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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**

**18 RECORDING at U 11:06 a m**

**APPEARANCES:**

**FOR THE PLAINTIFFS:**

**M. Miria V. Mirris  
M. C J. Sandley  
Attorneys at Law  
SOUTHERN POKERY LAW CENTER  
400 Washington Avenue  
Montgomery, Alabama 36104**

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**APPEARANCES, Continued**

2 **FOR THE PLAINTIFFS:**

**M. William Van Der Pol Jr.  
M. Ashley Austin  
Staff Attorneys  
ALABAMA DISABILITIES ADVOCACY PROGRAM  
P. O. Box 870395  
Tuscaloosa, Alabama 35487**

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4

5

6

7

**M. Aril A. Mujundar  
Attorneys at Law  
ZARZAR MUJUNDAR & DEBROSSE  
2332 Second Avenue North  
Birmingham Alabama 35205**

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**FOR THE DEFENDANTS:**

**M. Matthew Reeves  
Attorneys at Law  
MYNARD COOPER & GALE, P. C.  
655 Gallatin Street  
Huntsville**

**Huntsville COOPER . "R f\$**





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?

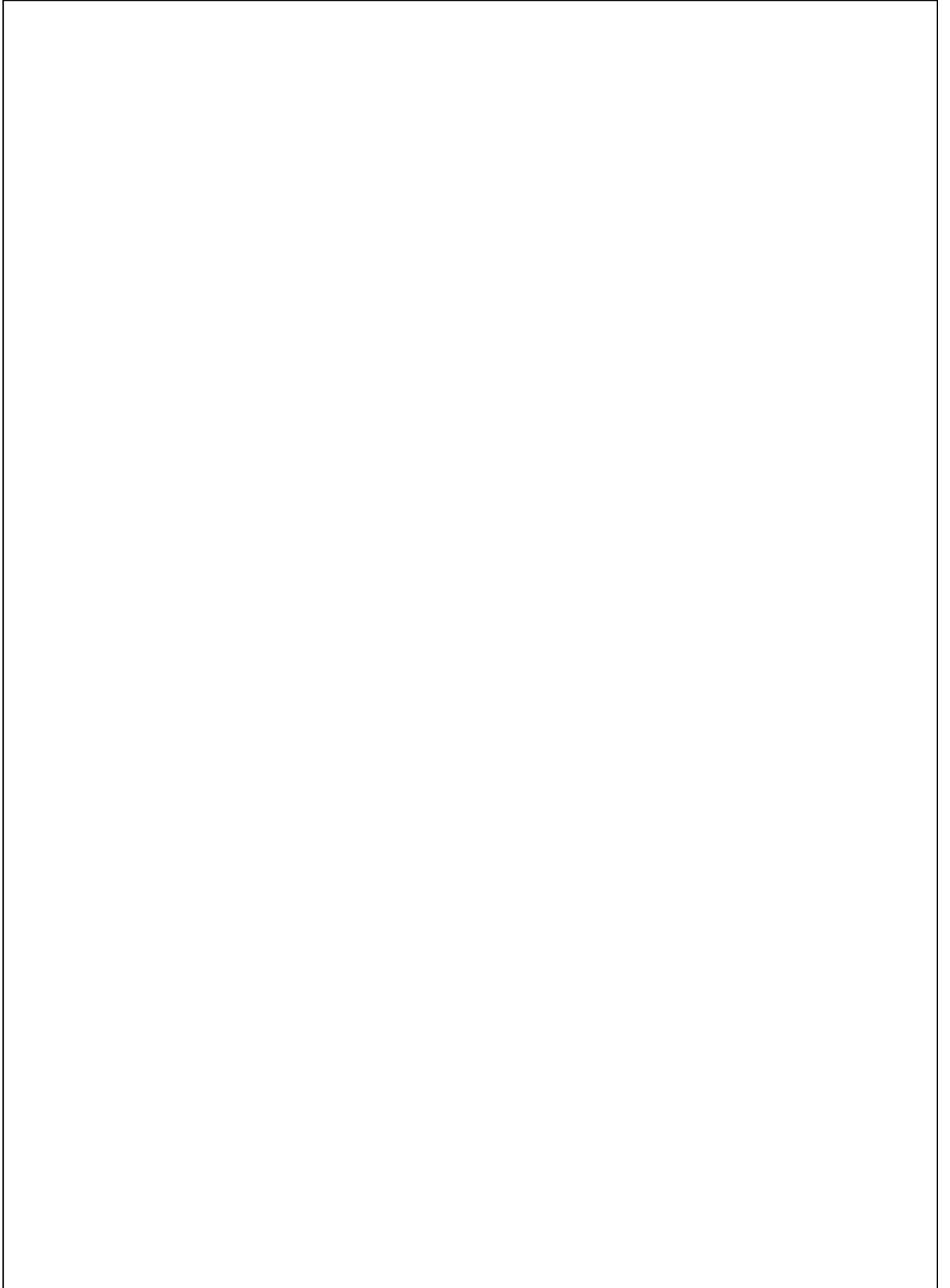
13 **MS. MORRIS:** You had indicated that you wanted some  
14 explanation as to why the things that defendants still seek to  
15 keep under seal should be under seal.

