

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

ALABAMA STATE CONFERENCE *
OF THE NAACP, *
Plaintiffs, * 2:21-cv-1531-AMM
vs. * November 12, 2024
WES ALLEN, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendant. *

TRANSCRIPT OF BENCH TRIAL
VOLUME I
BEFORE THE HONORABLE ANNA M. MANASCO
UNITED STATES DISTRICT JUDGE

Proceedings recorded by OFFICIAL COURT REPORTER, Qualified
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CHRISTINA K. DECKER, RMR, CRR
Federal Official Court Reporter
101 Holmes Avenue, NE
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 APPEARANCES

2 FOR THE PLAINTIFF:

3 Amanda N Allen
4 HOGAN LOVELLS US LLP
5 555 13th Street NW
6 Washington, DC 20004
7 202-637-2521
8 Amanda.n.allen@hoganlovells.com

9 Avner Shapiro
10 SOUTHERN POVERTY LAW CENTER
11 1101 17th Street NW
12 Suite 510
13 Washington, DC 20036
14 240-890-1735
15 Avner.shapiro@splcenter.org

16 Brittany Carter
17 NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC
18 40 Rector Street, 5th Floor
19 New York, NY 10006
20 646-761-0596
21 Bcarter@naacpldf.org

22 Colin Burke
23 NAACP Legal Defense and Educational Fund Inc
24 40 Rector Street
25 New York, NY 10006
646-531-3485
Cburke@naacpldf.org

18 Davin Rosborough
19 AMERICAN CIVIL LIBERTIES UNION
20 125 Broad Street
21 New York, NY 10004
22 212-549-2613
23 Drosborough@aclu.org

24 Dayton Campbell-Harris
25 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
425-516-8400
Dcampbell-harris@aclu.org

CHRISTINA K. DECKER, RMR, CRR
Federal Official Court Reporter
101 Holmes Avenue, NE
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 Deuel Ross
2 NAACP LEGAL DEFENSE AND EDUCATIONAL FUND INC
3 700 14th Street NW
4 6th Floor
5 Washington, DC 20005
6 202-682-1300
7 Dross@naacpldf.org

8 Jack Genberg
9 SOUTHERN POVERTY LAW CENTER
10 P O Box 1287
11 Decatur, GA 30031
12 404-708-0554
13 Jack.genberg@splcenter.org

14 Jacob Van Leer
15 American Civil Liberties Union Foundation
16 915 15th St NW
17 Washington, DC 20005
18 603-277-0314
19 Jvanleer@aclu.org

20 James W Ettinger
21 HOGAN LOVELLS US LLP
22 1999 Avenue of the Stars
23 Suite 1400
24 Los Angeles, CA 90067
25 310-785-4608
Jay.ettinger@hoganlovells.com

Jess Unger
SOUTHERN POVERTY LAW CENTER
1101 17th Street NW
Suite 550
Washington, DC 20036
771-200-8943
Jess.unger@splcenter.org

Kathryn Carden Sadasivan
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC
40 Rector Street, 5th Floor
New York, NY 10006
332-600-9546
Ksadasivan@naacpldf.org

CHRISTINA K. DECKER, RMR, CRR
Federal Official Court Reporter
101 Holmes Avenue, NE
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 Laurel Ann Hattix
2 ACLU of Alabama
3 ACLU of Alabama
4 P.O. Box 6179
5 Montgomery, AL 36106
6 703-342-9729
7 Lhattix@aclualabama.org

8 Nicki Leili Lawsen
9 WIGGINS, CHILDS, PANTAZIS, FISHER & GOLDFARB, LLC
10 301 19th Street North
11 Birmingham, AL 35203
12 205-314-0535
13 Nlawson@wigginschilds.com

14 Shelita M Stewart
15 HOGAN LOVELLS US LLP
16 555 13th Street NW
17 Washinton, DC 20004
18 202-637-6960
19 Shelita.stewart@hoganlovells.com

20 Sidney Monroe Jackson
21 WIGGINS CHILDS PANTAZIS FISHER & GOLDFARB
22 301 19th Street North
23 Birmingham, AL 35203
24 205-314-0500
25 Sjackson@wigginschilds.com

FOR THE DEFENDANT:

1 Benjamin Matthew Seiss
2 ALABAMA OFFICE OF THE ATTORNEY GENERAL
3 P.O. Box 300152
4 501 Washington Ave (36104)
5 Montgomery, AL 36130
6 334-353-8917
7 Ben.seiss@alabamaag.gov

8 Brenton Merrill Smith
9 OFFICE OF THE ATTORNEY GENERAL OF ALABAMA
10 P.O. Box 300152
11 501 Washington Avenue
12 Montgomery, AL 36130
13 334-353-4336
14 Brenton.Smith@AlabamaAG.gov

CHRISTINA K. DECKER, RMR, CRR

Federal Official Court Reporter

101 Holmes Avenue, NE

Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 James W Davis
2 OFFICE OF THE ATTORNEY GENERAL
3 501 Washington Avenue
4 P O Box 300152
5 Montgomery, AL 36130-0152
6 334-242-7300
7 Jim.davis@alabamaag.gov

8 Michael P. Taunton
9 Riley Kate Lancaster
10 BALCH & BINGHAM LLP
11 1901 Sixth Avenue North, Suite 1500
12 Birmingham, Alabama 35203
13 (205) 251-8100

14 J. Dorman Walker
15 BALCH & BINGHAM LLP
16 445 Dexter Avenue, Suite 8000
17 Montgomery, Alabama 35203
18 (334) 269-3138

19
20
21
22
23
24
25
COURTROOM DEPUTY: Sarah A. Carmichael

COURT REPORTER: Christina K. Decker, RMR, CRR

CHRISTINA K. DECKER, RMR, CRR
Federal Official Court Reporter
101 Holmes Avenue, NE
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

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Christina K. Decker, RMR, CRR
Federal Official Court Reporter
101 Holmes Avenue, NE
Huntsville, Alabama 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 THE COURT: You may.

2 MR. BURKE: No more questions from us. Thank you so
3 much, Ms. Peoples.

4 THE COURT: All right. Is there any reason why I may
5 not excuse Ms. Peoples?

6 MS. LANCASTER: None from us, Your Honor.

7 MR. BURKE: None from us.

8 THE COURT: All right. Ms. Peoples, thank you for
9 being with us today. And you're excused from the witness
10 stand.

11 Thank you.

12 (Witness excused.)

13 THE COURT: Plaintiffs, you may call your next
14 witness.

15 MR. ROSS: One moment, Your Honor. Plaintiffs call
16 Benard Simelton.

17 BENARD SIMELTON
18 having been first duly sworn by the Courtroom Deputy Clerk, was
19 examined and testified as follows:

20 THE COURTROOM DEPUTY CLERK: Please speak loudly and
21 clearly into the make phone. State your name and spell it for
22 the Court record.

23 THE WITNESS: Sure. Benard Simelton, B-E-N-A-R-D,
24 Simelton, S-I-M-E-L-T-O-N.

25

DIRECT EXAMINATION

BY MR. ROSS:

Q Good afternoon, Mr. Simelton.

A Good afternoon.

Q What race do you identify as?

A African-American.

Q When were you born?

A [REDACTED], 1954.

Q Where were you born?

A A little town called Cooperville, Mississippi.

Q When did you graduate from high school?

A 1972.

Q Where did you go to high school?

A There are two different high schools. I went to Lions Consolidated High School, then Faulkner High School.

Q Okay. Before you went to Faulkner, were your schools segregated?

A Yes.

Q And when did you go to Faulkner?

A 1969.

Q Where do you live now?

A Harvest, Alabama.

Q What county is that in?

A Limestone -- I live in Limestone County side of Harvest.

Q How far is Harvest from Huntsville?

1 A It's about two or three miles from the Huntsville city
2 limits.

3 Q And how long have you lived in Huntsville, Alabama?

4 A Since -- Harvest --

5 Q Excuse me. Sorry. How long have you lived in Harvest?

6 A Since 2002.

7 Q Okay. And how long have you lived in Alabama?

8 A Since 2001.

9 Q Are you registered to vote?

10 A Yes.

11 Q Are you retired?

12 A Yes.

13 Q What was your career before you retired?

14 A I served my country 23 years United States Air Force. And
15 then I worked for 16 years as a defense -- with a defense
16 contractor in Huntsville, Alabama.

17 Q Thank you for your service.

18 Are you affiliated with the Alabama State Conference of
19 the NAACP?

20 A Yes.

21 Q If I call the Alabama State Conference of the NAACP either
22 the Alabama NAACP or just the NAACP, will you understand what I
23 mean?

24 A Yes.

25 Q Thank you.

1 What is your affiliation with the Alabama NAACP?

2 A I am the president.

3 Q How long have you served as president?

4 A Since 2009.

5 Q How did you become president of the Alabama NAACP?

6 A I was elected to the position.

7 Q Who elected you?

8 A Delegates to the 2009 state convention.

9 Q Okay. And were those delegates members of the Alabama
10 NAACP?

11 A Yes.

12 Q Okay. What are your duties as president of the NAACP?

13 A Well, my duties are to ensure that our units are carrying
14 out the mission and goals and directives of the NAACP, and also
15 we work to ensure the political, educational, economic rights
16 of those who are being underserved and particular people of
17 color, African-Americans.

18 Q Okay. And how do you go about carrying out the mission of
19 the NAACP? What kind of activities or projects do y'all
20 undertake?

