11,11 hoaxes 38:11 hold 76:7 121:3 126:9 127:4 home 8:15,16 17:5 17:7 homicide 22:7 homicides 10:5 23:7 honesty 120:17 121:9 honorable 1:22 2:4 6:8 7:5 8:5
g	g	h	
gatton 22:12 gauge 84:19 general 5:17 7:10 13:20,21 81:4 93:16 116:11,13 126:20 general's 6:6 13:7 13:14 generally 48:11 50:7 67:1,14 84:8 141:19 gentleman 99:19 gigs 14:3 gist 87:7 give 8:14 15:1,1 21:6 36:14,16 61:13 124:11 125:8 128:15 given 77:8 122:8 122:10 123:5 134:22 145:13 giving 11:13 119:10 glasgow 51:21 go 11:1 28:6 29:17 39:12 40:2 63:10 75:14 76:12 89:22 100:18 101:21 117:9 118:12 123:18 127:11 128:14,17,17		h 1:15 7:6 57:2 habit 12:2 half 24:12 hallway 114:5 hand 76:1 92:8,14 109:8 handbook 89:11 90:1 handing 30:19 34:3 61:11 70:18 85:9 88:8 90:9 109:11 handle 23:6,13,14 23:20 24:2 126:17 handling 22:7 handwritten 29:23 happen 24:17 47:18 83:22 105:7 122:6 141:5 happened 105:8 106:2 133:4 happening 52:23 107:7 happens 137:8,9 137:12 hard 11:13 49:4 harm 36:11 94:1 hawaii 46:21,23 hb282 4:23 hb8-282 108:17	

[hope - january]

Page 11

hope 46:20 47:2,5 48:5 hopper 15:11 hours 24:15 101:4 house 108:2 125:6 houses 77:19 huh 11:20 14:4 25:6 59:1 62:4 71:17 73:22 89:8 129:9 130:7 135:4 143:14 humongous 142:20	import 43:16 importance 78:23 78:23 important 11:11 110:10 imposed 46:11 49:11 imprisoned 98:3 inchoate 66:13,22 67:1,2,10 include 38:15,16 62:1,1,2 64:20 66:21 67:1 97:10 99:15 127:22 included 35:15 62:7 63:23 64:6 66:11,13,22 69:4 90:8 91:4,8,21 94:14 105:17 110:17,18,19 111:2,8,9,10 117:11 120:1 135:23 includes 120:10 including 45:8 82:14 83:6 92:1 inconsistencies 36:3 38:22 inconsistency 95:21 97:12 inconsistent 60:15 incorporated 53:12 incorrect 27:9 28:2 33:16 increase 98:14 incumbent 22:2 independent 31:15 33:6,22 42:22 69:6 70:10 85:3 103:18	independently 72:16 index 4:1 indicate 130:1 indigency 55:14 82:14 indigent 50:22 51:3 137:6 141:23 individually 56:1 inform 54:20 information 14:14 20:4,14,16 69:5 101:4 informed 105:1,2 initially 46:11 input 106:17 inside 115:15 instructs 12:10 instrument 36:20 64:23 insurance 142:23 intended 40:13 72:23 125:13 136:6 intent 71:22 72:8 73:16 92:6,15,20 93:10,15,16 94:5,9 94:9 97:10 119:10 119:15 124:21 127:16 intentionally 94:1 interested 145:16 interesting 37:4 121:11 interpretation 138:23 interrupt 126:1 introduced 2:20 73:14 introductions 26:23 31:22	investigation 10:7 investigations 10:5 involve 92:14 111:18 120:9 127:21 134:13 involved 31:22 92:16,16 100:23 101:2 132:19 involvement 10:7 26:7 116:10 involving 29:9,10 35:22 40:19 62:23 71:11 73:15 74:6 87:6 91:1,12,14,19 91:21 93:1 94:15 95:4 97:3 98:15 104:17 109:1 111:20 133:1 136:7 irrespective 47:9 48:21 75:21 issue 32:12,15 49:7,21 75:23 76:5 99:12 116:13 126:21 128:2 137:7 141:13 issues 15:18 23:6,8 23:14 25:18 37:1 49:13 50:13,14
i			j
idea 53:19 54:7 79:1 identical 25:2 identification 30:23 34:6 61:15 70:23 85:13 88:13 90:12 109:14 identify 7:16 78:8 identifying 27:1 ignore 49:17 132:22 illegal 126:6,11,13 128:21 immigrant 126:11 126:13 128:21 immigrants 126:6 immigration 135:6,19 impact 44:23 45:7 51:6,16 52:4 68:17 97:15,17 98:18 113:3 132:3 impacts 52:8 impair 13:3 implement 132:23 133:2			j 5:4,15 jacksonville 21:9 january 21:21,22 22:18,22 66:19 90:15 104:10,13 105:5,21 106:2,7 107:9 108:7 114:12 116:18 133:6

jenner 5:5	justice 21:10	knowing 95:11	legal 71:15,15 74:1
jennifer 5:4 7:18	26:14 121:20	knowledge 132:4	74:9 79:22 132:9
9:5	juveniles 23:9	l	legally 74:21
job 25:17 80:9,21	k	l 2:1 57:2	76:22 118:8,10,10
80:22 122:12	keep 40:9	lady 56:21	128:3,5
141:12	keeping 16:15,17	laird 65:17	legislation 15:6,10
jobs 48:1 124:8	104:16	lane 7:12	19:23 32:2 35:15
joel 65:17	kept 123:17	language 4:17	35:16 38:9 50:13
john 1:15 7:6	kicked 45:21	85:16	50:17 54:18 63:13
71:11 99:21	kill 92:20	large 2:8 97:23	63:18 64:7,13
johnson 23:3 39:5	kills 92:19	100:7	66:2 77:22 82:15
41:10 65:19 78:13	kin 145:15	larger 97:14 98:7	91:6 93:20 98:13
78:22 79:21 88:3	kind 15:7 32:12	98:15 105:12	101:7,18 102:4
johnson's 65:20	80:1 100:4 121:9	late 21:14	105:4,11,18 106:6
81:15 82:9	128:7	law 21:12,13	106:22 107:4,23
jolley 1:22 2:4	kinds 76:8	22:20 23:1,19	108:14 110:22
4:21 6:9 7:5 8:5	knew 16:16	32:4 36:11 37:9	112:5 113:4 114:9
8:13 119:5 128:20	know 11:8 12:14	38:1 40:6 41:1	127:15,18
141:2 143:19	15:4,23 16:2,2	45:5 49:23 55:1	legislative 40:13
jones 108:1	17:20 18:17,19	58:18 63:20 74:11	63:14 75:15 76:12
judge 10:12,14	19:19 31:23 34:17	76:3,20 89:11	133:23
22:10,11 25:8,11	36:15 38:14 39:14	92:9,13 120:3	legislators 113:23
45:20 46:15,22,22	40:1 42:3 44:4	121:12,13 125:18	114:17
47:17 48:2 49:6	47:12 51:19 54:17	126:3,8 128:21	legislature 20:21
56:1 83:11 84:13	54:22 58:11 62:21	129:1 132:13	76:1,19 77:17,19
84:15 101:14,15	64:20 69:7,7	134:19 135:3,6,22	80:2 125:12,13
119:5 126:19	74:13 75:8 80:16	138:23 140:8	126:9 129:2,17
128:20 136:23	80:19 81:7,10,18	laws 3:4 58:15	133:23 134:10
141:2,3 143:19	82:2 84:20 87:23	120:22 125:13	lesser 97:17
judges 20:1 80:12	91:14 92:5 93:3	136:2	letter 4:15,21
81:1,4,5,7	93:20 94:12,13	lawsuit 14:12	90:15,18,22 94:20
judicial 81:3	95:19 96:23 100:6	lawyer 131:15	96:2,12,14 99:7,10
july 16:21 21:14	102:16 104:23	lawyers 65:9,15	99:11,18 103:7,11
jump 18:21	105:10,15,20,22	102:3	103:14 104:6
jumped 32:13	106:14,21 108:3	leaders 120:20	letters 139:18
june 16:21	110:6,19 113:6,7	learn 20:4	level 94:4,9
jurisdictional 9:17	119:23 121:8,22	learned 20:9,15	licensing 135:18
jurisprudence	123:9,12 129:10	121:18	lies 110:21
136:11	129:11 133:3	leave 76:10	liked 101:8
jurors 110:18	134:10 137:10	left 20:12 22:6	likelihood 127:6
	138:1		