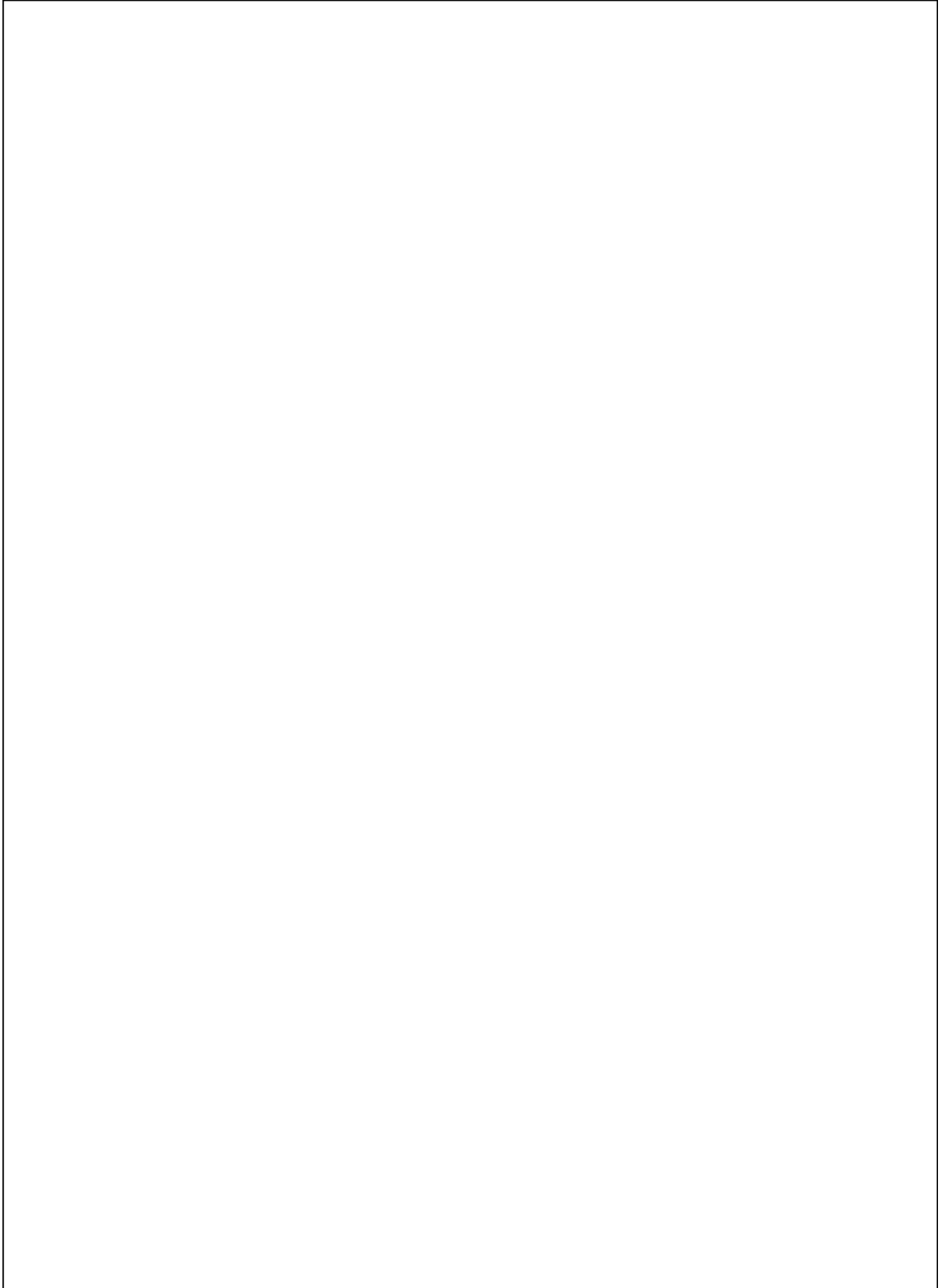
16 **THE COURT:** Oh, that is true. We were going to go  
17 through the document itself, weren't we?