21 A Yeah. We engage in protests. We engage in rallies. We
22 engage in press conferences. And also we work with
23 organizations or companies that may be discriminated against
24 individual. And also we work with law enforcement agencies, as
25 well.

1 Q What kind of work do you do with law enforcement agencies?

2 A Well, kind of two things. If someone comes to us and
3 complain about a law enforcement -- unfair treatment, you know,
4 we work with the agency to try and find out the truth and also
5 try to find the person an attorney that would represent them if
6 we feel they have been unfairly treated by a law enforcement
7 agency.

8 And also we ask the law enforcement -- law enforcement
9 agency to participate in -- one of our programs in particular
10 we call SWAG -- Stronger Without a Gun. We ask them to
11 participate in that and come and talk to our audience about,
12 you know, the need for them to, you know, not have guns.

13 Q For the police not to have guns?

14 A Yeah. No. Not for the police.

15 Q For the people?

16 A Yeah. The individuals.

17 Q Sorry. Okay. I think I asked you how the NAACP carries
18 out its mission, but I didn't ask you what is the NAACP's
19 mission?

20 A Well, I mean, basically, to protect the civil and human
21 rights of individuals in the community.

22 Q Okay. Are you paid for your work with the Alabama NAACP?

23 A No, I'm not.

24 Q Okay. Can you please describe the organizational
25 structure of the Alabama NAACP?

1 A Sure. We are a subcomponent, suborganization of the
2 national NAACP. And we are a -- the state conference and
3 within the state conference, we have college chapters. We have
4 branches. And we have youth councils.

5 And on the state level, we have an executive committee
6 that's similar to a board of directors. And in that, we have a
7 president, three vice-presidents, secretary, assistant
8 secretary, a treasurer, an assistant treasurer, and we also
9 have what we call executive committee members at large who are
10 elected at large. And then we have people on the executive
11 committee who are appointed to the executive committee by their
12 volunteering to serve a chair person of our standing
13 committees.

14 Q About how many people are a part of the state executive
15 committee?

16 A We have about 35 members.

17 Q I think you mentioned a unit. What is a NAACP unit?

18 A A unit is a -- again, a suborganization of the national
19 organization. And sometimes when we refer to units, we're
20 talking about the collectively -- collective state conference
21 college chapter, branches, and youth council when we say the
22 units of the Alabama NAACP, and then we talk about all those
23 collectively. We're not talking about a specific one.

24 Q Okay. How many active units are there in the Alabama
25 NAACP?

1 A There's about 40 -- somewhere, 40, 43, somewhere in there.

2 Q About how many active adult branches are there?

3 A We've got about 35 branches, active branches.

4 Q And about how many units are college or youth chapters?

5 A Youth chapter we have about seven, eight, that are active.

6 And then we have a couple -- three youth councils that are
7 active.

8 Q I'm sorry.

9 A Three youth council that are active.

10 Q And how many college chapters, did you say?

11 A I said seven or eight.

12 Q Okay. Do each of the units have a president?

13 A Yes.

14 Q How often do you meet with the unit presidents?

15 A We meet once a month -- I mean, once a week. And then
16 quarterly, we meet in person.

17 Q Does the Alabama NAACP have an active branch in Madison
18 County?

19 A Yes.

20 Q What area does the Huntsville Madison County branch cover?

21 A The entire county of Madison.

22 Q Okay. Does that include the cities of Huntsville and the
23 city of Madison and all the cities within Madison County?

24 A Yes.

25 Q Okay. Does the Alabama NAACP have an active unit in

1 Morgan County?

2 A Yes.

3 Q Okay. What areas or cities does the Morgan County branch
4 cover?

5 A It covers the entire county of Morgan.

6 Q Does it include the city of Decatur?

7 A Yes.

8 Q Is the Alabama NAACP a membership organization?

9 A Yes.

10 Q How does an individual become a member of the Alabama
11 NAACP?

12 A The person generally fills out an application and pay a
13 membership fee depending on the type of membership they want,
14 whether it's just regular adult or a life membership.

15 Q Okay. And how are the dues distributed when someone pays
16 a fee? What happens to that money?

17 A Well, it's -- if you pay it to a branch, then the branch
18 retains -- no. The branch retains 40 percent. They send
19 60 percent to the national. And then the national sends a
20 portion of that back to us -- back to the state conference.

21 Q Okay. What, if any, difference is there between being a
22 member of the Alabama NAACP and being a member of a local
23 Alabama unit?

24 A In order for a person to be a member of the -- well,
25 everyone that's a member of a unit within the state of Alabama

1 is a member of the Alabama state conference.

2 Q Okay. Thank you.

3 A By association.

4 Q What information does the application form collect?

5 A It generally collects, of course, your name, your phone
6 number, address, e-mail address, and it also asks if you are a
7 registered voter.

8 Q Okay. And is collecting those records part of the Alabama
9 NAACP's regular business practice?

10 A Repeat the question.

11 Q Sure. The Alabama NAACP collects information about
12 whether their members are registered to vote as a part of its
13 regular business practices, correct?

14 A Our units collect that information and then will share it
15 with us.

16 Q Okay. Thank you.

17 Did you review any records today to prepare for your
18 testimony?

19 A Yes.

20 Q What did you review?

21 A I reviewed the -- my statement. I reviewed the complaint.
22 I reviewed the map, proposed map.

23 Q I think maybe I was unclear.

24 What Alabama NAACP records did you review for your
25 testimony?

1 A Oh, okay.

2 Yeah. The membership unit reports and the -- some of the
3 information about the status of our units.

4 Q Okay. Thank you.

5 About how many members does the Alabama NAACP have?

6 A About 5,000.

7 Q About what percentage of the Alabama NAACP members are
8 registered to vote?

9 A We would say probably somewhere between 85 and 90 percent.
10 And because our youth council members are not old enough to
11 register -- at least the majority -- majority of those are not
12 old enough to register. So and we have some members that are
13 previously incarcerated that are not eligible to register, so,
14 but about 90 -- somewhere between 90 and 95 percent, I would
15 say.

16 Q Okay.

17 A That are really eligible.

18 Q Okay. And how do you know that about 90, 95 percent of
19 your members are registered to vote?

20 A Yeah. We -- discussion during our meetings, quarterly
21 meeting or a weekly meeting that we have we talk about, you
22 know, our members being registered to vote and making sure that
23 they are registered to vote.

24 Q Okay. About what percentage of the Alabama NAACP's
25 membership is African-American?

1 A I would say probably 95 percent.

2 Q And how do you know that?

3 A Again, by attendance at meetings and on our conference
4 calls, as well as just discussion about that during our
5 meetings, you know, how many people we have that are of
6 Hispanic, Asian, and whites, you know, other nationalities.

7 Q How many NAACP members are there in the Huntsville branch?

8 A Approximately 350.

9 Q Okay. And about what percentage of those members are
10 black registered voters?

11 A I would say the same percentage as, you know, that
12 95 percent to 90, 95 percent.

13 Q What are the names of some of the roles of some of the
14 members in Huntsville?

15 A Yes. Mary Jones Moore, she's the president. Kesha L.
16 Hendrix, she's the vice-president. And Randy Kelly, he's the
17 political action chair.

18 Q Does Ms. Hendrix have a role within the state conference
19 of the NAACP?

20 A Yes, she does.

21 Q What is her role?

22 A She's economic chair, and she -- and by her being the
23 economic chair, she serves on our executive committee.

24 Q Thank you.

25 About how many NAACP members are there in the Decatur

1 branch?

2 A About 75.

3 Q About what percentage of those members are black
4 registered voters?

5 A I would say probably about 90 percent. They had an
6 increase in white voters in -- voters other than black
7 recently, so I would say probably about 90 percent.

8 Q What's your understanding of why that Decatur branch has
9 had an increase in white membership recently?

10 A Well, it was because of the murder of Steve Perkins by a
11 Decatur police officer. Let me strike that.

12 There was -- the shooting of a -- Steve Perkins by a
13 Decatur police officer.

14 Q Who shot Mr. Perkins?

15 A A police officer.

16 Q Okay. And why, in your estimation, did that result in an
17 uptick in membership there?

18 A Well, it brought a lot of people out in protest and
19 because it was -- they felt that it was an unlawful shooting,
20 because Mr. Perkins was on his property defending his property
21 and he was shot. And so there was a lot of protests, and a lot
22 of people from all nationality or races that joined in, in the
23 protests.

24 Q Were they protesting anything in particular?

25 A Well, they was protesting the shooting of Mr. Perkins.

1 Q Okay. Did members feel that the shooting was racially
2 discriminatory?

3 A Yes.

4 Q Okay. What is the name of the Decatur branch president?

5 A Rodney Gordon.

6 Q Where does Mr. Gordon live?

7 A In Decatur.

8 Q In the city of Decatur?

9 A Yes. In the city limits.

10 Q What's the race of Mr. Gordon?

11 A African-American.

12 Q Do you know whether he's registered to vote?

13 A Yes.

14 Q Yes, he is?

15 A Yes, he is.

16 Q Okay. Do the Huntsville and Decatur branches hold any
17 events?

18 A Yes, they hold events.

19 Q What kind of events do the Huntsville and Decatur branch
20 of the NAACP hold?

21 A Of course, they hold galas or banquets. They do hold
22 rallies, protests, and those things.

23 Q Okay. About how far are the city of Huntsville and
24 Decatur?

25 A Probably about 15 miles or so.

1 Q Okay. So we're talking about events -- Huntsville NAACP
2 when they have events, do they invite members of the Decatur
3 NAACP?

