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

EDWARD BRAGGS, et al.,  
Plaintiffs,

vs.

CASE NO.: 2:14cv601-MHT

JEFFERSON S. DUNN, in his  
official capacity as  
Commissioner of the  
Alabama Department of  
Corrections, et al.,  
Defendants.

SEALED DOCUMENT

\* \* \* \* \*

IN-CAMERA PROCEEDINGS

REGARDING UNSEALING OF REPORT

\* \* \* \* \*

BEFORE THE HONORABLE MYRON H. THOMPSON, UNITED STATES  
DISTRICT JUDGE, at Montgomery, Alabama, on Monday, April 15,  
2019, commencing at 11:06 a.m.

APPEARANCES:

FOR THE PLAINTIFFS: Ms. Maria V. Morris  
Ms. C. J. Sandley  
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APPEARANCES, Continued:

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ALSO PRESENT: Ms. Alice Ann Byrne, General Counsel  
Ms. Tara S. Hetzel  
State Personnel Department  
64 North Union Street  
Montgomery, Alabama

Proceedings reported stenographically;  
transcript produced by computer.

\* \* \* \* \*

1 (The following proceedings were heard before the Honorable  
2 Myron H. Thompson, United States District Judge, at  
3 Montgomery, Alabama, on Monday, April 15, 2019, commencing  
4 at 11:06 a.m.:)

5 (Call to Order of the Court)

6 THE COURT: This is Braggs versus Dunn, civil action  
7 number 14cv601. We have a number of sort of loose ends to catch  
8 up with.

9 Where are we with regard to the Warren Averett report?  
10 Were you-all able to reach any resolution of that?

11 MS. MORRIS: We did not hear from defendants over the  
12 weekend.

13 THE COURT: And so is that just merely now before the  
14 Court?

15 MS. MORRIS: I believe so, yes.

16 THE COURT: Okay. Is that correct?

17 MR. DORR: Yes, Your Honor.

18 THE COURT: Okay, then.

19 The attorney-client documents or privileged documents,  
20 I think my law clerk sent you an email on that, and we have them  
21 here. Did you see the email, Ms. Morris?

22 MS. MORRIS: No.

23 THE COURT: You did not? The email should have been  
24 sent shortly after we recessed court on Friday, indeed, shortly  
25 after I got the documents. I think the essence was that I

1 preliminarily looked at them, and they appeared to be  
2 predominantly attorney-client privilege.

3           If the plaintiffs want to pursue this matter, they  
4 should pursue it with the Magistrate Judge, that is, Judge  
5 Borden. He can go over the documents in camera and decide what  
6 to release, if anything. Otherwise, I'm ready just to return  
7 the documents to the defendants.

8           MS. MORRIS: We would ask that defendants be ordered to  
9 produce a privilege log.

10          THE COURT: A privilege log?

11          MS. MORRIS: A privilege log.

12          THE COURT: Okay. Now, explain to me exactly what you  
13 mean by that.

14          MS. MORRIS: Well, consistent with the civil practice  
15 guidelines --

16          THE COURT: Pardon me?

17          MS. MORRIS: Consistent with the civil practice  
18 guidelines in the Middle District of Alabama, when documents are  
19 withheld on the basis of privilege, they are supposed to be  
20 accompanied by -- a privilege log is supposed to be provided to  
21 the opposing party in order that that opposing party has some  
22 way to determine whether or not there appears to be  
23 justification for the withholding.

24          THE COURT: What I'm just going to do is just turn the  
25 whole matter over to Judge Borden and let him take all of this

1 up with you-all.

2           Would you just like me to give the documents to Judge  
3 Borden?

4           MR. REEVES: That's fine, Your Honor, if you just want  
5 to go ahead and --

6           THE COURT: I'll just --

7           MR. REEVES: To avoid having to do it again.

8           THE COURT: I've not filed them, so I'll just give them  
9 to Judge Borden --

10          MR. REEVES: Perfect.

11          THE COURT: -- and he can set up a meeting with  
12 you-all, and you can decide how you want to proceed with them.  
13 I'll do that forthwith. Other than that, I consider -- as far  
14 as the matter before me, I consider it resolved.

15          When will the defendants respond to the chart?

16          MR. REEVES: We had intended to respond to that on  
17 Wednesday along with the proposed order.

18          THE COURT: Okay. Any problems with that?

19          MS. MORRIS: No, Your Honor.

20          THE COURT: Okay. Do we have anything else to take up  
21 today, then?

22          MS. MORRIS: I don't believe so.

23          THE COURT: Okay. With regard to the other matters  
24 that were set for oral argument last week, the joint proposal on  
25 methods the defendants can use to verify the segregation rounds,

1 and there were a list of other matters, I think you're just  
2 going to take those up in your briefs; is that correct?

3 MS. MORRIS: That is correct.

4 THE COURT: Is that correct?

5 MR. DORR: Yes.

6 THE COURT: So we won't have oral arguments on that,  
7 unless I want to have an oral argument next week.

8 Anything else, then, we need to take up today?

9 MR. REEVES: Besides the Warren Averett report?

10 THE COURT: Yes. Do you want to take up something with  
11 the Warren Averett report, any other argument, or is the matter  
12 just under submission with the Court now?

13 MS. MORRIS: You had indicated that you wanted some  
14 explanation as to why the things that defendants still seek to  
15 keep under seal should be under seal.

16 THE COURT: Oh, that is true. We were going to go  
17 through the document itself, weren't we?

18 MS. MORRIS: Yes.

19 THE COURT: Okay. Well, we would have to do that in  
20 camera.

21 MS. MORRIS: I believe that everyone who is in the  
22 courtroom -- and defendants can confirm -- is either plaintiffs'  
23 counsel or defense counsel or some people from the state  
24 personnel board who are here for the purpose of providing  
25 information, I believe.

1 THE COURT: Very good, then. So why don't we just  
2 close the doors, and we are in camera right now. We were just  
3 going to go through the document. We'll start with page 10.

4 MR. DORR: Your Honor, I'm Rusty Dorr for the  
5 department.

6 You had asked some questions during our last session on  
7 this back in chambers, and Mr. Lunsford was not in a position to  
8 speak knowledgeably about some of your questions. And so if it  
9 would be helpful to the Court, we have spent some time since  
10 then trying to get a better feel for some of those issues.

11 THE COURT: We definitely --

12 MR. DORR: It may inform some of the looking at the  
13 specific pages, if I can share a little bit of that with you  
14 now.

15 THE COURT: It definitely would be helpful to the  
16 Court. Why don't you provide that information?

17 MR. DORR: All right. Well, since we were together  
18 last, we have gone back and tried to get a better sense of a  
19 couple of things.

20 First of all, the Court was asking about how much of  
21 this is still really private at this point and how much has been  
22 released to the public and does it matter whether it's been  
23 released. And so let me speak to that first.

24 The short answer is that it does not seem to be public  
25 record at this point. There are some broad themes that are

1 being talked about in public, but none of the specific  
2 information that we're concerned about in this report. So it is  
3 still, from the defendant's perspective and as I understand from  
4 the state personnel board's perspective, very much still  
5 confidential information that should remain that way. That's  
6 the first issue there.

7 THE COURT: Okay. Let me ask you a question about  
8 that, just so I understand what you're saying.

9 MR. DORR: Yes, sir.

10 THE COURT: You're talking about the parts that were  
11 redacted are still private?

12 MR. DORR: Correct.

13 THE COURT: Because much of the report was made public.  
14 And you're not saying any of that is private.

15 MR. DORR: No. Only the redactions.

16 THE COURT: So for the redacted parts, you're saying  
17 that is now still private?

18 MR. DORR: It is. Now, there are two or three pages  
19 and categories of information that, upon looking back at them,  
20 are more historical in nature, or they are specifically  
21 disclosed. And so at the appropriate time, I can identify those  
22 to you, and we can say, those are no longer under dispute here.  
23 But there are some areas that we are still very concerned about.

24 And, Your Honor, the information that we would like to  
25 present on that is really sort of two-pronged. I'm here to talk

1 a little bit about the department's perspective on it, but there  
2 are also representatives of the state personnel board here who  
3 come at it from a little different perspective than the  
4 department does, and they would like a chance to be heard. They  
5 previously have been involved in this through affidavit  
6 testimony and previous motion practice. So they're aware of  
7 this process, and they have a position that they would like to  
8 present to you at the appropriate time.

9 THE COURT: When would be the appropriate time?

10 MR. DORR: As soon as I stop talking.

11 THE COURT: Okay.

12 MR. DORR: If that's okay with Your Honor.

13 THE COURT: I just wanted to know how you suggest we  
14 proceed on this.

15 MR. DORR: Yes, sir. I've got just a couple more  
16 points, and then I will cede the floor to them, if that's okay  
17 with Your Honor.

18 THE COURT: That's fine.

19 MR. DORR: On a big-picture basis, we have gone back  
20 and talked to our client and said, the Court has raised this  
21 concern about this report. How much of it should be public  
22 record? What are the reasons why, if we still oppose its  
23 distribution publicly, what are the reasons for that?

24 And these are the big themes that we heard in response:  
25 That there is information in here that if it is communicated in

1 this fashion, neatly packaged and easily digestible to various  
2 audiences, that it is going to create morale problems or  
3 perception problems or political problems with that group,  
4 depending on who they are.

5           And so there are certain aspects of this report that  
6 our people are concerned about a prospective recruit or a brand  
7 new correctional officer trainee hearing this and reading it and  
8 saying, oh, my goodness, I'm looking right here at what they're  
9 paying me as opposed to what -- how many more percent I could  
10 make if I go across the street or go do something else. And  
11 they're concerned about that having a negative effect.