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 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 notation 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**

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 CHAIR: 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.

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

3 THE CLERK 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 to



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**

**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,**



1 personnel board, our concerns with the Wirren 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 Wirren  
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 CURE: To what?

6           MS. BYRNE: Alabama law enforcement trooper.

7           THE CURE: 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.



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 MR. BYRNE: Yes.

8 THE COURT: Correctional officers will get two steps?

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

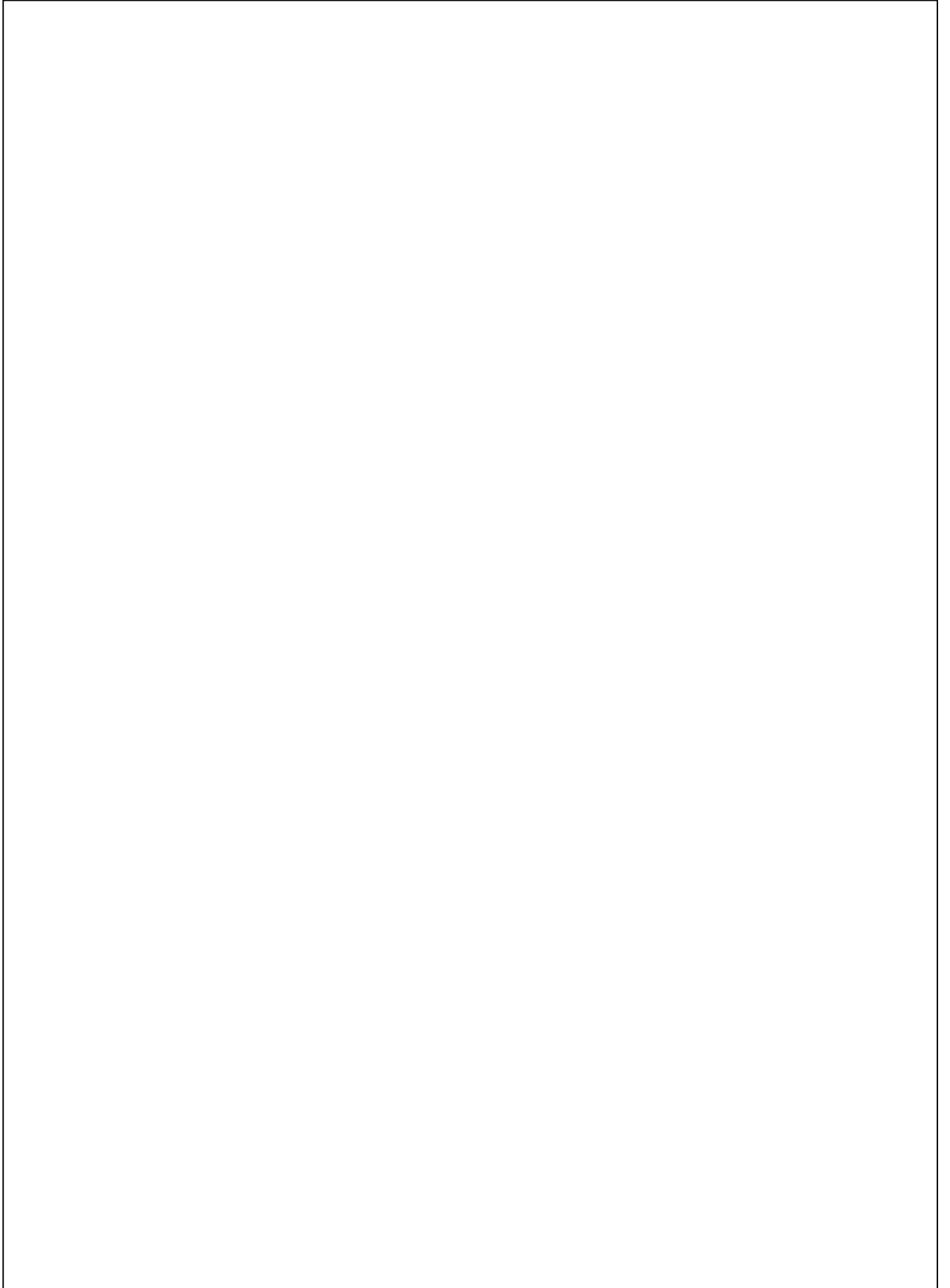
10 THE COURT: Which is 5 percent. So a correctional  
11 officer will get 2 percent plus 5 percent?