4 A Yes, they do.

5 Q Do they invite them to rallies and protests and things?

6 A Yes, they do. And banquets and things like that.

7 Q Okay. And vice versa, does the Decatur branch invite the
8 Huntsville branch to attend its events?

9 A Yes.

10 Q Okay. What's your understanding of why the two units may
11 invite one another to participate in events?

12 A Well, one, is that we share the common interest of, you
13 know, ensuring our political and economic and social rights are
14 protected. And so when we come together as an organization, we
15 are stronger. And additionally, you know, we learn from each
16 other because what's happening in Decatur, what's happening in
17 Huntsville could affect, you know, each other's cities or, you
18 know, communities.

19 Q In your role as president, do you attend events for the
20 Huntsville NAACP?

21 A Yes.

22 Q About how often?

23 A Probably about four, five a year, somewhere in there.

24 Q Okay. What about for the Decatur NAACP?

25 A About what now?

1 Q What about for the Decatur NAACP, do you attend events for
2 them?

3 A Yes. A couple events over in Decatur.

4 Q Sure. How often?

5 A About two or three a year.

6 Q Okay. Do local state legislators ever come to these
7 events?

8 A You say do legislators local?

9 Q Yes.

10 A Yes.

11 Q Okay. Who?

12 A Primarily Representatives Daniels and Hall.

13 Q Okay. Of the Huntsville Decatur events that you have
14 attended, which of any white legislators have you seen there?

15 A I have not seen any white legislators at any of the
16 Decatur events that I have attended. And I don't think I've
17 seen any at the Huntsville Madison County branch events either.

18 Q Do you ever travel to Decatur for non-NAACP activities?

19 A Yes.

20 Q What kind of activities do you go to Decatur for?

21 A Well, my wife's a realtor, so she goes over there for
22 business. And sometimes, I travel with her. Occasionally go
23 over there to get something to eat, or occasionally I will meet
24 with a city council member over there.

25 Q About how often do you do that?

1 A Probably total of about three, four times a year,
2 somewhere in there.

3 Q Okay. What church do you attend?

4 A Indian Creek Primitive Baptist Church.

5 Q And where is that located? Where is that church located?

6 A What's what?

7 Q Where is that church located?

8 A 380 Indian Creek Road.

9 Q In Huntsville?

10 A Huntsville, yes.

11 Q Okay. What, if any, role do you have at your church?

12 A Deacon at the church.

13 Q What are your responsibilities as deacon?

14 A Just the spiritual care of the people that are assigned to
15 my particular ward.

16 Q What is a ward?

17 A A ward is a group of people based on -- just based on
18 their last names that are assigned to the different deacons for
19 the deacons to help with their, you know, spiritual care.

20 We're not preachers, so don't get me wrong on that. But if
21 they need something, we are there to support them, pray with
22 them during, you know, the time of need and things like that.

23 Q Do any of your ward members live in Decatur?

24 A Yes. I have one that lives in Decatur.

25 Q What's the racial makeup of your church?

1 A Probably 98 percent African-American.

2 Q Okay. Have you attended other churches in Huntsville?

3 A Yes.

4 Q About how many Huntsville churches have you attended?

5 A Since I've been there?

6 Q Yes, sir.

7 A Probably about 30, 30 or more churches, you know.

8 Q In your experience, are the churches that you visited
9 mostly one race or another?

10 A Yes.

11 Q Okay. Have you ever been to a predominantly white church?

12 A Yes.

13 Q On what occasion have you had to go to a white church --
14 predominantly white church?

15 A A funeral, and also our church has kind of a relationship
16 with a predominantly white church where we -- on Thanksgiving
17 -- well, around Thanksgiving, they come to our church one year,
18 and then we go to their church, you know, the following year,
19 and our pastor preach at their service, and their pastor preach
20 at our service.

21 Q Other than that experience -- that annual experience, your
22 church is 98 percent black, though, correct?

23 A Yes.

24 Q Okay. What highway do you travel when you go from
25 Huntsville to Decatur?

1 A Interstate 65, which turns into Highway 20, but -- 565.

2 I'm sorry. Interstate 565, which turns into Highway 20.

3 Q Okay. Are there certain hours you try to avoid 565?

4 A Yes.

5 Q What hours are those?

6 A Rush hours in the morning, and from I would say probably
7 6:30 to 8:30, 9:00 o'clock, and then in the evening from about
8 3:30 until about 5:30, 6:00 o'clock, somewhere in there.

9 Q Why do you avoid those hours?

10 A Well, it's rush hour, and traffic is backed up, you know,
11 and it's almost -- it is bumper to bumper. No almost. It is
12 bumper to bumper.

13 Q What's your understanding of why traffic is backed up on
14 that particular highway?

15 A Well, in the morning, a lot of people trying to get into
16 Huntsville, you know. And in the afternoons, lot of people
17 trying to get out of Huntsville to go back to their homes, you
18 know, Decatur and other communities.

19 Q Okay. To your knowledge, what's being done to address
20 that traffic on the highway there?

21 A Well, recently, they've announced that the -- they're
22 adding another lane to 565 in each direction.

23 Q What's your understanding of why that lane is being added?

24 A Well, to help eliminate some of the traffic -- well,
25 actually help people get in to Huntsville quicker and out of

1 Huntsville quicker so traffic won't be backed up. And also it
2 reduces accidents especially in the winter time when --

3 Q When that lane's been added?

4 A It's being added.

5 Q Between Huntsville and Decatur?

6 A Yeah. It's not completely between Huntsville and Decatur,
7 but it's a certain stretch of 565.

8 Q Okay. What's your understanding of why there's been an
9 increase in traffic between Decatur and Huntsville?

10 A It's primarily the growth in the Huntsville area. There's
11 a lot of growth that is taking place.

12 Q Okay. What kind of growth have you seen in the
13 Huntsville?

14 A Well, there's, like the Huntsville -- the Toyota Mazda
15 factory. There's Amazon. There's new defense industries that
16 are located in Huntsville to really meet the demand of the
17 workforce there.

18 Q What, if any, economic ties are there between Huntsville
19 and Decatur?

20 A Well, certainly the job industry that's there in
21 Huntsville. And I will say that there's some in Decatur, as
22 well. They have an increase in industry in Decatur. But most
23 of it, of course, is moving into the Huntsville area. So --
24 and they have, you know, the convention center where a lot of
25 concerts occur. Also the -- the Huntsville has a -- well,

1 actually, it's in Madison, but Madison and Huntsville almost
2 together.

3 But Madison has the semi-pro baseball team, and they do
4 have a hockey team there, as well as a -- a -- I guess you
5 would call it a semi-pro soccer team opened in Huntsville, as
6 well. It attracts people, you know, across the north Alabama.

7 Q Is there a part of Huntsville that is in your experience
8 that's predominantly black and a part of Huntsville that's
9 predominantly white?

10 A Yes. Northwest Huntsville is referred to as the
11 African-American area, and south Huntsville is mostly where
12 whites.

13 Q Are there hospitals in Huntsville?

14 A Yes.

15 Q Are there any hospitals in north Huntsville?

16 A Well, no.

17 Q Okay. What industries do Huntsville and Decatur share?

18 A Really anything to do with the defense industry. Again,
19 whether that's something to do with missile defense or space
20 development, the Army has several, you know, contract --
21 several -- I guess a lot of industry there.

22 Q Yeah. Okay. Is there an airport in Huntsville?

23 A Yes.

24 Q Okay. About how far is the Huntsville airport from the
25 city of Decatur?

1 A It's about 15 miles.

2 Q Okay. If someone was traveling from -- to Decatur, what
3 airport would you recommend they fly into?

4 A The Huntsville International Airport.

5 Q Why would you recommend that airport?

6 A Well, it's the closest airport to -- closest, you know,
7 major airport to those cities.

8 Q Okay. Do you watch the local TV news?

9 A Yes.

10 Q Does your local news report on what's happening in
11 Decatur?

12 A Yes, it does.

13 Q Does it also report on things that are happening in
14 Huntsville?

15 A Yes.

16 Q Do you read any newspapers?

17 A Yes, I do.

18 Q What newspapers do you read?

19 A Athens News Carrier, Decatur Daily occasionally, Speakin'
20 Out News, and sometimes Huntsville Times, mainly Huntsville
21 Times online.

22 Q Does the Athens News Carrier report on events happening in
23 Huntsville and Decatur?

24 A Yes, it does.

25 Q What is Speakin' Out News?

1 A It's a black newspaper in Huntsville.

2 Q Okay. Does Speakin' Out News report on news events in
3 Huntsville and Decatur?

4 A Yes, it does.

5 Q Okay. Does the NAACP ever issue press releases?

6 A Yes.

7 Q Okay. If the NAACP wants to inform people in Huntsville
8 about something that's going on, what news outlets do you all
9 contact?

10 A Well, we contact the four major TV stations, the radio
11 stations, and, of course, send it to newspapers.

12 Q What newspapers?

13 A Speakin' Out News, Huntsville Times, and occasionally,
14 we'll send it to the Athens News Courier, as well.

15 Q What about the Decatur Daily?

16 A Yes. Decatur Daily.

17 Q Okay. And what if the NAACP is trying to notify people in
18 Decatur? What news -- excuse me -- what news outlets do you
19 send a press release to?