likes 15:23	29:14 32:1 33:17	116:14,19 124:18	60:4 64:18 66:7
likewise 57:3	41:13,13 42:1	128:23 140:23	74:18 77:11 81:18
122:13 124:3	43:20 44:4,5 46:9	majored 21:10	83:20 84:14 89:12
line 48:11 83:14	53:15 56:1,15	majority 57:15	91:20 97:20 101:7
84:7 93:2,9,11	69:12 70:15 75:8	104:15 113:10,12	101:23 105:7
123:20,21	80:15 81:12 109:7	123:2	106:14 107:15
list 20:10 35:21	120:6 123:22	makeup 28:15	110:20 111:22
36:3,4,5,21 37:4,5	looked 31:11	making 10:4 66:3	113:9 115:19
37:10,19 42:11	41:11	81:10 124:9	118:6 126:23
61:22 62:5,6,10,14	looking 26:20	133:22	134:7 136:4 138:2
62:14,15,19 63:21	31:14,16 36:12	malum 120:4,4	meaning 71:9
64:6,11,16,19	39:3 43:23 53:17	man 39:21,22 40:2	meaningful 14:20
66:11,14,21 83:5	64:5 79:5 81:11	131:15	15:20
87:5,15 88:2	90:21 95:23 99:7	managed 22:1	means 119:7
89:10 97:2,14,23	101:6 102:4	manner 2:21	135:16
98:1,7 100:5,7,8	123:10 130:10	manslaughter	meant 62:13 84:13
100:12 102:16	looks 27:14	91:20,23 92:9,11	84:19 91:10
103:4 104:17	lose 26:2	97:6,8,9	mechanism 40:9
105:12 109:1	lot 40:8 49:8 52:7	marissa 53:19	medications 13:1
110:17 111:9,20	52:9 80:23 94:12	mark 19:12	meeting 4:11
112:2 130:11	134:22 142:19	marked 30:20,22	15:17 19:20,21,21
132:23 134:3,4,12	low 122:21	34:4,5 61:12,14	26:22,23 27:3
134:12	lower 67:3,9	70:19,22 85:10,12	28:4 29:23 30:6
listed 38:5 101:19	m	88:9,12 90:9,11	31:3,6,9,18 32:19
117:9	ma'am 9:9 10:17	109:11,13	33:2,12,15 35:2,8
listen 11:12	10:23 11:6,23	marshall 8:23	35:11,13,22 37:2
listened 32:11	12:3,13,18,20,23	21:23 46:17 47:16	39:4 41:15 42:12
litigation 20:18,21	13:5,16 16:4	48:15 122:16,23	42:13 44:15 52:3
21:1 23:20	17:16 19:4,14	123:11 126:7	52:13 54:6 56:23
little 26:4,6 39:13	24:20 25:4,12,16	138:1 143:10	57:1 65:19 66:17
47:16 68:8 110:23	26:10 28:5,10	materials 34:15,18	69:13,14,21 70:4
129:15	29:16 30:9 31:5	34:21	71:6 77:7 78:2,5
live 122:18	33:13 34:2,9,17	mathematical	83:14,16 84:2,2,9
lives 123:3	35:3,6 44:13 50:4	98:9	84:23 85:4 86:7
llp 5:5	57:21 63:5 66:10	matter 7:5 41:11	86:14 87:2 88:7
local 9:22 130:23	68:12 70:2,17	43:19 97:23 100:7	89:2 100:2 103:21
locate 27:12	78:15 79:12 83:4	102:23 122:5	104:9,13 105:5
long 36:5 134:3	84:5 86:16 87:13	matters 24:2	106:3,7,11,12,22
longer 134:12	89:5 90:7,17 93:6	mean 18:8 25:22	106:23 107:8,9,10
look 15:12 16:23	99:9 108:21	33:6 48:21 50:15	108:3,7 116:18
25:21 27:7 29:10	111:22 112:6	52:20 53:13 57:13	130:9 133:4,9

meetings 14:18 16:12 26:20,21 27:8 32:20 33:3 33:11 68:14 69:1 69:3 98:21 100:4 102:9,13 105:23 114:6,7 115:16 116:6,21 member 34:22 42:1 102:15 114:11 131:13 member's 39:1 members 33:2 44:12 59:23 64:17 65:12 88:10 89:4 95:18 98:19 102:12 103:6,10 108:6 115:9 116:5 116:16 memo 70:20 71:2 71:9 72:15 73:5,5 85:21 memory 13:2 men 136:16 mention 63:16 125:5 126:23 140:7 mentioned 19:1 24:21 38:20 49:4 66:8 68:7 90:1 97:5 98:18 99:2 102:8 104:8 109:2 109:17 119:6,9 121:17 124:16 141:2 mentor 48:13 merrill 1:15 7:6 20:18 27:9 43:6 56:9 59:4 73:3,4 82:19 115:6 116:9 116:9,16	merrill's 108:12 115:8 message 14:6 messages 131:18 messick 4:5 5:14 7:20,21 8:14,20 12:9 13:12,17 16:8 19:3 25:3 27:14,17,20 28:17 28:22 30:17 31:10 32:22 34:13 35:23 39:11 43:11,13 50:11 51:17 53:1 53:9,12 54:1,12 56:20 59:12,18 60:13,21 65:5 67:19,23 68:18 69:16 71:13 72:2 72:10 73:19 75:5 78:8,11 83:17 84:6,10 85:1 86:21 87:18 89:6 89:9,20 93:13 94:6 95:1 96:6 100:14 104:20 105:13,19 106:8 106:20 107:6 108:9 109:5,23 110:7 111:7 112:16,21,23 113:5,19 114:20 117:1,6,16 118:18 119:13 120:15 122:2 128:4,15,17 128:19 140:19,23 141:8 142:16 143:8,15,22 144:2 met 26:18 42:3 87:22 107:19 113:15	michael 51:22 middle 1:3 7:8 78:13 midwinter 20:1 miller 23:8,10 mind 56:14 91:20 93:20 94:3 109:7 117:21 mine 23:5 minor 126:14 127:8 minorities 39:19 40:14 45:9 136:16 minority 39:23 minute 41:12 61:13 minutes 4:11 26:21 27:4,4,15 28:6 31:12 32:19 33:3,5,11,14 35:2 39:4,4 42:12 43:5 52:3,3,6,11,13,13 53:3 58:3 69:13 69:21 70:6 78:2,2 78:6,21 82:17,18 83:16,21 84:2 86:15,17,18 87:2 misdemeanor 37:17,19 38:10 67:17 74:18 misdemeanors 37:14,15 74:13 121:14 127:22 mistaken 40:23 51:22 71:4 misty 5:14 7:20 mittell 9:22 modern 136:2 monday 24:16 money 82:5	monies 55:4 137:1 montgomery 5:19 6:7 7:11 monthly 55:14 months 13:10,18 107:22 moral 20:11 29:10 32:4,12 35:22 39:6,8,14 40:17,20 41:8,17 61:21,23 62:3,16,18,22,23 63:15 70:8 71:11 71:21 72:7 73:15 73:20 74:3,6 75:10 76:9,20 87:4,6 88:1,11 89:10 91:1,5,12,14 91:17,19,21 92:14 93:1 94:4,15 95:4 96:22 97:4 98:15 104:17 109:1,3 111:18 118:7 119:7,15,20 120:1 120:8,9 127:21,23 130:11,18 132:7 132:12,19 133:1 133:11,15 134:14 134:18 135:8,16 135:17 136:1,5,7,7 morally 135:23 morals 121:6 morning 8:9,10 22:19 mortal 111:20 motivated 76:23 77:18,23 125:10 moved 17:4,15 multimedia 7:13 municipal 10:11 murder 9:20 10:10 23:8 37:3,5
--	--	--	---