12 MR. 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 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 APCST standards for  
12 corrections officers versus regular law enforcement officers.

13 THE COURT What is APCST 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 MR. 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 MR. BYRNE: I'll be happy to answer that, Your Honor.



1           **THE COURE**   Thank you

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

4           **THE COURE**   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 COURE**   Are those recommendations in the  
9 legislation?

10          **MS. BYRNE**   Yes, sir.

11          **THE COURE**   So they're actually in the legislation?

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

13          **THE COURE**   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 COURE**   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. HEIZEL: Your Honor --

10 THE COURT: Your name is?

11 MS. HEIZEL: 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. HEIZEL: That will be the two steps --

19 MS. BYRNE: And the bonuses.

20 MS. HEIZEL: -- 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 ADC, 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 M. Morris.

3 M. BYRNE: Yes, sir.

4 THE COURT: M. Morris?

5 M. 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 M. 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 M. 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: M. 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:**           **SURE:** Very good. Oh, they were getting

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?

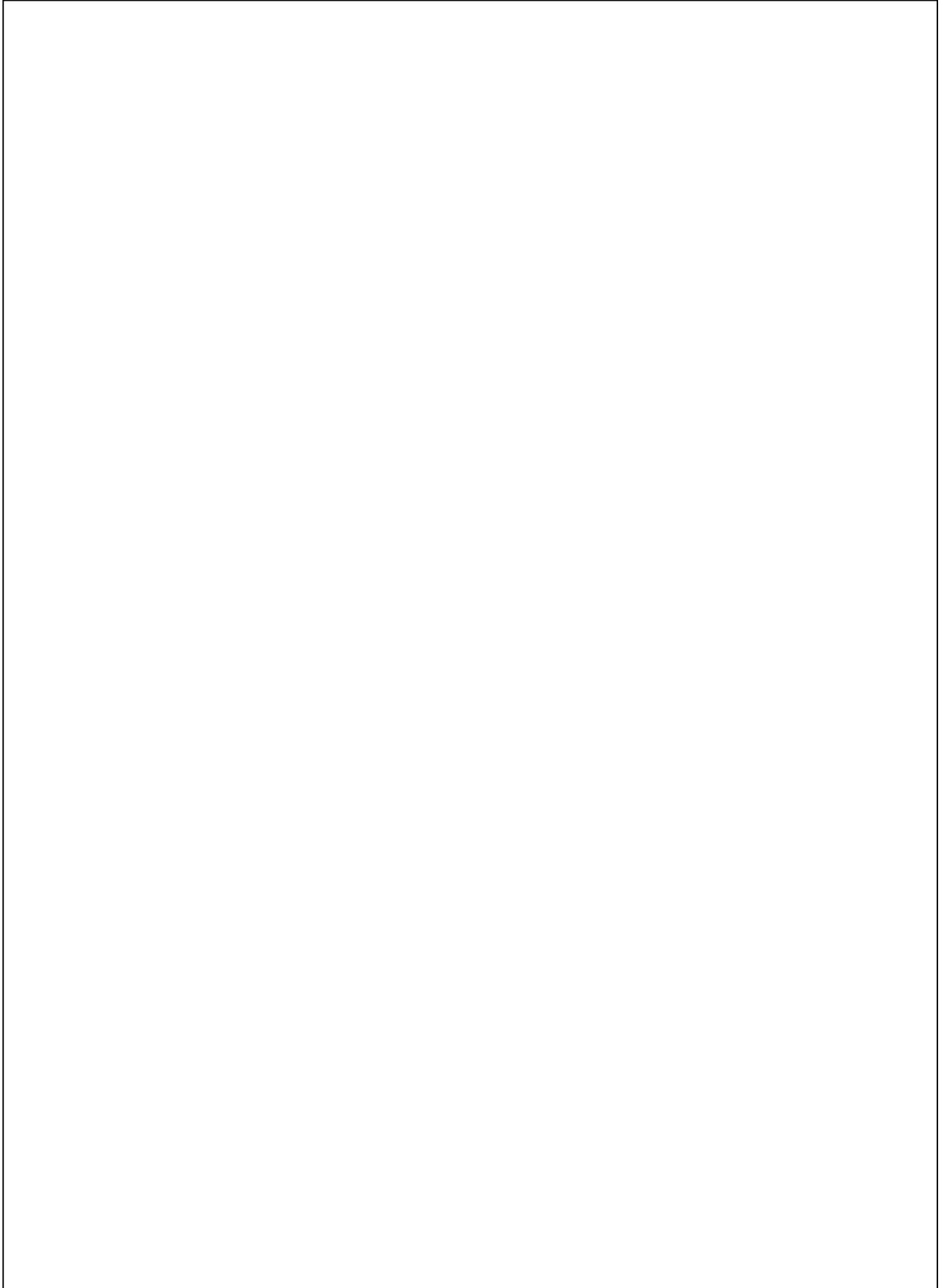
16 MS. MORRIS: It is not defined on this document.