12           To put some specifics on that, right now we have a  
13 training staff of approximately 80 people. And we're very  
14 encouraged by that number and getting them through the process  
15 and moving them into the work force.

16           THE COURT: You said training staff?

17           MR. DORR: For correctional officers. Brand new --

18           THE COURT: You have about 80 applicants?

19           MR. DORR: Well, in the current class. I'm not  
20 speaking about the whole pipeline, but I'm talking about the  
21 class that's underway right now.

22           THE COURT: The training class?

23           MR. DORR: Yes, sir. So there's a concern that those  
24 people would see this report and go, well, you know, why am I  
25 here, trying to qualify for a job that pays this, if, according

1 to this report, I can go do something else and make 120 percent  
2 of that or 110 percent? So we're concerned about that kind of  
3 morale.

4 THE COURT: I don't understand. Why would the report  
5 make someone feel that? So what -- can you give me just an  
6 example?

7 MR. DORR: Yes, sir. In the recommendations, there are  
8 recommended salaries that are stated in terms of dollars and  
9 percentages. And so your new or prospective correctional  
10 officer would see that and go, well, right now I'm training for  
11 a job that pays X. But according to this report, there are jobs  
12 all over the state that pay X times 125 percent.

13 THE COURT: Okay. Now, when you say there are jobs all  
14 over the state, there are numbers in here that reflect jobs all  
15 over the state? Is that --

16 MR. DORR: Yes, sir. Both private sector, other  
17 similar law enforcement jobs. That's the import of some of  
18 these. If you look at page 80, that's a chart that gives that  
19 kind of information.

20 THE COURT: Page 80?

21 MR. DORR: Yes, sir.

22 THE COURT: And you're saying it's -- the problem is  
23 that it's in one particular concise section, even though that  
24 information might otherwise just be out there already?

25 MR. DORR: Someone conceivably could go and research

1 this themselves, but it's certainly not going to be as  
2 convenient or as dramatic as this chart right here.

3 THE COURT: I understand your argument.

4 MR. DORR: So that's one problem is that we have that  
5 audience there of people that we're trying to hire.

6 And then we also have the audience of people who are  
7 existing correctional officers who read this report and see  
8 these numbers, and they assume, oh, great. Well, if the brand  
9 new people are going to get under this report an increase of X  
10 percent, well, then, I'm sure I'll get at least that much. So  
11 it creates expectations that are going to create friction,  
12 because the report does not allow for lockstep increases all the  
13 way up the employment chain. So there are some complicating  
14 factors there that will be confusing and potentially upsetting  
15 to people who read that among the existing CO work force.

16 Then you've also got the audience of the legislature,  
17 which is, again, a wide spectrum of people there who may see  
18 this. And one person may read it and say, well, there's a range  
19 there of recommendations, and we're coming in right in the  
20 middle of that recommendation. Why aren't we doing the very  
21 most for this? Why aren't we increasing our budget? And then  
22 there may be others that read it and say, wait a minute.  
23 They're saying it's okay for us to be at the bottom of this  
24 range. Why are we stretching? Why are we doing more than that?

25 So to release these numbers with these ranges, again,

1 just creates a lot of confusion and the possibility of someone  
2 who has a current position about the budget who may have a  
3 different idea after reading this.

4           So the department has tried to weigh each of these  
5 factors, and they have put together a proposal to the  
6 legislature and a messaging plan for how to -- how to describe  
7 this to the public that they believe has the best chance of  
8 success of getting a budget passed that gets us as close to the  
9 Warren Averett report as we can get at this point.

10           THE COURT: My question for you, and I'm trying to  
11 think of how to phrase it. Why should I, as a court, take a  
12 position implicitly, that is, that the budget you've proposed to  
13 the legislature is the budget that the state should have, by  
14 keeping this information out of the public debate? Aren't I in  
15 a way taking the side of the department in this debate rather  
16 than letting just people duke it out among themselves in the  
17 public forum?

18           MR. DORR: Your Honor, I don't see it that way. The  
19 Court's silence --

20           THE COURT: I'm not saying you should see it. I'm  
21 asking it as a question. Could the Court be perceived as taking  
22 a position that the ADOC's budget is the best budget to achieve  
23 the goal it wants to achieve? And in taking that position,  
24 aren't I sort of putting my thumb on the public debate when, in  
25 fact, I should be neutral, let the figures out there, and then

1 let you-all duke it out as to what's best? Why isn't -- why --  
2 is it really fair that the Court itself takes a position one way  
3 or the other? It may be that the state's position is absolutely  
4 correct. My question, though, is should I just be taking a  
5 position to that effect?

6 MR. DORR: Well, Your Honor, I can't speculate about  
7 what the perception would be about the Court's actions.

8 THE COURT: Well, not only perception. Actually,  
9 aren't I in some ways putting my thumb, say, on the scale in  
10 public debate about that you should accept the state's budget,  
11 when, in fact, maybe I should just be neutral on that? And the  
12 way I would be neutral would be disclose the information and let  
13 it play itself out in the public forum.

14 MR. DORR: Well, I suppose --

15 THE COURT: And that would be in the legislature.

16 MR. DORR: I suppose that is the issue, then, that the  
17 Court has to decide.

18 THE COURT: Tell me why I shouldn't do that.

19 MR. DORR: Yes, sir.

20 THE COURT: Trying to get you to say, Judge, you  
21 shouldn't be concerned about that. That's not a serious concern  
22 or it's not a valid concern. Tell me why.

23 MR. DORR: Well, the department's concern is that if  
24 this report is released to the public, that it is going to  
25 create an atmosphere within a number of groups of confusion or

1 morale problems that are going to affect the department's  
2 operations now, wholly apart from the political process.

3 THE COURT: I understand the morale issue, but I wanted  
4 to address the legislative issue first.

5 MR. DORR: All right. Well, as I've tried to explain,  
6 this information may affect different people in different ways.  
7 And the department has tried to -- I hesitate to use the word  
8 package, because it has a connotation, but it's attempted to  
9 communicate its position on this budget in a way that gives it  
10 the greatest likelihood of success. And the people who have  
11 made that decision are people who are familiar with the process,  
12 that understand those audiences better than anyone in this room  
13 probably does, and they're doing it the very best way they can.

14 So, Your Honor, we're going back to those cases that  
15 say that in an area of administration and management, that the  
16 Court should, if possible, defer to the judgment. And so I'm  
17 not saying that it would be a thumbprint of approval or a tacit  
18 approval by the Court as much as an abstention at this point.  
19 To take a report --

20 And, Your Honor, just to remind you, this report was  
21 generated at the Court's request, and it is purely a part of  
22 this lawsuit. It is a litigation-driven report. It's not an  
23 internal record of the department that was discovered through  
24 discovery. It's not that kind of public document.

25 So we're not asking the Court to cloak something that

1 we had in our file that we don't want to come to the light of  
2 day. We're saying that this was done specifically in the  
3 context of litigation for this case, and that it should remain,  
4 as to these redacted items, as just part of the case.

5 THE COURT: Did you have a third point, or did you  
6 cover --

7 MR. DORR: I believe that's it. I was going to --

8 THE COURT: Okay. Before we hear from the personnel  
9 department --

10 And by the way, now, how is the personnel department  
11 going to sort of function in these proceedings? We were going  
12 to go page by page. Are you going to -- how do you propose --

13 MR. DORR: I believe that their comments are more  
14 global in nature. I may be wrong about that, but I believe that  
15 their concerns are more as to the entire process.

16 THE COURT: So you're saying I should then hear from  
17 the personnel department, and then we'll go the page by page?

18 MR. DORR: I believe so.

19 THE COURT: Okay, then. Why don't I hear from the  
20 personnel department now? And then I'll hear from you,  
21 Ms. Morris, and you can respond to both the defendants and the  
22 personnel department, rather than your sort of appearing in  
23 between.

24 MS. BYRNE: Thank you, Your Honor. I'm Alice Ann  
25 Byrne, and I'm here representing, on behalf of the state

1 personnel board, our concerns with the Warren Averett report.

2 First of all, I agree with the position taken by DOC.  
3 I think they very adequately explained to you the problems with  
4 morale that this would cause.

5 And the reason is state personnel -- as you know, we  
6 turned 80 years old this year. And for 80 years, we've been  
7 doing compensation, recruitment, pay studies for state  
8 employees. And this is our job, this is what we do, and we're  
9 statutorily mandated to do it.

10 We are very much involved in national conferences. We  
11 hire outside experts. We see the global picture of it, which  
12 we're required by state law to do.

13 We had serious, very serious concerns with the Warren  
14 Averett report. We do not believe that it was conducted with  
15 recognized principles of compensation. We have an outside  
16 expert who reviewed the report that said the exact same thing.  
17 The comparisons were unrealistic and not recognizable at all by  
18 any methodology approved by any court that I'm aware of.

19 For example --

20 THE COURT: You have real concerns about the report  
21 itself?

22 MS. BYRNE: We do. State personnel does. It's not in  
23 accordance with any guidelines of which we are aware that is  
24 widely accepted practice by any expert in the area of  
25 compensation.

1           More importantly, they take comparisons -- for example,  
2 they're using construction workers. Retail workers. And  
3 they're also comparing a correctional officer to an ALEA  
4 trooper. And instead of --

5           THE COURT: To what?

6           MS. BYRNE: Alabama law enforcement trooper.

7           THE COURT: Okay.

8           MS. BYRNE: And they are comparing it to local  
9 municipal jails and facilities. And instead of comparing it to  
10 the correctional people in there, they're comparing them to  
11 deputy sheriffs.