37:8,9,12 66:9 92:12 127:6	note 29:23 30:3,7 30:16	142:16 143:8,15	oftentimes 55:5 142:23
n	notes 29:19 38:2	objection 12:11	oh 9:13 17:18 18:7 24:8 30:18 39:10 43:12 54:2 56:21 58:7 63:10 69:17 70:3 79:3,7 82:19 83:2 87:1 104:21 112:3 113:18 115:1 142:5 143:7
n 2:1	notice 3:8 17:21 27:4 76:14,14,15	objections 2:10,10	okay 7:1 8:1,3 11:5,9 12:19 16:8 18:15 20:14 24:8 27:20 28:8 30:10 30:18 39:20,22 40:2 45:2 50:2,12 53:9 54:1,2 60:22 62:15 63:8 68:1 69:19 71:17 76:8 78:20 79:11 89:20 91:22 96:13 97:3 113:18 118:21 119:2 120:16 129:14,19 131:2 131:13,18 132:15 133:20 134:3 136:15,16 138:5 139:12,22 140:19 144:1,5
name 7:12 8:11 9:5 19:9 22:12 57:1	noticed 26:20 27:7	obtain 122:12	older 81:5
narrow 91:3 96:4 96:17 122:1	notified 107:12	obtaining 48:1,1 80:21	once 17:23 18:1 23:13 53:22 67:13 125:1
narrower 100:5 100:12 103:4	notify 126:20	obvious 47:23,23 90:23 91:11,13 93:8 94:20,21 95:3,3,7,17,18,20	ones 17:10 19:8,10 33:17 62:1 81:9 121:15 129:8
national 123:23 130:23	november 27:15 28:4 33:18 35:1 42:13 52:12 69:21	obviously 18:20 27:9 33:7 75:12 83:20	open 40:12
nature 13:22 18:5 42:20 45:4 48:19 120:23	number 1:6 7:7 32:7 46:2 83:6 84:11 89:14 91:7 98:8,14,14 123:6,9	occur 30:6 60:7	operate 135:11
necessary 35:21	numbers 89:18 98:2	occurred 33:3 85:5 104:9 105:20	opinion 36:3,23 43:15 44:9 45:21 45:22 46:14 50:9
need 2:11 8:16 12:15 36:5 48:22 56:15 64:21 67:12 82:5 124:9	nw 5:6	october 21:15 31:2 33:11	
needed 24:17 100:8	o	offense 36:8 58:18 97:18 126:14 127:7,8	
needs 102:5	o 2:1	offenses 26:1 104:18 121:13 126:18	
negligently 93:23	oath 10:16	offered 2:13	
neighborhood 9:21	object 12:9 28:17 28:22 31:10 32:22 34:13 35:23 39:11 43:11 50:11 51:17 54:12 56:20 59:12 59:18 60:13,21 65:5 68:18 71:13 72:10 73:19 75:5 83:17 84:6,10 85:1 86:21 87:18 93:13 94:6 95:1 96:6 100:14 104:20 105:13,19 106:8,20 107:6 108:9 109:5 110:7 111:7 112:16,23 113:5,19 114:20 117:1,6,16 119:13 120:15 122:2 128:4 141:8	office 5:17 6:7 10:1 13:7,14 14:1 14:2,6 17:7 22:6 22:19 23:4 24:14 24:15 55:6 73:8 76:8 79:23 90:19 103:14 107:2 108:12,23 110:15 115:7,7,8 116:17 121:3 131:15 138:3 139:16	
neither 145:14		officer 10:10 55:13	
never 42:2 51:13 87:21 107:12 115:12 117:21		offices 7:9	
new 5:6 20:4,14,16 22:19 63:16,19		official 25:14 110:20	
newer 81:7			
nicholas 2:7 6:1 7:14 145:20			
nod 11:20			
nongovernment 25:14			
norms 91:15			

59:13,16,19 62:20 65:3,20 66:6,12 73:10,11,17 74:1,1 74:2,10,17 75:2 81:6 87:23 93:8 96:10 106:17 111:4,17 132:7,9 opinions 35:14 60:5 opportunity 122:10 opposed 14:21 24:7 94:1 120:4 option 132:21 oral 6:10 order 32:2 61:1 66:14 121:9 130:12 133:1 139:9 141:22 ordered 137:1 ordinarily 126:17 135:21 origin 123:23 outcome 82:8 107:14,15,17 outside 102:13 103:6 116:5 134:19 outstanding 55:4 80:9 86:1 140:1 oversight 110:9 overview 21:6	112:9 packet 17:3 34:15 34:18 42:4 69:4 page 4:3 27:22,22 35:4 42:13 53:6 53:18 63:6 78:5 78:13,13 83:1 86:22 96:1 99:6 pages 15:14 paid 51:13 53:23 54:16 55:19 79:2 79:16 80:14,16,18 81:17,23 82:1,3 83:10 84:12,16,18 paper 63:9 paperwork 101:3 paragraph 53:18 78:9 85:21 90:21 96:1,7,11 pardon 139:8,14 pardons 139:19 parole 83:7 139:19 139:20 part 9:1,2 14:3 23:1 47:12 48:21 49:1,2 50:17 54:20 55:7 58:13 58:19 59:20 60:12 60:18,22 61:8 68:9 79:14 82:1,4 87:11 89:16,17 112:14 114:1,10 122:14 131:20 participated 32:8 45:19 participating 45:19 particular 26:10 41:3 67:13 76:13 99:4 101:19 106:18 124:11	139:1 particularly 23:7 39:18 40:15 48:4 57:11 81:5 101:10 116:12 127:14 particulars 114:3 parties 2:3,18 140:18 145:15 parts 47:14 61:7 113:9 party 2:21 13:16 pass 64:8 127:17 passage 77:22 passed 40:16 77:1 77:17 117:15 120:22 125:19 126:8 129:1,7 132:2 passes 124:11 passing 76:20 125:13 133:23 passion 92:12 pay 46:2 48:9 49:7 49:9,11,18 50:7,15 50:16,18 51:10 55:15 56:1 80:14 80:17,22 136:23 137:6,14,20 138:11 140:10,14 140:16 141:4 142:3,10 143:3,6 paying 46:7 47:19 49:1 105:16 139:5 143:3,5,13 payment 46:1 52:16 56:5 57:9 58:5,12,12 59:8 78:3 99:15 141:22 payments 54:21 68:15 83:8	penalties 124:2,4 124:12 pending 12:17 14:13 people 12:2 27:1 31:22 32:8 45:8 45:14,23 46:2,14 47:8,18 48:5,11,13 48:16,23 49:8 50:15 51:4,14 74:5 75:16 76:14 81:1 91:7 98:8,12 100:18 101:2 117:10,13 118:5 120:21 121:19 122:6 124:22 126:5 137:17 138:4 139:12 143:2 people's 35:14 45:22 81:12 percent 55:3 122:20,22 123:10 period 39:18 80:5 81:8 138:19 139:3 139:4 perjury 108:23 110:10,15 perpetuate 44:17 person 39:23 49:11 50:10 92:21 95:8,10 101:1 120:17 121:2 personal 73:23 74:2,17,20 118:9 121:5 122:3 125:1 132:6 personally 101:9 128:6 130:19 personnel 101:4
p			
p 2:1 21:23 p.m. 27:5,10,11 28:1 118:22 119:3 144:6 packard 42:9,9,10 61:18 63:12 65:17 83:15 84:4 88:10 90:15 102:14,19			

philosophy 74:20	54:10,13 56:10	pride 46:16 47:11	produce 126:11,12
phone 100:3 102:9	58:20 59:5,5,7,23	47:19	produced 34:15
102:12	66:4,5 72:19,20	primarily 10:8	34:19,19 89:13
phrase 71:10	73:4 81:15,21,22	22:7 23:21 24:4	production 89:15
119:9 134:18	81:22 82:3	26:23 32:15 42:8	professional 21:17
pick 120:20	positions 60:3	print 145:10	program 46:20,20
pickens 70:6 71:12	possession 36:19	prior 76:19,19	46:22 47:1,6
99:21,23 102:9	36:21 38:11 64:23	112:8,10	48:15
115:19	possible 11:18	prison 15:9 63:20	prohibited 120:5,7
pie 47:16	89:14	114:10,10	prohibitum 120:4
piece 63:9	possibly 18:17	private 9:2 21:20	proof 9:17
place 7:9 79:6	post 22:10 118:4	22:23 24:6,12	property 67:4,6
137:13,15	postponing 39:5	probably 24:10,11	95:7,10,11 111:11
placed 55:11 80:7	potential 44:15,23	103:17,17 115:18	111:11
places 143:11	practice 9:2 21:21	115:18 122:19	proportionate
plaintiff's 4:8,10	22:20,23 24:6,12	142:6,6	123:6
4:12,14,16,18,20	practices 42:15	probate 101:14,15	proportions 98:9
4:22 30:22 34:5	44:17	101:21	proposal 52:14,19
61:14 70:22 85:12	practicing 131:15	probation 46:20	52:21 54:5,11,14
88:12 90:11	precluding 50:23	47:2,6 48:5 55:12	56:10 85:15,19,22
109:13	pred 127:19	55:13 83:7 138:20	proposals 44:23
plaintiffs 1:13 5:3	predecessor	138:20	proposed 4:17
7:19 9:6	127:19	probationary	19:23 39:5 43:6
plea 49:14,20	preparation 18:6	139:2	63:13 64:7,13
58:17	prepare 21:4	problem 90:23	82:15 85:16 91:6
plead 25:23	preparing 20:10	91:11,13 93:9	105:18 106:5
please 8:2,11	prescribed 58:18	94:22 95:3,8,20,21	108:14 111:9
11:18 15:3	83:10 84:12	124:8	prosecute 23:21
point 16:10 41:23	presence 78:17	procedural 23:17	25:23
66:2 79:1 88:3	present 5:21 26:19	procedure 2:6,16	prosecuted 110:12
112:19	104:9	2:22 6:4	111:13,14
pointing 28:11	presentation 70:7	procedures 32:5	prosecuting 92:4
police 10:10	70:9,11 72:15	proceedings 6:11	prosecution 24:3
poor 45:8 51:1	77:8	142:4 145:8,13	prosecutor 10:13
population 69:11	presented 47:2	process 29:11,13	23:23 25:22 137:5
69:11 97:19,20	president 77:20	29:14 45:12 53:21	prospect 80:21
122:17,21,23	pretty 23:12	76:12 79:15 80:15	provide 19:10
123:10 125:17	prevent 86:3	100:18,22 101:10	30:2 91:7
portions 113:8	previous 9:15	102:5 108:19	provided 2:15,21
position 25:11	105:22	140:17	6:3 19:17 33:5,21
32:13 51:9,15			38:3 70:14 91:6