17 But then two lines down from that it indicates 500  
18 additional correctional officers for half the year. And he y

**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**







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 CLERK: Yes.

25           MR. 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**

1 THE COURE Thank you Anything else from anyone? Any  
2 other evidence?

3 MR DORR No, Your Honor.

4 THE COURE 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 COURE 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 COURE Anything else?

**1**

**MR DORR** No, Your Honor.

**2**

**THE COURT** Anything else?

**3**

**MS. MORIS:** No, Your Honor.

**4**

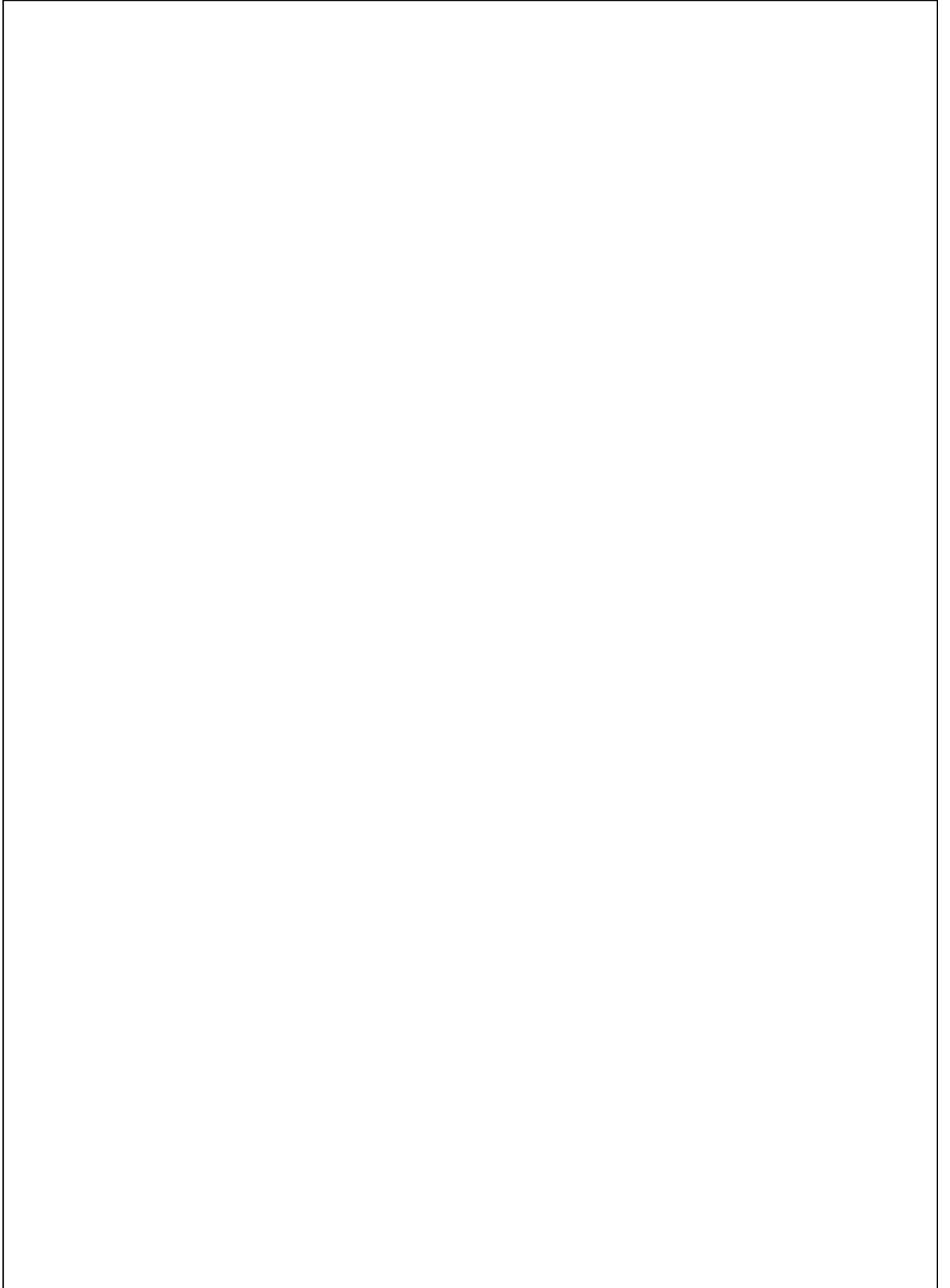
**THE COURT** Thank you Court's in recess.