12           There is nowhere in the country, Your Honor, that pays  
13 as much for a correctional officer as they do for a trooper or a  
14 deputy sheriff, et cetera. Furthermore, the ones that they used  
15 were all from very hard-to-recruit areas, most affluent areas in  
16 our state. Shelby County, Baldwin County. These are the  
17 comparisons that were used. We just don't think the report  
18 itself is appropriate.

19           More importantly, Your Honor, that the report did not  
20 take into account the extra benefits, which are compensation,  
21 that our correctional officers receive. For example, nowhere in  
22 the report was there the \$2,500 to \$3,000 a year that the  
23 corrections law enforcement gets, called subsistence pay, merely  
24 for showing up to work. They get that, and it's not even  
25 taxable by the state.

1           Furthermore, they get signing bonuses. They get  
2 location differentials up to 5 percent. CERT team, 5 percent.  
3 Supervisor, 7 and a half percent.

4           None of that was reflected in the report, Your Honor.  
5 That should have been considered.

6           Importantly, we have reached an agreement with Warren  
7 Averett and with corrections on what state personnel proposes to  
8 do in the new fiscal year. For example, the correctional  
9 officers' salary that was proposed by Warren Averett is pay  
10 grade 73 or pay grade 74. That is the proposal. That is -- pay  
11 grade 74 starts at \$40,000, which is the same starting salary  
12 for a trooper.

13           And we have reached an agreement with all the parties  
14 here that the correctional officer will start at pay grade 67.  
15 And still they would be at 31,000 rather than 40,000. However,  
16 we also, in the legislation that is proposed -- which we have  
17 worked with the legislature, we've worked with the governor's  
18 office, we've worked with DOC, and state personnel fully  
19 supports and intends to recommend that everyone get a 2 percent  
20 across-the-board pay raise immediately upon the passage of --  
21 excuse me -- the new fiscal year budget.

22           THE COURT: That's all state employees?

23           MS. BYRNE: No, sir. That's in addition to the 2  
24 percent that the legislature is going to give employees  
25 October 1st. Correctional officers, we have proposed -- and we

1 have gotten good feedback -- they're going to get an additional  
2 across the board.

3           And I'm sorry. It's not 2 percent, it's two steps,  
4 which is 5 percent -- I meant two and a half percent --

5           THE COURT: Let's back up a little bit. I've gotten  
6 confused. So all employees are getting 2 percent?

7           MS. BYRNE: Yes.

8           THE COURT: Correctional officers will get two steps?

9           MS. BYRNE: Two steps, which is 5 percent.

10          THE COURT: Which is 5 percent. So a correctional  
11 officer will get 2 percent plus 5 percent?

12          MS. BYRNE: Yes, sir. That is the proposed legislation  
13 that we support and believe will, in fact, pass.

14          The main thing, Your Honor, is that it will create  
15 unrealistic expectations. And they're going to look at the  
16 Warren Averett report and say, I'm supposed to be making the  
17 same as a trooper, but I'm not. So instead of being excited and  
18 want to stay and continue to go up, they are going to be upset,  
19 confused, and feel like they're not being treated appropriately.

20          What this report did, Your Honor, in our opinion, is to  
21 take a law clerk who works for the Montgomery Circuit Court, and  
22 take the salaries of staff attorneys at the Court of Appeals,  
23 the Federal Court of Appeals, and say, well, they all do legal  
24 research, they're all in the legal profession, they do the same  
25 job. They're comparable salaries.

1           As a matter of fact, this report compared correctional  
2 officers to the federal system. There is no way the state can  
3 be compared salarywise to the federal system, Your Honor.

4           So I guess the bottom line of what we're saying is we  
5 find that the report, in our opinion, was seriously flawed. And  
6 to put it out, as to say, this is what an expert recommended,  
7 without --

8           We had nothing to do with this, Your Honor. Had we  
9 been involved, we definitely -- when I say "with this," the  
10 court proceeding itself. We did provide feedback to Warren  
11 Averett after the report was drafted. So we were not able to be  
12 involved and express our concerns at the early stage. And by  
13 the time we were involved, I believe that it was -- you know,  
14 the horse had already left the stable at that point.

15           There are numerous other indications that we have that  
16 the report is flawed, but I think you've gotten the gist of my  
17 argument, Your Honor. And we just think it would be a  
18 disservice to the state of Alabama for a report that the very  
19 entity that is charged with setting compensation and pay  
20 disagrees with and has no actual faith or confidence in.

21           THE COURT: Okay. Let me ask you this: The personnel  
22 board sets the pay scale?

23           MS. BYRNE: Yes, sir.

24           THE COURT: Is that what you're saying? How does it do  
25 that? Could you just describe the process?

1 MS. BYRNE: Yes, Your Honor. We -- as a matter of  
2 fact, we survey surrounding states and comparable positions,  
3 which is exactly what we did to come up with the recommendations  
4 that we, in fact, made.

5 THE COURT: To the state legislature?

6 MS. BYRNE: No, sir. The recommendations that we're  
7 going to make in October to our board.

8 THE COURT: I see. Okay.

9 MS. BYRNE: And we even, at the request -- we are the  
10 highest paid correctional officers in the southeast, Your Honor.  
11 Not even close. Alabama pays more than any other southeastern  
12 state for corrections officers.

13 We have in place where in five years, a correctional  
14 officer can get an increase right now, as it stands today, of 41  
15 percent in five years. That is an astronomical way of moving  
16 forward in the state system. We recognize that even with all  
17 that, it is not enough for the recruitment and retention  
18 problems that we have. So therefore, though we normally would  
19 include southeastern states in our surveys, because they were  
20 lower, we completely threw them out, and we surveyed the people  
21 in the state of Alabama that were in comparable positions. Not  
22 the deputy sheriffs, not the sheriff, not the people that were  
23 in the report by Warren Averett, but we analyzed comparable  
24 positions. And they still do not come up to what we are  
25 recommending.

1 THE COURT: What would be a comparable position?

2 MS. BYRNE: A jailer in Jefferson County. A jailer in  
3 that county. Not a deputy sheriff, but comparable corrections  
4 positions.

5 And, Your Honor, even in the -- I hate to digress, but  
6 even in the newspaper this morning, they were talking about  
7 Montgomery County corrections and how they -- the jailer even  
8 recognized that the deputy sheriffs make more. And it said,  
9 well, they have more rigorous training and blah, blah, blah. A  
10 different job position, et cetera.

11 And that's true. We have different APOST standards for  
12 corrections officers versus regular law enforcement officers.

13 THE COURT: What is APOST standards?

14 MS. BYRNE: Alabama Peace Officer Standards and  
15 Training. The training they go through. There's different ones  
16 for law enforcement, that is, the deputies, the sheriffs, the  
17 troopers, than there are for correction. And you pay for that,  
18 Your Honor.

19 The point being, though, even though our -- even our  
20 narrowed survey doesn't really support the pay ranges that we're  
21 going to recommend to our board. We are recommending a higher  
22 pay range because of the recruitment and retention problems.  
23 But we absolutely cannot in any way, shape, form, or fashion  
24 justify the amounts that Warren Averett recommended, and we  
25 would have to fight that should that amount go to the

1 legislature. And it shouldn't go to the legislature because  
2 it's based upon flawed analysis, Your Honor.

3 THE COURT: I was going to ask you some of the same  
4 questions that I asked defense counsel, but I guess you're here  
5 in your capacity not to defend the department, but to defend the  
6 personnel board and what's in the best interests of the  
7 personnel board.

8 MS. BYRNE: That's my sole purpose for being here.  
9 They have capable lawyers, and I don't want to step on any toes.

10 THE COURT: Let me ask defense counsel. What is the  
11 status of the budget process right now? Well, what is the  
12 status of the -- well, the budget process, and what is the  
13 status of these pay increases?

14 MR. DORR: Well, I'll invite anyone here to help me  
15 answer that question. But my understanding, Your Honor, is that  
16 it goes to the senate sometime this week, which resumes its  
17 session tomorrow. I don't know the specific day on which it  
18 would be taken up or how long that process would take.

19 THE COURT: Right. Well, let's just say the senate  
20 approves the current budget and the governor signs it. Then  
21 what's the process then about the pay increases? What happens?  
22 How does it -- how does the personnel board act once it gets  
23 what the legislature did? How does ADOC act once it gets what  
24 the legislature did? In other words --

25 MS. BYRNE: I'll be happy to answer that, Your Honor.

1 THE COURT: Thank you.

2 MS. BYRNE: It would go into effect October 1st. And  
3 at that time --

4 THE COURT: What would go into effect?

5 MS. BYRNE: The new recommendations: The 2 percent  
6 across the board, the bonuses that are being recommended, up to  
7 \$7,500 bonuses for correctional officers.

8 THE COURT: Are those recommendations in the  
9 legislation?

10 MS. BYRNE: Yes, sir.

11 THE COURT: So they're actually in the legislation?

12 MS. BYRNE: Yes, sir, they are.

13 THE COURT: Now, why are they recommendations if  
14 they're in the legislation?

15 MS. BYRNE: Well, state law does not provide for state  
16 employees to get bonuses without legislation. So in order to  
17 allow bonuses, it has to be legislatively mandated.

18 THE COURT: I see. So when the legislature approves  
19 the budget, then they can get the 2 percent plus the -- and the  
20 correctional officers, the five steps. It's not really a  
21 recommendation anymore then.