[provides - redact]

Page 18

provides 55:2 92:10,11 127:3 providing 48:3 provision 29:8 37:22 41:3 72:23 73:14 75:19 76:19 92:9 97:10 117:23 127:2 130:16,17 132:22 133:2 provisions 40:11 40:16 76:3 provocation 92:13 provoked 66:7 public 76:7 108:23 110:15,20 punished 37:8 67:3 136:1 punishment 38:3 38:4 48:22 58:6 58:14,19 60:12,19 68:10 78:19 82:2 82:4 purpose 2:14 29:3 29:5 31:21 35:10 35:12 44:2 86:19 87:3,16 purposes 91:2 96:15 134:14,15 pursuant 2:5 16:22 61:19 76:2 pursuing 139:14 put 8:15 17:7 30:5 76:13,14,15 105:4 105:4 130:11	question 11:8,12 11:16 12:12 14:15 53:10,11 54:3 75:6 109:22,23 124:16 135:13 143:9 questions 2:10,11 10:16 11:3,19 12:10,17 13:3 93:19 128:11,18 140:20,22 143:22 145:9 quickly 53:2 quin 53:6 quite 32:10 37:16 57:13 98:22 131:5 138:21 quoting 78:23	reading 3:1 real 23:20 realized 47:3 realizing 127:18 really 15:23 17:20 74:4,7 77:21 93:21 100:7 110:19 117:7,19 134:22 143:21 reason 12:21 36:1 79:20 110:21 122:8 125:19 127:18 135:15 reasonable 127:5 reasoning 99:17 reasons 125:9 recall 15:2,4 16:15 16:17 28:15 31:8 33:4,8,9,10,14 35:7 41:6,16,19,22 42:10,21,23 43:8 44:8,20,21 45:15 51:8,15,20 52:18 52:23 54:5,9 56:9 56:11,12,16,18 57:3,6,11 58:8 59:2 60:8,15 61:7 61:10,10,18,19 62:16 63:2 64:11 64:15 65:2,16,20 66:16,16 68:13,19 68:19 69:2 70:9 71:2 72:16,19,21 73:2,3,9,11 79:4 79:13,18,20 80:6 82:2,7 83:13,22 85:8 86:8,8,10,11 88:7,15,21,23 89:1 89:3 90:3 98:21 98:23 99:1 101:12 101:13,17,18	102:7,11,15,21,23 103:2,9,23 104:5 105:6,9,10 106:9 106:10,12,15,16 106:23 107:7 108:10 109:6 110:13 114:6 117:2,2 139:7 recalled 41:12 receive 25:9 85:19 received 17:12 19:2 25:3 34:22 71:5 receiving 64:22 71:2 88:15,21 89:1 90:3 95:6 reckless 92:2,20 93:17 97:9 recklessly 92:1,7 92:18 93:23 recognize 30:21 34:10 61:12 85:10 90:10 recognized 92:13 recollection 17:1 19:6,18 20:3 31:13,16 33:6,22 42:2,23 60:14 64:3 65:7 69:7 70:11 85:3 87:21 103:18 131:11,12 recommendation 82:23 133:22 record 7:2 8:12 68:3,6 89:17 118:23 119:4 144:6 recovery 55:2,4,7 55:23 redact 8:17
q	r		
qualification 93:22 qualifications 76:4 127:17 ques 134:7	race 52:5,8 123:22 124:13 125:14 racial 44:23 97:15 98:18 132:3 racially 76:23 77:18,23 125:10 131:21 raise 137:6 raised 126:22 138:9 141:15,19 141:20 142:18 raising 141:12 ramble 36:16 ran 22:9,15 rarely 138:2 ratified 75:14,16 reach 9:18 react 59:23 reaction 39:1 reactions 103:10 read 37:16 52:21 72:2 82:18 96:1		

[reduced - right]

Page 19

reduced 145:10	relating 3:5 16:11	representative	50:1,1,6,19 51:11
reference 19:19	16:12 17:19 18:2	108:1	52:16 53:23 54:15
referred 108:17	18:8 45:5 63:14	represented 13:13	54:22 55:2,4,6,19
referring 28:3	relation 78:4	representing 2:3	55:23 57:10,10
29:18 70:20 88:17	relevant 14:15	2:18 7:13,14,19	58:13 83:7 84:18
126:4	44:1,3 50:9 60:18	represents 145:11	99:15 136:21
reflect 33:21 52:3	remainder 24:13	republican 22:17	140:2,3,8,11,13,15
52:6,11,13 58:4	remaining 79:1	request 12:16	142:6,9,14,15,20
70:6 78:2,22	remember 13:9	101:14	restoration 26:8
reflected 83:15	14:9 26:11,13,16	requesting 139:19	42:16 53:15,20
reform 15:9 63:20	28:19,20 32:9	requests 142:1	54:8 57:19 59:9
114:11	35:10 36:23 38:22	require 45:23	59:10,21 68:10
refresh 17:1 19:5	41:22 44:18 45:19	50:17 51:10 92:6	78:5 79:15 85:17
19:18 20:3 31:12	49:5 54:7 56:21	required 55:12,15	85:23 99:13,13
refreshes 64:3	57:10 66:12 77:4	59:9 61:1 79:14	100:17 102:5
regains 101:1	82:13 83:18 84:9	126:9	103:3 116:11
regard 42:15 43:2	89:2 98:17 100:10	requirement	restore 52:14 83:9
43:17 55:22 76:9	103:5 116:20	59:20 61:9 93:10	restored 60:20
80:2 99:12 108:13	118:8 130:13,19	105:17	61:5 84:17 100:19
138:6 142:5	131:8,18,23	requires 97:10	100:22
regarding 41:7	remit 50:1 80:20	140:9	restoring 50:9
53:7 59:5 61:8	139:6	requiring 45:9	56:4 81:16 83:19
70:8 73:4 85:16	remittance 136:21	57:9 68:15 81:16	105:17
103:14 106:17	139:9,13	rescheduling	result 35:18 51:4
108:13 110:14	remitted 49:22	17:22	98:4 107:18 108:2
114:15,16	55:21 137:18,23	research 47:13	145:17
regards 98:13	removed 75:22	reserved 2:12	retired 16:14
register 108:20	repairs 48:18	resolved 128:2	22:17 46:23
registering 45:14	repealed 130:15	resort 122:12	retirement 22:11
registrar 101:14	replaced 130:17	respect 47:9	retroactively
registrars 76:14	report 55:12 130:4	respond 11:19	116:22 117:5
rehabilitate 48:23	reporter 2:7 6:1	response 15:2	118:4
reinstatement	7:14 8:2,3 11:14	38:23 65:4,8	returned 14:8
29:12 43:3 53:8	72:3	72:14 73:5	reverend 51:20
61:9	reporting 55:15	responses 103:9	review 33:2 61:13
relate 68:10 76:3	reports 121:15	responsibility	80:15 87:4,15
related 22:8 25:10	represent 7:17 9:5	49:2 55:8	reviewed 19:2
25:13,18 45:17	109:16 112:7	rest 94:21	43:1 63:13
53:23 78:3 88:22	representation	resti 140:8	reviewing 33:4
relates 39:9 74:22	113:20	restitution 46:1,5	right 8:21 11:22
119:11		47:20 49:9,12	12:6 18:22 24:5