**5**

**(Brief pause)**

**6**

**THE COURT** Counsel, m



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 ADCC. 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 M. 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 Wirren 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?

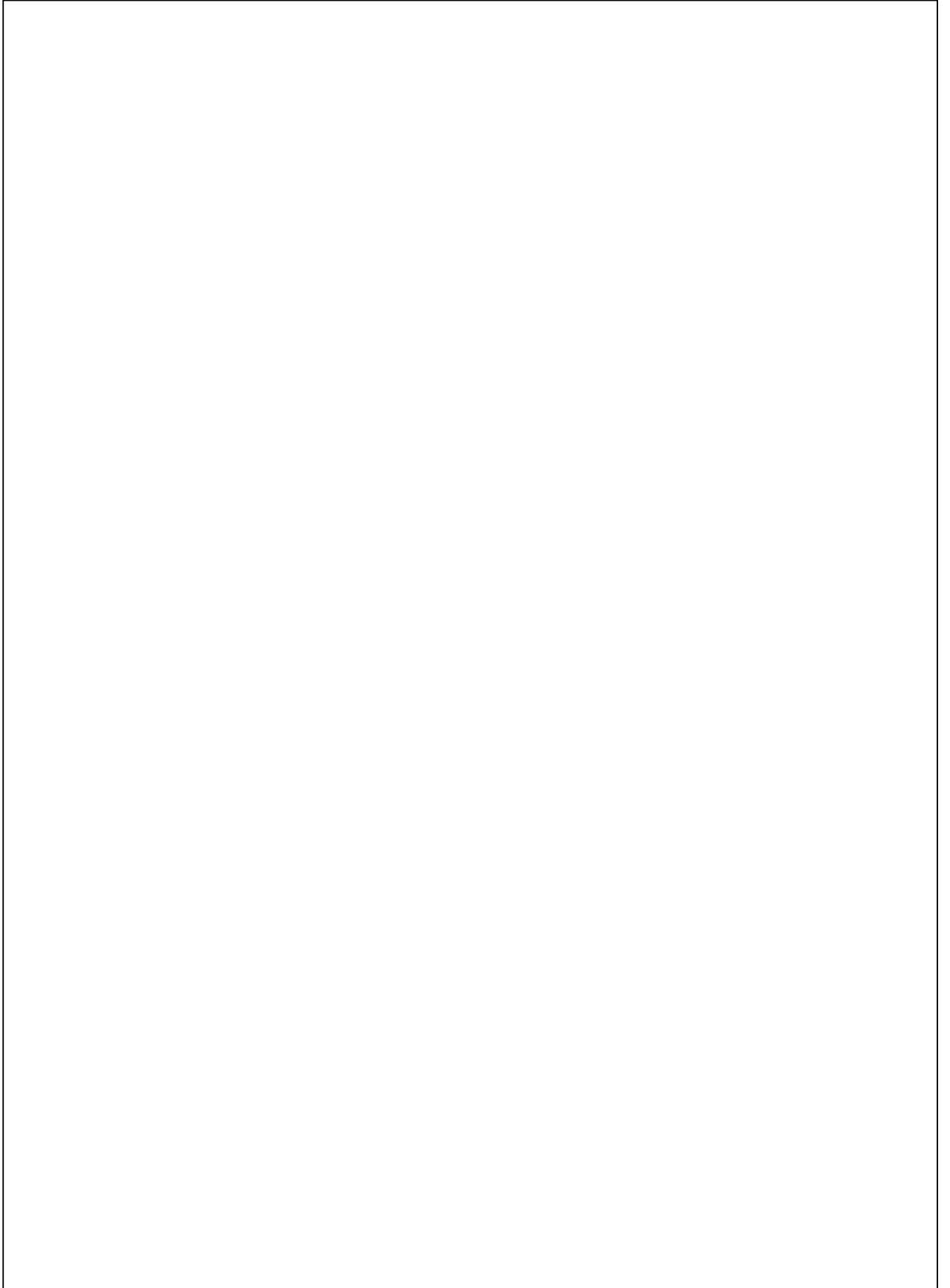
1           **MR REEVES:** Yes, sir.