22 MS. BYRNE: Well, the budget covers the -- will  
23 encompass the extra money needed to do this. This is a separate  
24 bill specifically for corrections that gives them a 2 percent --  
25 everyone there will get a 2 percent, separate and apart from the

1 other 2 percent that all state --

2 THE COURT: You mean five steps?

3 MS. BYRNE: -- employees are going to get.

4 THE COURT: You said two steps.

5 MS. BYRNE: Which is 5 percent.

6 THE COURT: Right. Two steps. Go ahead.

7 MS. BYRNE: Right. So that is a separate bill that is  
8 going to be coming up.

9 MS. HETZEL: Your Honor --

10 THE COURT: Your name is?

11 MS. HETZEL: Tara Hetzel, state personnel.

12 We are in the process of finalizing that to allow one  
13 of the representatives and one of the senators to introduce that  
14 bill in -- hopefully this week. We received emails this morning  
15 actually to finalize it, so it hopefully will be dropped this  
16 week into the legislature.

17 THE COURT: That will be the two steps; right?

18 MS. HETZEL: That will be the two steps --

19 MS. BYRNE: And the bonuses.

20 MS. HETZEL: -- and the bonuses and an additional  
21 similar payout for excess annual leave that's similar to the  
22 troopers. It will be an additional compensation for  
23 correctional officers.

24 MS. BYRNE: And that is what is encompassed in the  
25 budget. It has the full support of the governor's office,

1 everybody at ADOC, state personnel. It has support, Your Honor.  
2 The state recognizes that it has a problem, and the  
3 legislature's committed to helping correct it.

4 THE COURT: Let me just understand it, then. The  
5 budget just provides the money.

6 MS. BYRNE: Correct.

7 THE COURT: You still have to have a separate bill that  
8 will authorize the pay increases.

9 MS. BYRNE: Correct. Because it --

10 THE COURT: So even though we have the money in the  
11 budget, you still have to pass a separate bill that will  
12 authorize the 2 percent plus the 2 steps and whatever else --

13 MS. BYRNE: Plus the ten-day payout, annual payout of  
14 leave, which is very lucrative, that the troopers have that  
15 correctional officers didn't have. So this is also in the bill.

16 And I really can't reiterate strong enough, Your Honor,  
17 legislation is normally a very -- not a fun process. But in  
18 my 34 years of working with the state, I've never seen entities  
19 come together in this way to try to help correct an issue that  
20 we all recognize exists. So I fully think that there will be  
21 tremendous support for this bill. That has been our indication.

22 THE COURT: Anything else?

23 MR. DORR: No, Your Honor.

24 THE COURT: Anything else from the personnel board?

25 MS. BYRNE: Not unless the Court has any questions.

1 THE COURT: No. I may have some more questions after I  
2 hear from Ms. Morris.

3 MS. BYRNE: Yes, sir.

4 THE COURT: Ms. Morris?

5 MS. MORRIS: We just got a lot of information thrown at  
6 us that we have not heard anything about previously, and we  
7 would like an opportunity to talk amongst ourselves for a few  
8 minutes.

9 THE COURT: Do you want me to take a recess?

10 MS. MORRIS: Yes, but I would first like to get  
11 confirmation about what my understanding of the numbers that  
12 were just thrown out is.

13 THE COURT: Why don't we do this? Why don't we take  
14 a 15-minute recess? You sort of caucus among yourselves.  
15 You-all caucus also with the personnel board and ask them  
16 questions and see if you can get answers to your questions.

17 MS. MORRIS: Thank you, Your Honor.

18 THE COURT: And then we'll come back, and either they  
19 can clarify things or you can clarify things. Okay?

20 We'll take a 15-minute recess.

21 (Recess was taken from 11:40 a.m. until 12:00 p.m., after  
22 which proceedings continued, as follows:)

23 THE COURT: Ms. Morris.

24 Before I hear from you, I have one just very simple  
25 question to pose to defense counsel and the personnel board. Is

1 the state still pursuing a 20 percent pay raise?

2 No. I'm asking defense counsel.

3 MR. REEVES: It's not a 20 percent pay raise. What was  
4 said in terms of 20 percent related to the overall payroll costs  
5 being increased so that they could provide for these additional  
6 bonuses and increases.

7 THE COURT: So it's not really just a 20 percent pay  
8 raise.

9 MR. REEVES: Yes.

10 THE COURT: So the phrase that was used in the SPLC  
11 letter, that's not simply what's being pursued.

12 MR. REEVES: Right.

13 THE COURT: Do you wish to clarify that?

14 MS. BYRNE: Yes, sir.

15 THE COURT: Would you mind coming around?

16 MS. BYRNE: Excuse me, Your Honor.

17 THE COURT: That's okay.

18 MS. BYRNE: When you calculate the retirement and the  
19 amount of insurance and everything else that goes up --  
20 retirement is specifically based on income -- you do have to  
21 factor it in. Our benefits make up about 39 percent of salary.  
22 So when you give pay raises, you also have to factor in the  
23 extra cost for the benefits that must go along with that pay  
24 raise.

25 THE COURT: Okay. So is it really accurate, then, the

1 way that the SPLC was saying it was out in public, that they  
2 were getting a 20 percent pay raise?

3 MS. BYRNE: I'm just unaware to what you're referring,  
4 Your Honor.

5 THE COURT: You're unaware. Okay. Very good.

6 MS. BYRNE: But I assure you the personnel board would  
7 never support a 20 percent increase.

8 THE COURT: Very good. Thank you.

9 MS. MORRIS: First, I would like to address that point.  
10 We printed off the Department of Corrections -- off the  
11 internet -- which is, I would say, publicly available -- the  
12 Department of Corrections' budget request spreadsheet today.  
13 And it says for fiscal year 2020, the increases or decreases  
14 they're asking for with regard to personnel costs include merit  
15 raises, probation raises. And then the next one is 20 percent  
16 pay raise for security staff. And then elimination of security  
17 pay differentials, 500 additional correctional officers for half  
18 of the year, and then 20 percent pay raise for 500 additional  
19 correctional officers for half year. And then reduction in  
20 overtime due to the 500 additional officers for the half year.

21 THE COURT: Why don't you mark that?

22 MS. MORRIS: Certainly.

23 THE COURT: And what is it exactly?

24 MS. MORRIS: It is a spreadsheet that is posted on the  
25 legislative website for Alabama, and it is identified as the

1 Department of Corrections spreadsheet -- budget spreadsheet.

2 THE COURT: Okay. Is there anything to this effect on  
3 the Department of Corrections' website?

4 MS. MORRIS: I have never found any budget information  
5 on the Department of Corrections' website.

6 THE COURT: Go ahead, then.

7 MS. MORRIS: As soon as I hear what number we should  
8 mark this as, I will mark it and present it to you. It will be  
9 marked as Plaintiffs' Exhibit 2735.

10 THE COURT: Okay. Could I see it for just a second?  
11 You mentioned 20 percent twice. I don't understand the  
12 distinction there.

13 MS. MORRIS: Yes. So there is both an -- so there's a  
14 20 percent pay raise for security staff. That is one line item.

15 THE COURT: What is security staff, as far as you know?

16 MS. MORRIS: It is not defined on this document.

17 But then two lines down from that it indicates 500  
18 additional correctional officers for half the year. And then  
19 the next line is 20 percent pay raise for them as well.

20 So I would say that -- the way I would read that would  
21 be that the security staff are the correctional officers and  
22 correctional staff that exist already, but that would be my best  
23 guess based on reading the document.

24 May I approach?

25 THE COURT: Yes.

1           In that letter that was at issue the other day when the  
2 commissioner came to the Court, where did the SPLC get that 20  
3 percent figure? Do you know?

4           MS. MORRIS: That same spreadsheet. That spreadsheet  
5 has been available for quite a while. We certainly had none of  
6 the information that has been injected into the debate in this  
7 courtroom today.

8           THE COURT: Go ahead.

9           MS. MORRIS: What we have now seen is that there is a  
10 disagreement, a pretty strong disagreement, between the findings  
11 of the experts that were hand chosen by the Department of  
12 Corrections as to how much it will cost to hire people to bring  
13 the Department of Corrections into compliance with the  
14 Constitution and into compliance with your order versus what the  
15 state personnel board believes is necessary in order to -- I'm  
16 not sure what the reasoning behind the state personnel board's  
17 decision-making process is, because we have not -- that has not  
18 been shared.

19           But so where we are right now is we are looking at how  
20 much should some public employees be paid. That is a  
21 legislative question. It is something that the legislature  
22 should have all of the information in order to make an  
23 informed -- to debate and then have an informed decision-making  
24 process.

25           It appears that the legislature -- it's somewhat

1 difficult to tell from what's been said, but it appears that the  
2 legislature does not know what the -- what the experts chosen by  
3 the Department of Corrections found as far as what was needed in  
4 order to meet the requirements of this Court's order. That is  
5 all information that should be before the legislature, and it  
6 should be before the legislature in time that the legislature  
7 can absorb it, can debate it, can think about it, and can make a  
8 reasoned, informed decision. That's what democracy is all  
9 about.

10 We would also ask that the transcript of this  
11 proceeding today be unsealed, because, again, what we're talking  
12 about is how much public employees should be paid. The  
13 legislature should know. The taxpayers should know.