20 A Well, again, the TV stations, the black-owned radio
21 stations, as well as, Decatur Daily Newspaper.

22 Q Okay. You mentioned --

23 A Athens Courier.

24 Q You mentioned some sports teams earlier, the minor league
25 team in Huntsville area. In your experience, who attends the

1 -- those games, those minor league team games?

2 A People all over north Alabama.

3 Q People from Decatur?

4 A Yes.

5 Q People from Huntsville and Madison?

6 A Yes. And Athens.

7 Q Are there any colleges or universities in Madison County?

8 A Yes, there are.

9 Q What colleges and universities?

10 A There's Oakwood, Alabama A&M, Faulkner University has a
11 small campus there, University of Alabama Huntsville, and
12 there's -- Calhoun Community College has a campus in
13 Huntsville.

14 Q What, if any, Alabama NAACP college chapters have branches
15 at those schools?

16 A Well, we have -- Oakwood College has a chapter, as well as
17 Alabama A&M has a chapter, college chapter.

18 Q Based on your experience with your membership, what --
19 from where do those schools tend to draw their students?

20 A I don't know the specific demographics, but they draw from
21 all -- certainly all over north Alabama.

22 Q From Decatur and Huntsville?

23 A Yeah, Decatur, yeah, and Huntsville.

24 Q Does Alabama NAACP have members in Montgomery County?

25 A Yes.

1 Q What are the names of some of the members in Montgomery
2 county?

3 A Lillian Jefferson. She's the current president of the
4 metro Montgomery branch, and James Lovejoy, he's a member of
5 the branch there. And he also serves on our executive
6 committee as a veteran affairs chair for the Alabama State
7 Conference.

8 Q Mr. Simelton, who is Jerry Burnett?

9 A Jerry Burnett is a member of the Huntsville Madison County
10 branch. And he has previously served as president of the
11 Huntsville Madison branch and also served on the executive
12 committee for the Alabama State Conference.

13 Q Okay. Who's Bobby Diggs?

14 A Bobby Diggs is -- he was previous president of the
15 Lawrence County branch. And he served for -- as our security
16 chair for a while for the Alabama State Conference.

17 Q Okay. And, to your knowledge, are the folks that you just
18 named black registered voters?

19 A Yes.

20 Q Okay. Mr. Simelton, has the Alabama NAACP been involved
21 in voting rights lawsuits?

22 A Voting rights lawsuits?

23 Q Yes, sir.

24 A Yes.

25 Q In your experience, have any of those lawsuits ever

1 resulted in a settlement?

2 A Yes.

3 Q Okay. What, if any, of those lawsuits that settled had to
4 do with voter registration?

5 A There was back in -- I think it's probably 2012, '13, we
6 were involved in a lawsuit against the State of Alabama for
7 noncompliance with the National Voter Registration Act. And we
8 worked with the Department of Human Resources and the Medicaid
9 office to get them to become compliance with the National Voter
10 Registration Act by offering their customers, if you will, that
11 came to see them the opportunity to register to vote or to if
12 they, you know, needed something along that line, to make sure
13 that they were registered to vote. And also to put signage up
14 in their facility informing the clients that they -- when they
15 came there, that they could, you know, ask and get voter
16 registration information.

17 Q Is your understanding -- why was the Alabama NAACP
18 involved in that settlement?

19 A Well, I mean, we were involved in the settlement because
20 we were a party to the --

21 Q Why was the NAACP interested in sort of having Alabama
22 comply with the National Voter Registration Act?

23 A Well, it's part of our mission to make sure our citizens
24 there are eligible to vote, that they are registered to vote,
25 and that they have opportunity to, you know, register to vote

1 anytime, anywhere they can, you know. We offer voter
2 registration at our churches and place like that, so, you know,
3 the National Voter Registration Act requires the states to be
4 in compliance, that they offer that, so...

5 Q And is it -- prior to that settlement, what's your
6 understanding of Alabama's compliance with the National Voter
7 Registration Act?

8 A They were not compliant.

9 Q Okay. Could the settlement have been as recent as 2015 --
10 the settlement that you mentioned, could have been as recent as
11 2015?

12 A It could have been, yeah.

13 Q Okay. Was the Alabama NAACP involved in any other voting
14 rights lawsuits this past year?

15 A Yes.

16 Q Okay. What lawsuits has the Alabama NAACP been involved
17 in this year?

18 A Well, the absentee voting on SB-1 as well as the voter
19 purge.

20 Q What is SB-1?

21 A SB-1 was a legislation passed by the Legislature that
22 prevented organizations like the NAACP from assisting
23 individuals with their absentee ballot application unless we
24 were next of kin. And so that's kind of it in a nutshell.

25 Q Okay. What's your understanding of what happened with

1 that lawsuit?

2 A Well, there was an injunction -- well, I mean -- yes,
3 there was injunction issued, and we were able to assist those
4 individuals with the applications.

5 Q Which individuals were you -- are you able to assist?

6 A Really anyone that asked, but, specifically, you know,
7 some people that, you know, in nursing homes and places like
8 that, that could not -- that need assistance with their
9 absentee application.

10 Q People who asked who have disabilities or have trouble
11 reading; is that right?

12 A Oh, yes.

13 Q Okay.

14 A Yeah.

15 Q And why was the Alabama -- do you believe that SB-1 had a
16 racially disparate impact?

17 A Yes.

18 Q Why do you believe that?

19 A Because through our work, we find that it seemed to be
20 more significant number of African-Americans that will need
21 assistance with helping them to not only read, but also
22 understand the -- what is required on the application and how
23 to get it submitted to the proper authorities.

24 Q Okay. So you mentioned another lawsuit, I think. What
25 was the other lawsuit that the Alabama NAACP was involved in

1 this year?

2 A The purging of voters from voter rolls.

3 Q What's your understanding of how many voters were purged
4 from the voter rolls?

5 A Well, the number that was reported I think was 3,200 --
6 3,250, somewhere in that number.

7 Q Do you believe that the voter purge had racially disparate
8 impact?

9 A Well, if we had the names, I could probably give you more
10 definitive answer. But I don't know who they are.

11 Q Let me ask a different question. Why was the Alabama
12 NAACP involved in the voter purge lawsuit?

13 A Well, because we believe that there may be a disparate
14 impact to African-Americans being purged.

15 Q Why did you believe that there may have been a racially
16 disparate impact on African-Americans?

17 A Because it seems that any time, anything to do with voting
18 rights, it typically have a more significant impact on black
19 voters. So we requested a list of names so that we could reach
20 out to those individuals to help them either comply with the
21 law or find out if they, in fact, were, you know, noncitizen s.

22 Q Did anyone reach out to you about the voter purge or --
23 reach out to the Alabama NAACP, I should say?

24 A Yeah. We received several phone calls about people who's
25 -- who had previously been registered to vote, and their names

1 had all of a sudden come up. And they had to fill out a new
2 registration form, whether they were part of the list or not, I
3 don't know. We don't know. But they did reach out to us.

4 Q In your understanding, the people who reached out to you,
5 were they -- what race were they?

6 A They were African-Americans.

7 Q And to your understanding, were those individuals citizens
8 or not?

9 A Yes. Yes.

10 Q Yes, they were citizens?

11 A Yes. They were citizens.

12 Q Okay. What's your understanding of what happened with the
13 voter purge lawsuit?

14 A Well, they were -- the Secretary of State was ordered to
15 notify all those that received these notifications and to
16 restore their names to the voter rolls.

17 Q Okay. What are some of the major Civil Rights issues that
18 the Alabama NAACP works on at the state level?

19 A Well, you just mentioned several of them -- voting rights
20 issues. We also work on criminal justice -- unfair sentencing
21 of particular people of color to, you know, incarceration. We
22 also work on education, ensuring that our -- particularly our
23 students of color are not being really harmed by the punishment
24 that they're receiving, because it's certainly a disparate
25 impact to African-Americans that are receiving the harshest

1 punishment from our school system. And also to ensure that our
2 schools, particular public schools, are providing adequate
3 education and that the dollars -- public dollars are not going
4 to private schools.

5 Q Okay. What, if any, issues around healthcare does the
6 Alabama NAACP work on?

7 A We work on AIDS, we worked on expansion of Medicaid in the
8 state of Alabama, and just access to adequate medical care,
9 because so many of our hospitals are closing. And a lot of our
10 people are having to drive longer distance to get to, you know,
11 hospitals or medical care.

12 Q When you say our people, do you mean African-Americans?

13 A African-American people, yeah.

14 Q What, if any, Huntsville-based legislators have you met
15 with about those Civil Rights issues that you have just
16 discussed?

17 A I met with Anthony Daniels again and Laura Hall to talk
18 about -- especially Representative Hall talking about
19 healthcare issues.

20 Q Have any Huntsville-based white legislators ever reached
21 out to you to discuss those Civil Rights issues?

22 A No.

23 Q Mr. Simelton, why is the NAACP a plaintiff in this
24 lawsuit?

25 A We are a plaintiff because we want to ensure that

1 African-American votes are being heard and that we are not
2 being either packed into a particular district where we can't
3 have a voting strength -- I mean, where we can't have voting
4 power, and at the same thing with cracking, where they are
5 spread out so much that we won't have a voting power.

6 And on the packing, they tend to pack people in so that we
7 can only elect one person to represent us and not have more
8 than one person, you know, to represent us -- represent blacks,
9 African-Americans.