26:2,3 34:8 36:1 50:21 51:19 52:15 54:13 56:4 57:23 58:2 65:6 70:18 71:12 76:6,7,7 78:12,21 82:17 83:8 84:5 96:18 96:20 99:7 100:20 107:21 109:10,20 109:21 111:16 112:1,12,22 113:21 120:19 121:10 124:10 125:3 128:12 129:5 131:7,16 133:7,15 143:18 rights 26:8 42:16 43:3 45:6 50:10 53:8,15 56:22 59:9,10,21 60:20 61:4 68:11 78:4 79:15 81:17 85:16 85:23 98:13 100:19,21 101:1 105:18 116:11 119:12 120:13 risk 93:17 ronald 21:23 rule 81:4 rules 2:5,15,22 3:5 6:4 11:2 ruling 2:12 run 22:13 runs 92:19	saying 14:22 28:14 41:12 49:15 57:10 57:18 82:6 83:21 85:7 96:22 105:7 114:22 133:10 says 27:22 38:2 52:17 53:6 63:12 78:14,16 83:6 84:12 86:9 89:7 101:19 134:12 136:6 schedule 18:17 scheme 51:3 school 21:9,12,12 120:3 sciences 21:11 scienter 92:16 94:11 se 120:4 second 26:22 27:3 36:20 37:4,18,20 63:6 70:16 90:21 96:11 99:6 111:12 128:15 secretary 14:21 20:17 26:13 27:8 43:5 56:9 59:4 73:2,4,8 76:15 82:19 90:19 103:14 107:2 108:12 115:6,8 116:9,16 secretary's 65:18 section 101:20,20 sections 38:5 securities 37:23 38:1 111:16 see 14:14 42:18 58:6 75:6 83:3 89:11,21,23 94:8 101:9 102:18	106:5 108:4 110:20 117:21,21 118:6,11 122:9 123:6 127:21 seeing 33:10,14 68:20 106:9,10,23 123:12 seek 139:9 seeking 139:8,13 seen 123:19 select 130:10 seminars 97:21 senate 125:6 senator 114:18 send 16:23 25:9 42:6,11 sending 64:11 103:7 sent 17:4 64:19 103:11,15 sentence 49:6,10 52:15 53:22 54:20 60:23,23 61:2,5 83:6 84:18 86:1 99:14 139:2 sentenced 23:9 49:20 50:10 sentencing 50:8 58:15 63:19 137:1 137:13 138:10 141:5,17 142:8 separate 34:20 80:3 108:17 115:9 116:9 separately 130:10 serve 15:21,23 26:12 served 15:5,9 17:15 26:5,9 set 41:23 47:5 58:15 75:9 76:20	140:14 setting 17:21 18:2 127:4 140:8,10 settlement 9:18 sexual 37:18,21 shake 11:20 shannon 9:22 shay 71:15,19 shift 124:10 short 14:17 33:8 36:4 62:10 80:1 100:8 118:17 134:4,12 shorter 101:9 shortly 33:3 show 47:13 97:18 showing 78:17 sic 108:18 124:1 sickness 48:7 side 63:7 118:14 sides 75:7 signature 3:1 71:14 145:19 signed 27:8 significantly 105:12 similar 91:8 similiar 40:16 simple 48:18 102:6 simpler 100:22 simply 9:16 18:15 24:3 95:6 141:22 sinclair 5:15 7:22 7:22 8:22 34:8 sir 12:2 sitting 57:4 situation 47:10 51:12 67:8 80:6 97:6 120:2
s			
s 2:1 5:14 7:20 sat 56:22 100:1 save 19:11 saw 68:23 106:22 114:4,4 142:7,8			

situations 56:2 97:7 six 24:13 sizable 122:16 skeptical 15:7 slice 47:16 slide 49:16 slowly 11:3 small 98:1 smaller 123:3 smd 1:6 7:7 smith 5:23 social 39:17 91:15 136:14 society 120:5,7 society's 91:16 sold 95:10 solicitations 67:11 solve 75:23 somebody 62:17 139:8 someone's 93:18 119:12 120:13 somewhat 19:7,18 soon 23:12 sorry 17:18 32:18 43:12 45:2 53:1 54:3 70:3 79:5 87:1 105:1 118:15 121:14 125:22,23 sort 38:12 45:11 88:6 95:23 132:1 sorts 65:1 sought 106:17 source 112:4 south 44:7 southern 43:1,2,7 43:16 44:1,5,16 sparked 82:8 speak 11:11 13:6 13:11 21:3 103:13	114:21 speaker 78:11 speaking 84:8 special 10:3 specific 93:15 specifically 40:14 64:6 66:23 specifics 103:23 specified 67:12 speculate 29:1 56:13 110:9 speculating 113:8 speculation 141:10 speeding 92:18 spent 80:23 spoke 12:14 13:17 26:4 102:8 114:4 114:8,18,22 115:18 116:16 spoken 20:17,20 20:23 sponsored 108:1 stand 68:1 118:21 standard 7:4 133:12 start 35:1 128:20 started 17:6 46:18 46:18,19 starting 15:7 21:17 starts 89:9 state 2:8 5:16 7:16 8:11,22 9:21 13:7 13:14,14 14:22 20:21 21:9 26:14 39:4 40:10,21 43:5 47:14 58:18 58:20 59:4,7 73:8 76:2,15 77:13,19 82:17 86:18 90:19	103:14 107:2 121:1,12,23 125:12 130:23 145:3 stated 59:5 73:3,4 73:12 77:5 99:12 99:18 100:11 124:19 135:10 states 1:1 39:15 40:8,8,16 42:14 43:1,2,7,16,19 44:1,5,6,16 82:21 85:22 90:22 94:13 94:17 96:14 127:1 stating 72:19 statistics 68:15 69:8,9 98:2 123:18 status 108:13 statute 37:15 66:23 138:21 statutes 135:1 statutory 4:17 steal 67:7 stenotype 145:9 stephanie 2:7 6:1 7:14 145:20 steps 87:9,14 stick 80:2 stipulated 2:2,17 2:23 3:7 stipulation 6:5 stolen 95:6,12 stopped 126:13 store 25:13 strangely 23:3,19 strike 32:18 82:20 87:10 105:1 studies 97:18 subcommittee 41:23 86:18,20	87:9,11,14,21 88:7 88:11,22 89:4 104:16 subject 102:23 submitted 88:2,4 subpoena 16:22 130:1 subsection 92:10 subsequent 16:5 16:19 37:21 substances 13:2 successfully 61:2 suffrage 130:16 suggested 110:17 suggestion 41:7 43:9 suite 5:6 summarized 83:15 supervision 145:11 supervisor 23:3 supplant 134:1 support 57:17 suppose 66:19 75:11 81:19 113:11 117:19 supposed 36:15 69:9 87:7 137:12 140:14 141:3 supposition 141:10 supreme 88:5 101:23 102:2 sure 8:18 11:15,19 12:1 16:13 23:11 28:13 30:12,14 36:5 52:1 54:4,18 59:11,11,13 60:6 64:21 71:16 72:17 72:17 78:10 89:6 98:22 99:5 118:18
---	---	--	--