14 A couple other points that I would like to make are  
15 that, first, we don't know much of anything about the reasoning  
16 that went into what the state personnel board did. We haven't  
17 seen any documentation from them. They have indicated that  
18 other states pay more for their correctional officers. We don't  
19 know what the basis --

20 THE COURT: No. I think --

21 MS. MORRIS: I'm sorry. We pay -- you're correct.  
22 That we pay more than other states.

23 First, we don't know that because we haven't seen the  
24 data. But secondly, it's irrelevant. The situation that we  
25 have here is that ADOC has not been able to staff its prisons.

1 It is running somewhere around 30 percent of what they need.  
2 Clearly the determinations that have been made to date, which  
3 presumably were made with the approval of the state personnel  
4 board, were not adequate in order to attract people to come and  
5 work in the Department of Corrections.

6           The other point that I'd like to make about the amounts  
7 of money that are being discussed and the process that we're  
8 talking about. A year and a half ago, the Department of  
9 Corrections put together a plan. They said, we want to have  
10 Dr. Condrey do a report on salaries, and then we want to have  
11 Warren Averett do a second report that will figure out how  
12 exactly we get to the numbers of staff that we need.

13           They agreed to pay over half a million dollars for  
14 those two reports. And we are now a year and a half later.

15           They proposed the reports. They proposed the timing of  
16 the reports. They built into the time frame a month for them  
17 to -- for the Department of Corrections to come forward with any  
18 alternative mechanisms besides what the Warren Averett report  
19 said for reaching the amount -- for reaching the staffing levels  
20 that were required by the Court, and they were required to  
21 implement by December 1st.

22           And we're hearing today that they're not implementing.  
23 Quite the contrary, they have come up with a whole different set  
24 of numbers that is very far away from what both Dr. Condrey and  
25 the Warren Averett people came up with.

1           We learned today that Warren Averett suggested that  
2 the starting pay grade for a CO, a correctional officer, should  
3 be 73 or 74, and that that would be a starting salary at around  
4 \$40,000 a year. Dr. Condrey said that the starting pay grade  
5 should be 72-4 -- so I believe that's sort of midway in the 72  
6 range -- and that that would be a starting salary at that time  
7 of around \$38,000 a year.

8           And now we've learned that what has been agreed to,  
9 without seeking any relief from the Court from the process that  
10 the Department of Corrections asked for and was ordered to  
11 implement, is a pay grade of 67, which is 31,000 as a starting  
12 salary. That is not a large jump over where they are currently.

13           The Department of Corrections is in a very serious  
14 crisis. It has extraordinary understaffing, leading to  
15 extraordinary violence, extraordinary danger, and, as we saw  
16 over the last two weeks, an extraordinary rate of suicide.

17           They should not be able to hide behind some concern  
18 that legislators might get upset if they were to be told how  
19 much they actually need to spend. They should not be allowed to  
20 hide behind a seal to keep the information from the public and  
21 from the legislators about how much it's actually going to cost  
22 to solve the problem, according to their own experts.

23           I can also address the morale question.

24           THE COURT: Yes.

25           MS. MORRIS: So trainees know what they're being paid,

1 and they know how much -- they know what they're expected to be  
2 paid as they move forward. They can look at the Condrey report  
3 and see that at least one of defendants' experts thinks they  
4 should be paid a lot more.

5           They can find out what other people are being paid.  
6 The information about what other entities are being paid is  
7 publicly available. The idea that seeing in the Warren Averett  
8 report that yes, in fact, they really are underpaid, but look,  
9 they're going to be paid more, there is a proposal that the ADOC  
10 is fighting for, that the ADOC has been ordered to that will  
11 result in them getting a lot more money, that would be a morale  
12 boost.

13           Seeing that, in fact, ADOC will not fight to do the  
14 very thing that it has been ordered to do, which is to implement  
15 their expert reports, that's a morale -- that will harm morale.  
16 Because that will make it clear that you're not going to get the  
17 salary increase that defendants' own experts have indicated is  
18 necessary.

19           So I think that's highly likely to -- like the fact  
20 that we have to be having this discussion seems to me like a far  
21 greater harm to morale than if the ADOC were to do what it has  
22 already been ordered to do. And that is to work really hard to  
23 get the salaries that were ordered by the experts that they  
24 chose, who spent a year doing an analysis, and that the Court  
25 ordered to be implemented.

1 THE COURT: Thank you. Anything else from anyone? Any  
2 other evidence?

3 MR. DORR: No, Your Honor.

4 THE COURT: Let me ask you this question about the  
5 morale issue. Why isn't the solution to the morale issue not to  
6 keep the report secret, but, rather, to simply give the pay  
7 increases that the officers think they should have in order to  
8 stay in their positions?

9 MR. DORR: Well, in a perfect world, Your Honor, that  
10 is what would happen. But that's not the world in which we  
11 operate. As you've heard this morning, there are serious  
12 concerns and differences of opinion that are being channeled and  
13 marshaled through this process.

14 THE COURT: And I guess my second question would be if  
15 the correctional officers will suffer a morale problem, why  
16 shouldn't they know what's going on so that they can tell the  
17 legislature, if you don't give us this, we're going to quit?  
18 Which would actually put more pressure, arguably, on the  
19 legislature. In other words, why shouldn't that issue just be  
20 part of the public debate?

21 MR. DORR: That's a very good question, and I assume  
22 that it's one that was part of the analysis that's been done as  
23 part of the process that's brought us to where we are today in  
24 the legislative process, Your Honor.

25 THE COURT: Anything else?

1 MR. DORR: No, Your Honor.

2 THE COURT: Anything else?

3 MS. MORRIS: No, Your Honor.

4 THE COURT: Thank you. Court's in recess.

5 (Brief pause)

6 THE COURT: Counsel, we forgot to go over the report  
7 itself.

8 There are two things that I'd like to take up.

9 Does personnel need to be here, or can we just let them  
10 go? I'll ask defense counsel. Do you want personnel to stay,  
11 or do you want to let them go?

12 MR. REEVES: I think we know what, in the report  
13 itself, is important to y'all. So you can be released.

14 MS. BYRNE: All we're concerned about is the  
15 compensation portion, Your Honor.

16 THE COURT: So you would like to stay?

17 MS. BYRNE: No, sir. We'd like to leave.

18 THE COURT: Okay.

19 The second matter is it's now 12:20. We can do this  
20 after lunch. So I would like to come back at 1:15, and we'll go  
21 over the report. Okay? Very good. And personnel is excused.

22 MS. BYRNE: Thank you, Your Honor.

23 (Recess was taken from 12:19 p.m. until 1:24 p.m., after  
24 which proceedings continued, as follows:)

25 THE COURT: We're still in camera.

1 I'd like to start with page 10 of the report, document  
2 number 2150. On CM/ECF, it's actually page 11, but I'm going to  
3 use the pagination of the report rather than the pagination on  
4 CM/ECF.

5 Hold on. Let me get the notes here.

6 Now, here we have the recommended and actual staffing  
7 levels and inmate to correctional officer ratios for major  
8 prisons. And that information, I believe, is redacted.

9 My question is, is this information already part of the  
10 public knowledge? And if it is not, why should it be redacted?

11 MR. DORR: Your Honor, it may be that that is already  
12 within the public domain. I'm not positive.

13 But in either event, I'm authorized to tell you that we  
14 have three or four pages here that are consistent with what I  
15 told you earlier, that we are not --

16 THE COURT: Okay. Why don't you tell me --

17 MR. DORR: We don't have a problem with. So if you'll  
18 let me give those.

19 THE COURT: Right.

20 MR. DORR: They are pages 10, 24, 33, and 35.

21 THE COURT: Okay. 10, 24, 33, and what?

22 MR. DORR: And 35.

23 THE COURT: And 35.

24 MR. DORR: And if I've looked at the document  
25 accurately, that covers all of the redacted pages up through

1 that point. And our first point that we feel like you may want  
2 to talk with us about is over on page 71.

3 THE COURT: That's what I show. The report is, then,  
4 essentially a public document up through page 70.

5 The first redacted page is page 71. Okay. That makes  
6 it a lot easier. Let me see what we have here.

7 I believe the redactions recommend increase in CO  
8 trainee salaries; recommend a new -- or recommend new training  
9 and retention bonuses. The redactions also show the current  
10 amount of the bonuses for referring someone for employment who  
11 is hired and the recommended increase in the referral bonuses.

12 Initially I was going to ask you why isn't this part  
13 of the public domain, because the SPLC letter as well as  
14 Plaintiffs' Exhibit 2735 arguably reflect a 20 percent pay  
15 increase recommendation to the legislature by the ADOC. Why  
16 wouldn't that already be covered here?

17 MR. DORR: Your Honor --

18 THE COURT: Or another way of putting it, why isn't  
19 this information part of the 20 percent increase in document  
20 number 2735?

21 MR. DORR: As I understood the presentation from the  
22 state personnel board representative this morning, it's not as  
23 simple as just a pure 20 percent figure; that it's a good bit  
24 more complicated than that. And the nuances and the specifics  
25 of that go into these figures and recommendations here. So the

1 department's position is that it is not already in the public  
2 domain, and these are squarely within the sensitive facts that  
3 we are -- that were the basis of our argument this morning that  
4 they should not be released.

5 THE COURT: What does the 20 percent in document number  
6 2735, that is, Plaintiffs' Exhibit -- what does that 20 percent  
7 reflect that Ms. Morris mentioned earlier?

8 MR. REEVES: We understood that 20 percent to reflect  
9 the payroll, the personnel costs, the increase for that for this  
10 next fiscal year. Not an across-the-board 20 percent increase  
11 in pay for all security officers. It was a shorthand to try to  
12 provide a little context to what was being sought, but it was no  
13 detail like as reflected in the Warren Averett report on things  
14 like the increase in compensation by the two steps or the 5  
15 percent or the bonus structure that they put in place.