10 Q Thank you.

11 MR. ROSS: Your Honor, I have the addresses of the
12 members that he just listed. I don't know if they're willing
13 to stipulate or how we want to handle it, if we want to close
14 the courtroom to go over it or --

15 THE COURT: I tell you what, this is a great time for
16 our afternoon break. It's 3:26. Why don't we come back at
17 3:45, and that will give y'all long enough to break and
18 hopefully long enough to discuss.

19 (Recess.)

20 THE COURT: Please be seated.

21 All right.

22 Mr. Ross, what can you report on the addresses?

23 MR. ROSS: We conferred with the defendants, and
24 they're willing to stipulate to the addresses of the members
25 that were named in Mr. Simelton's testimony.

1 THE COURT: Excellent. Thank you. Can I ask y'all to
2 please file just an updated statement of undisputed facts, and
3 you can redact what you need to redact and then submit an
4 unredacted one separately.

5 MR. ROSS: Thank you.

6 THE COURT: If someone will remind me, I just need a
7 joint motion to file it under seal, the unredacted ones, and I
8 can sign off on that quickly.

9 MR. ROSS: Thank you, Your Honor.

10 THE COURT: Great. Thank you.

11 MR. ROSS: Passing the witness.

12 THE COURT: Excellent. Thank you.

13 CROSS-EXAMINATION

14 BY MR. TAUNTON:

15 Q Good afternoon, Mr. Simelton.

16 A Good afternoon.

17 Q Coming back to -- you testified a little bit to your
18 background. You didn't grow up in Alabama, right?

19 A Okay. I can't hear you.

20 Q I'm sorry.

21 THE COURT: I was going to say, Mr. Taunton, if you
22 will just get it in your line of sight.

23 BY MR. TAUNTON:

24 Q I said you didn't grow up in Alabama, right?

25 A Grow up?

1 Q Grow up.

2 A No.

3 Q Okay. And you moved to Harvest, Alabama around 2001; is
4 that correct?

5 A Yeah. 2002 was actually when moved to Harvest, but I
6 moved to Alabama in 2001.

7 Q Okay. Did you move to the Huntsville area in 2001 maybe
8 or?

9 A Yes.

10 Q Okay. So you were in Huntsville area in 2001, moved to
11 Harvest in 2002?

12 A Yes.

13 Q Now, you got involved in the NAACP -- real quick on that,
14 in depositions, we were call it the NAACP, and I think today we
15 have been calling it the NAACP. Is there a preference?

16 A Well, the NAACP is the preference, but either way. We
17 don't get upset one way or the other.

18 Q I will use the preferred names.

19 So you got involved in the NAACP prior to moving to
20 Harvest, Alabama, right?

21 A Yes.

22 Q And when was that? When did you get involved with the
23 NAACP?

24 A Now, you talking about in Alabama or NAACP in general?

25 Q In general.

1 A That was in '96, '97 time frame in Albuquerque, New
2 Mexico.

3 Q And you hadn't lived in Alabama at that time; is that
4 right?

5 A You say I had not?

6 Q Had not.

7 A No, I had not lived in Alabama.

8 Q So your reasons for becoming involved with NAACP were not
9 tied to your experiences in north Alabama; is that right?

10 A No.

11 Q Okay. You testified a little bit about the structure of
12 the state conference and the Alabama NAACP, right?

13 A Yes.

14 Q So does joining a local unit -- does becoming a member of
15 a local unit also make you a member of the state conference?

16 A It makes you a member by association of the state
17 conference.

18 Q And what do you mean by that?

19 A The same way with the national organization. The
20 individual membership card states that unit they belong to, but
21 because you are in the state of Alabama by association with the
22 NAACP, you are a member of the state conference, and you are a
23 member of the national organization.

24 Q Okay. So maybe just two follow-up questions. I think we
25 talked about this a little bit in your deposition. But there's

1 no way for a person to join just the state conference of the
2 NAACP, right?

3 MR. ROSS: Objection. Objection. Misconstruing his
4 testimony.

5 THE COURT: Okay. Well, he can tell him if he is.

6 MR. ROSS: Sure.

7 THE WITNESS: Repeat the question again.

8 BY MR. TAUNTON:

9 Q Ignore what your prior testimony was. I'm asking you the
10 question now. Is there a way -- is there a way for a person to
11 join just the state conference of the NAACP without being
12 involved in a local unit?

13 A No. There's not.

14 Q Okay. So but the state conference considers -- does it
15 consider all people who have joined local units and are in good
16 standing with local units to be members of the state
17 conference?

18 A Yes.

19 Q Okay. Yes which -- I'm sorry. I asked a compound
20 question. That was my fault. Let me ask it differently.

21 Does the state conference consider all members in good
22 standing of local units in the state of Alabama to also be
23 members of the state conference?

24 A You said of the state conference?

25 Q Yes, sir.

1 A Yes.

2 Q Okay. Thank you.

3 You testified a little bit earlier about the Decatur and
4 Huntsville branches of the NAACP and some of the events they
5 held, right?

6 A Yes.

7 Q Do those branches hold events together, like are they
8 jointly sponsored?

9 A No. Typically, one organization will hold the event and
10 invite the other.

11 Now, there are occasions when they may held a common
12 interest of an item issue that they come together to jointly
13 speak out on that particular issue.

14 Q Okay. Would that be with an event or with a press
15 release, or when you say speak out, what do you mean?

16 A Yeah. A press conference.

17 Q Okay. When is the last example you can think of that
18 happening?

19 A Last -- was it last year? I think it was last year, maybe
20 year before last we came together to speak out on Congressman
21 Mo Brooks.

22 Q Okay.

23 A Issue. And this year -- this year we came out to speak
24 about Senator Tuberville position on the veterans not -- not
25 veterans, but not promoting military officers.

1 Q The -- you mentioned that the Decatur branch might hold an
2 event and invite the Huntsville branch or vice versa, right?

3 A Okay. I'm still having difficulty understanding.

4 Q I'm sorry.

5 You said that the Decatur branch might hold an event and
6 invite the Huntsville chapter or maybe vice versa, right?

7 A Yes.

8 Q Does the Decatur branch always invite the Huntsville
9 chapter to its events?

10 A No.

11 Q Does the Huntsville chapter always invite the Decatur
12 branch to its events?

13 A And let me back up. When I say no, it's not a formal
14 invitation. There are some things they send a formal
15 invitation. Other things if they wanted to attend, then, you
16 know, they contact the president and say, well, we'd like to
17 attend. But they don't always send a formal invitation to
18 them.

19 Q So I guess maybe two follow-up questions to that, if the
20 Decatur branch were hosting an event, could somebody from --
21 I'm trying to think where else y'all have branches. Do y'all
22 have a branch in Cullman County?

23 A What county?

24 Q Do you have a branch in Cullman County?

25 A Cullman, no.

1 Q Or Marshall County?

2 A Yes.

3 Q Okay. So could somebody from the Marshall County unit of
4 the NAACP attend an event that's sponsored by the Decatur
5 branch?

6 A If it was, you know, open to the public. I mean, if it's
7 not a closed meeting or something like that, but typically
8 events are open. They could buy a ticket to -- if it's a gala
9 or something like that, or if it's a press conference, you
10 know, they can attend. But they may not be able to speak. But
11 they can attend for support.

12 Q So when you were speaking with counsel about invitations,
13 you know, Morgan County inviting -- or Decatur inviting
14 Huntsville or Huntsville inviting Decatur, were those formal
15 invitations or informal invitations that you were talking
16 about?

17 A I was talking about formal invitation.

18 Q Okay. And how often does the Decatur branch send a formal
19 invitation to the Huntsville branch, would you estimate?

20 A I would say, you know, a couple of times a year.

21 Q Okay. And how often would you estimate that the
22 Huntsville branch sends a formal invitation to the Decatur
23 branch?

24 A Probably similar.

25 Q Okay. You testified briefly about being a deacon in your

1 church, right? Being a deacon in your church, correct?

2 A Yes.

3 Q Okay. And you mentioned that as part of your duties as
4 part of your service there, you have a ward of -- a group of
5 individuals that you help shepherd, right?

6 A Yes.

7 Q And one of those individuals you said lives in Decatur,
8 correct?

9 A Yes.

10 Q How large is your ward?

11 A We have about I would say about 50 -- about 50 people.

12 Q Okay. To your knowledge, do -- does anybody else in your
13 ward live in Decatur?

14 A No. No.

15 Q Okay. You were talking a little bit about the ethic
16 makeup of the Huntsville region, right?

17 A Yes.

18 Q And I think you said that south Huntsville was
19 predominantly white; is that right?

20 A Well, again, that's kind of what people kind of referred
21 to the southern part of Huntsville as the white area, you know.
22 I haven't done any analysis to see if the numbers are correct,
23 but that's generally what people refer to, and it appears that
24 way.

25 Q And is Decatur north or south of Huntsville?

1 A Is Decatur --

2 Q Is Decatur south of Huntsville?

3 A It's more west.

4 Q Southwest?

5 A Yes.

6 Q Okay.

7 A Yeah.

8 Q You testified a little bit about the NAACP's involvement
9 in a ballot harvesting lawsuit fairly recently, correct?

10 MR. ROSS: Objection. There's no testimony about
11 ballot harvesting.

12 BY MR. TAUNTON:

13 Q SB-1. You testified about a lawsuit to enjoin SB-1, which
14 was targeted at what I guess the State characterized as ballot
15 harvesting; is that fair?