118:20 128:16 129:10 135:12 surviving 122:13 swear 8:2 sworn 8:6 sympathetic 81:14 synopsis 82:22 83:5 84:4,9 system 47:7 48:15 121:20	114:19,22 115:21 teaching 20:1 48:16 tell 18:4 21:16 26:6 31:14 60:6 113:13 ten 22:4 tendency 45:13 term 22:14 39:6,8 39:17 41:8,19 46:8 54:17 55:16 63:14 70:8 73:14 73:18,20 74:13,23 75:3 77:6,12,15 83:6 84:17 94:4 135:1,2 136:5 terms 74:21 75:18 136:10 testified 8:7 9:10 9:19 10:6 112:9 testify 12:22 16:2 16:2 81:19 143:10 testifying 10:19 testimony 1:21 9:14,16 10:22 21:4 112:8 113:16 145:12 testing 48:8,10 thank 8:20 12:7,8 16:3 17:17 24:19 27:16 29:15 38:18 43:13 50:3 54:1 67:23 77:2 78:7 79:8 85:14 89:20 109:15 129:21 143:19,20,23 144:4 thanks 28:11 theft 67:4,6 94:12 94:14 95:9 111:10 111:11	thefts 64:22 theory 137:2,11 141:3 thereto 145:9 thing 30:3 38:12 40:1 45:11 47:6 48:20 49:23 88:6 113:12 things 17:7 29:7 31:17,20 32:1 47:3,22 48:18 58:14,16,16 65:1 66:8 74:12 76:8 97:5 111:1,4 117:19 118:16 119:20,23 135:23 think 14:21 15:13 16:14,18 17:23 20:11 26:12,19 27:1 36:12 38:1 38:10 39:12 40:4 40:4,11,22 41:1 43:18,18,20 44:4 47:20 48:20 50:12 52:6,10 53:14 54:16 56:1,23,23 62:22 64:9,9,10 65:18,18 66:2 75:16 76:4,10,17 76:17,18 77:10 87:7,19 88:2 92:14 93:19 94:7 94:7 95:2,2 99:7 100:3 101:9 102:10 103:19 106:11 107:12 110:21 113:3 114:4,7 115:19 116:3 117:20 118:8,10,19 119:20,23 120:9	120:16,16 121:2 122:13,17,19,21 124:1,7 125:11,16 125:18 127:13,14 128:8,11 133:17 133:18 134:9,9 136:4,4,12 142:17 143:16 thinking 55:17 56:14 70:13 71:5 118:15 142:13 third 53:18 thompson 1:12 7:6 22:1 thought 15:8,19 32:14 66:7 69:4 94:21 97:16 100:11 117:7 134:23 thoughts 77:5 thousand 129:6 three 37:14 83:8 107:19 109:17 123:12,13,15 thursdays 24:16 tim 1:22 2:4 4:21 6:8 7:5 8:5 time 2:12,13 7:3,4 9:1,2,19 10:1 11:12 14:3 19:11 22:17 23:1,5 24:5 25:7 28:11 33:8 34:20 39:18 40:15 49:10,13,19 50:7 56:16 61:18 67:20 67:22 68:2,2,5 72:1,20 77:23 79:21 80:6,23 81:6,8,12 88:3 91:16 110:23 112:19 114:1
t			
t 2:1,1 tab 69:22 take 19:16 46:16 47:11 67:19,22 87:9,15 118:17 128:13 140:9 taken 2:5,6 13:1 32:19 51:9 68:4 119:1 120:14 145:8 takes 101:4 137:13 talk 14:13 17:22 57:5 113:22 115:6 talked 18:14,15 68:8 132:6 136:20 talking 18:7 41:4 50:5 53:4 55:10 55:22 62:6,9,12 64:5 65:10,13,16 95:5 96:9 102:11 102:15 105:21 111:23 115:4 117:8,11,22 128:22 133:7,8 138:15 tallapoosa 145:4 tallassee 6:2 tape 19:12 task 15:6,10 16:12 27:2 63:20 114:11			

[time - voiced]

Page 23

118:22,22 119:2,3 125:7 126:20 127:1 131:14 132:16 137:1 138:10,19 139:4 142:8 144:2,5 times 22:15,16 24:17 26:18 27:7 34:20 46:3 74:14 107:20 142:19 timing 18:16 timothy 8:13 titled 20:11 today 7:2 9:7 10:16 12:22 13:4 18:3,19 21:4 73:18 91:18 129:21 144:3 told 15:18 16:13 16:17 97:21 121:18 topic 41:15 56:19 98:17 124:15 tops 51:21,21 touch 14:7 25:17 town 123:3 traditional 91:5 traditionally 91:17 traffic 126:14,17 127:8 trafficking 23:14 transcribe 11:14 transcript 11:17 11:21 145:12 transfers 101:3 treats 47:8 treva 1:12 7:5 trial 2:20 9:10,18 tried 23:11	true 145:12 truly 65:13 truthful 10:22 truthfully 12:22 try 9:13 11:2 29:7 42:1 46:9 48:19 48:22 80:13 127:16 135:13 trying 10:19 26:12 40:9 48:13 56:23 67:7 84:19 91:18 132:23 tuesday 24:16 turned 130:23 turpitude 20:12 29:10 32:4,12 35:22 39:6,8,14 40:17,20 41:9,17 61:22,23 62:3,16 62:18,22,23 63:15 70:9 71:11,22 72:8 73:15,20 74:3,7 75:10 76:10,21 87:4,6 88:1,11 89:10 91:2,5,12,14,17,19 91:21 92:15 93:1 94:4,15 95:4 96:23 97:4 98:15 104:17 109:1,3 111:18,20 118:8 119:7,16,20 120:1 120:8,10 127:21 127:23 130:11,18 132:7,12,19 133:1 133:11,16 134:14 134:18 135:8,16 135:17 136:5,7,8 twice 17:23 two 20:13 22:15 22:16 24:11,12	29:7 38:5 83:7,9 83:20 123:15 129:6,6 type 36:8 typically 49:14,17 67:2 80:12 u u 2:1 uh 11:20 14:4 25:6 59:1 62:4 71:17 73:22 89:8 129:9 130:7 135:4 143:14 unable 143:3 unaddressed 141:21 unchaste 136:9 unclassified 38:3 unconstitutional 118:2 127:10 unconstitutionally 50:20 76:22 undergraduate 21:8 understand 10:15 10:21 11:8 36:9 41:8 46:3 50:14 84:13 91:23 93:4 132:12 134:6,7 135:12,20 142:22 understanding 29:3,5 39:7 41:18 66:20 74:11 84:22 93:16 97:22 107:13,23 117:4 understood 34:1 58:3 65:13 85:6 94:22,23 uniform 124:3 unit 10:3 55:7	united 1:1 39:15 127:1 university 21:9 unopposed 22:13 22:16 updates 108:12 use 25:8 48:7 75:3 134:17 135:1 136:7,12,13,17 uses 48:15 v vacant 22:10 vacated 22:11 vacuum 43:20 vague 54:16 74:4 74:20 76:22 77:6 118:2,11 128:9 132:7 varies 123:16 various 68:16 verbally 11:19 veritext 7:15 version 89:15 versus 7:6 9:22 23:8 69:11 100:17 victim 99:16 140:4 victims 56:22 video 7:4 videographer 7:1 7:12 8:1 68:1,5 118:21 119:2 144:5 view 96:3 99:18 100:17 103:3 views 103:5,19,22 violations 37:23 121:13 136:1 vision 54:19 voiced 53:7 64:19 66:18
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voicing 36:23 66:12 vote 26:2 32:6 36:9 39:5 45:15 50:21 51:1 52:15 56:4 75:21 76:7 83:8 93:22 95:9 95:12 108:20 120:20 121:10 130:21 131:6 voted 19:22 52:22 105:3,11 130:19 130:21,22 131:8 voter 26:7 45:6 50:20 74:7 76:4 84:16 voters 40:18 41:4 43:3 51:18 71:23 72:9 73:1,17 124:22 127:17 voting 26:8 36:7 39:9 40:10 50:9 51:4 56:17 59:10 60:19 61:4 68:11 81:16 86:3 98:13 100:19,21 101:1 105:17 116:10 119:12 120:13 134:16,19 135:16 vs 1:14	war 40:7 ward 114:4,18,18 washington 5:7,18 6:7 7:10 47:1 way 20:3 25:19 27:10 31:13 40:5 47:15 52:21 57:12 57:14 60:7 69:10 80:5 83:22 94:8,8 95:22 100:9 107:3 124:14 132:4 135:11 ways 53:16 122:13 wednesday 7:2 week 18:1 24:12 week's 17:21 weekend 24:11 weeks 18:2 went 15:15 21:22 22:9 42:8 46:17 46:21 47:1 84:22 95:10 104:13 whichever 100:9 white 111:5 whopping 46:5 wife 9:16 willfully 143:5,13 willing 15:21 143:4 win 39:4 41:10,12 65:19,20,20 78:12 78:22 79:21 88:3 winfield 5:15 7:22 witness 3:2 8:2 15:22,23 27:16 30:16,18 43:12 104:21 110:2 118:14 129:22,22 129:23 144:1,4 145:13	witnesses 36:15 110:18 woman 39:23 40:3 women 39:20 136:15 wonder 74:12 word 94:20 128:1 worded 45:7 words 140:11 work 8:15,18 21:22 23:1 24:11 24:14 26:16 32:15 48:1,3,6 107:16 110:23 112:7 113:3 115:13,22 worked 22:3,4 132:16 working 9:23 24:7 63:18 works 46:23 wound 38:8 wow 39:10 116:23 117:20 written 29:20 30:8 71:11 79:19 130:3 139:18 wrong 69:5 79:6 87:20 93:7 101:13 wrote 63:11 71:16 90:18	york 5:6 yun 4:4 5:4 7:18 7:18 8:8,18 9:4,5 27:19 28:3,19 29:2 30:19 31:19 33:1 34:7,10,14 43:15 51:2 52:2 53:5,11,17 54:4 57:8 59:15,22 60:17 61:3 65:14 67:21 68:7,22 69:17,20 71:17 72:13 73:22 77:2 78:10,12,14 84:1,7 84:21 85:6 86:22 88:8 89:8,12,22 94:3,19 95:14 96:8 100:16 104:23 105:15 106:1,13 107:1,8 108:11 110:3,13 111:14 112:18 113:2,22 115:1 117:3 118:17,19 119:5,14 121:7 124:15 128:6,13 128:16 140:21 141:1,14 142:22 143:12,16
w		y	
wait 41:12 waived 3:2,9 55:13 want 11:17 14:22 15:1 19:9 47:11 93:9 118:13,20 128:14 wanted 14:7,13 60:7 101:8 103:21		y'all 17:22 yeah 21:19 28:6 58:7 67:21 70:3 71:19 77:14 106:21 117:21 140:21 year 21:15 22:21 37:21 91:6 129:7 years 22:4,5,15 80:1 91:17	