16 THE COURT: Well, the document says 20 percent pay  
17 raise for security staff. And I'm quoting there. I assume that  
18 is for correctional officers; is that correct?

19 MR. REEVES: Again, it's nuanced. I think they're  
20 referring to correctional officers, but not, again, across the  
21 board. There is a 2 percent cost of living adjustment that is  
22 across the board, but the rest of it depends on where you are in  
23 the structure of security staff.

24 THE COURT: But the security staff, we are talking  
25 about correctional staff?

1 MR. REEVES: Yes, sir.

2 THE COURT: Right. Okay. So we already know that  
3 ADOC, at least in this document, has requested a 20 percent  
4 increase, however you want to figure it. Why should I keep this  
5 other information private, then, in light of the fact that ADOC  
6 is at least requesting something, that is, a significant  
7 increase? Why should I keep the nuances or the underlying data  
8 or the explanations -- why should they remain private when it's  
9 already been made public that ADOC wants this increase?

10 MR. DORR: Well, the document you're referring to does  
11 give information about what the department is proposing. It  
12 doesn't go into the details about what the Warren Averett report  
13 recommends. And the differences between the two are the areas  
14 where we're trying to keep that sealed.

15 THE COURT: Where did you find your document,  
16 Ms. Morris?

17 MS. MORRIS: On the legislative website. I believe  
18 it's called ALISON.

19 THE COURT: Where?

20 MS. MORRIS: On the legislative website. I believe  
21 it's called ALISON, but I'm not certain. It was not me. It  
22 was --

23 THE COURT: Is this a document that says ADOC fiscal  
24 year 2020 budget requests?

25 MS. MORRIS: Yes.

1 THE COURT: Can you pull that up in any way on the  
2 screen?

3 MS. MORRIS: Could we have TrialPad?

4 THE COURT: Where is the cover?

5 MS. MORRIS: We don't have a cover page for it.

6 THE COURT: Oh, I meant pull it up from the website  
7 itself. Not the document.

8 MS. MORRIS: The person who pulled it off the web is  
9 not here.

10 THE COURT: Pardon me?

11 MS. MORRIS: The person who pulled it off the website  
12 is not here. So I think we can, but it may take a little while.

13 THE COURT: What did you say, now?

14 MS. MORRIS: The person who got it off the website is  
15 not in the courtroom today.

16 THE COURT: Right.

17 MS. MORRIS: And so we can find it, but it may take a  
18 little while.

19 THE COURT: Why don't we come back to it, then? I'd  
20 like to just see the context in which it exists on the website.  
21 So if someone can pull it up, the whole document, off the  
22 website. Just take your time. We can come back to it.

23 But let me see if I have any more questions.

24 Two questions. Earlier Mr. Lunsford said -- I think  
25 he was talking about with regard to the 20 percent, or maybe it

1 was the Warren Averett report, that, quote, we cannot leave this  
2 room -- but that it cannot leave this room that ADOC was asking  
3 for the most -- and I'm quoting again -- the most monumental pay  
4 raise ever, end of quote.

5 He seemed to be more concerned about the fact that they  
6 were asking for this big pay raise, when, in fact, it's already  
7 out there that they were asking for a 20 percent pay raise. So  
8 I'm trying to understand why any of it should be kept secret;  
9 why the details need to be kept secret.

10 MR. DORR: Well, I go back to my point that to the  
11 extent there are references in this document to the  
12 recommendations, that that's something different than what's in  
13 the department's budget proposal.

14 THE COURT: Right. And to the extent that the actual  
15 request as represented by the personnel board is less than the  
16 20 percent set forth in document number 2735, isn't that really  
17 a compelling reason for the public to know that?

18 MR. DORR: Well, as I understand the explanation, the  
19 20 percent is the cost to the department of effecting the raises  
20 that are being proposed under the new budget.

21 THE COURT: I thought at one point also the personnel  
22 department says, they're requesting a 20 percent pay raise. We  
23 can't agree to that.

24 MR. REEVES: Your Honor, I think she suggested that  
25 when you take -- the 20 percent takes into consideration the

1 compensation increase, plus the cost of benefits for that. And  
2 so I think she was saying if it was a true 20, plus the cost of  
3 benefits on top of that, that was something that wouldn't be  
4 doable.

5 THE COURT: Yes.

6 MS. MORRIS: I think it's important to keep in mind the  
7 context that we're looking at. The Condrey report recommended  
8 an increase for starting COs.

9 THE COURT: Let's back up a bit here to refresh my  
10 memory.

11 MS. MORRIS: Yes.

12 THE COURT: What is the Condrey report and what is the  
13 Warren Averett report and how do they differ?

14 MS. MORRIS: So the Condrey report was put together --  
15 it was the first of the various reports that defendants said  
16 that they wanted to have done, and it was looking at salaries  
17 only. It was making an assessment of what would be a salary or  
18 a salary structure that would bring ADOC to a place where it  
19 would be competitive for hiring. And it's in the record at  
20 docket number 1725-1. And what they were suggesting -- what  
21 Dr. Condrey suggested was taking the correctional officers from  
22 starting at just under \$30,000 a year, \$29,954, to \$38,347.

23 THE COURT: Who's suggesting this?

24 MS. MORRIS: Dr. Condrey.

25 THE COURT: Is that public knowledge?

1 MS. MORRIS: That is public knowledge. That was  
2 publicly filed. All of the salary increases that Dr. Condrey  
3 recommended were publicly filed. And they are far more specific  
4 than anything in the Warren Averett report.

5 So Dr. Condrey -- like he recommended an increase in  
6 salary for people at -- like starting out correctional officers  
7 of approximately 28 percent.

8 Warren Averett, we learned this morning, was  
9 recommending even a slightly higher starting rate for  
10 correctional officers of 40,000, which I think would put it at  
11 about a 30 to 32 percent increase.

12 THE COURT: And you're saying that the public already  
13 knows about the Condrey report's recommendation of 38,000?

14 MS. MORRIS: Correct.

15 THE COURT: So what we're talking about here is just  
16 that Warren Averett is now recommending 40 plus?

17 MS. MORRIS: Correct.

18 And I think it's also really important for the public  
19 to understand the difference between what the experts chosen by  
20 the Department of Corrections recommended -- so that's 38 to  
21 \$40,000 as a starting salary and an increase of 28 to 32 or so  
22 percent -- compared to what was requested by the Department of  
23 Corrections, which was an increase of 20 percent, according to  
24 the spreadsheet -- as compared to what is now being sought,  
25 which my understanding from what we heard from the department of

1 state personnel or board of state personnel is that they are  
2 seeking to start these people at somewhere between 31 and 33.  
3 So an increase of less than ten percent.

4           And I think it's important that the legislators  
5 understand, not just what is being asked of them right now, but  
6 how that compares to what the experts recommended and what the  
7 ADOC sought.

8           THE COURT: Let's break that up into two issues. The  
9 first one is if the Condrey report is already out there, why are  
10 we concerned about the Warren Averett report? It just adds to  
11 it, but that there is a really significant request by an ADOC  
12 expert already out there. So to the extent that Mr. Lunsford's  
13 concerned or you-all are concerned that this big increase is  
14 being sought, Condrey's already made it public and it's out  
15 there. And what we're talking about is \$3,000. Relatively  
16 speaking -- and I emphasize relatively speaking -- that's not  
17 that much difference. That is a big difference over 31,  
18 but -- but anyway, so what's your --

19           MR. DORR: My understanding is that the earlier of the  
20 two reports addresses salary only. The Warren Averett report  
21 goes beyond that. It gets into --

22           THE COURT: Yeah, but the part that goes beyond, you're  
23 not seeking to -- the part that goes beyond just salaries you're  
24 not seeking to seal. You're seeking to seal the actual salary  
25 request.

1 MR. DORR: The bonus structure is part of it.

2 THE COURT: Right. So, again, my question is if -- I  
3 guess, to use a metaphor -- and I'm somewhat hesitant because  
4 I'm not a farmer -- but if, you know, three quarters of the  
5 horse is out of the barn, you know, or if all but the tail is  
6 out, why do we worry about the tail?

7 MR. DORR: They are different -- Your Honor, they are  
8 different numbers. They are higher numbers, and there are other  
9 components there. Like I said, the bonus structure that's not  
10 covered in the earlier report.

11 THE COURT: Anything else?

12 MS. MORRIS: I would add on the bonus structure,  
13 they're asking for a bonus that is -- the Warren Averett report  
14 proposes a bonus between 2 and \$10,000, and the bonus structure  
15 that we were told about this morning that they are requesting  
16 is 7500. So it's right there in the middle of that bonus  
17 structure. So I don't see how that information that there was a  
18 bonus structure and what it was is any -- it should be  
19 considered sensitive.

20 MR. DORR: Your Honor, if I could just respond to that  
21 quickly. You know, the distinction there may not be significant  
22 or apparent to anyone in this room. But outside of this room,  
23 among the people who have to try to make this work and get this  
24 budget passed, it was significant. And that's what we're here  
25 trying to communicate today.

1 MS. MORRIS: But it could also be significant to the  
2 legislators who have to make the decision as to how much people  
3 should be paid and how the public funds should be spent and  
4 whether or not ADOC is doing enough to address its gross  
5 understaffing problem.

6 THE COURT: In reaching its recommendations, did  
7 Condrey and Warren Averett consider the special circumstances  
8 within the department itself, like the conditions under which  
9 the officers worked and all that?