16 A Yes. We were involved in SB-1.

17 Q Okay. I'm just talking about that lawsuit. I'm trying to
18 identify the lawsuit so we're talking about the same thing,
19 okay?

20 A Yes.

21 Q Were -- now, you said that an injunction was eventually
22 issued in that case, right?

23 A Yes.

24 Q Now, weren't a lot of the claims in that case, though,
25 dismissed?

1 A Yes -- well, yes.

2 Q And the injunction applied specifically to individuals who
3 were handicapped, such as blind or illiterate; is that right?

4 A Yes. And those who could not read.

5 Q Correct. Okay. Thank you.

6 The NAACP conducts frequent voter registration drives,
7 right?

8 A Correct.

9 Q And the state conference expects its local branches to
10 conduct voter registration drives, right?

11 A Yes.

12 Q Do you consider -- do you consider voter registration
13 process a difficult process?

14 MR. ROSS: Objection. I'm not sure what he means by
15 difficult.

16 THE COURT: If the witness is confused, he can say.

17 THE WITNESS: Beg your pardon?

18 THE COURT: If you understand the question, you may
19 answer. And if you are confused, you may ask that it be
20 clarified.

21 THE WITNESS: Okay.

22 Repeat the question.

23 BY MR. TAUNTON:

24 Q Do you consider the process of registering to vote, do you
25 consider that a difficult process?

1 A For a person that is capable of understanding and who has
2 access and who can write and not visually impaired or anything,
3 it's fairly straightforward process.

4 Q Okay. Have members of the NAACP ever run for office?

5 A Yes.

6 Q And so if you had -- have you had an opportunity to
7 observe their campaigns in your position with the NAACP?

8 A When you say opportunity, the opportunity's there, but we
9 are nonpartisan, so I do not participate in their campaigns or,
10 you know, what their records are or anything.

11 Q I understand. I'm not asking whether the NAACP has ever
12 endorsed a candidate or anything like that. But if you had an
13 opportunity generally in that position to observe the process?

14 A Again, the opportunity's there. Do I do it? The answer
15 is no.

16 Q So you don't know whether it takes, for instance, funding
17 or infrastructure to run an effective campaign?

18 A I assume it takes funding, but I don't quite understand
19 the question.

20 Q Well, in a contested election, would simply announcing
21 your candidacy for office but otherwise doing very little to
22 raise campaign funding or build campaign infrastructure likely
23 result in a successful campaign?

24 A It probably would not. Again, it depends on who you're
25 running against and if you're running against anyone. So there

1 are a lot of factors involved in really responding to your
2 question, so...

3 Q In the last five years, have you had any communications
4 with any members of the NAACP that have said they wanted to be
5 more politically engaged but could not be because they couldn't
6 engage with the Democratic party?

7 MR. ROSS: Objection, Your Honor. It's beyond the
8 scope of the cross -- excuse me -- the direct.

9 MR. TAUNTON: Your Honor, I mean, it's cross. It's
10 not redirect. I don't know that my scope is entirely limited
11 by -- entirely by his direct.

12 MR. ROSS: Yeah. It's not impeachment either, Your
13 Honor. There's no reason for him to ask him questions about a
14 political party when we didn't ask him anything about that on
15 direct.

16 MR. TAUNTON: Your Honor, the case is about the -- the
17 allegation is that the members of the NAACP have not been able
18 to fully engage with the political processes in the state of
19 Alabama. I'm asking him questions related to that.

20 THE COURT: The question was: In the last five years,
21 have you had any communications with any members of the NAACP
22 that have said they wanted to be more politically engaged but
23 could not because they could not engage with the Democratic
24 party.

25 MR. TAUNTON: Correct, Your Honor.

1 THE COURT: I think to the extent you're asking
2 questions about whether members of the organization feel
3 they're unable to participate equally in the political process,
4 I think that's allowed. But if it's going somewhere else, it
5 may not be.

6 MR. TAUNTON: Your Honor, it is I think entirely
7 limited to that. There's not really a follow-up question.

8 THE COURT: Okay. You may answer that one.

9 THE WITNESS: Okay. I'm still a little confused here.
10 So help me out with what am I answering.

11 BY MR. TAUNTON:

12 Q I can repeat the question. In the last five years, have
13 you had any communications with any members of the NAACP that
14 said they wanted to be more politically engaged but could not
15 be because they could not engage with the Democratic party?

16 A The Democratic party?

17 Q Yes, sir.

18 A Okay. No.

19 Q Okay. In the last five years, have you had any
20 communications with any members of the NAACP that said they
21 wanted to be more politically engaged but could not be because
22 they couldn't engage with the Republican party?

23 A No.

24 Q Let me ask you a little bit about the reapportionment
25 process and the NAACP's participation in it.

1 Did a representative -- well, representative of the state
2 conference attended public hearings for the reapportionment
3 committee concerning the 2021 Senate district map, right?

4 A You said did members of the NAACP attend the hearing?

5 Q Yes, sir.

6 A Yes.

7 Q Okay. But that representative didn't speak at the
8 hearing, did he?

9 A No.

10 Q Did the state conference provide any comments on the 2021
11 Senate district map that was enacted by the Legislature?

12 A I don't recall on that one whether we provided any or not.

13 Q If I were to -- you gave a deposition in this case,
14 correct?

15 A I did what now?

16 Q Did you give a deposition in this case?

17 A Yes.

18 Q In April?

19 A Yes or whenever it was. I don't remember the date.

20 Q If I were to show you your deposition, could that reflect
21 --

22 A Yes.

23 Q Refresh your recollection?

24 A Yes.

25 Q So we turn to page 207 of that deposition.

1 And I -- if we -- I can't see it. Can you see the
2 deposition?

3 A Yes.

4 Q Okay. So beginning at line 7, I asked you: Did anybody
5 from the NAACP state conference examine the 2021 Senate
6 district map before it was passed and provide any comments?
7 And do you see your answer in line 10?

8 A Yes. I see the answer.

9 Q So I will ask you again: Did the state conference provide
10 any comments on the 2021 Senate district map before it was
11 passed by the Legislature?

12 A No.

13 Q Okay. Is it the state conference's position that the
14 Alabama State Legislature should consider race as a key factor
15 when drawing district lines in the state of Alabama?

16 MR. ROSS: Objection. Beyond the scope. It's
17 ambiguous. I'm not sure what he's asking.

18 MR. TAUNTON: This goes directly to the heart of the
19 claims of this case.

20 MR. ROSS: There's no intentional discrimination claim
21 or claim about the use of race in the districting anymore.

22 MR. TAUNTON: If nothing else, it goes to the totality
23 of the circumstances.

24 THE COURT: Why?

25 MR. TAUNTON: Well, certainly, if there were --

1 THE COURT: I think the answer would be different if
2 there were -- to be clear, if there were an intentional
3 discrimination claim in the case. But...

4 MR. TAUNTON: Your Honor, he provided testimony that
5 the state -- State of Alabama should actually have in its
6 guidelines -- or what we were discussing the guidelines that
7 one of the guidelines should be the consideration of race and
8 as we'll see in follow-up how that should be considered.

9 THE COURT: He did that in the deposition. I'm asking
10 why it's admissible now.

11 MR. TAUNTON: I think it goes to the question of what
12 guidelines were actually used, whether -- what the criteria
13 were for considering the map and what constitutes a reasonably
14 configured district ultimately.

15 MR. ROSS: Which, Your Honor, are --

16 THE COURT: Go ahead, Mr. Ross. I'm sorry.

17 MR. ROSS: Mr. Simelton didn't testify about what a
18 reasonably reconfigured district was or what -- or anything
19 about the illustrative map here. And, again, we don't have an
20 intent claim or a racial gerrymandering claim anymore.
21 Mr. Simelton also didn't testify about redistricting
22 guidelines, so it's --

23 THE COURT: To be clear, I'm less concerned about what
24 occurred in the deposition. What I'm concerned about is what
25 is admissible now. And as I understand it, reasonably

1 configured district is for the Court to determine as the fact
2 finder. And I still haven't heard anything that makes relevant
3 the NAACP's belief about what the role of the race should be in
4 Alabama's redistricting process. That's what I'm looking for.

5 MR. TAUNTON: Your Honor, it affected their decision
6 about when to bring a claim, what kind of claim to bring, and
7 ultimately, it -- he did testify concerning what he thought the
8 shape the district could or should be.

9 THE COURT: Well, that he testified about it doesn't
10 make it relevant.

11 MR. TAUNTON: I understand, Your Honor. But obviously
12 --

13 THE COURT: And the same for the decision about what
14 claim to be bring. I mean, I have got a claim sitting here I
15 have got to adjudicate. The strategic decision about what to
16 plead is not relevant to the fate of what was pled.

17 I guess I will put it this way: I understand why you want
18 to ask the question. Why do you need to ask the question?

19 MR. TAUNTON: Your Honor, I think that this Court is
20 going to consider lots of evidence about what a reasonably
21 configured district would be. I think evidence about what the
22 plaintiffs consider a reasonably configured district to be
23 could be probative to that. Traditional districting principles
24 and these types of things are certainly before the Court as it
25 considers what a reasonably configured district is.

1 THE COURT: Are the plaintiffs offering this witness
2 to prove anything about reasonably configured districts?

3 MR. ROSS: No, Your Honor, nothing beyond his
4 testimony about the relationship between Huntsville and
5 Decatur, but nothing specific to redistricting guidelines, what
6 redistricting guidelines were considered, the motivation of
7 legislators. He didn't -- none of his testimony goes to that,
8 Your Honor.