2           **THE GOVERNOR:** 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 GOVERNOR:** Where did you find your document,  
16 **M. Morris?**

17           **M. MORRIS:** On the legislative website. I believe  
18 in e



1 was the Warren Averett report, that, quote, we cannot leave this  
2 room-- but that it cannot leave this room that ADCC 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



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 Wirren 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           Wirren 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 Wirren 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 ADCC 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 ADCC  
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,



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 ADCC 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 MR. 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 MR. 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 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 Wirren  
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 Wirren 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?

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. REEMES: You heard the state personnel's  
13 perspective on the accuracy or validity of the methodology

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 MR. 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 COURE:** 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 COURE:** 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 COURE:** 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.

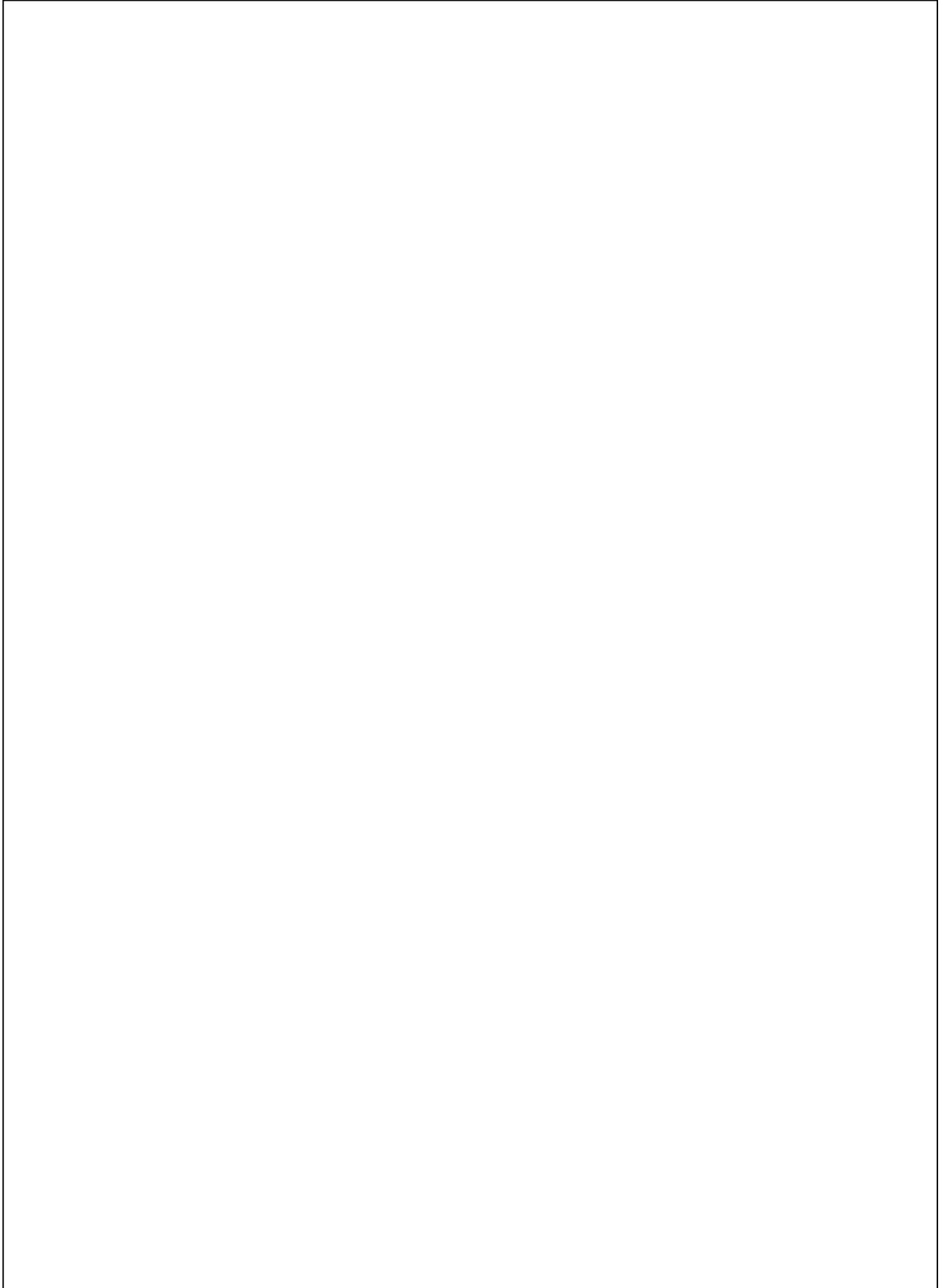
18           **THE COURE:** Do you want to respond to all of this?