10 MS. MORRIS: I do -- okay. Dr. Condrey did not. He  
11 did indicate that he was making recommendations that were  
12 slightly higher than the minimal baseline of competitive,  
13 because he understood that a lot of hiring needed to be done  
14 quickly.

15 THE COURT: That's the time factor.

16 MS. MORRIS: Yes. Yes.

17 THE COURT: It's not a matter of just competing, it's a  
18 matter of hiring a whole army of officers within a very short  
19 period of time.

20 MS. MORRIS: Yes.

21 THE COURT: Is that the point Condrey makes or Averett?

22 MS. MORRIS: Yes. Warren Averett discussed a lot of  
23 different aspects of hiring. I am not certain whether or not  
24 they talked much about the conditions in the department.

25 MR. REEVES: I think, yes, throughout the report they

1 discussed the conditions and the challenges that the  
2 department's going to face in hiring a large --

3 THE COURT: Who, Warren Averett?

4 MR. REEVES: Yes, sir.

5 THE COURT: Where do they discuss the challenges?

6 MR. REEVES: I know in the -- I want to say it was the  
7 introduction. I think they start off in the introduction by  
8 talking about the challenges in managing prisons, understaffing,  
9 overcrowding, and those things at the very beginning of their  
10 report.

11 THE COURT: Anything else about page 71?

12 MR. DORR: No, Your Honor.

13 THE COURT: Anything else about page 71 from the  
14 plaintiffs?

15 MS. MORRIS: The only thing I would add is that the  
16 correctional officer trainee salaries that are redacted on 71  
17 are listed on page 33, which is one of the pages they said did  
18 not need to be redacted.

19 MR. DORR: She's correct about that, Your Honor. There  
20 is a reference to the current trainee salary and also a current  
21 bonus there, and those are covered in the other pages that we  
22 agreed --

23 THE COURT: So on page 71, then --

24 MR. DORR: The reference --

25 THE COURT: -- the redacted parts, what parts are at

1 issue, then?

2 MR. DORR: The reference to \$29,371 under 1.1, and the  
3 reference to a \$500 bonus under Section 1.3.

4 THE COURT: Okay. Those you're not contending should  
5 be kept sealed?

6 MR. DORR: Correct.

7 THE COURT: You agree to their being unsealed?

8 MR. DORR: Yes, sir.

9 THE COURT: I think the next page is page 74. Am I  
10 correct?

11 MR. DORR: Yes.

12 THE COURT: Now, is this -- we're talking about the  
13 figure of 33 to \$35,000?

14 MR. DORR: Yes, Your Honor.

15 THE COURT: What's that figure represent?

16 MR. DORR: It's the recommended compensation for  
17 correctional officers.

18 THE COURT: Okay. And this is not in the public  
19 domain?

20 MR. DORR: No, Your Honor.

21 THE COURT: Why should I keep it confidential?

22 MR. DORR: This falls into the same category as the  
23 other recommendations we've discussed.

24 THE COURT: What's the plaintiffs' response?

25 MS. MORRIS: It is the -- it's the same issue. This

1 information has already -- very similar numbers have already  
2 been put out in terms of the -- in the Condrey report with  
3 proposals regarding -- with Dr. Condrey's recommendations for  
4 pay for correctional officer trainees and correctional officers.

5 THE COURT: What does he say?

6 MS. MORRIS: So for correctional officers, he  
7 recommended the proposed pay start at \$38,347. And that for  
8 correctional officer trainees, the proposed pay start at  
9 \$36,489.60.

10 THE COURT: So Warren Averett here is actually  
11 recommending a lower amount.

12 MS. MORRIS: I have to say I'm fairly confused by  
13 what's going on with the Warren Averett report, because we were  
14 informed this morning that Warren Averett was proposing a 73  
15 or 74 pay grade for starting correctional officers, and that  
16 would put it at between 37 and 40,000. So I'm confused by what  
17 this number is.

18 But here, this number is lower than what Condrey --  
19 what Dr. Condrey recommended.

20 THE COURT: Let me back up again. Why did they need  
21 the Warren Averett report if they already had Dr. Condrey's --  
22 or the Condrey report?

23 MS. MORRIS: That would be a question for defendants.  
24 We did not really ever understand that. But they did pay 400 --

25 THE COURT: You didn't understand why they needed the

1 second --

2 MS. MORRIS: No.

3 THE COURT: -- recommendation when they already had  
4 one?

5 MS. MORRIS: Correct. And it cost them \$450,000 and  
6 another six months.

7 THE COURT: I'm just trying to figure out what the  
8 Warren Averett report added that was not already in the Condrey  
9 report, other than perhaps different figures.

10 MS. MORRIS: It definitely adds some other proposals  
11 besides salary, such as how to go about doing marketing and  
12 recruiting. So there's -- there is more -- it covered more  
13 areas than the Dr. Condrey report did.

14 THE COURT: So it went into more how to go about  
15 getting people other than just raising salaries.

16 MS. MORRIS: Correct.

17 THE COURT: But it also repeated the salary proposals  
18 that were in the Condrey report, although their recommendations,  
19 that is, the Warren Averett report recommendations, were  
20 different.

21 MS. MORRIS: The Warren Averett report salary  
22 recommendations are not broken down by individual position.  
23 They are broken down by individual position only for  
24 correctional officer trainees. And then beyond that, they give  
25 a -- they give ranges of how much it's going to cost overall to

1 increase the salaries. It's possible there's more information  
2 that's been provided to defendants, but we haven't received it.

3 THE COURT: Okay. You were going to say something?

4 MR. REEVES: I was just going to say that the Warren  
5 Averett report took a more holistic view, I guess, of the  
6 staffing issue. It considered Dr. Condrey's report, and they  
7 did their own research and came to their own conclusions  
8 regarding salary in terms of where the appropriate place to set  
9 salaries for correctional officer trainees and correctional  
10 officers.

11 THE COURT: Let me rephrase the question that I was  
12 sort of posing at the beginning. If we already have salary  
13 proposals out there in Condrey, what difference does it make if  
14 we now have salary proposals by Warren Averett? I mean, the  
15 idea that we're talking -- that there are recommendations for  
16 increased salaries is already on the public landscape. Why does  
17 it make a difference that we get a second expert who just  
18 happens to differ a little? The argument might have more  
19 credence if it hadn't been out there already with Condrey. But  
20 now that it's already out there, why do you want to hide one  
21 expert and not hide the other?

22 MR. REEVES: So Dr. Condrey took a different  
23 perspective. And, yes, he came up with numbers that were higher  
24 than traditionally provided for correctional officer staff.  
25 Again, the Warren Averett approach was slightly different, and

1 it had additional recommendations. And we're saying those are  
2 the ones that the department has pursued, and those are the  
3 particulars of what they've been negotiating and working with  
4 the state personnel board and other stakeholders in trying to  
5 get passed in the upcoming legislation.

6 And that's the -- the real risk here, Your Honor, is  
7 you let all this out, and an agreement that exists going forward  
8 with state personnel and others may fall apart, and we may not  
9 get the approval of the legislature.

10 THE COURT: Let me just ask my question. Why doesn't  
11 it fall apart due to Condrey?

12 MR. REEVES: You heard the state personnel's  
13 perspective on the accuracy or validity of the methodology  
14 utilized by either Dr. Condrey or the Warren Averett report.

15 THE COURT: But what I'm saying, though, is if the sky  
16 is going to fall, why doesn't it fall because of Condrey, which  
17 is already out there? What difference does it make now whether  
18 we add Warren Averett to it?

19 MR. REEVES: Sure. Because I believe the state  
20 personnel folks would say that they've dealt with the Condrey  
21 report with the other agencies in the state, and they haven't  
22 addressed the Warren Averett report with those folks.

23 THE COURT: Do you want to add anything?

24 MS. MORRIS: No.

25 THE COURT: Anything on page 74 that I haven't heard or

1 with regard to page 74 that I haven't heard?

2 I think the next page is page 80. Now, what are the  
3 numbers on page 80? Sort of summarize them for me.

4 MR. DORR: These are comparisons to correctional  
5 officer compensation in Alabama, showing the amounts and  
6 percentages, the contrast between the Alabama Department of  
7 Correction employee and then others. And these are the figures,  
8 Your Honor, that we are concerned about the effect on morale  
9 among employees.

10 THE COURT: Right. Does Condrey do a similar  
11 comparison?

12 MS. MORRIS: No, he does not.

13 THE COURT: So you're concerned that it will affect  
14 morale because -- what? Why will it affect morale? Why will  
15 revealing these numbers affect morale, these comparative  
16 numbers?

17 MR. DORR: To either inform or highlight the fact that  
18 pay for an Alabama Department of Correction trainee is 19  
19 percent below the market average. These others have various  
20 percentages below the market average. We're just concerned  
21 about the deterrent effect that may have on potential recruits.

22 THE COURT: Well, the fact that the current trainee  
23 position is 19 percent below the market average could depress  
24 the department's effort to recruit? Is that what you're saying?

25 MR. DORR: And retain current employees perhaps.

1 THE COURT: And retain current employees.

2 What are the numbers below that? Why should I keep  
3 them secret, the ones in the chart, the little box?

4 MR. DORR: Well, as I understand this, those  
5 percentages are just further evidence of the disparity between  
6 the pay that Alabama employees receive and what the market index  
7 is for those types of positions.

8 THE COURT: So, for instance, a correctional officer  
9 gets approximately \$35,000, whereas a deputy sheriff gets  
10 \$38,400.