9 MR. TAUNTON: Your Honor, it also goes to communities
10 of interest and what communities of interest they thought
11 should and should not be considered as the NAACP was
12 considering what communities of interest could be drawn into a
13 reasonable district.

14 MR. ROSS: And there was no testimony from him about
15 what a reasonably configured district is or -- you know, beyond
16 his general testimony about factors that may be relevant to
17 communities of interest. He didn't testify about what are or
18 are not communities of interest.

19 THE COURT: I still don't see why it matters for my
20 limited task what the NAACP thinks the Alabama Legislature
21 ought to do with race as a consideration.

22 MR. TAUNTON: Your Honor, really this is a foundation
23 question that will go to actually specific maps before this
24 Court.

25 THE COURT: Well, he's not testifying about those.

1 MR. TAUNTON: Well, I had like to ask him questions
2 related to at least one of them.

3 THE COURT: Why does the NAACP's position on the role
4 that race should play relate to that? Why is it foundational?

5 MR. TAUNTON: Well --

6 THE COURT: I mean, I assume the lawyers are going to
7 make all kinds of arguments about reasonably configured, and
8 you are going to do it on the basis of different bodies of
9 evidence. The plaintiffs have just stipulated that their
10 evidence about reasonably configured is not going to be this
11 witness.

12 MR. TAUNTON: Well, Your Honor, that's not entirely
13 true. He certainly has offered evidence concerning communities
14 of interest, and in particular tying -- or seeking to tie
15 together Huntsville and Decatur if not other areas. That is
16 one of the things this Court will consider in the context of
17 reasonably configured.

18 THE COURT: But why does that open the door to what
19 the Legislature ought to do with race? I mean, it opens the
20 door to impeaching, seeking to impeach what he said about
21 Huntsville and Decatur. You can ask questions about that for
22 sure. But why does that open the door to writ large what the
23 Legislature ought to be doing? I mean, I think the question is
24 whether the map the NAACP has challenged violates Section 2 or
25 doesn't.

1 MR. TAUNTON: Correct. And the NAACP had a view about
2 when it did and when it did not.

3 MR. ROSS: Your Honor. Sorry. To the extent, he's
4 going to ask my client about when he decided to sue and why he
5 decided to sue, that obviously potentially implicates the
6 privilege and attorney work product, so it's even more far
7 afield from anything Mr. Simelton testified to or anything that
8 would be relevant to this Court's analysis.

9 Again, this is not an intent case. Plaintiffs are not
10 questioning or trying to question the motive of the
11 Legislature. Mr. Simelton simply testified to a few relevant
12 facts, which the Court may or -- which plaintiffs or the Court
13 or defendants may or may not use about communities of interest.

14 And so to the extent he wants to ask him about communities
15 of interest, we understand that he may open the door to that,
16 but we -- I didn't show him maps. He didn't testify to maps.
17 And I think it's far beyond the scope and irrelevant.

18 MR. TAUNTON: Your Honor, he testified that he -- he
19 did look at maps. He did testify to that. And also I'm
20 primarily interested not in what the Legislature should or
21 should not do which ultimately this Court will determine, but
22 instead what the NAACP's understanding of those things is.

23 Ultimately, why the NAACP believes that a suit like this
24 is due to be brought, why they ultimately decided to bring
25 that, and I don't think that we will not touch on issues of

1 privilege, at least anymore than privilege was waived within
2 the deposition itself.

3 THE COURT: Well, I mean, Mr. Ross asked why the NAACP
4 is a plaintiff in the case. So you can certainly ask that
5 question and engage with him about his answer there. But I
6 don't think that opens the door to what the Legislature should
7 or should not have considered about race as an input for this
8 map.

9 MR. TAUNTON: Your Honor, as far as it concerns that
10 specific issue, I will say I don't have any follow-up questions
11 to the one that I asked. I mean, I asked him if he has a
12 position on that. But that -- I really don't have any
13 additional questions for him concerning the legislative
14 guidelines.

15 THE COURT: All right. The question that drew the
16 objection is: Is it the state conference's position that the
17 Alabama State Legislature should consider race as a key factor
18 when drawing district lines in the state of Alabama?

19 MR. TAUNTON: Correct, Your Honor.

20 THE COURT: I still don't have a relevance hook for
21 that.

22 MR. TAUNTON: Your Honor, if -- I'm happy to ask my
23 next question, and if the Court is satisfied that it -- if it
24 doesn't draw the objection and the Court is satisfied that I
25 can proceed on that, then I'm happy to proceed.

1 THE COURT: Let me hear the next question.

2 BY MR. TAUNTON:

3 Q Mr. Simelton, is it the NAACP's position that if a
4 majority-black district can be created, it should be created?

5 A That's the question to proceed to answer?

6 MR. ROSS: Objection, Your Honor. I'm not sure -- it
7 seems to ask for a legal conclusion, and I'm not quite sure
8 what his question was, in fact, asking. So apparently he needs
9 to rephrase it.

10 MR. TAUNTON: I am not asking him for a legal
11 conclusion. I'm asking for him -- I'm asking for his
12 understanding and what the -- again, the understanding and
13 position of the NAACP is on that.

14 The Court ultimately decides the law.

15 THE COURT: You may answer that question.

16 BY MR. TAUNTON:

17 Q Would you like for me to repeat it, Mr. Simelton?

18 A Yes, sir.

19 Q Is it the NAACP's position that if a majority-black
20 district can be created, it should be created?

21 A That -- the answer is we believe that's what Section 2 of
22 the voting rights allows.

23 Q Is that the same as yes?

24 A The Section 2 of voting rights allow that? The answer is

25 --

1 Q Now, I --

2 A If that is allowed under Section 2 of the Voting Rights
3 Act, which we believe it is, then the answer is yes.

4 Q Okay. Now, the state conference had evaluated bringing a
5 lawsuit like this one for several years, hadn't it?

6 MR. ROSS: Objection. Excuse me. This is calling for
7 attorney-client privilege and work product.

8 MR. TAUNTON: Without -- I'm happy to stipulate that
9 you should not reveal any conversations with counsel.

10 MR. ROSS: He's asking him about what the -- what the
11 NAACP considered and what lawsuits it considered bringing. Of
12 course, that's entirely within the privilege. I don't know
13 what would be a non-privilege answer.

14 BY MR. TAUNTON:

15 Q I'm happy to rephrase the question.

16 Had the NAACP state conference for several years had
17 discussions about the possibility of creating another district
18 in north Alabama for African-Americans to get elected to the
19 Senate?

20 THE COURT: Mr. Simelton, I am going to instruct you
21 that in answering the question, you can't reveal anything about
22 conversations with attorneys.

23 MR. ROSS: Including with the NAACP's internal
24 attorneys at the general counsel's office of the NAACP
25 attorneys.

1 THE WITNESS: The response would be based on
2 discussions that we have had with attorneys. I mean, I haven't
3 -- we didn't come up with this ourselves.

4 MR. ROSS: Your Honor, I --

5 THE COURT: All right. Then the objection based on
6 the privilege is sustained if he can't answer it without
7 revealing conversations with attorneys.

8 MR. TAUNTON: Your Honor, I -- I just read his answer
9 in a deposition. So I mean, I'm not asking him for anymore
10 than he already has revealed. And there was no objection on
11 the basis of privilege at the time that the question was asked.
12 BY MR. TAUNTON:

13 Q So I am not asking you to go beyond what has already been
14 stated. I'm only asking you if that question -- if that
15 question is true.

16 THE COURT: What was the question from -- I don't have
17 the question. What was the question from the deposition?

18 BY MR. TAUNTON:

19 Q Mr. Simelton, if we could maybe refresh your recollection,
20 we'd go to your deposition on page 67 beginning at line 17 and
21 then through line 6. And at some point, you did reference
22 conversations with counsel. And I think both myself and your
23 counsel instructed you not to provide any further testimony
24 concerning that.

25 Mr. Simelton, based on your review --

1 MR. ROSS: Your Honor, there was an objection to
2 privilege in the middle of this deposition. So it's not clear
3 to me.

4 THE COURT: Well, but Mr. Naifeh it says at line 13,
5 you can say that. So I think the answer that begins at line 22
6 on 67 through page 68, line 6 is in, but nothing beyond that.

7 MR. TAUNTON: Your Honor, that's -- I am not asking
8 him anything beyond that.

9 THE COURT: All right. Well, if you want that in the
10 record, I think you need to refresh his recollection.

11 BY MR. TAUNTON:

12 Q Mr. Simelton, based on your review of the deposition
13 there, had the state conference been evaluating bringing a
14 lawsuit like this for several years?

15 A And I hate to ask the question with the question because I
16 don't want -- I want to make sure I answer your question
17 correctly.

18 MR. ROSS: Your Honor, there is also an objection to
19 form. I'm not sure this is proper refreshing recollection. I
20 also, again, raise my objection to relevance. He asked a
21 confusing and improper question and then got an objection to
22 attorney-client privilege. So obviously, whatever he said in
23 the deposition that came out before the objection, we
24 understand is in. But asking him to testify beyond that seems
25 improper to the plaintiffs.

1 THE COURT: All right. I think the answer that he
2 gave before the privilege objection is fairly in. I think
3 anything beyond that or any characterization of that is subject
4 to the privilege objection. I think the privilege objection
5 was waived as to the answer in the deposition that came before
6 the privilege objection.