Alabama Rules of Civil Procedure
Part V. Depositions and Discovery

Rule 30

(e) Submission to witness; changes; signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty (30) days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the

court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(F) Certification and filing by officer; exhibits; copies; notice of filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the court, the officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE 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.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Messick, Misty

From: Danielle Lang <dlang@campaignlegalcenter.org>
Sent: Friday, March 20, 2020 5:03 PM
To: Messick, Misty
Cc: Mark Gaber; Molly Danahy; Mitch McGuire; James Blacksher; Sinclair, Win
Subject: Re: Deposition Notice

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Misty,

Thank you for your letter and I hope you are doing well in these trying times.

We can agree to limit the scope of the deposition to specific topics and a specific time period.

In particular, we are willing to agree to limit our deposition to Secretary Merrill to the following topics:

- His personal leadership, experience, intent, and communications related to drafts of HB 282 and the exploratory committee.
- His understanding of the purpose of Alabama's felony disenfranchisement scheme.
- His determination that HB 282 applies retroactively.
- His personal actions, communications, and experience related to supervising the implementation of the felony disenfranchisement scheme before and after HB 282 and any personal communications or actions related to his office's work with the local officials on implementing the felony disenfranchisement scheme before or after HB 282.
- His personal actions, communications, and experience related to amending the felony language on the EAC instructions and Alabama voter registration form.

These are the topics--framed more generally--that were outlined in our letter and that we intend to probe. They are plainly relevant in light of ongoing claims related to racial intent, punitive intent, retroactivity, and the NVRA. We are willing to agree to a 4 hour time limit for [the](#) deposition.

Finally, if certain matters are fully answered by the Secretary's responses to interrogatories before the deposition, we can certainly not repeat the content of the written interrogatories. But, as you know, knowledge about personal conversations, actions, etc., cannot be adequately developed through written interrogatories.

As for the time and location of the deposition, we are very flexible to the Secretary's schedule. Also, we may want to schedule for May given the current circumstances. If an in-person deposition is not possible even in May, we can arrange for a remote deposition. We do plan to have a videographer.

I was encouraged that your letter anticipates the ability to resolve this without court action. I certainly hope that is the case.

Thanks and best wishes. Please stay safe and healthy.

Best,

Danielle



Danielle Lang

Co-Director, Voting Rights & Redistricting

202.856.7911 | [@DaniLang_DC](#)

Campaign Legal Center
1101 14th St. NW Suite 400
Washington, DC 20005
campaignlegalcenter.org

[Facebook](#) | [Twitter](#)

From: Messick, Misty <Misty.Messick@AlabamaAG.gov>

Sent: Friday, March 13, 2020 11:48 AM

To: Danielle Lang <dlang@campaignlegalcenter.org>

Cc: Mark Gaber <MGaber@campaignlegalcenter.org>; Molly Danahy <mdanahy@campaignlegalcenter.org>; Mitch McGuire <jmcguire@mandabusinesslaw.com>; James Blacksher <jblacksher@ns.sympatico.ca>; Sinclair, Win <Winfield.Sinclair@AlabamaAG.gov>

Subject: RE: Deposition Notice

Danielle,

Please see attached.

Misty S. Fairbanks Messick
Assistant Attorney General

Constitutional Defense Division
Office of the Attorney General
State of Alabama
501 Washington Avenue
Post Office Box 300152
Montgomery, Alabama 36130

334.353.8674 Office
334.353.8400 Fax (new)
Misty.Messick@AlabamaAG.gov (new)

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From: Danielle Lang <dlang@campaignlegalcenter.org>

Sent: Wednesday, March 11, 2020 10:57 AM

To: Messick, Misty <Misty.Messick@AlabamaAG.gov>; Sinclair, Win <Winfield.Sinclair@AlabamaAG.gov>

Cc: Mark Gaber <MGaber@campaignlegalcenter.org>; Molly Danahy <mdanahy@campaignlegalcenter.org>; Mitch McGuire <jmcguire@mandabusinesslaw.com>; James Blacksher <jblacksher@ns.sympatico.ca>

Subject: Deposition Notice

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Misty,

Please see attached.

Thanks and best,

Danielle



Danielle Lang

Co-Director, Voting Rights & Redistricting

202.856.7911 | [@DaniLang_DC](https://twitter.com/DaniLang_DC)

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Washington, DC 20005
campaignlegalcenter.org

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

Treva Thompson, *et al.*,

Plaintiffs,

v.

State of Alabama, *et al.*,

Defendants.

Civil Action No. 2:16-cv-783

Class Action

**PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT JOHN H.
MERRILL, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF
ALABAMA**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiffs in the above-captioned action, through their counsel, propound the following Interrogatories to Defendant John H. Merrill, in his official capacity as Secretary of State of Alabama, for the purpose of discovery of certain matters relevant to this action.

Plaintiffs request that Defendant Merrill provide written responses under oath within thirty (30) days of service of these Interrogatories. Responses may be served via email, FTP transfer, encrypted drive, and/or hard copy to Campaign Legal Center, 1101 14th Street, Suite 400, Washington, DC 20005 to the attention of Danielle M. Lang, dlang@campaignlegalcenter.org. Responses may be provided on a rolling basis as they become available.

Each Interrogatory is subject to the Instructions and Definitions set forth below.

DEFINITIONS

1. The words “You,” “Your,” “Defendant,” the “Secretary,” and all variants thereof refer to John H. Merrill, in his official capacity as Secretary of State of Alabama, and all persons acting or purporting to act on his behalf, including but not limited to his predecessors, agents, representatives, employees, officers, consultants, and/or contractors.
2. “BPP” or “the Bureau” refers to the Alabama Bureau of Pardons and Paroles.
3. “CERV” means Certificate of Eligibility to Register to Vote.
4. “Concerning,” “reflecting,” “regarding,” and “relating to” are used in the broadest possible sense and mean, in whole or in part, addressing, analyzing, constituting, containing, commenting, in connection with, dealing with, discussing, describing, embodying, evidencing, identifying, pertaining to, referring to, reporting, stating, or summarizing.
5. “Document” is used in the broadest possible sense to mean anything which may be within the meaning of Rule 34 of the Federal Rules of Civil Procedure, and includes without limitation any written, printed, typed, photocopied, photographed, recorded or otherwise reproduced or stored communication or representation, whether comprised of letters, words, numbers, data, pictures, sounds or symbols, or any combination thereof. “Document” includes without limitation correspondence, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers, accounts, analytical records, reports and/or summaries of investigations, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes of minutes of meetings or communications, electronic mail/messages and/or e-mail, text messages, social media communications, voice mail messages, instant messaging,

questionnaires, surveys, charts, graphs, photographs, films, tapes, disks, data cells, print-outs of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained (by translation, if necessary, by You through detection devices into usable form), including, without limitation, electromagnetically sensitive storage media such as CDs, DVDs, memory sticks, floppy disks, hard disks and magnetic tapes, and any preliminary versions, as well as drafts or revisions of any of the foregoing, whether produced or authored by a plaintiff or anyone else. The term “Document” includes the defined term “Electronically Stored Information,” which is defined below.

6. “Electronically Stored Information” or “ESI” shall include, but not be limited to, any and all electronic data or information stored on a computing device. Information and data is considered “electronic” if it exists in a medium that can only be read through the use of a computing device. This term includes but is not limited to databases, all text file and word processing Documents (including metadata); presentation Documents; spreadsheets; graphics, animations, and images (including but not limited to JPG, GIF, BMP, PDF, PPT, and TIFF files); email, email strings, and instant messages (including attachments, logs of email history and usage, header information and “deleted” files); email attachments; calendar and scheduling information; cache memory; Internet history files and preferences; audio; video; audiovisual recordings; voicemail stored on databases; networks; computers and computer systems; computer system activity logs; servers; archives; back-up or disaster recovery systems; hard drives; discs; CDs; diskettes; removable drives; tapes; cartridges and other storage media; printers; scanners; personal digital assistants; computer calendars; handheld wireless devices; cellular telephones; pagers; fax machines; and

voicemail systems. This term includes but is not limited to onscreen information, system data, archival data, legacy data, residual data, and metadata that may not be readily viewable or accessible.