11 MR. DORR: Yes, sir.

12 THE COURT: And the other figures you seek to keep out  
13 are about 21 percent to 13 percent. What are those numbers?  
14 What do those numbers mean?

15 MR. DORR: Again, just a comparison about the pay level  
16 for COs with degrees being anywhere from 13 to 21 percent below  
17 the entry pay level for similar employees in other areas.

18 THE COURT: Do you want to respond to all of this?

19 MS. MORRIS: Yes.

20 So the Warren Averett report in the publicly filed  
21 portion of it confirmed that CO pay is below other law  
22 enforcement agencies requiring similar qualifications.

23 THE COURT: Where does it say that in the --

24 MS. MORRIS: On page 33. So on page 33, there's -- in  
25 the paragraph that says -- under compensation, the very last

1 line, the very last sentence is "Additionally, CO pay is below  
2 other law enforcement agencies requiring similar  
3 qualifications."

4           So COs know how much they're being paid. And they  
5 know -- they have had now confirmation, in case they needed it,  
6 that they are, in fact, being paid less than other law  
7 enforcement agencies requiring similar qualifications.

8           Maybe ADOC is embarrassed at how much less they're  
9 paying them. That is not a justification for keeping this  
10 information -- in fact, as Your Honor suggested, if the officers  
11 knew that they were being paid so far below what other people  
12 were being paid with similar qualifications, they could well be  
13 pressuring the legislature.

14           The idea that they can know that they're paid below  
15 what other people get paid and know how much they're being paid,  
16 and that somehow that's not going to destroy their morale, but  
17 finding out just exactly how much less they're paid makes no  
18 sense.

19           THE COURT: What about the other figures on the page?

20           MS. MORRIS: I think the argument has just always come  
21 back to the same thing of this is information about how much  
22 people should be paid. How much this expert that the defendants  
23 chose and that the defendants provided information to -- this is  
24 what they said was necessary. This was the process that  
25 defendants said was necessary to figure out how to go about

1 staffing their facilities.

2           They should be required to comply with that process,  
3 since they didn't ask for any relief from it. And they should  
4 be presenting the information about what their experts said they  
5 need to do in order to resolve the constitutional violation to  
6 the legislature so the legislature has an understanding of  
7 whether what it's being asked to do will, in fact, address the  
8 problem.

9           THE COURT: Let me ask defense counsel this. Looking  
10 at the box, the pay for deputy sheriff, for police officer, and  
11 for trooper, those are already in the public domain because  
12 those figures have been released through this document; right?  
13 Am I correct?

14           MR. DORR: I don't have a basis to dispute that, Your  
15 Honor.

16           THE COURT: Well, they're not part of the redacted  
17 information, so they're out there already. So all an officer  
18 has to do is just look at his own pay and compare it with this  
19 document and know that he's making a heck of a lot less.

20           MR. DORR: That's true, Your Honor.

21           THE COURT: What's the purpose, then, about morale  
22 here? The fact that all these other people are being paid more  
23 is there for every officer to see. And as I said, all he or she  
24 has to do is simply look at their own paycheck.

25           MR. DORR: Well, that ability, to the extent it exists,

1 has been out there in the public domain prior to this. So to  
2 the extent there was some --

3 THE COURT: That's true, too. But I'm really getting  
4 at the thought that -- what you were saying that having it all  
5 in one place. But it's already all in one place, and what  
6 everybody else is making is already all in one place. The only  
7 missing factor is what is the correctional officer making, and  
8 they know that from looking at their paychecks. So where is the  
9 morale problem?

10 MR. DORR: All I can do is relay the concern that was  
11 expressed to me from Department of Corrections officials, that  
12 said that this information would create problems for them.

13 THE COURT: Let's move on to page 81.

14 MS. MORRIS: And if it is helpful, Your Honor, we've  
15 got it up on the screen.

16 THE COURT: What's this information on page 81,  
17 counsel?

18 MR. DORR: This is more of the same. Percentages of  
19 what Alabama employees are making compared to -- BOP is federal  
20 correctional officers.

21 THE COURT: Right. And, again, what everybody else is  
22 making as an alleged comparator is already out there. Because  
23 this page isn't made public, the only thing we've kept private  
24 is what the actual ADOC officers are making. And my question  
25 remains the same. We definitely know what they're making.

1 MR. DORR: Yes, sir. Your Honor, I think it's the  
2 compilation of the evidence here, these statistics.

3 THE COURT: What do you want to say in response?

4 MS. MORRIS: The arguments remain the same.

5 THE COURT: Okay. Page 82. Is that pretty much the  
6 same thing again? I guess this is more of a compilation of what  
7 has been portrayed earlier?

8 MR. DORR: Yes, sir. The arguments are the same from  
9 the department's perspective.

10 THE COURT: Now, this is a part that does maybe go into  
11 the issue of special circumstances. I'm just trying to read the  
12 paragraph. They do talk about the dangerous working  
13 environments. It does go on to talk about "Our analysis does  
14 support ADOC's employee input regarding their pay not  
15 compensating them for the challenging aspects of the job and the  
16 difficult working environment."

17 Anything else?

18 MS. MORRIS: No, Your Honor.

19 THE COURT: Why don't we move to page 83. What are  
20 these figures?

21 MR. DORR: This is another page of recommendations.

22 THE COURT: Do these recommendations appear elsewhere,  
23 either earlier in the report or in the Condrey report?  
24 Ms. Morris?

25 MR. DORR: Your Honor, I understand that they're very

1 similar to the ones that we've already gone through on page 71.

2 THE COURT: Do you have anything to add, then,  
3 Ms. Morris?

4 MS. MORRIS: One thing that is different on this  
5 particular page is that they are talking about a locality  
6 payment.

7 THE COURT: Yes.

8 MS. MORRIS: And then on this page and the next page  
9 they also start to talk about the overall cost that it would  
10 require to implement their proposals. Which, again, I would say  
11 it's essentially the same arguments, but the legislature should  
12 have that information.

13 THE COURT: I think the final page is page 84. What's  
14 that about? Same thing?

15 MR. DORR: Yes, Your Honor.

16 THE COURT: That's the payroll cost estimates for  
17 recommendation B.

18 What was your thinking in allowing much of the report  
19 actually to be made public and just keeping these figures out --  
20 or private?

21 MR. DORR: Your Honor, I believe we were trying to be  
22 as streamlined as possible --

23 THE COURT: Because I guess another way of putting it  
24 is the commentary talks about ranges and significant ranges and  
25 all of that. So the observations are there, it's just that we

1 don't have the necessary specific figures. If things like  
2 morale and things like just concern about what the department is  
3 asking for -- the commentary is already out there. All I would  
4 be keeping private is just the -- you could almost call it the  
5 footnotes to the broad statements about what's needed as far as  
6 compensation goes.

7 MR. DORR: The figures themselves were significant to  
8 someone to ask for redaction along the way.

9 THE COURT: Do you want to respond?

10 MS. MORRIS: The legislature is supposed to make the  
11 decisions as to how public funds are spent. And they need to  
12 know what the recommendations are in terms of dollar amounts,  
13 both overall but also for the individuals. And I think it  
14 should be made available to the legislature and the taxpayers  
15 they represent to know what is being debated and whether what is  
16 being proposed is going to address the problem.

17 MR. DORR: Your Honor, I would just say in response  
18 that that statement there sounds very desirable in the abstract.  
19 But I believe that Your Honor has seen this morning that we're  
20 not in an abstract situation, but a very specific one in which  
21 there are intense and delicate negotiations and discussions that  
22 have gotten us to this point. And respectfully, to disclose  
23 this information would threaten that delicate balance, and for  
24 that reason we continue to ask for redaction.

25 THE COURT: Were you able to pull up the --

1 MS. MORRIS: So we found it not on the legislative  
2 website, which is a difficult website to navigate. We did find  
3 it attached to an article on AL.com. Today we are not -- we've  
4 taken a couple of screen shots of how we go, but we can't  
5 live -- we can't pull it up live. But we've got screen shots  
6 that we can show you. So this was an AL.com article saying  
7 Alabama prisons seek 500 more officers, 20 percent raises. And  
8 then the numbers are available on this spreadsheet with a  
9 hyperlink. And then the hyperlink takes it to the spreadsheet  
10 that we showed you.

11 THE COURT: What's the date of the article?

12 MS. MORRIS: January 30th, 2019.

13 THE COURT: And the headline is 20 percent pay  
14 increases?

15 MS. MORRIS: Alabama prisons seek 500 more officers, 20  
16 percent raises.

17 THE COURT: Since we've seen that, I think you need to  
18 make that a part of the record as a document that is in the  
19 public domain.

20 MS. MORRIS: We can do that.

21 THE COURT: Why don't you mark it?

22 MS. MORRIS: Okay. And that will be -- I've given you  
23 the last exhibit, and so I don't know the number.

24 THE COURT: But that spreadsheet was the spreadsheet  
25 that we're already talking about?

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MS. MORRIS: Correct.

THE COURT: Anything else, counsel?

MS. MORRIS: No, Your Honor.

THE COURT: Very good. Well, go ahead and make that your next exhibit in line, and it's admitted.

MS. MORRIS: Thank you, Your Honor.

THE COURT: Thank you very much. Court's in recess.

(Proceedings concluded at 2:12 p.m.)

\* \* \* \* \*

COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of the proceedings in the above-entitled matter.

This 18th day of April, 2019.

/s/ Patricia G. Starkie  
Registered Diplomate Reporter  
Certified Realtime Reporter  
Official Court Reporter