7 MR. TAUNTON: Understood, Your Honor. I'm not trying
8 to probe any -- any further past that.

9 THE COURT: All right.

10 THE WITNESS: Start again?

11 BY MR. TAUNTON:

12 Q Yeah. I am a little lost as to where we are with the
13 question. But I think it was this: Had the state conference
14 before bringing this lawsuit evaluated bringing a lawsuit like
15 this for several years?

16 A Again, depends on what you mean by evaluated.

17 We have not done -- we did not do any evaluation, but we
18 did --

19 Q Don't tell me about evaluations of counsel.

20 A Beg your pardon?

21 Q Don't tell me about evaluation of counsels.

22 A That's what you said is evaluation.

23 MR. ROSS: Your Honor, it seems -- if he can just read
24 this answer into the record, that seems --

25 THE COURT: Why don't you read the answer into the

1 record and ask him if he wants to change it.

2 BY MR. TAUNTON:

3 Q Yeah. I tried that earlier and drew the objection, but I
4 will do that now.

5 THE COURT: Well, I mean, to be fair, it doesn't say
6 evaluating bringing a lawsuit. What it says is there have been
7 discussion for several years that it may be possible to create
8 another district.

9 MR. TAUNTON: Okay.

10 BY MR. TAUNTON:

11 Q So, Mr. Simelton, I think I asked you this question: I'd
12 asked you: How did the Stone matter come to your attention?

13 I believe your answer was: There had been discussion for
14 several years that it may be possible to create another
15 district in north Alabama for an African-American to get
16 elected to the Senate. And this is probably three or
17 four years ago. You know, just casual conversation; is that
18 correct?

19 A That is correct.

20 Q Do you stand by that answer?

21 A Stand by the answer?

22 Q Yes, sir.

23 A Casual conversation, yes.

24 Q Then the NAACP, of course, brought this lawsuit following
25 the reapportionment process after the 2020 census, right?

1 A Yes.

2 Q Is one of the reasons that the state conference did not
3 bring this lawsuit prior to the 2020 census because the state
4 conference did not believe that a valid majority-black district
5 could be drawn?

6 MR. ROSS: Objection. Not sure what valid means.

7 BY MR. TAUNTON:

8 Q I believe it is the word that you used. But did the state
9 conference believe that it could succeed in a lawsuit prior to
10 the 2020 census? And let me -- that's phrase is confusing.
11 Let me ask this: Did the state conference decline to bring
12 this lawsuit in the north Alabama area prior to the 2020 census
13 because the state conference did not believe it could succeed
14 in that lawsuit?

15 MR. ROSS: Which again, Your Honor, likely involved
16 conversations with counsel. So to the extent he's asking for
17 any information which Mr. Simelton testified about with --
18 excuse me -- spoke with counsel about the viability of any
19 claim, plaintiffs would object.

20 MR. TAUNTON: I could try rephrasing the question,
21 Your Honor.

22 BY MR. TAUNTON:

23 Q Would the population shifts following the 2020 census in
24 the Huntsville area have an impact on the state conference's
25 decision to participate in the Stone lawsuit?

1 A Yes.

2 Q How so?

3 A We believed that there were increase in African-Americans
4 in the Huntsville area after looking at the numbers that the
5 increase in the number of African-Americans in the area that
6 there would be an increased possibility of creating a district.

7 Q And how did that in particular impact the state
8 conference's decision to participate in the Stone lawsuit?

9 A It was a -- kind of a combination of the time was right,
10 and let's proceed.

11 Q Was there a shift in population that made you believe that
12 there was a way to create a majority-black district in the
13 Huntsville area?

14 MR. ROSS: Objection. Asked and answered.

15 MR. TAUNTON: Your Honor, I don't know if that was.

16 MR. ROSS: Well, he answered.

17 THE WITNESS: I mean, we did not do an analysis or
18 anything like that. We just knew that there were more people
19 moving into that area -- into the Huntsville Madison County
20 area.

21 BY MR. TAUNTON:

22 Q Do you know if majority of black district could have been
23 drawn before the 2020 census?

24 A We don't -- again, we didn't do an analysis, so we don't
25 know if there could have been or not.

1 Q Did the NAACP believe that a majority-black district could
2 be drawn prior to the 2020 census but only by splitting four
3 counties?

4 MR. ROSS: Your Honor, I renew my prior objections
5 about relevance and beyond the scope. Again, there was no
6 testimony from Mr. Simelton at all about whether he thought it
7 was possible to draw a majority-black district beyond his
8 general statement that he doesn't believe cracking and packing.
9 And there's no testimony from him about any map, you know, what
10 population changes in Huntsville.

11 So, again, this is not what Mr. Simelton was put up by the
12 plaintiffs to testify about. That's beyond the scope of his
13 knowledge or his direct testimony.

14 MR. TAUNTON: Your Honor, I believe, if I can get an
15 answer to it, this is probably my last question in this line.

16 Second, he was asked about the NAACP's decision to
17 participate in the lawsuit, why they're participating in the
18 lawsuit, and the NAACP is a plaintiff requesting the power of
19 this Court to do these things.

20 They're -- why they have invoked the power of the Court
21 and why they have invoked the power of the Court now as opposed
22 to some other time I think is relevant.

23 THE COURT: So I think I need to know answers to
24 questions about why the NAACP believes it's entitled to relief.

25 I do not think I need to know answers to questions about

1 why they did not previously believe they were entitled to
2 relief.

3 So if you can frame the question in a way that is relevant
4 to what I need to know or have to decide, then I think the fact
5 that it was not specifically asked in the direct is not a
6 sustainable objection.

7 But why the NAACP changed its mind about whether to bring
8 a lawsuit or not bring a lawsuit is not material to whether it
9 is now entitled to relief. Questions about its position as to
10 why it is now entitled to relief are relevant.

11 BY MR. TAUNTON:

12 Q When the NAACP brought this lawsuit, did it believe that a
13 majority-black district could be drawn without splitting four
14 counties?

15 A Yes.

16 Q Okay. And did it believe that that was true after the
17 2020 census?

18 A Let me back up and answer that question. I'm -- I should
19 have stated this upfront.

20 But it was only after we -- I mean, we had in our minds
21 that it could be done, but --

22 MR. ROSS: Your Honor, I guess I'm concerned that he
23 may testify about --

24 THE COURT: I'll reissue my warning. Okay, so
25 Mr. Simelton, you may answer the question, but you may not

1 reveal conversations with counsel.

2 So make sure that you limit yourself in your answers to
3 things that were not derived from conversations with counsel.

4 MR. ROSS: I think that, Your Honor, that he can't
5 testify --

6 THE COURT: I think he's about to tell us that if he
7 can't, but --

8 THE WITNESS: I can only --

9 BY MR. TAUNTON:

10 Q Would it help if I refresh your recollection?

11 A Well, if you rephrase the question. I mean, I think --
12 again, we didn't do an analysis -- well, I don't want to get
13 into the client -- attorney-client privilege.

14 THE COURT: All right. I'm going to stop you right
15 there. If you have something from the deposition, you can use
16 it.

17 MR. TAUNTON: Can we put up page 201 beginning at line
18 10, the full page? Your Honor, this was phrased in the context
19 of what the NAACP thought prior to the 2020 census.

20 THE COURT: Well, I already said that wasn't relevant,
21 so, I mean, that's not the question.

22 MR. TAUNTON: But it was -- he discusses in his
23 answer, Your Honor, without raising a privilege objection why
24 the NAACP believed it was entitled to relief afterwards --
25 without raising a privilege objection.

1 THE COURT: Well, but that's all before.

2 MR. ROSS: Your Honor --

3 THE COURT: What I limited you to was on relevance
4 grounds was now or after --

5 MR. TAUNTON: Your Honor, I was trying to phrase it in
6 the context of now. I do think that his answer goes to the
7 question of now.

8 I'm happy to move on.

9 THE COURT: I think that sounds like the wiser course.

10 MR. TAUNTON: Your Honor, I will take a minute to
11 confer with counsel.

12 THE COURT: Sure.

13 MR. TAUNTON: Your Honor, I don't think I have any
14 further questions.

15 THE COURT: Okay. Is there any redirect?

16 MR. ROSS: Your Honor, could I have just have a few
17 minutes?

18 THE COURT: You may.

19 MR. ROSS: Thank you.

20 Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. ROSS:

23 Q Just a couple of questions, Mr. Simelton. You mentioned
24 you had about 50 people in your ward at your church, correct?

25 A Yes.

1 Q Do you know where all 50 of them live?

2 A No.

3 Q Okay. In your experience, are black people more likely to
4 need help with registering to vote?

5 A Yes.

6 Q And are black people more likely to need help with
7 applying to vote absentee?

8 A Yes.

9 MR. ROSS: Thank you, Your Honor. No further
10 questions.

11 THE COURT: All right. Is there any reason I may not
12 excuse Mr. Simelton?

13 All right. Mr. Simelton, thank you for being with us
14 today. You are excused.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: All right. Would plaintiffs' counsel
18 predict for me the chances that the next witness can testify in
19 fewer than 22 minutes.

20 MR. ROSBOROUGH: Zero.

21 THE COURT: Zero. Okay. All right. I thought that
22 was the case, but I just wanted to be sure.

23 All right. Then we will plan to recess now for the day.

24 Is there any objection to starting at 8:30 tomorrow?

25 Y'all are so well prepared, and everything has gone so

CERTIFICATE

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

Christina K Decker

11-12-2024

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

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