7. “Identify” means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, their present or last known place of employment, if known. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.
8. “Person” means any natural person, firm, association, partnership, joint venture, corporation, business trust, banking institution, unincorporated association, government agency or any other entity, its officers, directors, partners, employees, agents, and representatives.
9. “HB 282” refers to the Definition of Moral Turpitude Act, enacted by the Alabama legislature in 2017 to “establish a comprehensive list of felonies that involve moral turpitude, which disqualify a person from exercising his or her right to vote.”
10. Pre-“HB 282” refers to the period before HB 282 took effect. Post-“HB 282” refers to the period after HB 282 took effect.

INSTRUCTIONS

1. Unless otherwise stated in a specific Interrogatory, these Interrogatories seek responsive information and Documents authored, generated, disseminated, drafted, produced, reproduced, or otherwise created or distributed or relating to the period from January 1, 2015 to the present.

2. If a Document is provided in response to an Interrogatory, identify which Document(s) is (are) being provided to answer that Interrogatory; if you are asked to identify Documents, please provide a brief description of the Documents, including any Bates numbers.
3. Each Interrogatory should be responded to upon your entire knowledge from all sources and all information in your possession or otherwise available to you, including information from directors, officers, employees, agents, representatives, consultants, or attorneys, and information which is known to each of them.
4. If any of the Interrogatories cannot be responded to in full, respond to the extent possible, specifying the reason for your inability to respond to the remainder. If your responses are qualified in any respect, set forth the terms and an explanation of each such qualification.
5. If any response is given that states an objection to these Interrogatories on any ground, state the ground(s) completely. If an Interrogatory is only partly objectionable, respond to the remainder of the Interrogatory.
6. If you object to any of the Interrogatories herein, whether in whole or in part, on the grounds that the information sought therein is privileged or confidential, state the following:
 - a. Identify the privileged Document or Communication;
 - b. Identify the persons who received or have received the privileged Document and/or the persons present during the privileged Communication;
 - c. Identify the person who made the privileged Document or Communication;
 - d. Identify the general subject matter of the privileged Document or Communication;and

- e. State the basis for your claim of privilege with respect to each such Document or Communication.
7. Where an Interrogatory calls for information with respect to “each” one of a particular type of matter, event, person, or entity, of which there is more than one, separately list, set forth or identify for each thereof all of the information called for in the Interrogatory.
8. If you do not possess knowledge of the requested information, you should so state your lack of knowledge and describe all efforts made by you to obtain the information necessary to answer the Interrogatory.
9. In no event should you leave any response blank. If the answer to an Interrogatory is, for example, “none,” “unknown,” or “not applicable,” such statement should be written as an answer.
10. If you have no knowledge regarding an Interrogatory, identify an individual whom you believe to have the knowledge necessary to respond to the Interrogatory.
11. The following rules of construction apply to all Interrogatories:
 - a. All/Each: the terms “all” and “each” shall be construed as both all and each.
 - b. And/Or: the connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Interrogatories all responses that might otherwise be construed to be outside of their scope.
 - c. Number: the use of the singular form of any word includes the plural and vice versa.
 - d. Gender: whenever used herein, the singular includes the plural and vice versa. The masculine includes the feminine and neuter genders, and vice versa.
 - e. Tense: the past tense includes the present tense when the clear meaning is not distorted by a change of tense.

INTERROGATORY NO.1

Identify each person involved in the preparation of your responses to these interrogatories.

INTERROGATORY NO. 2

Identify the state interests served by Alabama's disenfranchisement of people with felonies involving moral turpitude.

INTERROGATORY NO. 3

Identify and describe in detail Alabama's definition of "moral turpitude" prior to the passage of HB 282, and list every felony conviction YOUR office determined was a crime involving moral turpitude or for which a person was disqualified from voting prior to the passage of HB 282.

INTERROGATORY NO. 4

Identify and describe all known instances of disagreements among state officials—including Board of Pardons and Paroles' officials, county election officials, and Secretary of State officials—about which felonies involving moral turpitude.

INTERROGATORY NO. 5

Identify each person involved—and their role—in the proposing, drafting, revising, or finalizing of the bill YOU proposed to the Legislature to define felonies "involving moral turpitude," which ultimately was enacted as HB 282.

INTERROGATORY NO. 6

Identify each legislator or other public official that YOU consulted with, the date of those consultation(s), and the nature of your consultation(s) about the bill YOU proposed to the Legislature to define felonies "involving moral turpitude," which ultimately was enacted as HB 282.

INTERROGATORY NO. 6

Identify the state interest(s) served by denying people with past convictions a CERV because they have outstanding legal financial obligations from their criminal sentence that they cannot afford to pay.

INTERROGATORY NO. 7

Identify the reason why YOUR office excluded bribery, public corruption, and voter fraud from YOUR draft bill defining felonies “involving moral turpitude.”

INTERROGATORY NO. 8

Identify all research or analysis YOUR office conducted with respect to the potential racial impact of the chosen felony convictions included in YOUR draft bill defining felonies “involving moral turpitude.”

INTERROGATORY NO. 9

Identify each person involved in drafting, proposing, and finalizing all administrative regulations, policies, guidelines, or guidance relating to the implementation of Alabama’s constitutional provision disenfranchising persons convicted of a felony involving moral turpitude or HB 282 from January 1, 2015 through the present, whether proposed or finalized, including such person’s title and office at the time, a description of the person’s involvement in those activities, and the dates of such involvement.

INTERROGATORY NO. 10

Identify and describe all actions, formal or informal, taken by YOU from 2017 to the present to inform, educate, or explain the requirements of HB 282 to election officials or the public, and specify the amount of money budgeted and spent on this activity.

INTERROGATORY NO. 11

Identify and describe all requests for guidance or inquiries YOUR office has received about whether a specific criminal conviction—including Alabama, out-of-state, and federal offenses—of an applicant is disqualifying under HB 282 and YOUR office’s response to such requests or inquiries.

INTERROGATORY NO. 11

Identify the number of phone calls YOUR office has received on the toll-free line indicated on the voter registration form for questions related to felonies involving moral turpitude, identify the person responsible for responding to that phone line and the hours worked by that individual, and describe the nature of the inquiries received.

INTERROGATORY NO. 12

State all facts supporting YOUR contention that “the requirement that felons pay ‘all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on the disqualifying cases,’ Ala. Code § 15-22-36.1(a)(3), is not severable.”

INTERROGATORY NO. 12

State all facts supporting YOUR contention that “Plaintiffs Thompson and Gamble have unclean hands as to Count 13.”

INTERROGATORY NO. 13

Identify which constitutional provision YOU rely upon in contending that “[i]f Plaintiffs are correct that the NVRA requires the State to list on voter registration forms each and every disenfranchising felony, then the provisions so requiring are unconstitutional” and all facts supporting that contention.

INTERROGATORY NO. 14

Describe in detail the process by which, and reasons why, YOU determined that HB 282 applies retroactively to those with felony convictions pre-dating the passage of HB 282 and all individuals you consulted in making that determination and their role in the process.

INTERROGATORY NO. 15

Identify and describe all policies, procedures, and/or guidance—informal or formal—that YOUR office has created, disseminated, or communicated related to the voter registration process for individuals who have received a pardon or CERV, including whether a copy of that pardon or CERV must be provided and, if so, if it must be provided even if the voter has previously registered after receiving the pardon or CERV.

INTERROGATORY NO. 16

Identify and describe all instances when YOUR office has identified errors, problems, or inaccuracies in the processing of voter registration applications or voter registration removals with respect to people with criminal convictions and YOUR response to addressing those errors, problems, or inaccuracies.

Respectfully submitted,

/s/ Danielle M. Lang

Danielle Lang (CA Bar: 304450)

J. Gerald Hebert (VA Bar: 38432)

Mark P. Gaber (DC Bar: 988077)

Molly Danahy (DC Bar: 1643411)

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aderfner@derfneraltman.com

Counsel for Plaintiffs

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 serve a copy of the foregoing document on Winn Sinclair (wscinlair@ago.state.al.us) and Misty Fairbanks Messick (mmessick@ago.state.al.us), counsel for Defendants, via email on this 11th day of March 2020.

/s/ Danielle M. Lang

Danielle Lang