19           **MR 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 COURE:** Where does it say that in the --

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



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

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 ADCO 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**           **MR. MORRIS:**   The arguments remain the same.

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

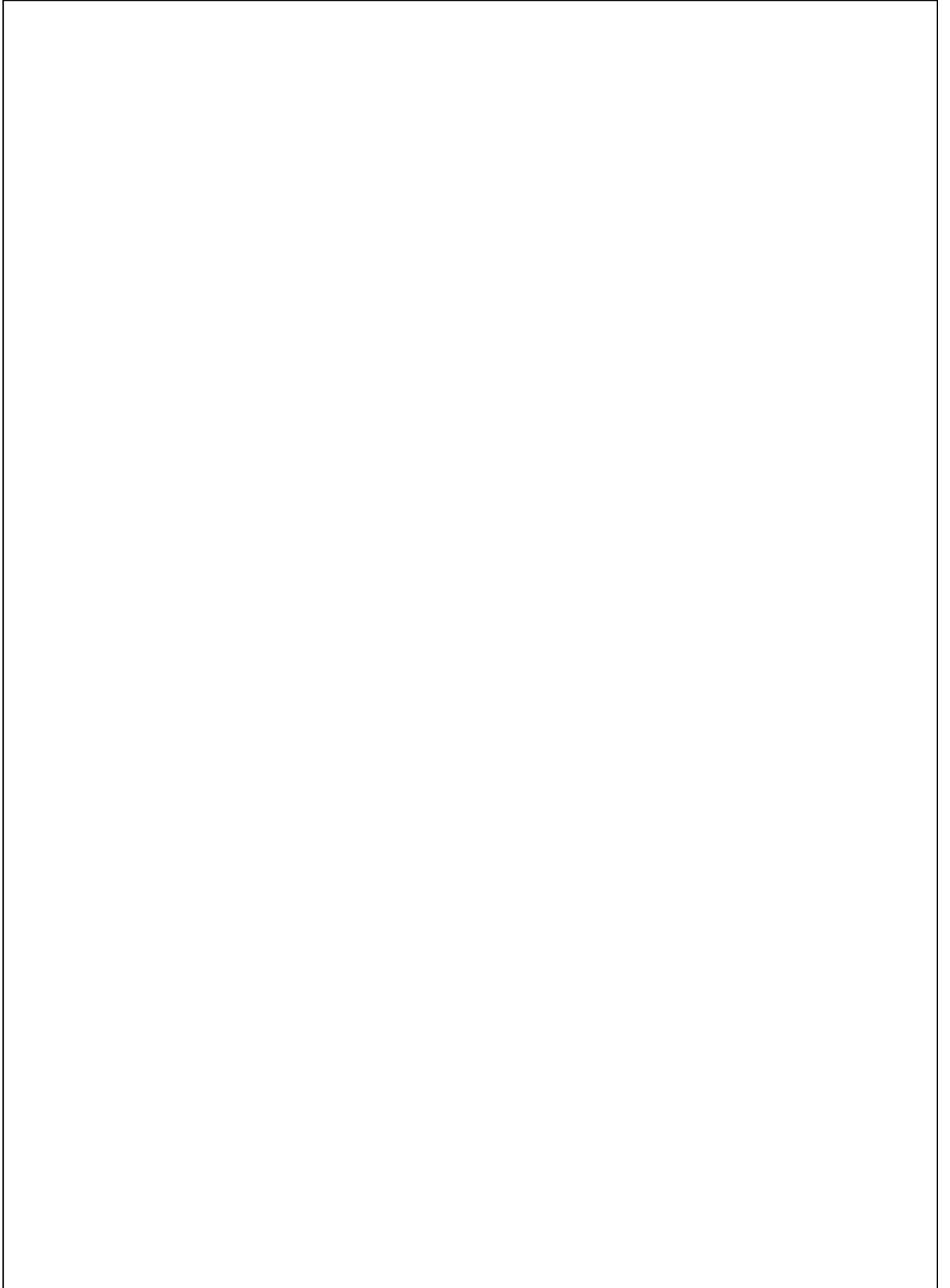
2 THE CURE: Do you have anything to add, then,

3 M. Morris?

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

7 THE CURE: Yes.

8 M. MORRIS: And then on this page and the next in our



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 CLERK:** What's the date of the article?

12           **MS. MORRIS:** January 30th, 2019.

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

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

17           **THE CLERK:** 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:** V MS nlpR that cad Rain M



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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 Diplomat Reporter  
Certified Realtime Reporter  
Official Court Reporter**